



**THE SABC'S ADDITIONAL SUBMISSIONS ON THE ICASA
DRAFT MUST CARRY AMENDMENT
REGULATIONS, 2021**

29 July 2021

Introduction

1. Following the Authority's public hearings on 28 June 2021, the SABC hereby submits information with respect to additional questions raised by the Authority with respect to the ICASA Draft Must Carry Amendment Regulations of 2021 Gazette No. 44338 (the Draft Regulations). The SABC has also prepared amendments to the draft regulations as an Annexure which are tracked for ease of reference
2. The SABC respectfully notes that the Authority intends to only complete these final regulations by March 2022. The SABC believes that given the length of time that has passed since 2008, without the SABC having the legitimate right to commercially negotiate terms, we would again request that the process be expedited.
3. In this submission, the SABC will focus on the following areas:
 - Subscriber Convenience vs Universal Access;
 - Purpose of the regulations;
 - Obligation to offer television programmes and other terminology;
 - Negotiation framework;
 - Other Free-To-Air PBS channels
 - Penalties:
 - Dispute resolution mechanisms;
 - Transitional provisions;
 - Redrafted Regulations

4. Subscriber Convenience vs Universal Access

- 4.1 As the SABC submitted at the hearings, Must Carry is less about universal access than convenience for SBS subscribers and commercial benefit for SBS licensees. It is central to the SABC's position that "subscriber convenience" must be differentiated from universal access as a regulatory concept

4.2 The SABC notes the Authority's position that the rationale for Must Carry is to ensure universal access to public broadcasting platforms³. Furthermore, MultiChoice has submitted that the universal access of public broadcasting services should be a guiding principle in the development of the revised Must Carry regulations⁴. It further states that other side issues should be overridden by the public interest with respect to accessibility of SABC channels. In the same vein, MultiChoice disregards the very principle it advocates for, as it wants to carry popular SABC channels only. It also deprives its defaulting subscribers from accessing SABC Channels which are meant to be freely accessible.

4.3 **The SABC has not submitted that SBS should be allowed to provide free to air access to SABC channels on its platform.** On contrary, the strict regulatory distinction between SBS and free to air public broadcasting services would prevent that and must be maintained. However, the SABC is simply demonstrating that, because of the very nature of subscription services, these can be switched off for non-payment and cannot be relied upon for permanent universal access. Subscription services cannot be seen as a permanent solution to Universal Access.

4.4 Notwithstanding the position of the Authority and Multichoice which seeks to make carriage by Multichoice synonymous with the universal access principle, it is the SABC's submission that its three Must Carry channels are already universally and freely accessible through other non-subscription platforms. Any member of the public, including the indigent (through SAPO and Sentech), can now acquire an alternative way of accessing the three SABC channels.

³ ICASA Findings and Positions Document on the Review of the ICASA Must Carry Regulations, 2008, clause 2.29, at page 14

⁴ MultiChoice Submission on the ICASA Discussion Document on the Review of Must Carry Regulations, 2008, point 13, at page 101 (Genesis Rep

4.5 Therefore, for Multichoice, Must Carry is not about universal access for subscribers. Rather, at its core, Must Carry is now about convenience for SBS subscribers and commercial benefit for the company.

4.6 The SABC submits that “subscriber convenience” is a completely different concept to “universal access” to the SABC by the public. While DStv or other SBS subscribers may be inconvenienced if the SABC withdrew the three channels after failing to agree commercial terms, they still have a very real opportunity of accessing three SABC channels WITHOUT having to pay a subscription.

5. Purpose of the regulations

5.1 It is noted with concern that Multichoice proposed that the purpose of the Regulations has not been updated in line with the RIA Report and the Findings Document. Essentially, MultiChoice wants the Authority to deviate from the prescripts of section 60(3) of the ECA. Amongst other things, MultiChoice submits that the objective of Must Carry Regulations is to make Must Carry Channels conveniently accessible to SBS subscribers, by requiring SBS licensees to simultaneously retransmit the Must Carry Channels to subscribers on their SBS¹.

5.2 MultiChoice further states that “Must Carry rules are driven by a central public interest principle of universal access to make public broadcasting

¹ MultiChoice submission on the Draft Must Carry Amendment Regulations , 21 May 2021, at page 28, para 80.3

programming available to all citizens, targeting those citizens that use subscription broadcasting services as their means of access to television².

- 5.3 It is not acceptable for MultiChoice to seek to entrench the convenience of its subscribers in accessing Must Carry channels, when at the core, its main target is to advance its own commercial interests.
- 5.4 Thus, the SABC submits that the Authority should stick to the dictates of section 60(3) of ECA which empowers the regulator to prescribe the extent to which SBS Must Carry PBS TV programmes. This provision was not meant to advance the convenience of SBS subscribers.

6. Obligation to offer television programmes

- 6.1 The SABC submits that the regulations must provide that that if no commercial agreement can be found after 90 days and after a bona fide attempt by the parties to do so, the SABC has the right to hold back the channels from any SBS without any penalty from ICASA or punitive regulatory consequence as envisaged in Regulation 10.
- 6.2 It does not make regulatory sense to require the parties to enter commercial negotiations according to the Act, but then determine that – even after the failure to find commercial agreement – the public broadcaster could still be forced to offer the three channels against its financial interests.
- 6.3 The SABC has proposed amendments to the regulations in this regard.

² *ibid*, at page 30, para 1

7. Other terms and phrases

- 7.1 The SABC has noted MultiChoice's concern with respect to interchangeable use of "*bouquet*" and "*service*" in the Draft Regulations. The SABC supports MultiChoice's proposal that the regulations should refer to subscription broadcasting services instead of bouquets of subscription broadcasting services in regulations 5(1), 4(5) (b) and (c), as it will demystify the existing confusion.
- 7.2 It is further noted that MultiChoice proposes that the usage of terms and phrases in the Draft Regulations should be aligned to the lingo of the ECA; it referred to interchangeable use of "commercially negotiable terms" and "commercially agreeable terms" which should be corrected to "commercially negotiable terms". In line with MultiChoice proposal, the SABC supports the consistent use of the phrase "commercially negotiable terms" throughout the Draft Regulations.
- 7.3 Additionally, the SABC has noted MultiChoice's concern with regards the interchangeable use of "Must Carry Channels" and "television programmes of the PBS Licensee" in the Draft Regulations. MultiChoice proposed that the phrase "the television programmes be replaced with the phrase "the Must Carry Channels" throughout the regulations. The SABC agrees with the abovementioned proposal and further proposes that since Must Carry channels would mean SABC 1, SABC 2 and SABC 3, and then it suffices to have Must Carry channels used across the Draft Regulations.
- 7.4 The SABC has made consequential amendments to the regulations in this regard. (See Annexure)

8. Negotiation Framework

The SABC has made detailed amendments to the proposed negotiation framework first proposed by Multichoice under Regulation 7A (see Annexure).

9. Other free-to-air PBS channels

- 9.1 The Draft Regulations have extended the ambit of the 'Must Carry' concept to "all the free to air PBS programs comprising a channel broadcast by a PBS licensee as part of its broadcasting service are subject to Must Carry obligations".
- 9.2 MultiChoice has also proposed that "subject to Regulations 4(5) and 5, all the free-to-air PBS programmes comprising a television channel broadcast by a PBS Licensee as part of its broadcasting service are subject to Must Carry obligations."³
- 9.3 It is the SABC's view that this would inadvertently extend the SABC's Must Carry obligations to SABC Sport, SABC Education and any other current channel or future channel to be developed. SABC News is already carried by Multichoice in terms of a commercial agreement signed in 2018 and subject to its own, negotiated terms of distribution.
- 9.4 Therefore, the SABC submits that Draft Regulation 3(1) must be amended to reflect that the **Must Carry channels are defined as SABC1, SABC 2 and SABC 3**. These do not include SABC Sport, SABC Education or any other SABC television channel either existing or to be developed. The public

³ MultiChoice submission on the Draft Must Carry Amendment Regulations , 21 May 2021, at page 30, para 1

broadcaster may, in its discretion, add the carriage of these additional channels, subject to commercial negotiations.

- 9.5 The SABC has made amendments to the Regulations in this regard (See Annexure)

10. Penalties

The SABC has made amendments to the proposed penalties and clarified which Regulations, if breached, can be penalised

11. Dispute resolution mechanisms

- 10.1 The SABC supports the view that Authority should not be involved in the commercial negotiations on Must Carry, as this will amount to interference in commercial activities of licensees, which is contrary to the objects of the ECA, in particular section 2(y).
- 10.2 It would be within both parties' discretion to jointly agree on an arbitration process as a tool for dispute resolution. Through this process, parties may jointly appoint an arbitrator and agree on the terms of reference with respect to the arbitration process. This proposal is premised on the fact that arbitration could be a cost effective, expeditious and preferred mechanism for resolving commercial disputes. However, this should not be regulated by the Authority but decided upon by the parties if both agreed.

- 10.3 If there is a deadlock, it would be the responsibility of parties to notify the Authority of the deadlock and the developments of the arbitration process (if any).
- 10.4 It is further submitted that PBS and SBS must notify Authority on the commencement of negotiations, on the conclusion of negotiations, their success or otherwise.
- 10.5 The SABC has made amendments to the Regulations in this regard (see Annexure).

11. Proposals on transitional provisions

- 11.1 The SABC is opposed to the perpetual carriage of Must Carry channels by SBS without commercially negotiated terms. We note the suggestion by MultiChoice as follows:
- 11.2 “The Must Carry Channels carried by an SBS Licensee immediately prior to the publication of the Must Carry Amendment Regulations, 2021 shall continue to be carried on an SBS in accordance with the Agreement concluded between the SBS and PBS Licensees and submitted to the Authority under the ICASA Must Carry Regulations, 2008 until such time as the Must Carry Channels are carried by that SBS Licensee in accordance with a new Agreement concluded by the parties in terms of the amended regulations.”⁴

⁴ MultiChoice submission on the Draft Must Carry Amendment Regulations , 21 May 2021, at page 48, para 2

11.3 The continued carriage of PBS channels without commercially negotiated terms will perpetuate the existing unlawfulness of the Must Carry regulations. The SABC submits that the Regulations should give room for the Authority to self-correct and allow for PBS and SBS licensees to negotiate commercial terms of carriage for Must Carry channels.

11.4 The SABC has proposed detailed amendments in this regard (see Annexure).

12. Conclusion

12.1 In summary the SABC submits that the Must Carry regulations, with the SABC's proposed amendments as set out in the Annexure, would go a long way to addressing the concerns of the public broadcaster.

12.2 The SABC thanks the Authority and looks forward to amended Must Carry Regulations that are aligned with the spirit and the letter of the law.

ANNEXURE

SABC'S PROPOSED AMENDMENTS TO THE DRAFT MUST CARRY REGULATIONS

As indicated in SABC's written presentation at the Draft Must Carry Regulations Hearings and notwithstanding the SABC's key policy differences with Multichoice, we are aligned with many of Multichoice's proposed constructive amendments to the draft regulation which seek to deal with several provisions which "are unworkable and/or unclear and are likely to give rise to difficulties in implementation".

In the proposed amended regulations by the SABC, the public broadcaster has given effect to the submissions articulated by the SABC in its written submission and presentation to the public hearing and taken into account the proposed draft regulations by ICASA and the amendments proposed by Multichoice. We have prepared a tracked version to indicate our proposed changes from the Authority's draft regulations.

As the Authority will note, the SABC is aligned with many of Multichoice's proposals and has incorporated those we agree with.

For ease of reference, the SABC has made the following material amendments and changes to the following:

1. Regulation 1 - Definition of Must Carry Channels as SABC 1, SABC 2 and SABC 3;
2. Regulation 2 - The Purpose of the Regulations;
3. Regulation 4(1)(A) - The Obligation to Carry Television programmes under Regulation 4(1A);
4. Regulation 7A - SABC has largely adopted Multichoice's proposed Negotiation Framework which SABC, with changes to the commencement date, time periods and a prohibition on the PBS Licensee concluding an exclusive agreement on Must Carry Channels with one SBS Licensee

5. Regulation 8 - The Agreement, including changes to the length of validity of the existing agreement, related time frames and what should occur should the parties fail to conclude an agreement within the time periods envisaged under SABC's amended Regulation 7A
6. Regulation 10 – Contraventions and Fines
7. Transitional Arrangements

ANNEXURE: SABC'S PROPOSED AMENDMENTS TO THE DRAFT REGULATIONS

ICASA Must Carry Regulations, 2008 as proposed to be amended by the Draft Must Carry amendment regulations, 2021: SABC's Drafting proposals (tracked changes).

SCHEDULE

1. DEFINITIONS

In these Regulations any word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) and the Broadcasting Act, 1999 (Act No. 4 of 1999) shall have the meaning ascribed to them unless the context indicates otherwise.

"Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

"Agreement" means the agreement in terms of these regulations concluded between a PBS Licensee and a SBS Licensee, governing the carriage of television programmes of the PBS Licensee by a SBS Licensee;

"Bouquet" means a collection of video and/or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre;

"Carry" means to simultaneously retransmit a Must Carry Channel on the subscription broadcasting service of an SBS licensee;

~~'Channel' means a single defined television programming service of a licensee other than a video on demand programming service;"~~

"**Must Carry**" means the set of rules that obliges a SBS Licensee to carry the television programmes broadcast by a PBS ~~licensee~~ Licensee;

"**Must Carry Channel**" means the television programmes comprising a channel of the PBS Licensee, limited to SABC 1, SABC 2 and SABC 3 channels only, to be added to the _bouquets subscription broadcasting service_ of a SBS Licensee in accordance with regulation 4;

~~"**Non-Must Carry Channels**"~~ means the television programmes comprising a channel of the PBS Licensee which the SBS Licensee voluntarily adds to its _bouquets subscription broadcasting service_ in the absence of an obligation imposed by these regulations, but subject to commercially negotiable terms;

"**PBS Licensee**" means Public Broadcasting Service Licensee;

"**SBS Licensee**" means Subscription Broadcasting Service Licensee;

"**Television Programmes**" means television programmes broadcast by the Must Carry Channels or the Non-Must Carry Channels, as the case may ~~Public Broadcasting Service Licensee~~ to be carried by the Subscription Broadcasting Service Licensee subject to commercially negotiable terms. ~~in terms of section 60(3) of the Act~~;

2. Purpose of the regulations

(1) The PBS Licensee is established as the public broadcaster to service the needs of all South African society, to be responsive to audience needs and to make its services available throughout the Republic on all platforms.

(2) Must Carry rules are driven by the central public interest principles:

a. of universal access to make Must Carry Channels to all citizens, targeting those citizens that use subscription broadcasting services as their one possible means of access to television; and

b. the protection of the integrity and viability of the PBS Licensee.

(3) The objective of Must Carry Regulations is to make Must Carry Channels accessible to subscribers, by requiring SBS Licensees to carry the Must Carry Channels on their subscription broadcasting service, subject to commercially negotiable terms.

(1) The purpose of these regulations is to:

(a) ~~Provide for terms and conditions under which~~ Prescribe the extent to which SBS Licensees ~~must will~~ carry, subject to commercially negotiable terms, the programmes of the PBS Licensee;

~~(aA) provide for terms and conditions under which the PBS Licensee will offer its television programmes to the SBS licensee;~~

~~(b) Determine the transparent, equitable and reasonable terms and conditions under which the PBS Licensee may offer its programmes to the SBS Licensee;~~

~~(c)-(b)~~ Provide exemptions for certain SBS Licensees from compliance with these regulations; and Regulations

~~(c)~~ Set out the obligations on the PBS Licensee to offer, and SBS Licensees to carry, the Must Carry Channels, subject to commercially negotiable terms.

(d) Create a framework for PBS and SBS Licensees to commercially negotiate terms to which the carriage of Must Carry Channels will be subject.

(d) Regulate all other matters incidental hereto

3 Television programmes to be carried

(1) ~~All the free-to-air~~ Subject to regulations 4(5) and 5, only the Must Carry Channels ~~PBS programmes comprising a channel~~ broadcast by a PBS Licensee as part of its broadcasting service are subject to Must Carry obligations.

(2) The PBS and the SBS Licensees must negotiate the carriage of ~~PBS channels~~ Must Carry Channels in accordance with the framework in Regulation 7A.

4. Obligation to carry television programmes

(1) All SBS Licensees must carry the channels of the PBS Licensee designated as ~~must carry~~ Must Carry C channels as part of the service offering, subject to Regulations 5 and 7A.

(1A) The SBS ~~L~~ icensee and the PBS Licensee must take all reasonable steps within their control to ensure that the Must Carry channels are carried available ~~on its bouquet at all times.~~

~~2) A SBS Licensee must submit a request to carry the television programmes all of the PBS Licensee within six (6) months of the bouquets provided on the subscription broadcasting service within the time frames provided for in Regulation 7A from the coming into effect of these regulations, or within six (6) months from concurrent with the date of issue of the Subscription Broadcasting licence, whichever occurs first.~~

~~The SBS Licensee must commence to transmit the must carry within three (3) months of receipt of the must carry channels from by the PBS Licensee. Provided that an SBS Licensee will not be held to have contravened this regulation due to circumstances beyond its reasonable control or due to downtime not exceeding 24 continuous hours.~~

~~(2)...~~

~~(3)...~~

~~(3)(4)...~~

~~(4)~~(5) A SBS Licensee:

- (a) ___ whose service offering consists of more than twenty nine (29) channels is subject to the obligation to carry the Must Carry Channels on commercially negotiable terms; ~~television programmes of the PBS Licensee~~

- (b) ___ must ensure that the thirtieth (30th) channel added to its subscription broadcasting service bouquets is a Must Carry must carry Channel of the ~~PBS Licensee~~.

- (c) ___ must ensure that every twentieth (20th) channel added to its ~~bouquet~~ subscription broadcasting service over the minimum thirty (30) channels is a Must Carry Channel must carry channel (being the 50th, 70th, 90th channels and so forth) in accordance with Regulation 3

~~(5)~~(6) Where channels are added in accordance with Regulation 4(5)(b) and 4(5)(c), regulations 7, 7A and 8 apply to such channels.

~~(6)~~(7)...

5 Exemption from compliance with the regulations

(1) Subject to regulation 5(3), a SBS Licensee whose service offering has twenty-nine (29) channels or less is exempt from the obligation to carry ~~the television programmes of the PBS Licensee~~ Must Carry Channels

(2) A SBS Licensee may only be exempt where:

- (a) Written notice has been submitted to the Authority by the SBS Licensee; and
- (b) Approval of such exemption has been granted in writing by the Authority.

~~(2) (3)~~ A SBS Licensee with twenty-nine (29) or less channels intending to carry Must Carry Channels or Non-Must Carry Channels: television programmes or non-must carry channel

~~(a)~~ is not precluded by the application of an exemption, granted in terms of regulation 5(1), to carry Must Carry Channels or Non-Must Carry Channels subject to commercially negotiable terms y television programmes or non-must carry channels; and

~~(b) (b)~~ may carry such Must Carry Channels or Non-Must Carry channels television programmes or non-must carry channels subject to commercial negotiations between the SBS and PBS Licensees.

6 Obligation to offer television programmes

~~(1) The PBS Licensee must offer its television programmes, subject to commercially agreeable terms, to a SBS Licensee upon a request from the SBS Licensee.~~

~~(2) The PBS Licensee must offer its television programmes to a SBS Licensee within three (3) months from the date of conclusion of the commercial negotiations.~~

~~(3) (2A) The commercial negotiations contemplated in regulation 6(2) above must be concluded within 90 days from the date of receiving a request for the Must Carry channels.~~

~~(1)...~~

~~(2)...~~

~~(2A)...~~

~~(4) (3)~~ The PBS Licensee must deliver its signal to the SBS Licensee in an un-encoded and compatible format.

7 Transmission of television programmes

(1) The SBS Licensees are required to transmit simultaneously and without any alteration, the entire television programmes carried that are identified as on the Must Carry programmes Channels.

(2) An SBS Licensee which carries the Must Carry Channels on its SBS in accordance with these Regulations will not bear any responsibility or liability to any person arising from any of the programming or advertising broadcast on the Must Carry Channel

7A Negotiation framework

(1) An SBS Licensee must submit a request, in writing, to the PBS Licensee to carry the Must Carry Channels, as required in terms of regulation 4(5), within fourteen (14) days of:

(a) the coming into effect of the Must Carry Amendment Regulations, 2021 or the date of issue of the relevant Subscription Broadcasting Service licence, whichever occurs first;

(b) the addition of every twentieth (20th) channel to its subscription broadcasting service which triggers the addition of a Must Carry Channel by the SBS Licensee to its subscription broadcasting service from time to time; and/or

(c) the launch of a new Non-Must Carry Channel on the broadcasting service of the PBS Licensee, from time to time.

2) The PBS Licensee and SBS Licensee must commence commercial negotiations within fourteen days from the receipt of a request from the SBS Licensee in terms of sub-regulation 7A(1) and must negotiate the commercial

terms in good faith having regard to the purpose of these Regulations specified in Regulation 2.

- (3) Within 90 days from the receipt of a request from the SBS Licensee in terms of sub-regulation (1), or such further period as may be agreed to by the parties and notified to the Authority in writing, the PBS Licensee and the SBS Licensee must conclude a written Agreement setting out the commercially negotiated terms agreed to by the parties pursuant to the commercial negotiations.
- (4) Subject to this regulation 7A, the SBS Licensee must add the Must Carry Channel(s) to its subscription broadcasting service within 30 days of the signature of the Agreement by the party signing last in time, or such further period as may be agreed to by the parties and authorised by the Authority.
- (5) Subject to commercially negotiated terms, the PBS Licensee must take all relevant steps within its control in order for the SBS Licensee to carry the Must Carry Channels on its subscription broadcasting service in accordance with these Regulations.
- (6) The PBS Licensee is not permitted to conclude an exclusive agreement with a SBS Licensee for the Must Carry Channels: Provided that the PBS Licensee shall not be regarded in breach of this provision if it is not able to conclude commercially negotiated agreements with one or more SBS Licensees after bona fide attempts to do so.

8 Agreement

- (1) ___ The SBS Licensee must notify the Authority, in writing, within ~~within~~ thirty (30) days of the signature of an agreement by the party last signing last in time, that it has concluded an agreement with the PBS Licensee agreement-being signed

- 2) The provisions of the Must Carry Amendment Regulations become immediately enforceable on the day they come into effect and the timelines provided for under Regulation 7A immediately apply.

- 3) Notwithstanding any other provision of these Regulations, the Must Carry Channels carried by an SBS Licensee immediately prior to the publication of the Must Carry Amendment Regulations, 2021 shall continue to be carried on an SBS in accordance with the Agreement concluded between that SBS Licensee and the PBS Licensee and submitted to the Authority under the ICASA Must Carry Regulations, 2008 until such time as:
 - (a) a new Agreement is concluded by the parties in terms of the amended regulations within the Regulation 7A time periods; or
 - (b) The parties fail to find agreement within the Regulation 7A time periods;

- 4) Should the parties fail to find agreement within the Regulation 7A timelines then:
 - a) The parties may at their own discretion agree to independent arbitration; or failing that
 - b) Within 60 days of the expiry of the period for negotiation in terms of Regulation 7A(3) or such longer period as the parties may agree in writing, the SBS shall cease carrying the Must Carry Channels on its subscription services, and the parties shall inform the Authority, the public and the SBS subscribers accordingly

9 Monitoring compliance with the Regulations

Licensees must submit a compliance report annually no later than six (6) months after the end of their financial year.

10 Contravention and fines

(1) In terms of section 17E (2)(b) of the ICASA Act, the Authority may impose a fine not exceeding:

~~(a) Any person that contravenes regulations 4(2), 4(3), 4(6), 5(2), 6, 7 and 9 is liable to a fine not exceeding R1 000 000, 00.~~

(a) Five hundred thousand rand (R500 000, 00) for contravention of regulations 4(1), 5(2), 6, 7A(1), 7A(2), 7A (3), 7A (4), 7A(5), 8(2), 8(3)(b) and 9.

(b) One Hundred Thousand Rands (R100 000, 00) for a repeated material contravention of ~~the~~ regulations ~~not specified in regulation 10 (a)(7)(1), 8(1) and 9~~

(c) One Million Rands (R1 000 000, 00) for repeated material contravention of the regulations: specified in Regulation 10(1)(a).

10. SHORT TITLE AND COMMENCEMENT

These regulations are called the Must Carry Amendment Regulations, 2021 and will come into force upon publication thereof in the Gazette.

Transitional arrangements to be included in the Must Carry Amendment Regulations, 2021: Clause 10 of the Amendment Regulations

(1) These Regulations are called the Must Carry Amendment Regulations, 2021, and will come into force on the date of the publication thereof in the Government Gazette.

(2) Notwithstanding any other provision of these Regulations, the Must Carry Channels carried by an SBS Licensee immediately prior to the publication of the Must Carry Amendment Regulations, 2021 shall continue to be carried on an SBS in accordance with the Agreement concluded between that SBS Licensee and the PBS Licensee and submitted to the Authority under the ICASA Must Carry Regulations, 2008 until such time as:

- a) a new Agreement is concluded by the parties in terms of the amended regulations within the Regulation 7A time periods; or
- b) The parties fail to find agreement within the Regulation 7A time periods;

(3) Should the parties fail to find agreement within the Regulation 7A timelines then:

- c) The parties may at their own discretion agree to independent arbitration; or failing that
- d) Within 60 days of the expiry of the period for negotiation in terms of Regulation 7A(3) or such longer period as the parties may agree in writing, the SBS shall cease carrying the Must Carry Channels on its subscription services, and the parties shall inform the Authority, the public and the SBS subscribers accordingly

(4) The Authority takes cognisance of a government policy process that may lead to the repeal of the enabling statutory provision for these regulations, namely section 60(3) of the Electronic Communications Act, 2005. Should section 60(3) of the ECA be repealed then the agreement concluded in terms of Regulation 8(1) between an SBS Licensee and a PBS Licensee should remain in force until the termination of that Agreement, or for a period mutually agreed to by the parties.
