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GENERAL NOTICE

NOTICE 680 OF 2011



Independent Communications Authority of South Africa

EXPLANATORY MEMORANDUM ON THE REPEAL OF THE DIGITAL MIGRATION REGULATIONS AND THE PUBLICATION OF 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 repeal the Digital Migration Regulations ("the DM Regulations") which were published in *Government Gazette* No 32956 of 15 February 2010 and to publish a new set of draft Digital Terrestrial Television regulations ("the Draft DTT Regulations") for 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. 34538 of 19 August 2011. 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.

The Authority has decided to repeal the DM regulations and replace them with the DTT regulations for the following reasons:

1. The DVB-T2 standard provides approximately double the capacity available on multiplexes that the DVB-T standard provides. It is thus necessary to assess the implications of this increase on the allocation of capacity in the multiplexes to terrestrial television broadcasting services.
2. The new timeline for analogue switch-off in December 2013 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). It is estimated that there are 11 million TV households in South Africa which will need to make the change to digital television in this period. Approximately 5 million households will be able to receive a subsidy to acquire the STBs. This subsidy scheme is to be put in place and administered by the Universal Service and Access Agency of South Africa. In addition there are a range of technical steps that have to be concluded in this period such as the finalisation of the STB standard by the South African Bureau of Standards and the manufacture and distribution of STBs. Existing terrestrial television broadcasters need to prepare their channel offerings and Sentech has to build a network to accommodate DTT.

This 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 change its Digital Migration regulations to meet any future contingencies, including the possibility that analogue switch-off will not take place in December 2013 as envisaged in the policy amendment. It is thus prudent not to allocate all the available capacity in the multiplexes to existing television broadcasting services but to keep some capacity in reserve for future use.

3. The regulations were drafted taking into account only one existing community TV station, Trinity Broadcasting Network in the Eastern Cape. Capacity was assigned to TBN in Multiplex 1. Subsequently, new community television stations have been licensed such as Soweto TV, Cape TV and Bay TV. More community TV stations may be licensed before December 2013. The regulations do not enable these and future community TV stations to be accommodated on the DTT multiplexes before analogue switch-off. Hence the regulations need to provide all community TV broadcasting services with capacity on the multiplexes.
4. The DM regulations provide for digital incentive channel authorisation to take place only during the performance period for dual illumination by existing TV services. If ICASA were to set the performance period to correspond with the switch-on date of April 2012, then TV stations would only be able to apply for channel authorisation after that date and this would delay their capacity to launch their DTT channels and increase pressure on the analogue switch-off date of December 2013. Hence it is necessary to adjust and streamline the channel authorisation process to at least

allow TV stations to apply for channel authorisation before the performance period/digital switch-on date.

The DTT regulations are different to the DM regulations in the following respects:

- It is clearly specified that digital migration to Digital Terrestrial Television shall take place using the Second Generation Digital Video Broadcast Transmission (DVB-T2) standard.
- The definition of an 'incumbent broadcasting licensee' is removed and replaced with the concept of a 'terrestrial television broadcasting service'.
- There is a reduction of the capacity allocated to the SABC, e.tv and M-Net in Multiplexes 1 and 2. They will still have more capacity under DVB-T2 than they were allocated under DVB-T.
- Community television broadcasting services are allocated 10% of Multiplex 1 on the basis of their existing licence coverage area.
- Community television broadcasting services will not be required to dual illuminate – the aim is that they should complete their migration by the end of the dual illumination period.
- Community television broadcasting services will not be entitled to digital incentive channels as they are not required to dual illuminate.
- A percentage of both multiplexes is reserved for future use, in view of the unpredictability and complexity of the digital migration process.
- The channel authorisation procedure enables terrestrial television broadcasting services to apply for channel authorisation to the Authority before the commencement of the performance period.

The Authority has decided to repeal the DM regulations, rather than amend them and to initiate the DTT regulations because the DM regulations laid the basis for the digital migration of 'incumbent television broadcasting licensees' and under the DVB-T standard allocated almost all the capacity in the two multiplexes to them. The introduction of DVB-T2 as the standard for DTT changes the logic of the regulations because it doubles the available capacity of the multiplexes and enables the inclusion of new terrestrial television broadcasting services such as community television broadcasting services in the multiplexes without prejudicing the existing 'incumbent television broadcasting licensees'. The DTT regulations seek to lay the platform for Digital Terrestrial Television in South Africa on an inclusive rather than exclusive basis.

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 10 November 2011 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: Rramatlo@icasa.org.za or Hmashapha@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

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;

“Broadcasting Act” means the Broadcasting Act, 1999 (Act No. 4 of 1999);

“broadcast frequency plan” means the Terrestrial Broadcasting Frequency Plan 2008 published under Government Notice 1538, *Government Gazette* 32728 of 18 November 2009;

“CCC” means the Complaints and Compliance Committee;

“Charter” means the Charter of the SABC, as outlined in Chapter IV of the Broadcasting Act;

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

“Group” means the Joint Spectrum Advisory Group to be established in terms of regulation 13(1)

“Department” means the Department of Communications;

“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 to be provided by an existing broadcasting licensee in addition to the existing television channel or channels broadcast by that licensee as an incentive for digital migration and to incentivise consumers to take the steps necessary for successful digital migration;

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

“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 or satellite electronic communications network;

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

“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 (HDTV)” means digital transmissions with a pixel aspect ratio of 16:9.interlaced/interfaced or progressive scanned.

“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;

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

“Multiplex 1” means the frequencies designated as “DTT1” in Annexure F to the broadcast frequency plan;

“Multiplex 2” means the frequencies designated as “DTT2” in Annexure F to the broadcast 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;

“performance period” means the period commencing on the date set by the Authority by notice in the *Gazette*, for the purposes of dual illumination;

“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 test” is a test of 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 licenses” means the SABC, e.tv, M-Net and TBN;

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 allocation of channel capacity in Multiplex 1 and Multiplex 2 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;
- (d) set the time frames within which digital migration is to be achieved by the terrestrial television broadcasting service licensees; and
- (e) prescribe 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.

3. FRAMEWORK FOR DIGITAL MIGRATION

- (1) Digital migration shall take place using the Second Generation Digital Video Broadcast Transmission (DVB-T2) standard and the fourth generation Moving Picture Experts Group (MPEG-4) compression standard and future versions of the standards.
- (2) During the performance period, 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 performance 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 during the performance period but must ensure that they have completed their migration to digital terrestrial television by the end of the performance 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 performance period.
- (6) During the performance period, the terrestrial television broadcasting service licensees shall broadcast in Multiplex 1 or Multiplex 2, as the case may be, only the existing television channels and any digital incentive channels which they are authorised to provide in accordance with the procedures provided for in these Regulations, using the capacity in those Multiplexes which they are authorised to use.

- (7) 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 utilised by that licensee as at the end of the performance period, such capacity shall be regarded as being forfeited to the Authority.
- (8) Where any digital incentive channel in Multiplex 1 and Multiplex 2 which is authorised in terms of these Regulations to be broadcast by terrestrial television broadcasting service licensee, is not being broadcast by that licensee as at the end of the performance period, the capacity related to that channel shall be regarded as being forfeited to the Authority.
- (9) The Authority may establish additional Multiplexes (Multiplex 'n') as digital migration progresses and will undertake a 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) Subject to sub-regulation (2), the SABC may use up to eighty percent (80%) of the available capacity in Multiplex 1 for the digital broadcasting of -
- i. the SABC channels; and
 - ii. any digital incentive channels, which the SABC is authorised to provide, in accordance with the procedures set out in these Regulations.
- (2) Community television broadcasting service licensees may use up to ten percent (10%) of the available capacity in Multiplex 1 as is sufficient to broadcast their existing analogue television channel within their existing licence coverage areas.
- (3) The SABC shall commence the digital migration of its existing television channels at the start of the performance period.
- (4) 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.

(5) The remaining ten percent (10%) of the available capacity on Multiplex 1 shall be set aside for future use.

5. MULTIPLEX ALLOCATION - MULTIPLEX 2

(1) e.tv may use up to forty per cent (40%) 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 performance period.

(3) M-Net may use up to thirty percent (30%) of the available capacity in Multiplex 2 for the digital broadcasting of -

(a) the M-Net channels; and

(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 performance period.

(5) The remaining thirty percent (30%) of the available capacity on Multiplex 2 shall be set aside for future use.

(6) During the performance 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 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, 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 period.
- (9) The Authority's personnel may participate and/or engage on the test activity.

6. 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 performance period, for authorisation to broadcast a digital incentive channel(s).
- (2) An application for authorisation to broadcast a digital incentive channel shall be subject to the public value test, 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.
- (3) The Authority may conduct a public hearing in relation to the application submitted in terms of sub-regulation 6(1).
- (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 for commencement of the channel on written application by the licensee, prior to the expiry of the ninety (90) day period.

7. 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 regulation 9.
- (3) An application submitted in terms of this regulation 7 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 7, the Authority will consider –
 - (a) whether the public value test 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.

8. AUTHORISATION TO BROADCAST A DIGITAL INCENTIVE CHANNEL IN 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) a programming plan, including local content; and
 - (e) 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) In evaluating an application in terms of this regulation 8, the Authority shall consider –
 - (a) whether the public value test is met; and
 - (b) the extent to which the objects set out in section 2 of the Act will be achieved, if the application is granted.
- (4) 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 rather than the procedures set out in the Subscription Broadcasting Regulations, 2006.

9. SIGNAL DISTRIBUTION OF THE DTT SERVICES BROADCAST IN MULTIPLEXES 1 AND 2

- (1) Signal distribution services shall be provided to each of the terrestrial television broadcasting service licensees for digital broadcasting in Multiplex 1 and Multiplex 2, as

the case may be, by an electronic communications network services licensee or licensees appointed in terms of this regulation 9.

- (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 performance period, together with -
 - (a) a roll-out plan in line with the coverage targets stated in regulation 10;
 - (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 inviting interested persons who hold an individual licence to provide electronic communications network services to apply to provide signal distribution services to the terrestrial television 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 10(1);
 - (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 9 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 performance 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 10 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.

10. 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 DTT services reaches:-
 - (a) 80% of the population of the Republic by the end of 2012 ; and
 - (b) 95% of the population of the Republic by the end of 2013.

- (2) An electronic communications network services licensee appointed in terms of regulation 9 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.

- (3) An electronic communications network services licensee appointed in terms of regulation 9 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).

11. 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.

12. 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 12) 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 12) 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.
- (4) 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.
- (5) 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 9 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.

- (6) At the end of the performance 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.
- (7) Until such time as they are repealed or amended, each of the terrestrial television broadcasting service licensees must comply with the ICASA South African Television Content Regulations published under General Notice 154 in *Government Gazette* 28454 of 31 January 2006, as at the date of the commencement of these Regulations, for each channel broadcast by it, provided that those channels which by the nature of the programming provided, including channels which consist exclusively of sport or education programming, cannot comply with the ICASA South African Television Content Regulations may be exempted by the Authority from this requirement, upon written application by the terrestrial broadcasting service licensee.

13. JOINT SPECTRUM ADVISORY GROUP

- (1) In order to promote the efficient co-ordination of frequency spectrum and interference resolution during the performance 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 9 to perform signal distribution services, to co-ordinate usage of radio frequencies during digital migration.
- (2) The Group 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.
- (3) The Group shall comprise -

- (a) two (2) representatives from each terrestrial television broadcasting service licensee and electronic communications network service licensee appointed in terms of regulation 9;
 - (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 9 are not obliged to join the Committee
- (4) The Group shall be dissolved within six (6) months after the end of the performance period.
- (5) The Group shall make recommendations to the Authority in relation to the matters referred to in sub-regulation (2).
- (6) Decisions of the Group regarding the recommendations to be made to the Authority are to be reached by consensus.
- (7) Where the members of the Group are unable to reach consensus on the recommendation to be made to the Authority, each terrestrial television broadcasting service licensee and electronic communications network service licensee referred to in sub-regulation (3) may make a separate recommendation to the Authority.
- (8) A quorum of a meeting of the Group is a majority of the members of the Group, including the person designated as Chairperson of the Group.
- (9) The existence of the Group does not affect the rights of any licensee to file complaints, or the Authority's powers to enforce compliance in terms of the law.

14. 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) 6(1) and (5),

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) 10 (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.

15. REPEAL OF REGULATIONS

These regulations hereby repeal the Digital Migration Regulations published in *Government Gazette* No 32956 of 15 February 2010.

16. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Digital Terrestrial Television Regulations, 2011, and will come into effect upon publication in the *Gazette*.

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