



Independent Communications Authority of South Africa
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**CODE FOR PERSONS WITH DISABILITIES REGULATIONS
REASONS DOCUMENT**

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1. ACKNOWLEDGEMENTS

The Independent Communications Authority of South Africa (“the Authority”) hereby acknowledges and thanks all stakeholders who have participated in the process aimed at amending the Code for Persons with Disabilities Regulations (“draft amendment Regulations”).

The following stakeholders have submitted written representations to the third draft amendment Regulations published for public comments on 12 June 2020:

- 1) AudioDescribe Pty (Ltd);
- 2) Cell C;
- 3) Consumer Advisory Panel (“CAP”);
- 4) Internet Service Providers' Association (“ISPA”);
- 5) MNET/MultiChoice;
- 6) MTN;
- 7) National Association of Broadcasters (“NAB”);
- 8) National Council of and for Persons with Disabilities (“NCPD”);
- 9) National Institute for the Deaf (“NID”);
- 10) SABC;
- 11) SACF;
- 12) Tapeaids for the Blind and South African National Council for the Blind (“SANCB”);
- 13) Telkom;
- 14) Virecom and nWise;
- 15) Vodacom.

2. INTRODUCTION

- 2.1 The Reasons Document sets out the reasons for the decisions of the Authority on the Code for Persons with Disabilities Regulations, 2021, ("the Regulations").
- 2.2 The Authority's reason for enacting of the Regulations was due to the necessary improvement on and review of the Code on People with Disabilities Regulations published in Government Gazette No. 30441 of 7 November 2007 ("the previous regulations") so as to ensure broader access to television broadcasting and electronic communications services by persons with disabilities; to enhance aspects in the previous regulations and to ensure a streamlined process of reporting by licensees.
- 2.3 On 12 June 2020, the Authority published the draft Code for Persons with Disabilities Regulations ("the draft Regulations") with the intention of soliciting inputs on the draft Regulations. This was subsequent to the Authority conducting an extensive process of consultations on the proposed amendments which included a two-day workshop held on 06 and 07 June 2019; international study visits; and public hearings across all provinces and engagements with licensees and stakeholders.
- 2.4 In developing this Reasons Document, the Authority has considered the written submissions by interested parties, as well as oral submissions made during the two-day workshop. The Authority's mandate is to regulate broadcasting and electronic communications services in the public interest as laid out in section 2(a) and (b) of the ICASA Act 13 of 2000 ("ICASA Act"), as amended and section 70 of the Electronic Communications Act 36 of 2005 ("ECA").

REASONS FOR AMENDMENTS TO THE DRAFT REGULATIONS

3. AD DEFINITIONS:

- 3.1 **Accessibility Services:** The definition was expanded to include sign language, as it was excluded amongst the accessibility services being referred to in the draft Regulations.
- 3.2 **Subtitles and Closed Captioning:** The Authority is of the view that there is a distinction between subtitles and closed captioning, and this is further captured in that Subtitles are embedded on the programme, whereas closed captions can be switched on and off, depending on what the viewer wants to see.
- 3.3 **Universal Design:** The terminology of universally designed was substituted with Universal Design which is the correct terminology in line with the UN's Convention on the Rights of Persons with Disabilities ("CRPD") definition.

4. AD BASIC STANDARDS FOR TELEVISION BROADCASTING SERVICE LICENSEES:

In line with an input from a stakeholder alerting the Authority of the omission of Closed Captioning in the draft regulations, that "closed captioning" was defined but not incorporated in the body of the Regulations, this has now been added in regulation 3 (5) of the Regulations. Furthermore, in line with paragraph 3.2 above, the Authority believes there is a difference between subtitles and closed captioning.

5. AD BASIC STANDARDS FOR ELECTRONIC COMMUNICATIONS SERVICE LICENSEES:

Universal Design in Products and Services: The Authority notes comments from Licensees that they do not manufacture electronic communications devices, and therefore have no control over product design, however Licensees must ensure that the products they procure, meet the principles of universal design as this will ensure that consumers will enjoy all the benefits of universal design.

For the purpose of these Regulations, the Authority has decided to confine the definition of electronic communications devices to mobile handheld and fixed line telephones. This is because the Authority has decided to adopt a phased-in regulatory approach, and will in future, consider including other devices in line with technological developments.

6. AD GENERAL REQUIREMENTS FOR COMMUNICATION AND INFORMATION PROVISION TO PERSONS WITH DISABILITIES FOR TELEVISION BROADCASTING SERVICE LICENSEES:

6.1 Provision for breaking news: every person is entitled to breaking news, including persons with Disabilities. The previous regulations failed to cater for persons with Disabilities in this regard. This provision will take place on applicable channels broadcasting news content.

6.2 Improving accessibility: The Authority made some amendment to this clause to ensure that persons with Disabilities have access to information and entertainment, thus the insertion of this requirement in the Regulations ensures inclusion of persons with Disabilities.

7. AD GENERAL REQUIREMENTS FOR COMMUNICATION AND INFORMATION PROVISION TO PERSONS WITH DISABILITIES FOR I-ECS LICENSEES

7.1 Emergency services: The Authority deems it necessary for I-ECS licensees to provide these functionalities that enable persons with disabilities to acquire emergency assistance. The Authority notes inputs from stakeholders on the provision of access to emergency services using the 112-emergency line. The Authority is therefore of the view that licensees can take steps to ensure that specific needs of deaf persons are addressed using the current emergency numbers, either through the national relay system or through other means.

7.2 Priority Fault Repairs: Stakeholders comments on this subject are noted but are not implemented in the Regulations, as the End-User and Subscriber Service Charter Regulations, 2016 ("End-User Regulations") have recently undergone a Regulatory Impact Assessment ("RIA") which might result in the End-User Regulations being amended to address fault repair issues relevant to the Regulations. The realignment, if any, will be considered in the next review of the Regulations.

8. AD NATIONAL RELAY SYSTEM:

- 8.1 The Authority requested information regarding the feasibility of providing the National Relay System ("NRS") from I-ECS licensees. Based on the information provided, together with the demonstration of NRS capabilities by a consultant from Canada, among others, the Authority has considered the technological possibilities of providing this service and it proved to be feasible for licensees to provide the NRS. Pursuant to the recommendations received from the stakeholders, the NRS is included in the Regulations as it will enable persons with Disabilities to have immediate access to emergency services. The establishment and maintenance of an NRS technology platform will allow persons with disabilities the ability to communicate.
- 8.2 The Authority has noted comments from MTN, Vodacom, Telkom and Cell C on the funding of the NRS with regards to the use of the Universal Service and Access Fund ("USAF"), and the decision is that the Authority has no jurisdiction to give such directives to the USAF. It is up to each licensee to determine how they choose to comply with this obligation.

9. AD COMPLIANCE REPORTING

The Authority has considered the submissions made by the stakeholders on compliance reporting. Therefore, the reporting shall be aligned with Form 7 C of the Compliance Procedure Manual Regulations.

10. AD CONTRAVENTION AND PENALTIES

After further consultations and engagements, the Authority has decided to remove the insertion of *"10% of a licensee's annual turnover for everyday or part thereof during which the contravention continued"* and considers the penalty clause sufficient without that insertion. The principle is to deter non-compliance. R5 million is the maximum fine that can be imposed. Thus, the CCC will determine the applicable fine having considered the merits of the case, which fine will not exceed R5 million.