
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1951

31 March 2022

**Independent Communications Authority of South Africa**

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park, Centurion

MUST CARRY AMENDMENT REGULATIONS, 2022

The Independent Communications Authority of South Africa hereby amends the ICASA Must Carry Regulations, 2008 (published in Government Gazette No. 31500 on 10 October 2008, in terms of section 4 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended, read with sections 60(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, to the extent reflected in the Schedule.

A handwritten signature in black ink, appearing to read 'Dr. Keabetswe Modimoeng', written over a horizontal line.

DR KEABETSWE MODIMOENG**CHAIRPERSON****DATE: 30/03/2022**

SCHEDULE

1. DEFINITIONS

In these regulations "the Regulations" means the regulations published by Government Notice No. 1271 (Government Gazette No. 31500) of 10 October 2008.

2. AMENDMENT OF REGULATION 1 OF THE REGULATIONS

2.1 Regulation 1 of the Regulations is hereby amended by the substitution of the definition "Must Carry Channel" of the following definition:

"Must Carry Channel" means the television programmes comprising a channel of the PBS Licensee to be added to the SBS Licensee in accordance with Regulation 4";

2.2 Regulation 1 of the Regulations is hereby amended by the substitution of the definition "Non-Must Carry Channels" of the following definition:

"Non-Must Carry Channels" means the television programmes comprising a channel of the PBS Licensee which the SBS Licensee voluntarily adds to its subscription broadcasting services in the absence of an obligation imposed by these regulations";

3. AMENDMENT OF REGULATION 3 OF THE REGULATIONS

3.1 Regulation 3 of the Regulations is hereby amended by the addition of the following sub-regulation 2:

"(2) The PBS and the SBS licensees must negotiate the carriage of PBS channels."

4. SUBSTITUTION OF REGULATION 4 OF THE REGULATIONS

4.1 The following regulation is hereby substituted for regulation 4 of the Regulations:

- “(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) The 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 the Must Carry Amendment Regulations, 2022 or within six (6) months from the date of issuance of a new SBS Licence or within six (6) months from the date that an obligation to add Must Carry Channels is triggered as a result of a licensee adding new channels that amount to twenty-nine (29) channels or more.
- (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:
- (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 SBS is a must carry channel of the PBS licensee;
 - (c) must ensure that every twentieth (20th) channel added to its SBS 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;

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

5. AMENDMENT OF REGULATION 6 OF THE REGULATIONS

5.1 Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) The PBS licensee must offer its television programmes, subject to commercially negotiable terms, to the SBS licensee upon a request from the SBS licensee.”

5.2 Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

“(2) The PBS licensee must offer its television programmes to the SBS licensee within three (3) months from the date of conclusion of the agreement on commercially negotiable terms.”

5.3 Regulation 6 of the Regulations is hereby amended by the insertion after sub-regulation (2) of the following sub-regulation:

“(2A) The agreement contemplated in sub-regulation (2) above must be concluded within three (3) months from the date of receiving a request for the Must Carry Channels.”

6. INSERTION OF REGULATION 6A IN THE REGULATIONS

6.1 The following regulation is hereby inserted in the Regulations after regulation 6:

“6A. NEGOTIATION OF COMMERCIALY AGREEABLE TERMS

- (1) Should the parties to a commercial negotiation fail to conclude an agreement within three (3) months as contemplated in regulation 6(2A), the parties may request an extension in writing to the Authority to finalise the agreement.
- (2) A request for extension must be lodged with the Authority before the lapse of the three (3) months period mentioned in regulation 6(2A) above.
- (3) The duration of extension granted by the Authority in terms of regulation 6A(1) must not exceed a period of thirty (30) working days.
- (4) If the parties fail to conclude the agreement, they must refer the dispute to the Authority in writing within five (5) days of reaching a breakdown in negotiations.
- (5) The Authority may refer any failure to comply with these Regulations or any unresolved dispute to the CCC for resolution."

7. SUBSTITUTION OF REGULATION 7 OF THE REGULATIONS

7.1 Regulation 7 of the Regulations is hereby amended by the substitution for regulation 7 of the following regulation:

"7. TRANSMISSION OF TELEVISION PROGRAMMES

The SBS licensees are required to transmit simultaneously and without any alteration, the entire television programmes that are identified as Must Carry programmes."

8. SUBSTITUTION OF REGULATION 9 OF THE REGULATIONS

8.1 Regulation 9 of the Regulations is hereby amended by the substitution for regulation 9 of the following regulation:

"9. MONITORING COMPLIANCE WITH THE REGULATIONS

Licensees must submit a compliance report annually no later than six (6) months after the end of their financial year."

9. INSERTION OF REGULATION 9A IN THE REGULATIONS

9.1 The following regulation is hereby inserted in the Regulations after regulation 9:

"9A. TRANSITIONAL ARRANGEMENT

The arrangement between the licensees in terms of the 2008 Must Carry Regulations will continue to be applicable until such time as the parties have concluded the commercial agreement in terms of regulation 6(2A), read with regulation 6A."

10. SUBSTITUTION OF REGULATION 10 OF THE REGULATIONS

10.1 The following regulation is hereby substituted for regulation 10 of the Regulations:

"10. CONTRAVENTION AND FINES

(1) Any person that contravenes regulations 4(2), 4(3), 5(2), 6, 6A(1), 6A(2), 6A(4), 6A(6), 7 and 9 is liable to a fine not exceeding R1 000 000,00 (one million Rands).

(2) Any person that contravenes any regulations not specified in sub-regulation (1) is liable to a fine not exceeding R100 000,00 (one hundred thousand Rands).

- (3) Any person that repeatedly contravenes any regulation in the Regulations is liable to a fine not exceeding R1 000 000,00 (one million Rands). "

11. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Must Carry Amendment Regulations, 2022 and will come into force upon publication thereof in the Gazette.