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Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 485

Pretoria, 16 November 2005

No. 28235



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GENERAL NOTICE

Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 1256 OF 2005



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

REGULATIONS RELATING TO SUBSCRIPTION BROADCASTING

SERVICES

The Independent Communications Authority of South Africa ("the Authority") hereby, in accordance with section 78 (1) read with sections 56 and 57 of the Independent Broadcasting Authority Act, No.153 of 1993, and sections 4 (3), 4 (4), 30 (6), and 31(2) of the Broadcasting Act, No.4 of 1999, publishes proposed Regulations on Subscription Broadcasting.

The Authority invites interested parties to comment on the proposed amendments by 16h00 on **15 December** 2005. Submissions will be public documents and must be provided to the Authority in both electronic and hard copy formats. Electronic copies will facilitate the posting of the submissions on the Authority's website (<http://www.icasa.org.za>).

Representations should be sent to:

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P Mashile, (Chairperson), N Bulbulia, T Cohen, ZR Masiza, M Mohlala, L Mtshede, M Zokwe (Councillors)
JB Manche (Chief Executive Officer)

SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

The Independent Communications Authority of South Africa, in terms of section 78(1) read with sections 56 and 57 of the Independent Broadcasting Authority Act, No.153 of 1993, and sections 4 (3), 4 (4), 30 (6), and 31(2) of the Broadcasting Act, No.4 of 1999, intends to make the regulations in the Schedule.

SCHEDULE

1.Preamble

The objectives of these regulations are to:

- 1.1 regulate subscription broadcasting services in South Africa;
- 1.2 impose payment to the Authority of charges and fees in respect of subscription broadcasting licences, including applications of all descriptions, the issue, renewal, and amendment of subscription broadcasting licences;
- 1.3 prescribe the procedure and the appropriate conditions for the authorisation of channels in a multi-channel environment for subscription broadcasting services; and
- 1.4 ensure that subscription broadcasting services' largest source of revenue is not advertising or sponsorships, or a combination thereof;

The provisions of the IBA Act, the Broadcasting Act, and other pieces of legislation pertaining to broadcasting and telecommunications are applicable to these Regulations.

2. Definitions

In these regulations any word to which a meaning has been assigned in the Independent Broadcasting Authority Act and the Broadcasting Act shall have that meaning unless the context indicates otherwise:-

- 2.1 **"Acquiring"** includes acquiring rights in relation to a program or a channel;
- 2.2 **"Advertising"** has a similar meaning to the meaning set out in the Authority's Advertising, Infomercials and Programme Sponsorship Regulations, 1999;
- 2.3 **"Black people"** means Africans, Coloureds, and Indians who are South African citizens;
- 2.4 **"Bouquet"** means a collection of video and / or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre;
- 2.5 **"Cable broadcasting service"** means a system of providing television, sound and other services to consumers through fixed co-axial cables, rather by the older and more widespread radio broadcasting method;
- 2.6 **"Channel provider/supplier"** means any person(s) that package(s) individual programmes into channels for distribution by a network operator;
- 2.7 **"Closed user groups"** means transmission of information and / or channels and / or services not intended for the general public using appropriate means of transmission;
- 2.8 **"Code of Conduct"** means the Code of Conduct for subscription broadcasting services;
- 2.9 **"Country of origin"** means the country wherein the channel was packaged;
- 2.10 **"Expenditure"** in relation to channel acquisition means expenditure incurred in acquiring the channel;
- 2.11 **"Gross income revenue"** includes annual gross income derived from subscription fees, advertising, sponsorship and infomercials/advertorials;

- 2.12 **"Historically disadvantaged persons"** means South African citizens who are black people, women or people with disabilities;
- 2.13 **"Nature of the channel"** means the type of the channel;
- 2.14 **"Network operator"** a broadcaster licensed in terms of section 5(c) of the Broadcasting Act for purposes of distributing packaged individual programme;
- 2.15 **"Niche channels"** means a specially tailored channel whose programming is aimed at addressing a market segment's specific needs on social, political and economic issues, including but not limited to, science, technology, education, health, law and citizens' rights, culture, business, finance, religion, and the natural or built environment;
- 2.16 **"Performance period"** means the period of 126 hours in one week measured between the hours of 05h00 and 23h00 each day;
- 2.17 **"Permanent channel"** the transmission of channel within the network operators' bouquet of channels on permanent basis;
- 2.18 **"Programme Sponsorship"** has a similar meaning to the meaning set out in the Authority's Advertising, Infomercials and Programme Sponsorship Regulations, 1999;
- 2.19 **"Public access television"** means the availability of a television broadcast channel for use by community television groups for the presentation of community programmes;
- 2.20 **"Retransmission"** means the receipt and simultaneous complete and unchanged transfer of sound or television programmes addressed to the public via the appropriate means of transmission;
- 2.21 **"Satellite broadcasting service"** means a service which is broadcast by satellite transmission;
- 2.22 **"Sound broadcasting service"** has a similar meaning to the meaning set out in the IBA Act and the Broadcasting Act;
- 2.23 **"South African music"** has a similar meaning to the meaning set out in section 53(1)(c) of the IBA Act;

- 2.24 **"South African television content"** has a similar meaning to the meaning set out in section 53(1)(a) of the IBA Act;
- 2.25 **"Subscription broadcasting service"** has a similar meaning to the meaning set out in section 1 of the Broadcasting Act;
- 2.26 **"Television broadcasting service"** has a similar meaning to the meaning set out in the IBA Act and the Broadcasting Act;
- 2.27 **"Temporary channel"**, means the transmission of a channel within the network operators' bouquet of channels, for a specified temporary duration;
- 2.28 **"the Authority"** means the Independent Communications Authority of South Africa established by the Independent Communications Authority Act, No 13 of 2000;
- 2.29 **"the Broadcasting Act"** means the Broadcasting Act, No.4 of 1999;
- 2.30 **"the IBA Act"** means the Independent Broadcasting Authority Act, No.153 of 1993;
- 2.31 **"the SABC"** means the South African Broadcasting Corporation Limited; and
- 2.32 **"Transmission"** means transfer of programmes over a broadcasting network where such programmes are addressed to the public, sections of the public or subscribers.

3. Terms of Broadcasting Licences

- 3.1 The term of validity of a subscription television broadcasting licence shall be eight years.
- 3.2 The term of validity of a subscription sound broadcasting licence shall be six years.

4. Authorisation of Channels

- 4.1 Any subscription broadcasting licensee who intends to add or introduce a new channel to its bouquet shall apply to the Authority in advance and shall only broadcast the channel with the approval of the Authority.
- 4.2 A subscription broadcasting licensee shall apply for the authorisation of additional channels at least 90 days before the channel is to be introduced.

- 4.3 The Authority shall make its decision within a period not exceeding 60 days of receipt of the application for the authorisation of channels.
- 4.4 Every application made pursuant to the authorisation of channels shall be in a prescribed form, which form shall *inter alia*, require the applicant to furnish the following particulars-
- 4.4.1 the name of the proposed channel;
 - 4.4.2 the nature of the channel and its content;
 - 4.4.3 the country of origin;
 - 4.4.4 the full name of channel supplier;
 - 4.4.5 the primary language(s) of channel; and
 - 4.4.6 the duration of the channel (whether it is a temporary or permanent channel).

5. Fees

- 5.1 Every application for a six year subscription sound broadcasting service licence shall be accompanied by a fee of thirty thousand rand (R30 000.00).
- 5.2 Every application for an eight year subscription television broadcasting service licence shall be accompanied by a fee of seventy thousand rand (R70 000.00).
- 5.3 A licence granted to any applicant in terms of 5.1, and 5.2 shall not be issued unless a fee of five thousand rand (R5000.00) has been paid to the Authority.
- 5.4 Every application for the amendment of a six year subscription sound broadcasting service licence shall be accompanied by a fee of thirty thousand rand (R30 000.00).
- 5.5 Every application for the amendment of an eight year subscription television broadcasting service licence shall be accompanied by a fee of seventy thousand rand (R70 000.00).
- 5.6 Every application for the renewal of a six year subscription sound broadcasting service licence shall be accompanied by a fee of thirty thousand rand (R30 000.00).

- 5.7 Every application for the renewal of an eight year subscription television broadcasting service licence shall be accompanied by a fee of seventy thousand rand (R70 000.00).
- 5.8 Every application for the authorisation of channels shall be accompanied by a fee of one thousand rand (R1000.00).
- 5.9 Every subscription broadcasting service shall pay to the Authority a maximum annual licence fee of 1, 6% of turnover as per the audited financial statements.
- 5.10 All fees are non-refundable.

6. Advertising and Sponsorship

- 6.1 A subscription broadcasting service shall, within 90 days after the end of the licensee's financial year of operation, submit to the Authority audited financial statements stating that, in the opinion of the auditor, the return, in so far as it relates to subscription revenue and advertising and sponsorship revenue is correct.
- 6.2 All subscription broadcasting services shall adhere to the Advertising Standards Authority's Code as specified in section 57(1) of the IBA Act.
- 6.3 All subscription broadcasting services shall adhere to the Authority's Advertising, Infomercials and Programme Sponsorship Regulations, 1999, or any amendment or replacement thereto.

7. Code of Conduct

- 7.1 Subscription broadcasting services shall, pending a body contemplated in section 56(2) of the IBA Act, adhere to a Code of Conduct for broadcasting services promulgated from time to time by the Authority.
- 7.2 A body contemplated in section 56(2) of the IBA Act shall be afforded an opportunity to adopt its own Code of Conduct for subscription broadcasting services within twelve months of the publication of the Position Paper on subscription broadcasting services.

- 7.3 Subscription broadcasting services shall adhere to the Code of Conduct referred to in 9.2, after the Code of Conduct has been approved by the Authority, or any amendment or replacement thereto.

8. Technical Standards and Specifications

All subscription broadcasting services shall adhere to the Authority's regulations relating to the technical standards and specifications applicable to subscription broadcasting services.

9. Records to be kept by all Subscription Broadcasting Services

- 9.1 A subscription broadcasting licensee shall, to the satisfaction of the Authority, in addition to records prescribed by any other law, 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 organisations of the entity;
 - (ii) details of the directors, members or trustees including the gender, race and address of such person or entity, as the case may be; and
 - (iii) in the case of a licensee which is a company, the shareholding, the extent thereof and any changes which may occur in the control thereof;
 - (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) all documentation pertaining to the opening, maintenance and changes in the status to banking accounts;
 - (e) all contracts entered into by or on behalf of the licensee in connection with the daily operational activities of the licensee;

- (f) a public file for keeping -
 - (i) written complaints received by the licensee;
 - (ii) correspondence between the licensee and complainants;
- (i) a log of telephonic complaints received by the licensee;
- (j) information pertaining to personnel records including full details of individuals employed by the licensee on a full time or part-time basis including an indication of the race and gender of each employee, the length of service and information pertaining to the status of each employee as well as training programmes arranged by a licensee;
- (k) a log of all advertisements broadcast;
- (l) a log of all sponsorships for programmes together with details of payment, financial or otherwise, received for such sponsorship;
- (p) copies of all correspondence with the Authority; and
- (p) a log of all direct and indirect on-air fundraising activities for the stations.

9.2 For purposes of regulation 9.1 (c), "donations" shall include prizes, non-cash donations, grants or sponsorships made available for the licensee's use or awarded to the public, sections of the public, a community, or subscribers, and "donors" and "donated" shall have corresponding meanings.

9.3 A licensee may, by notice directed to him or her, 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 licence.

10. Amendment and Review of Regulations

- 10.1 The Authority may, in terms of section 78(1) of the IBA Act, make any amendment to the regulations it considers to be in accordance with the public interest as enunciated in the IBA Act and the Broadcasting Act.
- 10.2 The Authority may, every successive eight years after these regulations have come into effect, hold an inquiry to review these regulations in terms of section 28 of the IBA Act.
- 10.3 In reviewing the regulations the Authority shall determine the procedure to be followed during the inquiry.
- 10.4 The Authority shall consider submissions made by licensees, and any interested person and may make such determination as it considers equitable in the circumstances.

11. Effective Date

The effective date of these regulations shall be the date of publication in the Gazette.

12. Short Title

These regulations will be called the Subscription Broadcasting Services Regulations, 2006.

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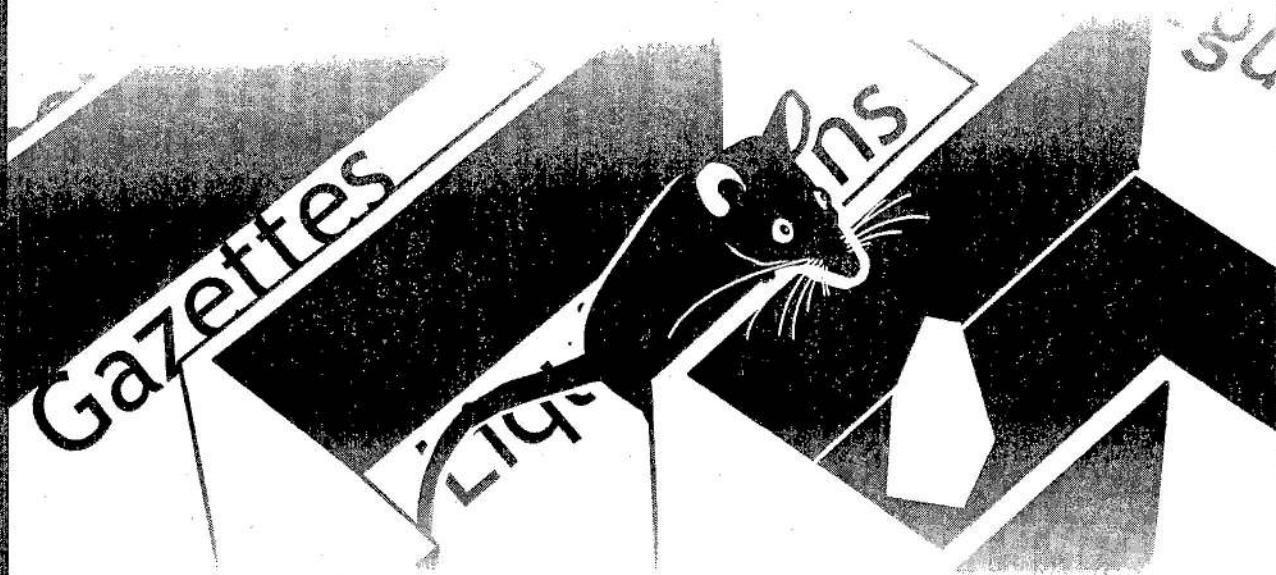
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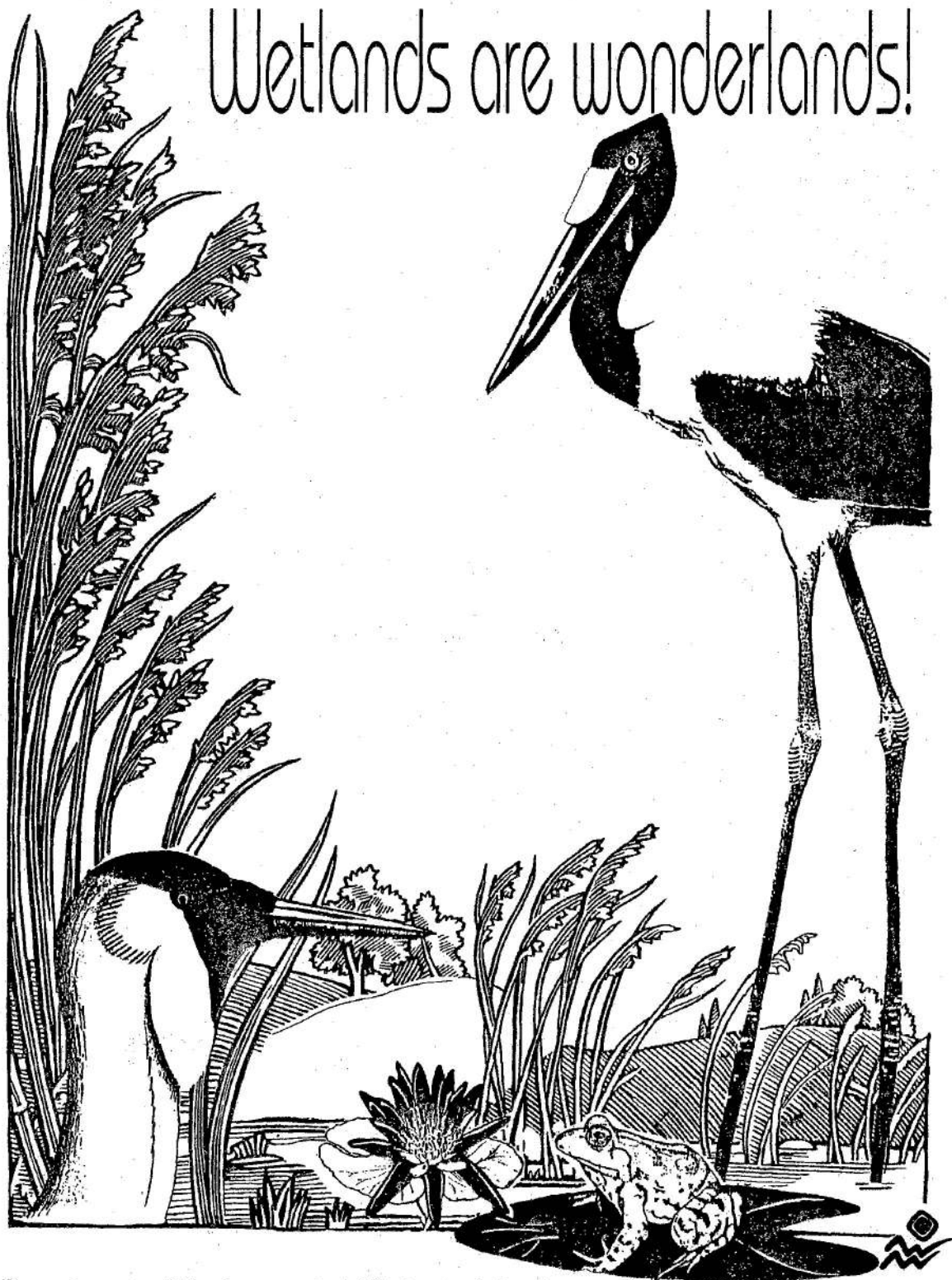
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