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GENERAL NOTICE

NOTICE 1271 OF 2008



Independent Communications Authority of South Africa
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REGULATIONS REGARDING THE EXTENT TO WHICH SUBSCRIPTION BROADCASTING SERVICES MUST CARRY THE TELEVISION PROGRAMMES PROVIDED BY THE PUBLIC BROADCAST SERVICE LICENSEE

I, Mr. Paris Mashile, the Chairperson of the Independent Communications Authority of South Africa (the Authority) hereby publish regulations in the attached Schedule, made and approved by the Authority under section 4 read with section 60(3) of the Electronic Communications Act 2005 (Act No. 36 of 2005)


PARIS MASHILE
CHAIRPERSON

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;

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

“Must Carry Channel” means the television programmes comprising a channel of the PBS Licensee to be added to the bouquet 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 bouquet in the absence of an obligation imposed by these regulations;

“PBS Licensee” means Public Broadcasting Service Licensee;

“SBS Licensee” means Subscription Broadcasting Service Licensee;

“Television Programmes” means television programmes broadcast by the Public Broadcasting Service Licensee to be carried by the Subscription Broadcasting Service Licensee in terms of section 60(3) of the Act;

2. PURPOSE OF THE REGULATIONS.

The purpose of these regulations is to:

- (a) Provide for terms and conditions under which the SBS Licensees will carry the programmes of the PBS 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) Provide exemptions for certain SBS Licensees from compliance with these regulations; and
- (d) Regulate all other matters incidental hereto.

3. TELEVISION PROGRAMMES TO BE CARRIED

All the television programmes comprising a channel and broadcast by a PBS Licensee as part of its broadcasting service are subject to Must Carry obligations.

4. OBLIGATION TO CARRY TELEVISION PROGRAMMES

- (1) All SBS Licensees must carry the channels of the PBS Licensee designated as must carry channels as part of the service offering, subject to Regulation 5
- (2) A SBS Licensee must submit a request to carry the television programmes of the PBS Licensee within six (6) months of the coming into effect of these regulations, or within six (6) months from the date of issue of the Subscription Broadcasting licence, whichever occurs first.
- (3) The SBS Licensee must commence to transmit the must carry channels within three (3) months of receipt of the must carry channels from the PBS Licensee.

(4) The SBS Licensee must bear the costs of carriage of the television programmes of the PBS Licensee on its distribution platform in compliance with these regulations.

(5) A SBS Licensee:

(a) whose service offering consists of more than twenty-nine (29) channels is subject to the obligation to carry the television programmes of the PBS Licensee;

(b) must ensure that the thirtieth (30th) channel added to its bouquet is a must carry channel of the PBS Licensee;

(c) must ensure that every twentieth (20th) channel added to its bouquet over the minimum thirty (30) channels is a must carry channel (being the 50th, 70th, 90th channels and so forth) in accordance with Regulation 3.

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

(7) Where a SBS Licensee adds must carry channels in accordance with Regulations 4(5)(b) and 4(5)(c) it must prioritise the addition of channels of the PBS Licensee within the public service division of the PBS Licensee in terms of the Broadcasting Act 4 of 1999, as amended.

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.

- (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.

- (3) A SBS Licensee with twenty-nine (29) or less channels intending to carry television programmes or non-must carry channels:
 - (a) is not precluded by the application of an exemption, granted in terms of regulation 5(1), to carry television programmes or non-must carry channels; and
 - (b) may carry such 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, at no cost, 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 the request submitted by a SBS Licensee.

- (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 PBS Licensee bears the costs of transmission of the broadcast signal to the SBS Licensee.

- (2) The SBS Licensees are required to transmit simultaneously and without any alteration, the entire television programmes of the PBS Licensee.

8. AGREEMENT

The SBS Licensee must submit to the Authority a copy of the agreement within thirty (30) days of the agreement being signed.

9. MONITORING COMPLIANCE WITH THE REGULATIONS

Licensees must submit a compliance report annually no later than end of June to demonstrate compliance with these regulations.

10. CONTRAVENTION AND FINES

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

- (a) One Million Rands (R1 000 000, 00) for contravention of regulations 4(2), 4(4), 4(6), 5(2), 6, 7(2) and 9.
- (b) One Hundred Thousand Rands (R100 000, 00) for contravention of the regulations not specified in regulation 10(1) (a).
- (c) One Million Rands (R1 000 000, 00) for repeated contravention of the regulations.

11. SHORT TITLE AND COMMENCEMENT

These regulations are called the ICASA Must Carry Regulations, 2008 and will come into force upon publication thereof in the Gazette.
