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Independent Communications Authority of South Africa

Government Notice

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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**No. R. 720****3 July 2009**

Independent Communications Authority of South Africa
Pinnacle Farm, 164 Katherine Street, Sandton
Private Bag 710002, Sandton, 2146

DIGITAL TERRESTRIAL TELEVISION REGULATIONS

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of Council of the Authority hereby approve and publish the Digital Terrestrial Television Regulations set out in the Schedule and made by the Authority in terms of section 30(2)(c) and (d) read with section 4(1) (a) (b) and (d) of the Electronic Communications Act, 2005 (Act No. 36 of 2005). The Ministerial Policy issued in terms of section 3(1) of the Act published in the Government Gazette Number 31408 dated 8 September 2008 has been taken into account.

A handwritten signature in black ink, appearing to read 'Paris Mashile', written over a horizontal line.

PARIS MASHILE**ICASA CHAIRPERSON**

SCHEDULE

1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

“the Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“Channel authorisation” means the granting of permission by the Authority to a licensee to commence broadcasting a digital channel within the capacity allocated in terms of these regulations;

“Digital broadcasting” means the use of digital data rather than analogue waveforms to carry broadcasts over assigned frequency;

“Digital incentive channel” means a new public or commercial channel which is authorised as an incentive for migration, subject to the capacity allocated to existing television broadcasting services in terms of these regulations

“Digital Terrestrial Television” (DTT) means the application digital technology to provide a greater number of channels and/or better quality of picture and sound using aerial broadcasts to a conventional antenna/aerial instead of a satellite dish or cable connection;

“Dual illumination” means the transmission of the same broadcast content in both analogue and digital technology;

“Dual illumination period” means the period commencing 01 November 2008 until and including 30 April 2012;

“Existing television broadcasting services” means broadcasters that provided analogue television services before the publication of these regulations and does not include services awarded one year licenses for test purposes;

“Hard switchover” means a direct migration from analogue to digital television, without dual illumination, in a period not exceeding Twelve (12) months

“**Multiplex**” means a network of frequencies designed to simultaneously permit the transmission of two or more channels;

“**Multiplex operator**” means an ECNS licensee who operates a multiplex;

“**Multiplexing**” means the combining of data and video streams into one signal over a shared medium;

“**Multiplex 1**” means the multiplex allocated for the purposes of broadcasting public, public commercial and community broadcasting television services;

“**Multiplex 2**” means the multiplex allocated to commercial free-to-air broadcasting television services;

“**Multiplex 3**” means the multiplex allocated to commercial subscription service, subject to M-Net conducting a hard-switchover

“**Public Value Test**” means the requirement that the authorisation of public channels be subject to a public process to meet the requirements of section 10 of the Broadcasting Act, 1999 (Act No. 4 of 1999) and section 2 of the Act;

“**Standard Definition Television (SDTV)**” means digital transmissions with a resolution of at least 720 x 576 pixels, either interlaced/interfaced or progressive scanned formats.

2. PURPOSE OF THE REGULATIONS

(1) The objectives of these regulations are to: -

- (a) regulate the transition of terrestrial television broadcasting services from Analogue transmission to Digital Terrestrial Television (DTT) transmission during the dual illumination period;
- (b) prescribe a procedure and conditions for the assignment of the DTT multiplexes;
- (c) provide for the allocation of channel capacity and procedure for the authorisation to operate a digital incentive channel;
- (d) Set out the time frames for the rollout of the digital terrestrial television throughout the Republic.

3. FRAMEWORK FOR DTT MULTIPLEXES

- (1) Three (3) DTT multiplexes will be reserved for existing television broadcasting service licensees;
- (2) During the dual illumination period, the same broadcast content must be broadcast in both digital and analogue technologies in Standard Definition Television (SDTV) mode as follows:
 - (a) With respect to Multiplex 1, the content of SABC 1, SABC 2, SABC 3 and TBN shall broadcast simultaneously on both analogue and digital formats; and
 - (b) The e-TV free-to-air channel, existing prior to these regulations, shall broadcast simultaneously on both analogue and digital formats.

4. MULTIPLEX ALLOCATION

MULTIPLEX 1 (PUBLIC AND COMMUNITY TELEVISION SERVICES)

- (1) Multiplex 1 is herewith set aside, for public and community broadcasting services subject to the following restrictions:
 - (a) The SABC is allocated 100% capacity in multiplex 1, taking into consideration regulation 4 (1) (c) below;
 - (b) The SABC will, at all times, maintain a ratio of three (3) public channels to one (1) commercial channel to ensure that a large portion of its allocated capacity is dedicated towards the provision of public broadcasting services; and
 - (c) Ten (10%) percent of channel capacity in multiplex 1 must be made available to accommodate TBN within its licensed area in the Eastern Cape Province.
- (2) Other community television services licensed on trial basis for a period not exceeding one year will continue to broadcast on analogue frequencies.

MULTIPLEX 2 (COMMERCIAL FREE-TO-AIR TELEVISION SERVICES)

- (3) Multiplex 2 is herewith set aside for commercial free-to-air television broadcasting services, subject to the following conditions:
- (a) The Commercial free to air broadcaster, e-tv, is allocated sixty percent (60%) capacity of the multiplex; and
 - (b) e-TV can only apply for additional channel authorisation, in addition to the digital incentive channels in Multiplex 2 at the end of the dual illumination period.
- (4) Any other interested licensee or person can apply for available capacity in multiplex 2 to conduct test services.

MULTIPLEX 3 (SUBSCRIPTION BROADCASTING SERVICES)

- (5) Multiplex 3 is herewith set aside for subscription television broadcasting services, subject to the following conditions:
- (a) The subscription broadcaster, M-Net, conducting a hard switch-over, commencing within ninety (90) days of the publication of these regulations;
 - (b) M-Net is allocated fifty percent (50%) capacity of the multiplex; and
 - (c) M-Net can only apply for additional channel authorisation, in addition to the digital incentive channels in Multiplex 3, at the end of hard switch-over.
- (6) Any other interested licensee or person can apply for available capacity in multiplex 3 to conduct test services.

5. DIGITAL INCENTIVE CHANNELS

- (1) All broadcasting service licensees must prioritise the allocated channel capacity to broadcast channels that are currently being broadcast in the analogue format.
- (2) The remaining channel capacity not utilised for the purposes of broadcasting the analogue channels in the digital format will be deemed to have been allocated for the broadcast of incentive channels.

6. DIGITAL INCENTIVE CHANNEL AUTHORISATION AND PROCEDURE

- (1) An existing television broadcasting service licensee may not operate a digital incentive channel without prior written authorisation of the Authority

MULTIPLEX 1

- (2) Authorisation of new public channels in terms of additional capacity allocated to the public broadcaster in Multiplex 1 will be subject to a Public Value Test in terms of section 10(1) of the Broadcasting Act, 1999 (Act No. 4 of 1999) read together with section 2 of the ECA and will be subject to a public process.
- (3) In the event that the Authority elects to pursue a public process, the following steps may be applicable:
- (a) Publish a notice in the *Gazette* of the application for the channel authorisation;
 - (b) Invite comments from interested persons in relation to the application within the period specified in the notice;
 - (c) Afford an opportunity to the applicant to submit written responses to representations received in relation to the application within the period specified by the Authority; and
 - (d) Conduct a public hearing in relation to the application.
- (4) Within hundred and twenty (120) days of the publication of these regulations the SABC must apply for the authorisation of new channels taking into account the need to balance the ratio between public and public commercial channels.
- (5) The public broadcaster must include in all its applications for new public channel authorisation, a Market Impact Analysis (MIA), including the implication of the proposed channel on diversity of programming, other DTT services and subscription television services and failure to submit the required information may lead to the application not being considered.
- (6) The Authority will conclude the authorisation process within sixty (60) days of the filing of the request for public service channel authorisation failing which, the digital incentive channel will be considered to be authorised;
- (7) Public Commercial services of the public broadcaster are subject to the same authorisation requirements as those set out for commercial services in terms of regulation 8 of these regulations.

MULTIPLEX 2

(8) The application for the authorisation to operate a digital incentive channel in Multiplex 2 must be accompanied by the following information: -

- (a) the name of the proposed channel;
- (b) market impact analysis, including the implication of the proposed channel on diversity of programming and other DTT services;
- (c) the primary language(s) of the channel;
- (d) proof of financial viability;
- (e) submission of a programming plan, including the provision of local content; and
- (f) submission of any other related information as may be required by the Authority.

(9) Failure to submit the information required in terms of regulation 6(8) may lead to the application not being considered.

(10) A decision on an application made in terms of these regulations will be communicated to an applicant within sixty (60) days of the submission of an application, failing which the digital incentive channel will be considered to be authorised.

(11) Where the Authority refuses to authorise a channel, the Authority will give written reasons thereof to the applicant within Ninety (90) days after receiving the request for reasons.

(12) Where a digital incentive channel is authorised in terms of these regulations, the licensee must commence broadcasting the channel within ninety (90) days after the issue of the certification for authorisation by the Authority unless the Authority grants, on good cause shown, an extended commencement period on written application prior to the expiry of the ninety (90) day period.

MULTIPLEX 3

(13) The authorisation for subscription channels in multiplex 3 will in addition to the requirements in the Subscription Broadcasting Regulations, 2003, meet the same authorisation conditions as commercial channels in Multiplex 2 .

7. ELECTRONIC COMMUNICATION NETWORK SERVICE (ECNS) LICENSEE

- (1) Each multiplex will be assigned to an ECNS licensee, which will operate the multiplex in accordance with the process outlined in these regulations.
- (2) Within sixty (60) days of publication of these regulations, existing television broadcasting service licensees must provide the Authority with the name of their preferred ECNS to be designated as the Multiplex operator.
- (3) The submission referred to in regulation 7 (2) above should include the following:
 - (a) Commercial agreement entered into between the parties;
 - (b) Rollout plan in line with the coverage targets stated in regulation 7(10); and
 - (c) Technical plan consistent with the broadcasting frequency plan
- (4) Should the existing broadcasting service licensee fail to comply with regulation 7(2) above, the Authority will within the subsequent sixty (60) days issue an Invitation for any interested ECNS to apply to provide signal distribution services and act as a multiplex operator.
- (5) The Application submitted in response to regulation 7(4) must include the following information:
 - (a) Tariff framework to be applied;
 - (b) Rollout plan in line with the coverage targets stated in regulation 7(10); and
 - (c) Technical plan consistent with the broadcasting frequency plan.
- (6) Failure to submit the information required in terms of regulation 7(5) may lead to the application not being considered.
- (7) Where the Authority believes that it is necessary as a matter of procedural fairness, the Authority may take any or all of the following steps –
 - (a) Invite interested persons to submit written representations in relation to application(s) received from ECNS licensees to operate the Multiplex within the period specified in the notice;
 - (b) allow the applicant(s) an opportunity to submit written responses to representations received in relation to the application within the period specified

- by the Authority; and
- (c) Conduct a public hearing in relation to the application.
- (8) A multiplex must be operated in accordance with section 62 of the Act.
- (9) An ECNS licensee designated as the Multiplex Operator is responsible for the multiplexing and signal distribution services.
- (10) The ECNS licensee providing services to Multiplex 1 and Multiplex 2 must ensure that the digital broadcast signal reaches the following percentage of the population in the Republic:
- (a) 50% coverage at the end of the 2009/2010 financial year;
- (b) 60% coverage at the end of the 2010/2011 financial year;
- (c) 80% coverage at the end of 2011/2012 financial year.
- (11) Multiplex operators must provide the Authority with quarterly reports on the quality of standards, including progress in meeting required technical standards and measures undertaken or to be undertaken to manage and prevent frequency interference within South Africa and in the region.
- (12) Multiplex operators must keep records of all incidences of harmful frequency interference and include them in their quarterly reports to be submitted to the Authority

8. GENERAL OBLIGATIONS

- (1) The data services included on the programming will prioritise Electronic Programme Guide and Electronic Programme Information, which must always be available to the viewers.
- (2) The broadcasting services licensee must provide audio sound tracks for all local content programmes in no fewer than three (3) official languages.
- (3) Multiplex operators must prioritise the provision of Digital television services when compared to the provision of data services.

- (4) Additional data services introduced for the purposes of enhancing innovation and better service to consumers must not exceed fifteen (15) percent of the capacity allocated to a broadcaster in each multiplex.
- (5) No sound broadcasting services must be broadcast on the DTT multiplexes unless it is for test purposes, in which case, such test broadcasts must first be authorised by the Authority.

9. JOINT SPECTRUM ADVISORY COMMITTEE

- (1) In order to promote the efficient co-ordination of frequency spectrum and interference resolution during the dual illumination period, the Authority will establish a Joint Spectrum Advisory Committee (JSAC), as a consultative forum, with broadcasting service licensees and their respective ECNS providers to co-ordinate usage of frequencies;
- (2) The JSAC will advise the Authority on the most efficient processes to be adopted in resolving matters related to spectrum management to minimise or prevent harmful interference during the transition from analogue to digital technology;
- (3) The establishment of the JSAC is subject to the following:
 - (a) participation in the JSAC is voluntary;
 - (b) the committee is to comprise of:
 - (i) two (2) representatives per broadcasting service licensee and ECNS licensee at each JSAC meeting;
 - (ii) two (2) officials of the Authority; and
 - (iii) a person designated as a Chairperson by the Authority.
- (4) The JSAC will cease to exist within six (6) months from the date of the switch off of the analogue signal.
- (5) Decisions of the JSAC are to be reached by consensus submitted to the Authority as a recommendation. Where the votes are equal, the Chairperson has a casting vote.
- (6) For a quorum of the meeting of the JSAC:
 - (a) the person designated as a Chairperson in terms of regulation 16(3)(b)(iii) or his

- nominated proxy must be present; and
- (b) attendance by no less than 50% of persons entitled to attend the meeting must be secured.

10. CONTRAVENTIONS AND PENALTIES

- (1) Upon a determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
- (a) Five Hundred Thousand Rands (R500 000.00) for contravention of regulations 3(2), 4, 5(1), 7(1), 8(6), 9(4), 9(7), 9(8) and 10(4);
- (b) One Hundred Thousand Rands (R100 000.00) for contravention of all the regulations not specified in regulation 12(1)(a); and
- (c) Additional Fifty Thousand Rands (R500 000.00) for repeated contravention of the regulations.

11. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Digital Terrestrial Television (DTT) Regulations, 2009, and will come into effect upon publication in the Government Gazette.

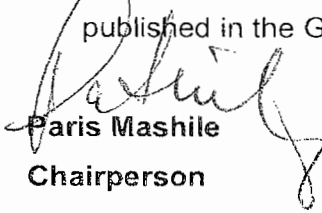


Independent Communications Authority of South Africa
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**INDEPENDENT COMMUNICATIONS AUTHORITY
OF SOUTH AFRICA**

**GENERAL NOTICE – POSITION PAPER ON DIGITAL TERRESTRIAL
TELEVISION**

- (1) On 3 October 2008 in Notice 1240 in Government Gazette Number 31490, the Authority published the 1st Draft Broadcasting Digital Migration Framework Regulations. The Authority also invited interested parties to submit written representations on the draft regulations. The closing date for submission was set at 7 November 2008.
- (2) The Authority convened hearings on 28 November and 1 December 2009 whereat parties who had expressed an interest to participate in oral hearings were afforded an opportunity to submit oral arguments in support of the written submission.
- (3) Subsequent to the hearings, the Authority then published a 2nd version of the draft Digital Terrestrial Television Regulations in Notice 344 in Government Gazette Number 32083 dated 31 March 2009 (the 2nd Draft). The 2nd Draft regulations set the closing date for comments at 30 April 2009.
- (4) The Authority hereby publishes the attached position paper to reflect some of its findings and to contextualize the revisions incorporated in the final regulations as published in the Government Gazette.


Paris Mashile
Chairperson
ICASA

POSITION PAPER ON DIGITAL TERRESTRIAL TELEVISION

1. INTRODUCTION

- 1.1. This document sets out the decisions of the Independent Communications Authority of South Africa (the "Authority") in respect of the Digital Terrestrial Television Regulations, 2009. The Regulations aim to provide a framework for the migration of existing terrestrial television services from analogue transmission platforms to digital transmission platforms during the migration period. The regulations also seek to give effect to Ministerial policy on the migration of Terrestrial Television Services from analogue to digital transmissions, as contained in **Notice 958** published in **Government Gazette 31408 of 8 September 2008**.
- 1.2. The regulations are specifically aimed at providing a framework that will ensure a smooth migration of services and ensure the implementation on the dual illumination period as contained in the Ministerial Policy.
- 1.3. While the advent of digital technology raises a range of policy issues, the Authority is convinced that the smooth migration and the release of the digital dividend should remain the overriding objectives of the migration process. In particular the release of the digital dividend is not only important for the television sector, but has far reaching positive implications for the sound broadcasting and electronic communications service sectors.

2. BACKGROUND

- 2.1. Over the last few months, starting in October 2008, the Authority has engaged extensively with interested parties and the general public on the country's approach to the digital migration process. The consultation process undertaken by the Authority was informed by the Ministerial Policy on Digital Migration issued in September 2008 in terms of the Electronic Communications Act, 2005.
- 2.2. The consultative process included the publication of the 1st draft Broadcasting Digital Terrestrial Television Regulations on **3 October 2008 in Notice No. 1240 in Government Gazette Number 31490** which set the closing date for submission of written comments by interested parties 7 November 2008. This was then followed by hearings convened on 28 November and 1 December 2008 whereat parties who had expressed an interest to participate in oral hearings were afforded an opportunity to submit oral arguments in support of the written submission. Subsequent to the hearings, the Authority then published a 2nd version of the draft Digital Terrestrial

Television Regulations in **Notice 344 published in Government Gazette Number 32083 dated 31 March 2009** (the 2nd Draft). The 2nd Draft regulations set the closing date for comments at 30 April 2009.

2.3. Overall both drafts dealt with the following issues:

- 2.3.1. Confined the current regulatory process to the dual illumination period and did not deal with issues of the digital dividend review and its aftermath;
- 2.3.2. Set out the framework for the allocation of DTT multiplexes, including the requirement that digital broadcasting should be provided on Standard Definition Mode until after the dual illumination period;
- 2.3.3. While the Authority remained committed to the commitments of the International Telecommunication Union Regional Radio Conference 2006, the second draft of the digital migration regulations proposed the creation of a third multiplex to address peculiar national needs;
- 2.3.4. Proposed the allocation of Multiplex 1 to the SABC and community broadcasting services, and Multiplex 2 to commercial broadcasting services and the commercial subscription broadcasting services. In the second Draft, the Authority sought to explore separating e-TV and M-Net by proposing a Third Multiplex, subject to M-Net conducting a hard switch-over within a period not exceeding twelve (12) months;
- 2.3.5. The two drafts also provided a framework for the authorisation of digital incentive channels. In particular, the second draft proposed that public channels in Multiplex 1 should be authorised subject to the public value test, which includes public consultation, while public commercial and other commercial free to air and subscription services will be authorised subject to receipt of an application proving inter alia the demand of a proposed service and its viability.
- 2.3.6. Both drafts dealt with the role of ECNS licensees in the digital migration process. In the first draft, the Authority proposed that broadcasting service licensees should decide on who should provide signal distribution services, consistent with section 63 of the ECA. The draft regulations also proposed that ECNS licensees should control statistical multiplexing thereby acting as a multiplex operator.
- 2.3.7. The Authority had also proposed that Electronic Programme Guide (EPG) and Electronic Programme Information (EPI) should be provided in several

languages in addition to English. This was to ensure that as many viewers as possible have access to EPG and EPI in their preferred languages.

2.3.8. With regard to the limitation on data and sound broadcasting services, the draft regulations proposed that the two multiplexes should prioritise the provision of television services. The second draft proposed that data services should be limited to 15%, while placing a blanket prohibition on sound broadcasting services.

2.3.9. Both drafts proposed the establishment of the Joint Spectrum Advisory Committee for the purposes of co-ordinating and managing incidences of frequency interference. The draft regulations suggested that the JSAC will only comprise the three broadcasting service licensees and would not include other parties not directly involved in the migration process

2.3.10. Related to the discussion on the draft DTT regulations, the Authority has engaged extensively with industry and the general public on the Broadcasting Frequency Plan. The Plan has been subjected to three cycles of public consultation, including a public workshop, which allowed stakeholders to further engage on frequency planning and related digital migration issues.

2.4. After considering all written submissions to the draft Digital Terrestrial Television Regulations, the Authority decided not to hold public hearings in terms of section 4 (6) of the Electronic Communications Act of 2005. Section 4 (6) of ECA states that:

*"The Authority **may** conduct public hearings in respect of a draft regulation"*

2.5. This provision gives the Authority discretion to decide whether to hold public hearings or not. And, since all substantive issues have been sufficiently canvassed with stakeholders the Authority believes that there is no need for further consultation on the dual illumination period.

DECISIONS

3. MINISTERIAL POLICY ON DIGITAL MIGRATION

- 3.1. The Authority's approach to developing regulations for digital migration was guided by the Ministerial Policy on Digital Migration 2008. Amongst others, the Authority noted the objectives of the Ministerial Policy including the provision of universal access to broadcasting services. As indicated later in the document, the Authority has introduced the public value test for the authorisation of public channels to ensure that the broadcasting system, especially the public broadcasting service meets the needs of a diverse citizenry.
- 3.2. The Regulations also provide for rollout targets to be met by ECNS licensees providing signal distribution and multiplexing services. The Authority also took note of provision regarding the provision of e-government services. While the Authority took note of the socio-economic rationale underpinning this provision, we noted that the Ministerial Policy was silent on how and who should provide these services. It was not immediately clear as to whether this should be provided by government itself, or whether this should constitute a licence condition imposed on broadcasting service licensees. Further policy and legislative clarity will inform the Authority's regulatory approach.
- 3.3. The ministerial policy also made provisions for the introduction of three regional television channels to cater for language needs across the country. The Authority is committed to addressing the needs of diverse language communities in light of the ministerial decision. The Authority is however mindful of the financial implications of introducing additional regional services. Over the last few years the SABC had indicated to the Authority that it was not in a position to introduce two regional television services due to financial constraints. Although the introduction of two regional services was included in the Broadcasting Act of 1999, as amended, the licenses have not been issued because of the financial limitations raised by the SABC. The Authority believes that the pending review of the public broadcasting service, as recently announced by the Minister of Communications, will also inform the Authority's future allocation of more capacity to public broadcasting services.
- 3.4. The Authority also took into consideration the provision regarding the three year dual illumination period. In our consultation process, some stakeholders, especially the broadcasting service licensees, recommended that the dual illumination period be reviewed. Stakeholders indicated that it was no longer feasible to meet the current dual illumination period as industry is yet to commence with commercial DTT

offering. The Authority is in agreement with the sentiments expressed by stakeholders. Since the matter was first highlighted in the ministerial policy, the Authority will recommend to the minister to review the time frames.

- 3.5. Where necessary, the Authority has introduced new provisions to cater for specific national issues. The Digital Terrestrial Television Regulations consulted on the creation of a third multiplex, referred to in the draft regulations as the MULTIPLEX 3. Further consultation with stakeholders was necessary as the proposal on the creation of the third multiplex did not form part of the draft Digital Migration Framework regulations in October 2008.
- 3.6. The idea around the creation of the third multiplex arose during the public hearings in November 2008, although it was first mentioned in the Digital Migration Working Group, but was not carried through into the Ministerial policy on Digital Migration. The main reason behind the idea was due to concerns about the feasibility of e-TV and M-Net sharing a single multiplex, MULTIPLEX 2, as initially proposed in the Digital Migration Framework regulations.
- 3.7. E-TV and M-Net indicated that sharing a multiplex will not be in the interest of both parties as they were using different signal distribution services. E-TV was contracted to Sentech, which made sense for the company as this allowed consumers to use the same antennas to receive both SABC and e-TV. On the other hand, M-Net used Orbicom, as its signal distributor, in an arrangement reflecting self provision, as both companies are owned by Naspers.
- 3.8. The Authority wanted to explore the possibility of creating a third multiplex subject to M-Net conducting a hard-switchover. The Authority preferred M-Net to conduct a hard switchover believing that it was easier for a subscription television service to conduct a hard switch-over compared to a free-to-air service.
- 3.9. The Authority also noted that the hard switch-over would commence the process towards the release of the 790-862 MHz band which is being earmarked for mobile communications services in terms of the decisions of the ITU's Regional Radio Conference (RRC) 2006 and the World Radio Conference 2007.
- 3.10 The Authority has decided to proceed with the hard-switchover on the understanding that it will also enable a speedy introduction of competition in the subscription television market. The conclusion of hard-switchover within a period not exceeding 12 months will provide additional capacity needed to introduce a viable competition. M-

Net will not be permitted to use the remaining capacity in multiplex 3 until after the the hard switch-over period.

3.11 The Authority believes that the evolution of the broadcasting policy, over the years, since the advent of democracy, has enabled it to deal with competition issues. With the advent of a multichannel environment and the technology neutral licensing framework, the Authority has considered a need to review current cross media ownership regulations taking into account the provisions of section 66(7)-(9) of the Act.

3.12 In anticipation of the introduction of competition, available capacity in Multiplex 2 and Multiplex 3 is made available for test or trial purposes. Any licensed entity interested in providing non-commercial test services will use this capacity in co-ordination with the existing television broadcasting services.

4. TECHNICAL STANDARDS FOR DIGITAL MIGRATION

4.1. The Authority has decided not to include the standards in the regulations since SABS has already published DVB-T as the South African National Standard for Digital Terrestrial Television (SANS 300744: 2005), whilst DVB-S has been published as the South African National Standard for Digital Satellite (SANS 300421: 2007). However, the Authority has taken note of the ministerial policy on the need for DVB-S to complement DVB-T to promote universal access. With regard to the technical standards for set-top-boxes the Authority will later determine the necessity of introducing compulsory standard for South Africa.

5. INCENTIVES FOR MIGRATION

5.1. The Authority has considered representations regarding the allocation of the available multiplexes to the existing television services as an incentive for the cost of dual illumination which will come from the SABC, TBN, M-Net and e-TV. In deciding to incentivise the existing broadcasting service licensees, the Authority took note of the following issues:

5.1.1. The short migration time frame of three years means that the three broadcasting service licensees will invest resources to release the digital dividend, within a short space of time compared to other broadcasters elsewhere;

- 5.1.2. The value of the digital dividend to be released at the end of the dual illumination period outweighs the cost of migration which will be paid for by the broadcasting service licensees;
- 5.1.3. The expansion of the SABC will enable the public broadcasting service to meet the diverse socio-economic development needs of a diverse citizenry;
- 5.1.4. SABC 1, SABC 2, SABC 3 and e-TV carry more local content quotas in some cases surpassing quotas set by the Authority, which means that dual illumination will increase the costs of content production for the broadcasters; and
- 5.1.5. M-Net's hard switch-over will also facilitate for the introduction of competition in the subscription television market. The Authority envisages setting aside additional capacity for the purposes of introducing competition in the subscription television market at the end of hard switch-over. Furthermore, the speedy introduction of competition will address the historical domination of Multichoice and M-Net in the satellite and subscription terrestrial television markets, respectively. The Authority believes that the introduction of a new operator (s) and the finalisation of the competition framework in terms of Chapter 10 of the ECA are the best interventions to address this historical reality.

6. MULTIPLEX ALLOCATION

- 6.1. Having taken into consideration the implications of digital migration on the terrestrial broadcasting service licensees, the Authority decided to allocate three multiplexes as follows:
- 6.1.1. MULTIPLEX 1 is allocated to the SABC and community television services. Within its allocated capacity, the SABC will maintain the ratio of 3 public to 1 public commercial channel. Public commercial services exist primarily to cross subsidise the public channels, which carry more local content requirements, therefore the SABC should continue to be defined by the delivery of its public broadcasting mandate.
- 6.1.2. The Authority has decided that the SABC will share its multiplex with Trinity Broadcasting Network (TBN) in the Eastern Cape. The Authority is of the view that there is yet no need to create a separate regional multiplex for TBN. Ten percent (10%) of the capacity in multiplex 1 will therefore be set aside for TBN to provide broadcasting services within its licensed geographic area. The

Authority does not believe that this allocation will deprive the SABC an opportunity to meet its public service objectives. There is no evidence to suggest that this decision will in anyway disadvantage the SABC. Temporary Community test or trial licenses' will continue to be licensed on analogue frequencies provided they do not interfere with the digital migration process. As previously stated, until the end of the dual illumination period, frequencies are not enough to satisfy existing demand; hence the Authority will await the conclusion of this exercise before setting aside multiplexes for the purposes of community television services.

6.1.3. MULTIPLEX 2 will be set aside for e-TV to use 60% capacity. In the interest of establishing a competitive broadcasting landscape, e-TV will not be permitted to apply for the remaining channel capacity in MULTIPLEX 2 until after the introduction of competition in the free-to-air market at the end of the dual illumination period

6.1.4. MULTIPLEX 3 will be set aside for M-Net to use 50% capacity until after the introduction of competition in the subscription television market. At the end of hard switch-over, M-Net can apply for additional channel capacity in Multiplex 3. As in the case of Multiplex 2, this intervention attempts to create a viable competitive environment. In the interest of introducing a viable competitive environment, the Authority has acceded to the M-Net submission regarding further allocation of the remaining capacity in Multiplex 3.

6.1.5. E-TV has been allocated more incentive channel capacity compared to M-Net due to the cost of dual-illumination, especially the broadcast of local content on both analogue and digital formats. To ensure a viable competitive environment between the commercial free to air and subscription broadcasting services, the Authority will enhance the monitoring of the compliance of subscription services with section 60 (4) of the Electronic Communications Act.

7. CHANNEL AUTHORISATION

7.1. Most of the submissions, especially the Media Monitoring Project and the Save our SABC Coalition indicated their support for the concept of public value test during the authorisation of public channels. Both concurred with the view of the SABC which recommended that the public value test should be conducted in line section 10 of the Broadcasting Act. With regard to channel authorisation, the Authority has decided to

subject the authorisation of public channels to a public process, taking into consideration section 10 of the Broadcasting Amendment Act of 2009 and Section 2 of the ECA.

- 7.2. This is done to ensure that the introduction of new digital channels seeks to meet the legislative requirements around universal programming. A separate criterion will be used to authorise all commercial free-to-air broadcasting channels, including those belonging to the SABC. Public commercial channels and other free to air commercial channels will be treated equally to create a competitive environment. Subscription channels will in addition to the Subscription Broadcasting Regulations, 2003, meet similar obligations as those applying to other commercial services. The decision regarding the authorisation of subscription services is informed by the need to promote a beneficial utilisation of the scarce radio frequency spectrum. In other words, the Authority prefers an effective but efficient regulation of subscription television services on the DTT platform when compared with services on satellite and cable systems.

8. FRAMEWORK FOR DTT MULTIPLEXES

- 8.1. Within the limited capacity available for dual illumination, the Authority has decided to confine the broadcasting of digital television to Standard Definition Television (SDTV) mode; the transition to High Definition Television (HDTV) will take place at the end of the dual illumination period, when there is enough capacity. HDTV will therefore be introduced as part of the digital dividend review. The Authority has decided to do away with limiting the number of channels in each multiplex to encourage technological innovation and the efficient utilisation of the frequency spectrum.
- 8.2. With countries in the region already moving away from DVB-T and MPEG 2, South Africa has decided to adopt MPEG 4 as a compression standard. The uptake of MPEG 4 will increase the number of digital channels broadcast on each multiplex. Accordingly the Authority has decided to reflect the channel allocations as a percentage rather than a specific number of channels. By creating this flexibility, the Authority will also encourage innovation and investment in Digital Terrestrial Television.

9. ELECTRONIC COMMUNICATIONS NETWORK LICENSEES

- 9.1. The advent of the multichannel environment has also raised issues regarding the role of Electronic communications network services (ECNS). Under the previous

legislative environment, the broadcasting service licensees retained a right to decide on who should provide signal distribution services. This was done consistent with the provision that allowed broadcasting service licensees to self provide, a provision which has been carried into the new legislative framework in terms of section 63 of the Act.

- 9.2. While this provision remains legally enforceable, the Authority has come to the conclusion that in future this provision will be difficult to implement should a single multiplex be allocated to two broadcasting service licenses. In the meantime, the Authority has decided to allow the existing services to choose their own multiplex operators to provide signal distribution services. In terms of the regulations, the Authority will intervene in the introduction of multiplex operators in instances where the broadcasters are not able to appoint their preferred multiplex operators within the specified period.
- 9.3. During the consultative process, the Authority proposed that frequencies be assigned to broadcasters who also retained a right to appoint a signal distributor of choice. In response Sentech argued that this provision was contrary to the interpretation of section 31 and section 32 (1) of the Act which, according to Sentech, provided for the co-assignment of frequencies to broadcasting licensees and the ECNS licensees. While the Authority did not agree with Sentech's interpretation of the Act, the matter has since been resolved through the introduction of multiplex operators to operate multiplexes.
- 9.4. The introduction of a concept of a multiplex operator should not be construed as an attempt to introduce a new license category outside of the Act. Instead, a multiplex operator refers more to the responsibility to be discharged by the ECNS services. In the interest of facilitating a smooth migration, the Authority believes that the responsibilities of all role players in the value chain should be adequately spelt out.
- 9.5. The ECNS licensees operating a multiplex will also be required to meet rollout targets, set out in the regulations. The Authority is aware that the rollout targets contained in the regulations may need to be revised, considering that the dual illumination period did not take place as initially planned due to the delay in the provision of set-top-boxes and the request by the broadcasting service licensees to undertake a digital terrestrial television trial. The Authority will therefore engage the Minister of Communications on the possibility of revising the current targets. In the meantime, the Authority has decided to align the rollout targets with the financial years as

opposed to the calendar year. This approach does not constitute a material departure from the Ministerial policy.

9.6. Discussions on the payment of frequency spectrum fees and related frequency spectrum issues will be addressed in the relevant Radio Regulations in terms of the Act.

10. LIMITATION ON DATA AND SOUND BROADCASTING SERVICES

10.1. The Authority has also considered representations regarding the limitation on data and sound broadcasting services on DTT multiplexes. The Authority has decided to prioritise the provision of digital terrestrial television (DTT) services. This means that a large portion of the available capacity in each multiplex should be set aside for the purposes of providing television services. Each broadcasting service licensee is therefore required to use not more than 15% to provide additional services.

10.2. With regard to sound broadcasting services, the Authority has taken note of the views expressed by the SABC with regard to the expansion of public sound broadcasting services through the DTT process. But, while the Authority is sympathetic to the rationale behind the SABC's reason, we are of the view that the introduction of digital radio should be done in a systematic, co-ordinated manner in order not to disrupt the current market environment.

10.3. For this reason, the Authority will prefer structured public discussions as part of the digital dividend review. The Authority has acceded to the representations regarding the provision of Electronic Programme Guide (EPG) and Electronic Programme Information (EPI) in multiple languages. The Authority concurs with industry players that there is no value in providing for EPG and EPI in more than one language. As a result, the Authority has removed that provision from the current regulations. Meanwhile, the Authority favours the idea of introducing audio tracks in multiple languages to ensure that local content programmes are accessible to the majority of citizens.

11. JOINT SPECTRUM ADVISORY COMMITTEE

11.1. The final regulations also provide for the establishment of the Joint Spectrum Advisory Committee (JSAC) for the purposes of co-ordinating frequency interference. In response to the Draft Digital Migration Framework Regulations some industry players, especially the Electronic Communications Services, argued that the JSAC

should be opened to them as they were also interested in the smooth migration process.

11.2. The Authority has taken note of the interest shown by other industry players to participate in the digital migration process, but does not believe that they should be included and represented in the JSAC. Instead, the Authority would create other opportunities for industry players to contribute to the DTT frequency planning process, which is separate from the tasks to be performed by the JSAC. Given the administrative nature of the JSAC, there is clearly no case to broaden the committee.

12. RELATED MATTERS

12.1. In finalising the Digital Terrestrial Television Regulations the Authority has taken consideration of representations on other broadcasting related regulations. In particular, the Authority has taken note of submissions for a speedy finalisation of regulations dealing with competition, and local content. While the Authority does not believe that these regulations constitute a *sine qua non* for the dual illumination period, we do concur that their resolution will add value to digital migration and to the development and growth of the sector as a whole.

12.2. Throughout the consultation process, e-TV, in particular, argued that continuing with the digital migration regulations without a pro-competitive framework would advantage the SABC, which, according to e-TV, enjoys a monopoly in the industry. e-TV suggested that to mediate the potential domination of the SABC, to the extent of crowding out its sole competitor, digital migration should be accompanied by a balanced allocation of digital incentive channels.

12.3. While the Authority is committed to the creation of a competitive environment, we are of the view that, in the short term, competition should be addressed through the equitable allocation of additional channel capacity. This is so because licensing on its own plays a significant role in a competitive environment. The Authority is therefore satisfied that the provisions in the regulations, especially the requirement that the SABC should broadcast a ratio of 3 public channels to 1 public commercial channel should create a competitive framework. Moreover, the provision regarding the application of the public value test in the authorisation of public channels will ensure that the public broadcasting service is focused towards meeting certain developmental objectives as required by section 10 of the Broadcasting Act of 1999.

- 12.4. The Authority will expedite public consultation on the competition framework for broadcasting in terms of Chapter 10 of the Act. The Authority has also taken note of the proposal to introduce competition in the pay DTT market.
- 12.5. During the public consultations on both drafts, the newly licensed television services Telkom Media, WOW Media and On Digital Media argued against the decision to defer competition until at the end of the dual illumination period. They argued that the decision in this regard was likely to entrench the current monopoly enjoyed by M-Net in the Pay DTT Market. Their submissions raised questions about mitigating the competing policy objectives – the need to release the digital dividend and the quest for a competitive landscape.
- 12.6. Consistent with the section 2 of the ECA, the Authority will introduce competition in the subscription television market at the end of hard switch-over, in 2010, while competition in the commercial free- to- air market will be introduced at the end of the dual illumination period. This approach is informed by the need to allow the current services to migrate before competition is introduced. The Authority believes that any arbitrary introduction of competition at the outset of digital migration can defeat the objectives of digital migration which is to release the digital dividend. The fact that the current services will take up the cost of dual illumination means that they should be allowed to meet national objectives, before they are subjected to a competitive environment. Moreover, more channel capacity is needed to create a working competitive environment.
- 12.7. With regard to the local content regulations the Authority has noted concerns expressed by amongst others the SABC on the prescriptive nature of the existing Local Content regulations which prohibit the rebroadcast of content. The SABC argued that this was not in the interest of the migration process. While the Authority agrees that digital migration should be aligned with the local content regulatory environment, we are of the view that the review of the local content regulations should follow on the creation of a new television market structure, which is one of the intended outcomes of these regulations. Once the new market structure is in place, the Authority will consider the review of the current local content regulations.
- 12.8. The second draft provided for mobile television services on DTT multiplexes. While this is technically feasible the Authority has decided to license mobile television as a separate process based on the two metropolitan multiplexes in terms of the RRC 06. This is subject to the finalisation of the Broadcasting Frequency Plan.

12.9. Other matters related to broad based black economic empowerment in the DTT environment will be addressed in terms of the Broad Based Black Economic Empowerment Act (BBBEE Act) and the relevant regulations formulated in terms of the ECA, and shall apply to all broadcasting services unless stated otherwise.

13. CONCLUSION

The conclusion of the consultative process on the dual illumination period, paves way for industry to commence the provision of commercial services and initial work to be done to review the digital dividend. The Authority believes that the launch of commercial services and work on the digital dividend will enable all role players to continuously improve their services with a view to emerge with a successful digital migration process. For this reason, the Authority remains committed to engage stakeholders on better and innovative ways to achieve the digital dividend, which will lay the required foundation for the introduction of competition in both the pay and free- to- air markets.

The fact that the current regulations are confined to the dual illumination period should not negate work that still needs to be done to usher in a competitive environment. The Authority is convinced that more capacity is needed to bring about adequate competition in the sector. By incentivising the current broadcasting services, for their cost of migration, the Authority has signalled its intention to use the digital dividend to benefit the entire broadcasting and communications sectors. Related to this, the Authority will continue with current work to introduce a competition framework for broadcasting, in terms of section 67 of the Act, as well as consider the necessity to review the current local content regulations. The advent of the new multichannel environment will inform the extent to which local content should be regulated, going forward. As part of facilitating a successful migration process, and should it be necessary, the Authority will make policy or legislative recommendations to the Minister. Going into the future, it may be necessary to consider some legislative amendments to introduce a new DTT licensing environment to enable the smooth functioning of the multichannel environment.
