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Draft Regulations for Community Broadcasting Services: Radio and Television

INVITATION FOR WRITTEN REPRESENTATIONS

The Independent Communications Authority of South Africa ("ICASA or the Authority") hereby declares its intention to make regulations for Community Broadcasting Services (radio and Television) in line with the provisions of section 4 (3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("ICASA Act"), section 4 (4)(a) and (b) and section 5(7) of the Electronic Communications Act No. 36 of 2005 ("the ECA"), published herewith ("the Draft Regulations") and invites interested parties to make written representation.

A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), Sandton between 09h00 and 16h00, Monday to Friday.

Written representations must be submitted to the Authority by no later than 16h00 on 18 May 2018 by post, hand delivery or electronically and marked specifically for attention: Mamedupe Kgatshe. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton to: mkgatshe@icasa.org.za and shill@icasa.org.za or by facsimile at: 011 566-3260. Enquiries should be directed to 011 566-3259 between 10h00 and 16h00, from Monday to Friday.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and such copies will be obtainable upon payment of the prescribed fee.

At the request for confidentiality by any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations.

The Authority will conduct provincial workshops on the Draft Regulations. The date and schedule for the workshops will be communicated in due course.



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MR RUBBEN MOHLALOGA

CHAIRPERSON

DATE: 22/03/2018

SCHEDULE

The ICASA has in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("ICASA Act") read with section 50 (c)s 5(7) of the ECA made the regulations in the Schedule.

1. Definitions

In these regulations, any word to which a meaning has been assigned in the ICASA Act and underlying statutes will have that meaning unless the context indicates otherwise.

"Alliance with a Political Party" means any cooperation and/or agreement between non-political organisations and political parties;

"Applicant" means a person applying to the Authority to register for a community broadcasting service licence;

"Community" has the same meaning as defined in the Broadcasting Act, No.4 of 1999 as amended and the Electronic Communications Act, No.36 of 2005 as amended

"Community Broadcasting Services" has the same meaning as defined in the Broadcasting Act, No.4 of 1999 as amended and the Electronic Communications Act, No.36 of 2005 as amended;

"ECA" means the Electronic Communications Act No. 36 of 2005, as amended.

"Licence" means a community broadcasting service licence granted and issued by the Authority;

"Licensee" means a person granted and issued with a community broadcasting service licence by the Authority;

“Local Origination Programmes” means local programmes sourced from the coverage area:

- (a) produced by a broadcasting service licensee; or
- (b) programmes produced by a resident of the coverage area; or
- (c) produced by a juristic person, the majority of directors, or members of whom are residents of the coverage area; or
- (d) produced in a co-production in which persons referred above have at least fifty percent financial interest.

“Non-Profit Entity” has the same meaning as defined in the Non-Profit Organisations Act 71 of 1997;

“Process and Procedure Regulations” means the Class Licensing Processes and Procedures Regulations (as amended), 2010 published in Government Gazette No. 33297, Notice No. 526 of 14 June 2010, as amended by Government Gazette No. 39874, Notice No. 157 of 30 March 2016;

“Political Office Bearers” means persons listed in regulation 7 of these Regulations;

“Political Party” has the same meaning as defined in section 1 of the ECA;

“Programme Sharing/networking” means programmes produced by one broadcaster and shared amongst different broadcasting licensees;

“Programme Syndication” means programmes produced at a central hub, distributed and broadcast simultaneously by broadcasting licensees;

“Record” has the same meaning as defined in section 1 of the National Archives and Records Service of South Africa Act No 43 of 1996.

2. Licence Application

- (1) An applicant is required to have been registered as a non-profit entity for the purpose of community broadcasting 2 years prior to the lodgement of the application as a community broadcasting service.
- (2) An applicant must demonstrate community development and empowerment activities undertaken within the period specified in sub-regulation (1) of these regulations.
- (3) An applicant applying for a community broadcasting license must submit a pre-registration notice as set out in Form B: Regulation 7.2 of the Process and Procedure regulations, which must be accompanied by the following documents:
 - (a) the applicant's founding documents such as the Constitution and Articles of Association;
 - (b) Curriculum vitae of board members and management;
 - (c) Disclosure of interest of board members and management;
 - (d) programming plan;
 - (e) Business plan comprising a 3-5 years' financial plan;
 - (f) Tax clearance certificate
 - (g) Demand, need and support including profiled community broadcasters in the coverage area and programming format; and
 - (h) Projects reporting on management, governance and finances.

- (i) Corporate governance and operational policies including, but not limited to:
 - a. Memorandum of incorporation;
 - b. The Constitution;
 - c. Technical operations;
 - d. Human resource;
 - e. Financial;
 - f. Programming policy;
 - g. Editorial policy;
 - h. Social media policy; and
 - i. Political branding at the station and affiliation policy.

- (4) The criteria of whether to grant or not to grant a community broadcasting service licence, be as follows:
 - (a) The applicant to fulfil the diverse needs of the community within the coverage area;
 - (b) programming to reflect the needs of the community as identified and prioritised by that community in a forum or any other manner to the satisfaction of the Authority;
 - (c) contribution towards the general enrichment of the lives of members of the community;
 - (d) distinction of the applicant from other applicants and/or broadcasters serving the same geographical coverage area;
 - (e) the format or coverage of an individual licence;
 - (f) application is not made where a community licensee exists with similar services;

- (g) compliance with the registration form in the Process and Procedure Regulations; and
 - (h) the demonstration of competency to self-provide, where a licensee chooses to self-provide for signal distribution.
- (5) An applicant must submit a pre-registration notice within the time frames to be prescribed by the Authority through the invitation to pre-register.
- (6) The Authority will inform the applicant of the outcome of the pre-registration notice 90 days after the closing date for submission of the pre-registration notice.
- (7) Where the Authority is satisfied that the applicant meets the requirements for the granting of a licence, the Authority will communicate such decision to the applicant in writing, following which the applicant may lodge the registration notice within 30 days of the Authority's written communication.
- (8) The Authority shall, where frequencies are available, grant a community broadcasting licence if the applicant satisfies the pre-registration requirements.
- (9) Where the Authority deems it necessary, the Authority will conduct public hearings prior to making a decision on the application to register a community broadcasting service.

3. Governance and Management

- (1) The founding documents of an applicant must reflect defined roles of management and the board members.

- (2) The composition of the Board must exclude immediate family members such as, parents, spouses, siblings, children connected by birth, adoption, marriage, civil partnership, or cohabitation, such as grandparents, great-grandparents, grandchildren, great-grandchildren, aunts, uncles, siblings-in-law, half-siblings, cousins, adopted children and step-parents/step-children, and cohabiting partners.
- (3) The role of the Board includes, but not limited to:
- (a) ensuring compliance with all relevant laws, regulations and codes of good practice;
 - (b) approving policies for the station;
 - (c) giving strategic direction to the licensee;
 - (d) development of a corporate code of conduct;
 - (e) identification of risk areas and performance indicators;
 - (f) appointing and supervising the Station Manager;
 - (g) approving the appointment of other senior management of the station;
 - (h) monitor implementation of the Board's plans; and
 - (i) supporting the station management in fundraising activities through its networks.
- (4) The role of the Station Manager includes, but not limited to:
- (a) planning of action such as initiating projects to fulfil the mandate of the licensee;

- (b) recruiting staff and volunteers including drafting contracts with detailed job descriptions;
 - (c) directing as well as training management for sound human relations and operational skills;
 - (d) managing daily operations and delegating control of other departments such as programming, sales and marketing, news, music, finance, technical and administration;
 - (e) instilling discipline through written and approved policies that detail correct actions and procedures;
 - (f) networking and meeting potential clients, funders and donors; and
 - (g) ensuring that the licensee affiliates/signs with the relevant forums such as the National Association of Broadcasters and the National Community Radio Forum.
- (5) The Station Manager must serve as *ex-officio* member of the board and report to the board.
- (6) Managers below the Station Manager must report to the Station Manager in respect of the operations in their respective departments.
- (7) Management is responsible for the daily administration duties of a licensee.
- (8) The Board must not interfere in the daily operations of a licensee.

4. Licence Amendment

- (1) The Authority shall deal with each licence amendment application based on its own merits.
- (2) In deciding whether to approve or not to approve a licence application, the Authority shall take into account the provisions of regulation 2 of these Regulations.
- (3) A licensee must fully comply with the amendment Form D: Regulation 8.1 in the Process and Procedure regulations.

5. Licence Renewal

- (1) A licensee intending to renew its licence must submit Form F: Regulation 9.1 in the Process and Procedure regulations comprising the following information:
 - (a) feasibility and sustainability report;
 - (b) Five (5) year financial statement revealing how a licensee has been performing;
 - (c) community support detailing how community members have been given access to the airwaves;
 - (d) details of whether the broadcaster have been off air;
 - (e) legality of office bearers;
 - (f) the existence of another community broadcasting licensee in the same geographical area; and

- (g) compliance report in respect of relevant legislation, the Authority's regulations and licence conditions, including instances of non-compliance if any.
- (2) In deciding whether to renew a licence, the Authority will apply the criteria as stipulated in regulation 2(4), read with sub regulation (1) herein.
- (3) Where a licensee, in its renewal notification, fails to comply with the requirements enunciated in sub regulation (1) and (2), the Authority will renew the community broadcasting license only for a period of eighteen (18) months and provide the licensee with an opportunity to comply with the outstanding requirements.
- (4) The Authority will monitor and assess licensee's compliance after twelve (12) months and determine whether to renew the community broadcasting license for a full licence period.
- (5) The Authority will not renew a community broadcasting license if the Authority determines that a licensee has;
- (a) repeatedly failed to comply with the requirements set out in regulation 5(1) and (2);
- (b) Failed to comply with a ruling/s of the Complaints and Compliance Committee (CCC).
- (6) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence renewal.
- (7) Where a licensee meets the licence renewal requirements, the Authority will issue a new licence on the same terms and conditions as the expired licence and update the Community Broadcasting licensees register by renewing the period of a licence.

(8) Where a licensee's licence has not been renewed, the Authority will update the register by removing a licensee from the Community Broadcasting licensees register.

6. Licence transfer

- (1) An intention to transfer of a licence from one entity to the other must be tabled and endorsed by the radio station's constituency either at its annual general meeting or special general meeting.
- (2) Full disclosure of the intended transfer must be tabled and submitted to the community served and the Authority for consideration.
- (3) The licence transfer application must be lodged in terms of Form F: Regulation 10 of the Processes and Procedures Regulations.
- (4) The criteria of whether to transfer or not to transfer a community broadcasting service licence, be as follows:
 - (a) the license transfer applicant to fulfil the diverse needs of the community within the coverage area;
 - (b) programming to reflect the needs of the community as identified and prioritised by that community in a forum or any other manner to the satisfaction of the Authority;
 - (c) contribution towards the general enrichment of the lives of members of the community;
 - (d) distinction of the license transfer applicant from other applicants and/or broadcasters serving the same geographical coverage area;
 - (e) the format or coverage of an individual licence;

- (f) whether a community broadcasting licensee exists with similar services in the proposed license area;
 - (g) compliance with the license transfer form in the Process and Procedure Regulations;
 - (h) the demonstration of competency to self-provide, where a licensee chooses to self-provide for signal distribution.
 - (i) feasibility and sustainability report;
 - (j) Five (5) year financial statement revealing how a licensee has been performing;
 - (k) community support detailing how community members have been given access to the airwaves;
 - (l) details of whether the broadcaster have been off air;
 - (m) legality of office bearers; and
 - (n) compliance report in respect of relevant legislation, the Authority's regulations and licence conditions, including instances of non-compliance if any.
- (5) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence renewal.

7. Prohibited Office Bearers

- (1) The following political office bearers shall not play any role in the Board, Management and Staff of a Community Broadcasting Service:

- (a) Members of the Local Executive Committees of political parties, the youth affiliates and women's affiliates of political parties, and any organisation that is in an alliance with a political party;
- (b) members of the Regional Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;
- (c) members of the Provincial Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;
- (d) members of the National Executive Committees of political parties, the youth wings and women's wings of political parties and any organisation that is in an alliance with a political party;
- (e) Councillors;
- (f) Mayors;
- (g) Members of Provincial Legislatures; and
- (h) Members of Parliament.

8. Programming

- (1) Majority of programmes, news bulletins and current affairs broadcast by a community broadcasting service must be produced and sourced locally.
- (2) Programme syndication/network and programme sharing shall not exceed 20% of the community licensee's programming.

(3) Licensees must have policies dealing with programming matters that include, amongst others:

- (a) mechanisms for community participation;
- (b) programming format; and
- (c) language policy.

9. Non-Profit Entities

(1) A community broadcasting service licensee shall, in the event of making a surplus, utilise and/or invest the funds in the community served for the purposes of community development.

(2) A community broadcasting service licensee must submit annually, a report with supporting documents, detailing how it has utilised or invested the surplus within the financial year.

10. Management Contract

(1) Management contracts must be lodged with the Authority for approval.

(2) The Authority will consider the following conditions for approval of management contract:

- (a) ownership of the community broadcasting licensee remains with the community being served;
- (b) administrative control in the operations of the community broadcasting licensee remains with the board of directors and management;

- (c) method of reimbursement and the duration of the management contract;
 - (d) a licensee retains editorial and programming control and independence;
 - (e) Management contract does not render a third-party entity a shareholder/owner of a community broadcasting licensee;
 - (f) fiduciary duties remain the responsibility of the board;
 - (g) In line with section 3 of the Standard Terms and Conditions for class, Board of directors must be from the coverage area; and
 - (h) The expiry date of the management contract
- (3) Renewal and amendment of a management contract must be lodged with the Authority for approval. The Authority will consider factors set out in regulation 10(2) for approval.

11. Community participation

- (1) A community broadcasting licensee must ensure that ownership of the community broadcasting licensee remains with the community being served.
- (2) A community broadcasting licensee must involve the community in the management of the community broadcasting licensee.
- (3) A community broadcasting licensee must establish programming councils/committees to enable community members to participate in the selection and provision of programmes.

- (4) The programming councils/committees must be representative of different interest groups within the community served, such as youth, women, or people with disabilities.
- (5) A community broadcasting licensee must submit proof of community participation at every annual general meeting, and other forums that require community participation.

12. Code of Conduct

Community broadcasting services licensees must adhere to the Authority's Code of Conduct for Broadcasters, 2009, or any amendment or replacement thereto.

13. Technical Standards and Specifications

- (1) A community broadcasting licensee must adhere to the Authority's regulations relating to technical standards and specifications, including amendments, applicable to broadcasting services namely;
 - (a) Radio Frequency Spectrum Regulations published on 30 March 2015 in the Government Gazette No. 38641
 - (b) Terrestrial Broadcasting Frequency Plan published on 02 April 2013 in the Government Gazette No. 36321 (as amended); and
 - (c) Administration Fees Notice 232 of 2017 published on 17 March 2017.

14. Record keeping

- (1) A community broadcasting licensee must in line with the National Archives and Records Service of South Africa Act, No 43 of 1996 as amended and any other applicable legislation, keep the following records relating to its broadcasting activities:

- (a) documentation relating to the person or entity who or which is in control of or in a position to exercise control over the licensee concerned including documentation relating to;
 - i. Its legal status including all founding documentation pertaining to the licensed entity and any member organizations of the entity;
 - ii. Details of the board members or trustees including gender, race and address of such person or entity, as the case may be; and
 - iii. Disclosure of interest of Board members in programming and finance.
- (b) a list of capital assets, books of account, financial records and audited financial statements;
- (c) a list of donors and details of all financial and non-monetary donations;
- (d) documentation pertaining to the opening, maintenance and changes in the status to banking accounts;
- (e) contracts entered into by or on behalf of the licensee in connection with the daily operational activities of the licensee;
- (f) a log of programmes broadcast in the form acceptable to the Authority;
- (g) a public file for keeping written complaints received by the licensee and correspondence between the licensee and complaints;
- (h) a log of telephonic complaints received by the licensee;
- (i) a log of advertisements broadcast;

- (j) a log of the percentage air-time per hour allocated to advertisements;
 - (k) during an election period, a log of party election broadcasts broadcast by the licensee;
 - (l) a log of sponsorship for programmes together with details of payment, financial or otherwise, received for such sponsorship;
 - (m) copies of correspondence with the Authority; and
 - (n) a log of all direct and indirect on-air fundraising activities for the stations.
- (2) A community broadcasting licensee may, by written notice directed to it, be required to produce or furnish to the Authority, at a time and place specified in the notice such records, including documents, accounts, estimates, returns and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by the Act or these regulations or by the relevant license.
- (3) The logs, statistical forms and records contemplated in regulation 13(1) and (2) must be preserved for the duration of the broadcasting licensee's license period.
- (4) A community broadcasting licensee must publish its policies on its website or have them available for public scrutiny at its premises or public space like libraries.
- (5) A community broadcasting licensee must report on its funding, surplus and the distribution of surplus at its annual general meetings and to the Authority.

15. Penalties

A community broadcasting licensee that contravenes any provisions set out in these regulations is liable for a fine not exceeding 10% of their annual turnover.