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DRAFT CODE FOR PERSONS WITH DISABILITIES REGULATIONS FOR FURTHER PUBLIC COMMENTS

COMMENTS BY E.TV

WHO ARE WE

1. e.tv is South Africa's first commercial free-to-air television licensee and since its inception has made a significant contribution to the country's broadcasting landscape:
 - 1.1. e.tv is a Level 2 BBBEE contributor;
 - 1.2. e.tv's holding company, eMedia Investments, is majority-owned and controlled by HCI;
 - 1.3. HCI's major shareholder is the SACTWU Investment Group, the investment vehicle for the South African Clothing and Textile Workers Union;
 - 1.4. e.tv's ultimate shareholder beneficiaries are:
 - members of the South African Clothing and Textile Workers Union (SACTWU) and their families; and
 - Annual dividend payments are made;
 - 1.5. Eighteen (18) million South Africans watch e.tv daily;
 - 1.6. The channel broadcasts more than 45% South African content;
 - 1.7. The channel makes significant investment in South African independent production, staff development and training – 5.5% of payroll.



INTRODUCTION

2. e.tv wishes to thank the Independent Communications Authority (“the Authority”) for the opportunity to comment on the Draft Code for Persons with Disabilities Regulations (“the Draft Regulations”) as published on 20 November 2017 in Government Gazette No. 41265. e.tv requests the opportunity to make an oral submission should the Authority decide to hold public hearings on the matter.
3. The Draft Regulations are issued in terms of section 70 of the Electronic Communications Act No. 36 of 2005, which requires the Authority to prescribe regulations setting out a code on people with disabilities that will be applicable to all categories of licences. The purpose of the regulations is to prescribe Code for persons with disabilities, to be adhered to by Electronic Communication Services (ECS) and Broadcasting Service (BS) Licensees aimed at ensuring that persons with disabilities have access to ECS and broadcast services.
4. In this regard, the Draft Regulations will be applicable to both the ECS and BS Licensees.
5. While e.tv is aware of the views of some members of the disabled community that broadcasters are not doing enough for disability issues and that improvements in making broadcasts more accessible are long overdue, e.tv is concerned that the rash proposals made by the Authority will ultimately harm, rather than help, the disabled community. This is because it would prove difficult for e.tv to implement the proposals in their current form. This means that instead of seeing some, albeit gradual, improvement under the current regime, the Draft Disability Code is likely to result in an impasse between broadcasters and the Authority.

E.TV COMMITMENTS

6. In order to set the context, e.tv wishes to place on record its long commitment to improving both the involvement of persons with disabilities in television broadcasting and the accessibility of its programming to disabled audiences. e.tv is one of the only television broadcasters, which made promises of performance in relation to disability issues at the



time it applied for its licence, which promises were captured as licence conditions. e.tv is therefore obligated to meet and report on these conditions annually.

7. Section 6 of e.tv's license requires that:

- 7.1. at least 5% of the licensee's employees (being staff and management) shall be disabled people; and
- 7.2. the licensee's management shall consist predominantly of South Africans from historically disadvantaged groups (i.e. black (Coloureds and Indians) women and disabled persons.

8. e.tv strives to ensure that its programmes cater to serve the needs of persons living with disabilities. As a result, where possible, e.tv uses the means available to allow the hearing impaired persons better access to its services in the news and entertainment fields. In this connection:

- 8.1. e.tv broadcasts its 20h00 week day news bulletins using sign language as required by clause 2.2 in schedule 1 of its license conditions;
- 8.2. special news events such as the State of the Nation address and Budget Speech are broadcast in sign language;
- 8.3. Sunrise has a sign language interpreter daily for its African news between 05h30 and 08h00. This is over and above our license obligation to broadcast news in sign language during primetime; and
- 8.4. e.tv has subtitles in its primetime shows such as Rhythm City, Scandal to assist the hearing impaired enjoy our top entertainment shows.

E.TV'S RESPONSE TO THE DARFT REGULATIONS

9. The Draft Regulation in regulation 4, which is applicable to e.tv, prescribes minimum requirements for broadcast service licensees with respect to subtitling, audio captioning, audio description and closed captioning.

10. e.tv has serious concerns with the Draft Regulation since:



- 10.1. The Authority does not indicate the criteria used in arriving at the various percentages for each category of broadcasting service. The Authority does not outline or take the DTT and its impact on broadcasters into consideration. DTT and its rollout already places financial burden on all broadcasters. These regulations are not futureproof in that they do not anticipate the future and developing trends in the electronics industry nor does it offer any intervention in the likelihood of disruptive technology been invented.
- 10.2. It is absurd that even in a multichannel digital environment, that the Authority imposes onerous obligations on free-to-air (FTA) BS licensees than subscription BS licensees. e.tv submits that the Authority must use this opportunity to start putting in place measures aimed at levelling the playing field by ensuring that there is some parity as far as obligations between FTA and subscription television licensees is concerned. e.tv is of the view that the proposed minimum requirements are discriminatory between FTA and subscription television and serve to continue protecting subscription BS licensees.
- 10.3. In the past broadcasters were not expected to comply with minimum requirements as expressed in percentages as far as subtitling, audio description, closed captioning and audio captioning. The challenge then becomes how does e.tv calculates the current percentages in order to meet the proposed percentages of the various years as proposed in the Draft Regulation.
- 10.4. The Draft Regulation does not make provision for a formula on how the proposed minimum requirements will be calculated for each licensee. e.tv submits that the Authority must consider providing a formula and criteria to be used in calculating the proposed percentages. Equally the Authority must assist with the formula and criteria in order to help broadcasters to arrive at the percentages currently. As alluded to earlier, the regulations are not future proof against disruptive technologies.
- 10.5. It is also e.tv's considered view that as an industry we must work with the Authority in applying the best practice regardless of where they are found. A case in point is that we can learn from the UK's regulator, Ofcom which has made it its duty under



the Communications Act to promote the development and availability of assistive devices.

10.6. To help the industry achieve similar standards, “Ofcom commissioned an independent study to identify the areas where Ofcom could have the greatest potential impact in supporting the future development and application of new assistive technologies in the communications sector. The study focussed on three key areas namely:

- The current provision of assistive technologies in the field of communications, with a view to the identification of unmet needs;
- The identification of recent technological developments that may enable new services (eg speech recognition, touch screens, smart materials); and
- The identification of existing assistive technology developments”

10.7. Again as a form of best practice we can learn from the Australian regulator, ACMA’s Disability standard which has periodic and future measures to protect both consumers and broadcasters against these disruptions.

10.8. “An item must meet the requirements of the applicable ACMA technical standard/s that is in force at the time the product is first supplied to the market (at the point where the Declaration of Conformity (DoC) is signed).

10.9. When an ACMA technical standard, or the underlying industry standard, is amended or replaced, or a new standard is introduced, a transition period applies. The transition period is two years, or such lesser period that is specified in the standard. During the transition period, both the old and the amended/replacement standard apply.

10.10. During the transition period, a supplier of a new product may choose to comply with either the old or amended/replacement standard. The product must not be tested against a combination of the two standards.



10.11. The requirements may also come at a cost to e.tv since the company may be required to acquire specialised hardware and/or for this purpose which may not necessarily be available locally and has to be imported from elsewhere in the world. Linked to this there may be a need to hire warm bodies to operate the system. Thus e.tv submits that the Authority must conduct a Cost-Benefit Analysis in order to arrive at informed and appropriate percentages.

FINANCIAL IMPACT

11. Among the issues not considered by ICASA, is the crucial matter of the financial impact the proposals will have on broadcasters. Specifically, the financial impact of setting aggressive minimum quotas for accessibility on all television channels.

12. e.tv submits that there would be a devastating financial impact on television broadcasting licensees should the Draft Disability Code be finalised as is and the minimum quotas for accessibility implemented. e.tv further submits that these proposals are contrary to the objects of the ECA, which the Authority must uphold. These include the objectives to:

12.1. encourage investment in the industry (section 2d);

12.2. promote the development of the industry (section 2r);

12.3. refrain from undue interference in the commercial activities of licensees (section 2y); and

12.4. promote stability in the sector (section 2z).

13. Given the objects of the ECA, ICASA must consider the impact of its proposals on the financial viability of licensees. Once it has considered this, only then can it reach a finding. At this stage there is no evidence that ICASA has given any consideration to the financial impact of its proposals on licensees.

14. e.tv understands that the costs of implementing the proposed minimum quotas would add at least R1600 per minute to the cost of programming – a significant and unsustainable increase.



15. Given that the Authority has given no consideration to the financial impact of its proposed minimum quotas on licensees, e.tv again submits that the Draft Disability Code is fatally flawed.
16. The Draft Regulation prescribes the imposition of a fine not exceeding R5 000 000, 00 (Five Million Rand) when a licensee fail to comply with the Regulations. e.tv finds the fine to be exorbitant and respectfully submits that the figure be reduced.

CONCLUSION

17. e.tv thanks the Authority for the opportunity to comment on the Draft Code for Persons with Disabilities Regulations and looks forward to participating in the further stages to be undertaken by the Authority.