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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
NOTICE 639 OF 2020****DRAFT DIGITAL SOUND BROADCASTING SERVICES REGULATIONS, 2020**

On 29 March 2019, the Independent Communications Authority of South Africa (“ICASA or the Authority”) published a notice¹ in the Government Gazette regarding the conclusion of the inquiry into the use of Digital Sound Broadcasting (“DSB”) in South Africa. The said notice contains ICASA’s findings and position on the use of DSB in South Africa.

The Authority hereby declares its intention to make regulations for DSB in line with section 4(1), read with section 30 (2) (d), and 34 (6) of the Electronic Communications Act No. 36 of 2005 (“ECA”) and invites interested parties to make written representations thereon.

A copy of the Draft Regulations will be made available on the Authority’s website at www.icasa.org.za. Written representations must be submitted to the Authority by no later than 16h00 on 29 December 2020 electronically and marked specifically for attention the attention of Mr. Ndumiso Dana (Project Manager) by email at ndana@icasa.org.za and or by facsimile at: (012) 568 3818. Telephonic enquiries

¹ Government Gazette No. 42337 of 29 March 2019.

should be directed to (012) 568 3817 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 on the Authority's website at www.icasa.org.za.

In terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 (ICASA Act), a person submitting information to the Authority may request that specific information, within the submission be treated as confidential information. The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential in terms of section 4D(4)(a) to (e) of the ICASA Act. 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. Reference is also made to the ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 (Notice No. 849) of 17 August 2018.

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



Dr. Keabetswe Modimoeng
Chairperson

Date: 04/11/2020

SCHEDULE

1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act 36 of 2005) ("the Act"), has the meaning so assigned-

"Analogue broadcasting" means terrestrial broadcasting where the sound broadcast signal is in analogue format and "analogue broadcast" shall be construed accordingly;

"Applicant" means a person applying to provide a broadcasting service on a digital platform in terms of the Processes and Procedures Regulations;

"CCC" means the Complaints and Compliance Committee;

"Digital Sound Broadcasting (DSB)" means an audio broadcasting technology intended to deliver superior quality sound using digital communications technology. It is a digital signal delivery system capable of delivering sound and data;

"Digital sound broadcasting services" means a broadcasting service delivered over a DSB platform.

"Multi channel distributor" has the same meaning as defined in the Act;

"MUX" means a network of frequencies designed to simultaneously permit the transmission of two or more channels;

"Primary market" means geographical markets of Gauteng and the metropolitan areas of and around Cape Town and Durban;

"Process and Procedures Regulations" means the Processes and Procedures Regulations for Class Licences, 2010 published under Government Notice R526 in *Government Gazette* 33297 of 14 June 2010, as amended from time to time and the Processes and Procedures Regulations for Individual Licences, 2010 published under Government Notice R522 in *Government Gazette* 33293 of 14 June 2010, as amended from time to time;

"Radio Frequency Spectrum Licence" has the same meaning as defined in the Act;

“Secondary Markets” means geographical markets that fall outside Primary Markets;

“Simulcast” means a simultaneous transmission of the same radio programme on two or more channels or media;

“Sound broadcasting service” has the same meaning as defined in the Act;

“Licensee” has the same meaning as defined in the Act;

“Terrestrial Broadcasting Frequency Plan 2013” means the Terrestrial Broadcasting Frequency Plan published on 02 April 2013 in Government Gazette 36321 Notice No. 298 of 2013 as amended; and

“The Act” means the Electronic Communications Act, 2005 (Act No.36 of 2005), as amended.

2. OBJECTIVES

(1) The objectives of these Regulations are to:

- (a) set out the framework for the introduction of DSB services; and
- (b) prescribe the procedure for an Applicant seeking to provide DSB services.

3. SCOPE

These Regulations shall apply to sound broadcasting licensees seeking to provide digital sound broadcasting services.

4. FRAMEWORK FOR DSB SERVICES

(1) The introduction of DSB services will be in a phased approach: phase one (1) will be in the primary markets, and phase two (2) will be in the secondary markets.

(2) On a date to be determined by the Authority and published in the Government Gazette, the existing sound broadcasting service licensees will be granted an

option to simulcast their existing sound broadcasting programme (s) on analogue and digital platforms until the switch off date to be determined by the Minister.

- (3) The Authority will consider Applicants without existing sound broadcasting licences two (2) years after the effective date of these Regulations. This will be done through an invitation to apply issued by the Authority in terms of section 9 of the Act, and in line with Regulation 4 (5) of the Community Broadcasting Services Regulations, 2019.
- (4) A DSB technical advisory group (DTAG) will be formed after the effective date of these regulations. DTAG will be a consultative forum established by the Authority to oversee the roll out of DSB services. Its roles and responsibilities shall amongst others be set out in its terms of reference that shall be developed by its members in consultation with the Authority. The DTAG shall be chaired by a Councillor appointed by Council comprise of technical representatives from:
 - (1) Representatives from the DSB Council Committee of ICASA;
 - (2) Representatives from Licenced Public sound broadcasters;
 - (3) Representatives from Licenced Commercial sound broadcasters;
 - (4) Representatives from Licenced Community sound broadcasters; and
 - (5) Representatives from Licensed ECS/signal distribution operators.
- (5) The switch off date for analogue sound broadcasting services will be published by the Minister in the Government Gazette.

5. MULTI-CHANNEL DISTRIBUTOR FOR DSB SERVICES

- (1) Multi-channel distribution services will be provided by an electronic communications network services (ECNS) licensee as defined in the Act.
- (2) A Multi-channel distributor shall be required to have an ECNS licence and radio frequency (RF) Spectrum licence in-order to distribute and operate a MUX.
- (3) The Authority shall issue an invitation to apply (ITA) for a RF spectrum licence to Applicants who hold an ECNS licence and intend to be a Multi-channel distributor.
- (4) Existing Broadcasters, who self-provide their signal distribution services, will be required to apply for a RF spectrum licence in order for them to operate a MUX.

- (5) The ECNS licensee shall be required to roll-out infrastructure and commence operation within twenty-four (24) months from issuance of a RF spectrum licence by the Authority.

6. STANDARDS APPLICABLE TO DSB SERVICES

The DSB services must be provided using one of the following digital standards:

- (a) DRM30 technologies to complement AM sound broadcasting services in the band 535.5 - 1606.5 kHz;
- (b) DRM+ to complement FM sound broadcasting services in the band 87.5 – 108 MHz; or
- (c) DAB+ to complement FM sound broadcasting services in the band 214 - 240 MHz

7. DSB MUX ALLOCATION

- (1) The MUX allocation for DSB services is as indicated in the Terrestrial Broadcasting Frequency Plan 2013.
- (2) Public, commercial and community DSB services will be provided in terms of the Terrestrial Broadcasting Frequency Plan 2013 as updated by the Authority from time to time.

8. LICENSING OF DSB SERVICES

- (1) The Authority shall, upon receipt of an application by an Applicant and subject to the availability of capacity on a MUX, issue a sound broadcasting service licence to provide DSB services.
- (2) A sound broadcasting service licensee shall approach the Multi-channel distributor with its existing sound broadcasting service licence for confirmation of the availability of capacity.
- (3) The Multi-channel distributor shall not grant capacity to a sound broadcasting service licensee without the approval of the Authority.

- (4) Once the Applicant receives written confirmation of capacity from a Multi-channel distributor, the Applicant shall provide the same to the Authority in order to apply to provide a DSB service in terms of regulation 4(3) or to apply for channel authorisation as set out in regulation 9 of these Regulations.

9. CHANNEL AUTHORISATION

- (1) A sound broadcasting service licensee may, as set out in Annexure A to these Regulations, apply to the Authority for a channel authorisation to add a new DSB service to an existing DSB service.
- (2) A sound broadcasting service licensee may not add a channel to its service unless the Authority, on application by the licensee, has authorised the channel.
- (3) Within sixty (60) days of the receipt of the application for channel authorisation, the Authority shall issue a certificate authorising or refusing to authorise the channel.
- (4) If the Authority refuses to authorise a channel, the Authority will provide written reasons for the decision to the Applicant.

10. CONTRAVENTION AND PENALTIES

- (1) Failure to comply with regulations 7 and 8 (3) will result in the imposition of a fine not exceeding two hundred thousand Rands (R200 000) for each day of the contravention; and
- (2) Failure to comply with regulation 9 (2) will result in the imposition of a fine not exceeding five hundred thousand Rands (R500 000).

SHORT TITLE AND COMMENCEMENT

These Regulations are called the Digital Sound Broadcasting Regulations, 2020 and shall come into force upon publication in the *Government Gazette*.

Annexure A: Channel authorisation application

- (1) An Applicant requiring channel authorisation in terms of regulation 9 of these Regulations must submit a channel authorisation application setting out the following information:
- (a) State the name of the channel;
 - (b) The nature of its channel and its content;
 - (c) The primary language of the channel;
 - (d) The duration of the channel if it is a special event channel or pop out channel;
 - (e) Confirmation from the Multi channel distributor of capacity on the MUX; and
 - (f) Information regarding the name, nature and content of the existing DSB service provided by the Applicant.