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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. 532

10 July 2012



EXPLANATORY MEMORANDUM ON THE DECISION TO AMEND THE DRAFT DIGITAL TERRESTRIAL TELEVISION REGULATIONS FOR PUBLIC COMMENT

1. BACKGROUND AND REASONS

The Independent Communications Authority of South Africa (“the Authority”) hereby wishes to clarify its decision to amend the draft Digital Terrestrial Television regulations (“the Draft DTT Regulations”) for further public consultation.

Acting in terms of section 3(1) of the Electronic Communications Act 36 of 2005, the Minister of Communications published the proposed Amendment of Broadcasting Digital Migration Policy issued under Government Gazette No. 31408 on 08 September 2008 (“the Ministerial Policy”) in *Government Gazette* No. 35014 of 7 February 2012, which was later withdrawn and replaced with the Ministerial Policy published in *Government Gazette* No 35051 of 17 February 2012. The Ministerial Policy recorded a Cabinet decision to adopt the DVB-T2 standard and extended the switch-off date from November 2011 to December 2013.

On 28 September 2011, the Authority published the draft DTT Regulations in *Government Gazette* No 34642 to engage with interested parties and afford them an opportunity to make written and oral representations.

The draft regulations are specifically aimed at providing a framework that will ensure the smooth migration of existing analogue television services and the creation of a platform for digital terrestrial television. However, the Authority has considered the representations and submissions it has received from various interested parties and the Broadcasting Digital Migration Policy for South Africa (“the Ministerial Policy”) published by the Minister of Communications (“the Minister”) in February 2012 in *Government Gazette* No 35051.

The Authority had decided to amend the draft regulations for the following reasons:

1. The Authority's approach to the Digital Terrestrial Television Regulations is based on ensuring that the regulations are future proof and should at least last for the next five years.
2. The timeline for analogue switch-off places great pressure on all stakeholders to put in place a range of complex systems to firstly achieve a successful DTT launch and secondly provide consumers with attractive channels to incentivise them to acquire new Set Top Boxes (STBs).
3. The DTT process is clearly a complex multi-stakeholder, multi-activity project in which a breakdown in any one sphere of activity has a knock-on effect on the delivery of other activities. A project of this scale is thus replete with dependencies and risks in its implementation. It is therefore important that ICASA amend its draft Digital Terrestrial Television regulations to meet any future contingencies, including the possibility that analogue switch-off may not take place in 2015 as envisaged in the Ministerial policy.
4. As set out in section 5 of the Ministerial Policy, competition should be promoted within the limits of the available spectrum, first, to ensure a smooth digital migration process and, secondly, to provide a range of different but sustainable services to benefit both the public and the broadcasters. The Authority is of the view that given the current limitation in the broadcasting plan, it is essential to redesign the second Mobile Television Multiplex to create the third Digital Terrestrial Television Multiplex to accommodate the needs for future services in the short to medium term during the dual illumination period. Therefore, the Authority wishes to hear stakeholder views on whether to utilise the Mobile Digital Terrestrial Television multiplex (MDTT2) in order to accommodate new entrants to stimulate the uptake of DTT services, foster content and enhance consumer choice. It is likely that an invitation to apply for a new free-to-air commercial television licence(s) will only take place after the Authority has conducted an inquiry into the form such licensing should take, e.g. full spectrum national service, single digital TV channels, regional TV services etc.
5. The Authority is mindful of the fact that intra competition (competition between the current channel and the incentive channel authorised within a broadcaster during dual illumination) and inter competition (competition between incumbent broadcasters competing amongst themselves on incentive channels authorised during dual illumination) will in any case be introduced upon authorisation of incentive channels. These draft regulations amend the Mobile TV regulations and in the event of the Authority pursuing this route, the broadcasting frequency plan will also be amended.

6. The Authority is of the view that the current Broadcasting Plan, with MPEG 4 compression ratio and DVB-T2 at thirty two Mega Bits per seconds (32.5 MB/s) has the capacity to accommodate approximately twenty one (21) Standard Definition Channels or approximately six (6) High Definition Channels per Multiplex and achieve at least eighty five percent (85%) population coverage. The Authority has also considered the Ministerial Policy in ensuring close to 100% coverage for those areas that are difficult to reach, which will be covered through DTH by satellite means.
7. Provision for High Definition Television (HDTV) is made to accommodate future trends and HD broadcasts also provide widescreen pictures, but they have an even sharper image with up to twice the horizontal and almost three times the vertical resolution of SD.
8. The Authority is of the view that future broadcasting developments should take into consideration the needs of current and future services during and after dual illumination. The Authority has therefore assigned an arbitrary multiplex number (n) to ensure that any additional future multiplexers are taken care of in the development of future DTT Frequency Plans.
9. The Authority wants to test an interim solution to using original television content to incentivise viewers to acquire set-top boxes and to set minimum requirements for local television content on digital incentive channels and new digital channels during the dual illumination period or until such time as the South African Local Television Content regulations are amended. In this regard the Authority is also proposing the formation of a Digital Television Content Advisory Group to advise on the most effective way to ensure the supply of digital television content to encourage consumers to acquire set-top boxes in order to begin viewing digital television services.

2. INVITATION FOR WRITTEN REPRESENTATIONS

In terms of section 4(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), interested persons are hereby invited to submit their written representations on the draft DTT Regulations published herewith by the Authority. A copy of the proposed regulation will be made available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at No. 164 Katherine Street, Pin Mill Farm, (Ground Floor at Block D), SANDTON between 09h00 and 16h00, Monday to Friday only.

Written representations with regard to the proposed regulations must be submitted to the Authority by **no later than 16h00 on 30 July 2012** by post, hand delivery or electronically (in Microsoft Word) and marked specifically **Attention: Ms Refilwe Ramatlo. Delivery address:**

Block A, Pinmill Farm, 164 Katherine Street, Sandton. Further enquiries in that regard may be directed to her via e-mail at:

DigitalDividendandDigitalMigrationCommittee@icasa.org.za or **by facsimile: 011 566-3252** or **by telephone: 011 566-3251**; between 10h00 and 16h00, Monday to Friday only.

Written representation(s) received by ICASA pursuant to this notice, will be made available for inspection by interested persons at the ICASA library and such copies will be obtainable upon payment of the prescribed fee.

At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.

The final regulations following the conclusion of the consultative process including any hearing that may be held, will be published in the Government Gazette and made available on the website referred to above.



DR STEPHEN MNCUBE

CHAIRPERSON OF COUNCIL

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

DRAFT DIGITAL TERRESTRIAL TELEVISION REGULATIONS

SCHEDULE

1. DEFINITIONS

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

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

“**analogue broadcasting**” means terrestrial broadcasting where the broadcast signal is in analogue format and “**analogue broadcast**” shall be construed accordingly;

“**broadcast frequency plan**” means the radio frequency plan prepared by the Authority in relation to the broadcasting service radio frequency bands, which forms part of the national radio frequency plan referred to in section 34 of the Act;

“**CCC**” means the Complaints and Compliance Committee;

“**Charter**” means the Charter of the SABC, as outlined in Chapter IV of the Broadcasting Act; 1999 (Act No. 4 of 1999);

“**commercial service division**” means the commercial service operational division of the SABC, as provided for in section 9(1)(b) of the Broadcasting Act;

“**digital broadcasting**” means terrestrial broadcasting where the broadcast signal is in a digital format and “**digital broadcast**” shall be construed accordingly;

“**digital incentive channel**” means a new digital channel provided by an existing terrestrial television broadcasting service licensee in addition to the existing television channel or channels broadcast by that licensee as an incentive for digital migration and to encourage consumers to take the steps necessary for a successful digital migration;

“**digital migration**” means the transition from analogue broadcasting of a television channel to digital terrestrial broadcasting platform;

“**digital television channel**” means a new digital channel authorised for use on Multiplex 3.

“**Digital Terrestrial Television**” or “**DTT**” means digital broadcasting of television broadcasting services over a terrestrial electronic communications network which employs radio frequency spectrum in the transmission of the broadcast signal, and does not include

television broadcasting services transmitted over a cable electronic communications network;

“dual illumination” means the simulcast broadcasting of a television channel in both analogue and digital format;

“dual illumination period” means the period commencing on the date of digital terrestrial television switch-on, to date of analogue terrestrial television switch-off, to be announced by the Minister;

“e.tv” means e.tv (Proprietary) Limited;

“e.tv channel” means the existing television channel broadcast by e.tv at the commencement of these Regulations in terms of the individual licence to provide a commercial free-to-air broadcasting service held by e.tv;

“High Definition Television” means digital transmissions with a pixel aspect ratio of 16:9.interlaced/interfaced or progressive scanned formats;

“existing television channel” means a television channel provided by a terrestrial television broadcasting service licensee as an analogue broadcast at the commencement of these Regulations;

“M-Net” means Electronic Media Network Limited;

“M-Net channels” means the existing television channels broadcast by M-Net at the commencement of these Regulations in terms of the individual licence to provide a commercial subscription broadcasting service held by M-Net;

“Minister” means the Minister of the Department of Communications;

“Multiplex” means distinct blocks of transmission capacity that carries a bouquet of digital television channels;

“Multiplex 1” means the frequencies designated as “DTT1” in the broadcasting frequency plan;

“Multiplex 2” means the frequencies designated as “DTT2” in the broadcasting frequency plan;

“Multiplex 3” means the frequencies designated as “MDTT2” in the broadcasting frequency plan;

“**Multiplex ‘n’**” means the frequencies designated as an additional multiplex in the broadcast frequency plan, where “n” denotes an arbitrary number that may be given at the time;

“**public service channel**” means a channel broadcast by the SABC which is broadcast for the public benefit rather than for the maximization of revenues;

“**public service division**” means the public service operational division of the SABC, as provided for in section 9(1) of the Broadcasting Act;

“**public value assessment**” is an assessment process to test whether a channel will be of value to the public;

“**Process and Procedures Regulations (Class Licences)**” means the Regulations on Licensing Processes and Procedures published by the Authority in a *Government Gazette* from time to time;

“**Process and Procedures Regulations (Individual Licences)**” means the Regulations on Licensing Processes and Procedures published by the Authority in a *Government Gazette* from time to time;

“**SABC**” means the South African Broadcasting Corporation Limited;

“**SABC channels**” means the existing television channels, SABC 1, SABC 2 and SABC 3, broadcast by the SABC at the commencement of these Regulations in terms of the individual licences to provide public free-to-air broadcasting services held by the SABC;

“**SABC commercial service channel**” means a commercially operated channel broadcast by the SABC;

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

“**terrestrial television broadcasting service licensee**” means the current operational analogue terrestrial television service licensees.

2. PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to: -

- (a) regulate the digital migration of terrestrial television broadcasting services;

- (b) prescribe the conditions for the assignment of channel capacity in Multiplex 1, Multiplex 2 and Multiplex 3 for the purposes of digital migration and the creation of a platform for digital terrestrial television;
- (c) prescribe the procedure for the authorisation of digital incentive channels and digital television channels;
- (d) set the time frames within which digital migration is to be achieved by the terrestrial television broadcasting service licensees; and
- (e) make provision for the conditions on the assignment of capacity in any additional Multiplex (Multiplex 'n') for the purposes of providing digital terrestrial television during and/or after migration.

3. FRAMEWORK FOR DIGITAL MIGRATION

- (1) Digital migration shall take place using the Second Generation Digital Video Broadcast Transmission (DVB-T2) standard and furthermore take place using the fourth generation Moving Picture Expert Group (MPEG-4) compression standard.
- (2) There shall be dual illumination of the SABC channels, e.tv channel, and M-Net channels so as to achieve the phased digital migration of those channels in the whole of the Republic.
- (3) During the dual illumination period, the digital broadcast of terrestrial television broadcasting services shall be broadcast in Standard Definition Television (SDTV) mode and/or High Definition Television (HDTV) mode.
- (4) Community television broadcasting services shall not be required to dual illuminate but must ensure that they have completed their migration to digital terrestrial television by the end of the dual illumination period.
- (5) Each terrestrial television broadcasting service licensee shall ensure that the analogue broadcast signal of its existing television channel or channels is switched off by the last day of the dual illumination period.
- (6) For certain analogue television transmitters located in the Northern Cape Province, it is required that the analogue broadcast signal switch-off occurs before the end of December 2015 in order to provide the required protection for radio astronomy in terms of the Astronomy Geographic Advantage Act (Act No. 21 of 2007).

- (7) During the dual illumination period, only the existing television channels and any digital incentive channels shall broadcast in Multiplex 1 or Multiplex 2, as authorised.
- (8) Where any allocated capacity in Multiplex 1 and Multiplex 2 which is allocated in terms of these Regulations to be used by a terrestrial television broadcasting service licensee, is not being fully utilised for content provision by that licensee 36 months after the commencement of digital terrestrial television switch-on, such unutilised capacity shall be regarded as being forfeited to the Authority.
- (9) Where any digital incentive channel in Multiplex 1 and Multiplex 2 or digital television channel on Multiplex 3 which is authorised in terms of these Regulations to be broadcast by terrestrial television broadcasting service licensee, is not being broadcast by that licensee 18 months after the authorisation of the channel, the capacity related to that channel shall be regarded as being forfeited to the Authority.
- (10) The Authority may establish additional Multiplexes (Multiplex 'n') as digital migration progresses and will undertake public consultation regarding the conditions for the allocation of channel capacity in any additional Multiplex (Multiplex 'n') for the purposes of providing Digital Terrestrial Television during and/or after migration.

4. MULTIPLEX ALLOCATION - MULTIPLEX 1

- (1) The SABC may use up to ninety percent (90%) of the available capacity in Multiplex 1 for the digital broadcasting of -
- (a) the SABC channels; and
 - (b) any digital incentive channels, which the SABC is authorised to provide, in accordance with the procedures set out in these Regulations.
- (2) The SABC shall commence the digital migration of its existing television channels at the start of the dual illumination period.
- (3) The SABC shall maintain a ratio of not less than three (3) public service channels to one

(1) commercial service channel and ensure that at least three quarters of its allocated capacity in Multiplex 1 is dedicated towards the provision of public service television.

- (4) Community television broadcasting service licensees may use up to ten percent (10%) of the available capacity in Multiplex 1 to broadcast their existing analogue television channel.

5. MULTIPLEX ALLOCATION - MULTIPLEX 2

- (1) e.tv may use up to fifty percent (50%) of the available capacity in Multiplex 2 for the digital broadcasting of -

(a) the e.tv channel; and

(b) any digital incentive channels, which e.tv is authorised to provide, in accordance with the procedures set out in these Regulations.

- (2) e.tv shall commence the digital migration of the e.tv channel at the start of the dual illumination period.

- (3) M-Net may use up to forty percent (40%) of the available capacity in Multiplex 2 for the digital broadcasting of –

(a) the M-Net channels

(b) any digital incentive channels, which M-Net is authorised to provide, in accordance with the procedures set out in these Regulations.

- (4) M-Net shall commence the digital migration of the M-Net channels at the start of the dual illumination period.

- (5) The remaining ten percent (10%) of the available capacity on Multiplex 2 shall be set aside for future use, including test and trial licences.

- (6) During the dual illumination period, any person, other than a terrestrial television broadcasting service licensee, may apply to the Authority in accordance with the Process and Procedures Regulations for a special temporary authorisation to conduct test or trial

services using the available capacity in Multiplex 2, which has not been authorised to be used by e.tv and M-Net in terms of these Regulations.

- (7) During the course of the service test and/or trial, the applicant will have to provide a progress report on the status, outcome and benefits derived therefrom.
- (8) The report provided in terms of sub-regulation 7 shall be made on a quarterly basis with a comprehensive final report submitted at the end of the test and/or trial period.
- (9) The Authority's personnel may participate and/or engage on the test or trial activity.

6. MULTIPLEX ALLOCATION – MULTIPLEX 3

- (1) During the dual illumination period, the capacity on MDTT2 shall be used for the provision of commercial digital terrestrial television and commercial sound broadcasting services.
- (2) The capacity on MDTT2 shall be allocated as follows –
 - (a) Forty percent (40%) shall be made available to a subscription television service licensee through an Invitation to Apply for a Radio Frequency Spectrum Licence in terms of the Radio Frequency Spectrum regulations as published by the Authority from time to time.
 - (b) Fifty percent (50%) shall be made available to a new free-to-air commercial television service licensee(s) to be licensed through an Invitation to Apply in terms of section 9 of the Act
 - (c) Ten percent (10%) will be made available to commercial sound broadcasting service licensees through an Invitation to Apply for a Radio Frequency Spectrum Licence in terms of the Radio Frequency Spectrum regulations as published by the Authority from time to time.

7. DIGITAL INCENTIVE CHANNEL AUTHORISATION AND PROCEDURE

- (1) A terrestrial television broadcasting service licensee, other than a community television broadcasting service licensee, may make a written application to the Authority, before or after the commencement of the dual illumination period, for authorisation to broadcast a digital incentive channel(s). An application for authorisation to broadcast a digital incentive channel by a public service broadcasting licensee shall be subject to a public value assessment, for which purpose the Authority shall –

- (a) publish notice of the application in the *Gazette* and invite comments from interested persons within the period specified in the notice, on the application and the criteria to be taken into account by the Authority in assessing the public value of the addition of the proposed digital incentive channel; and
 - (b) afford the terrestrial television broadcasting service licensee an opportunity to submit written responses to representations received in relation to the application and public value criteria within the period specified by the Authority.
- (2) The Authority may conduct a public hearing in relation to the application submitted in terms of sub-regulation 1.
- (3) The Authority shall grant authorisation to broadcast a digital incentive channel to a public broadcasting service licensee that complies with the following public purposes -
- (a) Supporting citizenship, consumer protection and civil society;
 - (b) Providing fair and impartial news and current affairs coverage;
 - (c) Promoting education and learning;
 - (d) Stimulating creativity and cultural excellence; and
 - (e) Representing South Africa in all its diversity.
- (4) Where a digital incentive channel is authorised by the Authority in terms of these Regulations, the terrestrial television broadcasting service licensee must commence broadcasting the channel within ninety (90) days of the date on which the authorisation is granted unless the Authority grants, on good cause shown, an extended period not exceeding 30 days after authorisation for commencement of the channel on written application by the licensee, prior to the expiry of the ninety (90) day period.

8. LOCAL CONTENT FOR DIGITAL INCENTIVE CHANNELS AND NEW DIGITAL CHANNELS

- (1) Regulations 3, 4, 5 and 8 of the South African Local Television Content regulations published in General Notice 154 in *Government Gazette* 28454 of 31 January 2006 shall not apply to digital incentive channels or new digital channels during the dual illumination period.
- (2) Television content on digital incentive channels or new digital channels shall be regulated as follows –

- (a) During the hours of 6 – 10 p.m., a minimum of 50% of original television content shall be broadcast daily on each digital incentive channel or new digital channel, of which 55% shall be original South African television content in the case of public service incentive channels and 35% shall be original South African television content in the case of commercial incentive channels and 10% shall be original South African television content in the case of subscription incentive channels.
- (b) This requirement may be waived by the Authority on application for Digital Incentive Channel Authorisation or New Digital Channel Authorisation on good cause shown.

9. AUTHORISATION FOR THE SABC TO BROADCAST A DIGITAL INCENTIVE CHANNEL IN MULTIPLEX 1

- (1) In any application by the SABC for authorisation to broadcast a digital incentive channel that is a public service channel and that will fall under the public service division, the SABC must include –
 - (a) a market impact analysis, including the implications of the addition of the proposed channel to the SABC's broadcasting service for diversity of programming and other broadcasting services;
 - (b) the name of the proposed channel;
 - (c) the primary language(s) of the proposed channel;
 - (d) a programming plan, including local content; and
 - (e) information on the extent to which the addition of the proposed digital incentive channel to the SABC's broadcasting service will contribute to the achievement of the public service requirements to be met by the SABC in terms of the Charter.
- (2) In any application by the SABC for authorisation to broadcast a digital incentive channel that is a commercial service channel and that will fall under the commercial service division, the SABC must include in its application the information that is required to be provided in an application by a commercial broadcasting service licensee, as specified in sub-regulation 1.
- (3) An application submitted in terms of this regulation 9 that does not contain the information required to be included in terms of these Regulations will not be considered by the Authority.

- (4) In evaluating an application in terms of this regulation 9, the Authority will consider –
- (a) whether the public value assessment is met; and
 - (b) the extent to which the commercial service requirements to be met by the SABC in terms of the Charter will be met and the objects set out in section 2 of the Act will be achieved, if the application is granted.

10. REGIONAL OPEN WINDOWS

Regional public television services and regional commercial television services shall provide an open window for community television programming within the region concerned for a minimum period of 30 minutes during the hours of 6-10 p.m.

11. AUTHORISATION TO BROADCAST A DIGITAL INCENTIVE CHANNEL MULTIPLEX 2

- (1) An application for authorisation to broadcast a digital incentive channel in Multiplex 2 must include -
- (a) the name of the proposed channel;
 - (b) a market impact analysis, including the implications of the addition of the proposed channel to the relevant broadcasting service for diversity of programming and other DTT services;
 - (c) the primary language(s) of the channel;
 - (d) proof of financial viability;
 - (e) a programming plan, including local content; and
 - (f) any other related information as may be required by the Authority.
- (2) An application in terms of sub-regulation (1) that does not contain the information that is required to be included in terms of these Regulations will not be considered.
- (3) A terrestrial television broadcasting service licensee who provides a subscription broadcasting service must follow the procedures set out in these Regulations to obtain the Authority's authorisation to broadcast a digital incentive channel.

12. AUTHORISATION TO BROADCAST A DIGITAL TELEVISION CHANNEL MULTIPLEX 3

- (1) An application for authorisation to broadcast a digital television channel in Multiplex 3 must include -
 - (a) the name of the proposed channel;
 - (b) a market impact analysis, including the implications of the addition of the proposed channel to the relevant broadcasting service for diversity of programming and other DTT services;
 - (c) the primary language(s) of the channel;
 - (d) proof of financial viability;
 - (e) a programming plan, including local content; and
 - (f) any other related information as may be required by the Authority.
- (2) An application in terms of sub-regulation (1) that does not contain the information that is required to be included in terms of these Regulations will not be considered.
- (3) A terrestrial television broadcasting service licensee who provides a subscription broadcasting service must follow the procedures set out in these Regulations to obtain the Authority's authorisation to broadcast a digital television channel.

13. SIGNAL DISTRIBUTION OF THE DTT SERVICES BROADCAST IN MULTIPLEXES 1,2 AND 3

- (1) Signal distribution services shall be provided to each of the terrestrial broadcasting service licensees for digital broadcasting in Multiplex 1,2 and 3, as the case may be, by an electronic communications network services licensee or licensees appointed in terms of this regulation 13.
- (2) Each terrestrial television broadcasting service licensee must seek to conclude a commercial agreement with an electronic communications network services licensee to provide signal distribution services.
- (3) The agreement concluded between a terrestrial television broadcasting licensee and the electronic communications network services licensee selected to provide signal distribution services shall be submitted to the Authority prior to the commencement of the dual illumination period, together with -

- (a) a roll-out plan in line with the coverage targets stated in regulation 14;
 - (b) a technical plan consistent with the broadcast frequency plan; and
 - (c) tariff structure for signal distribution.
- (4) Where a terrestrial television broadcasting service licensee fails to comply with sub-regulation (2) or where the Authority is not satisfied that the electronic communications network service licensee selected by an existing broadcasting service licensee will achieve the roll-out targets or the broadcasting signal distribution objectives specified in section 62 of the Act, the Authority must issue an invitation to interested persons who hold an individual licence to provide electronic communications network services to apply to provide signal distribution services to the terrestrial broadcasting service licensee.
- (5) An application submitted in response to an invitation to apply referred to in sub-regulation (4) must include details of: -
- (a) the tariff framework to be applied;
 - (b) a roll-out plan in line with the coverage targets stated in regulation 14;
 - (c) a technical plan consistent with the broadcast frequency plan; and
 - (d) the electronic communications network service licensee's compliance with section 62 of the Act.
- (6) 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 electronic communications network service licensees to provide signal distribution services to a terrestrial television broadcasting service licensee 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.
- (7) The Authority may, after considering the application(s) submitted in response to an invitation to apply in terms of sub-regulation (4) and any written representations made in relation to an application, appoint an electronic communications network service licensee

to provide signal distribution services to the terrestrial television broadcasting service licensee in question and shall stipulate the terms and conditions on which the electronic communications network service licensee is appointed, taking into account the requirements of section 62 of the Act.

- (8) Where any electronic communications network services licensee appointed in terms of this regulation 13 to provide signal distribution services receives any government subsidy intended to subsidise the signal distribution costs incurred by any terrestrial television broadcasting service licensee or licensees for digital broadcasting during the dual illumination period, that electronic communications network services licensee must reduce the tariffs charged to the terrestrial television broadcasting service licensee or licensees by the amount of the subsidy and must, in appropriate circumstances, provide such signal distribution services free of charge.
- (9) Where, pursuant to section 67 of the Act, the tariffs charged by an electronic communications network services licensee appointed in terms of this regulation 13 to provide signal distribution services are subject to regulation by the Authority, the tariffs charged by the electronic communications network service licensee shall be in accordance with such regulation and any agreement between the electronic communications network service licensee and the terrestrial television broadcasting service licensee shall be modified accordingly.

14. ROLL-OUT TARGETS

- (1) The electronic communications network service licensees appointed to provide signal distribution services to the terrestrial television broadcasting service licensees must ensure that the digital broadcast signal for public service DTT services reaches:-
 - (a) 74% of the population of the Republic, within six months after the commencement date of digital terrestrial television switch-on ; and
 - (b) 95% of the population of the Republic by the end of the dual illumination period.
- (2) The coverage requirements for digital transmission in Multiplexes 2 and 3 and any other additional multiplex will be based on the broadcaster's licence conditions.

- (3) An electronic communications network services licensee appointed in terms of regulation 13 must submit quarterly reports to the Authority on quality of service, 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 Southern African region, to be submitted to the Authority within one (1) month after the end of the electronic communications network services licensee's financial year and every six(6) months thereafter.
- (4) An electronic communications network services licensee appointed in terms of regulation 13 must keep records of all incidences of harmful frequency interference and include such in the quarterly reports to be submitted to the Authority in terms of sub-regulation (2).

15. DIGITAL TELEVISION CONTENT ADVISORY GROUP

- (1) In order to promote the availability of digital television content during the dual illumination period the Authority will establish a Digital Television Content Advisory Group (DTCAG) as a consultative forum, with the terrestrial television broadcasting service licensees and representatives of the independent television production industry and civil society.
- (2) The DTCAG will advise the Authority on the most effective way to ensure the supply of digital television content to encourage consumers to acquire set-top boxes in order to begin viewing digital television services.
- (3) The DTCAG shall comprise -
 - (a) one (1) representative from each terrestrial television broadcasting service licensee, representative organisations of the independent television production industry, consumer protection organisations and civil society organisations with a demonstrated interest in digital television content;
 - (b) two (2) officials from the Authority; and
 - (c) a person designated as a Chairperson by the Authority, provided that participation in the Committee is voluntary and the terrestrial television broadcasting service licensees, representative organisations of the independent television production industry and civil society organisations.
- (4) The DTCAG shall be dissolved within six (6) months after the end of the dual illumination period.

- (5) The DTCAG shall make recommendations to the Authority in relation to the matters referred to in sub-regulation (2).
- (6) Decisions of the DTCAG regarding the recommendations to be made to the Authority are to be reached by consensus.
- (7) Where the members of the DTCAG are unable to reach consensus on the recommendation to be made to the Authority, each incumbent broadcasting service licensee, representative organisations of the independent television production industry and civil society organisations referred to in sub-regulation (1) may make a separate recommendation to the Authority.
- (8) A quorum of a meeting of the DTCAG is a majority of the members of the Group, including the person designated as Chairperson of the DTCAG.
- (9) The existence of the DTCAG does not affect the rights of any licensee or organisation to file complaints, or the Authority's powers to enforce compliance in terms of the law.

16. GENERAL OBLIGATIONS

- (1) A terrestrial television broadcasting service licensee must ensure that an Electronic Programme Guide, being a schedule of forthcoming available programmes broadcast by the licensee at defined intervals, and Electronic Programme Information, being information in relation to the nature and content of programming, are made available to consumers in relation to the programming broadcast on a particular channel.
- (2) A terrestrial television broadcasting service licensee may provide data services using the capacity authorised to be used in Multiplex 1 and 2, as the case may be, for the purpose of enhancing service to consumers: provided that any data services provided may not utilise more than fifteen per cent (15%) of the capacity allocated to a terrestrial television broadcasting service licensee.
- (3) Licensed sound broadcasters may be accommodated on the various multiplexes subject to a commercial agreement with the terrestrial television broadcasters.

17. TRANSITIONAL PROVISIONS

- (1) The Authority will amend, in accordance with section 10(1)(d) of the Act and the procedures contained in the Process and Procedures Regulations (Individual Licences) or in accordance with the procedures contained in the Process and Procedures Regulations (Class Licences), as the case may be, each of the broadcasting service licences (collectively referred to as “terrestrial television broadcasting service licences” for the purposes of this regulation 17) held by the terrestrial television broadcasting service licensees as at the commencement of these Regulations to reflect the fact that multi-channel services will be made available by those licensees using DTT.
- (2) Until such time as the terrestrial television broadcasting service licences have been amended as contemplated in sub-regulation (1), each of the terrestrial television broadcasting service licensees is considered to be authorised to provide a multi-channel broadcasting service as provided for in these Regulations and the terrestrial television broadcasting service licences are deemed to confer such authorisation.
- (3) The Authority will amend, in accordance with section 31(4)(c) of the Act, each of the radio frequency spectrum licences (collectively referred to as “existing radio frequency spectrum licences” for the purposes of this regulation 17) held by the terrestrial television broadcasting service licensees as at the commencement of these Regulations to reflect the radio frequency spectrum which they are authorised to use for the purposes of DTT in accordance with these Regulations.
- (5) Until such time as the existing radio frequency spectrum licences have been amended as contemplated in sub-regulation (3), each of the terrestrial television broadcasting service licensees is considered to be authorised to utilise the radio frequencies included in Multiplex 1, or 2 as the case may be, in accordance with these Regulations, and the existing radio frequency spectrum licences are deemed to confer such authorisation.
- (6) For the purpose of these regulations it is deemed that the electronic communications network service licensee which is appointed by a broadcaster to provide signal distribution in terms of regulation 13 does so as an agent of the terrestrial television broadcasting service licensee and therefore will be deemed to be in compliance with section 31 of the Act.

- (7) At the end of the dual illumination period, the broadcasting service licences and radio frequency spectrum licences held by each of the SABC, e.tv, M-Net and community television broadcasting service licensees at that time, will be amended in terms of the relevant provisions of the Act, the Process and Procedures Regulations (Individual Licences) and the Process and Procedures Regulations (Class Licences) to reflect the fact that those terrestrial television broadcasting service licensees have ceased analogue broadcasting and are no longer authorised to utilise the radio frequency spectrum which was previously assigned to them for analogue broadcasting purposes.

18. JOINT SPECTRUM ADVISORY GROUP

- (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 Group (JSAG), as a consultative forum, with the terrestrial television broadcasting service licensees and the electronic communications network service licensees appointed in terms of regulation 13 to perform signal distribution services, to co-ordinate usage of radio frequencies during digital migration.
- (2) The JSAG 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 digital migration as well as the management of common DTT resources such as the electronic programme guide.
- (3) The JSAG shall comprise -
- (a) two (2) representatives from each terrestrial television broadcasting service licensee and electronic communications network service licensee appointed in terms of regulation 13;
 - (b) two (2) officials from the Authority; and
 - (c) a person designated as a Chairperson by the Authority: provided that participation in the Committee is voluntary and the terrestrial television broadcasting service licensees and electronic communications network service licensees appointed in terms of regulation 13 are not obliged to join the Committee
- (4) The JSAG shall be dissolved within six (6) months after the end of the dual illumination period.

- (5) The JSAG shall make recommendations to the Authority in relation to the matters referred to in sub-regulation (2).
- (6) Decisions of the JSAG regarding the recommendations to be made to the Authority are to be reached by consensus.
- (7) Where the members of the JSAG are unable to reach consensus on the recommendation to be made to the Authority, each incumbent broadcasting service licensee and electronic communications network service licensee referred to in sub-regulation (1) may make a separate recommendation to the Authority.
- (8) A quorum of a meeting of the JSAG is a majority of the members of the JSAG, including the person designated as Chairperson of the JSAG.
- (10) The existence of the JSAG does not affect the rights of any licensee to file complaints, or the Authority's powers to enforce compliance in terms of the law.

19. PENALTIES

- (1) Where the CCC finds, in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), that there has been a failure by a terrestrial television broadcasting service licensee to comply with regulations:
 - a) 3(1)-(5),
 - b) 4(3)-(4),
 - c) 5(1)-(7)
 - d) 10

the Authority may impose a fine not exceeding five hundred thousand rands (R500 000) for each day that the terrestrial television broadcasting service licensee was in contravention of that regulation.

- (2) Where the CCC finds, in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), that there has been a failure by an Electronic Communications Network Service licensee to comply with regulations:

- (a) 14 (1) – (3),

the Authority may impose a fine not exceeding five hundred thousand rands (R500 000) for each day that the ECNS licensee was in contravention of that regulation;

- (3) The Authority may impose a fine not exceeding two hundred thousand rands (R200 000) where a terrestrial television broadcasting service licensee or ECNS licensee is found to be in contravention of any other sub regulation.

20. REPEAL OF REGULATIONS

- (1) These regulations hereby repeal the Digital Migration Regulations published in *Government Gazette* No 32956 of 15 February 2010.
- (2) These regulations amend the Mobile Television Regulations, published under GN R318 in GG 33125 of 16 April 2010, as follows:
- a) By the deletion of the definition of 'mobile TV2 multiplex' as set out in regulations 1(e):
 - b) By the substitution of regulation 3(b) with the following regulation: '(b) Licensees who intend to simulcast using their existing DTT multiplex, cable or satellite technologies do not have to apply for spectrum on MDTT1 for the purposes of simulcast'
 - c) By the substitution of regulation 5(a) with the following regulation: '(a) A mobile multiplex of radio frequency spectrum within the designated range, namely, the MDTT1 multiplex is hereby assigned for the provision of mobile television broadcasting services in terms of the Terrestrial Broadcasting Frequency Plan.'

21. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Digital Terrestrial Television Regulations, 2012, and will come into effect upon publication in the *Gazette*.

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