



DRAFT DIGITAL TERRESTRIAL TELEVISION REGULATIONS, 2025

30 September 2025

The Team

- Pippa Rafferty : Executive: Legal & Regulatory Affairs
- Dan Rosengarten : Rosengarten & Feinberg
- Oscar Machaba: Compliance Manager
- Sashin Rajah: Legal
- Thabiso Seichoko: Technical Manager

- eMedia Investments is the holding company for numerous broadcast interests and a pivotal player in the broadcasting industry.
 - e.tv – a private Free-To-Air commercial broadcaster.
 - YFM – a commercial radio broadcaster.
 - e.Sat which holds a pay television licence.
 - Platco/Openview – a Free-to-Air satellite broadcaster.
 - eVOD, video on demand service

Introduction

- Whether or not new DTT regulations are required must be seen within the changing technological environment as well as the ongoing issues pertaining to analogue switch-off (“ASO”).
- eMedia submits that the proposed regulations are either not needed or are premature in their current form as they assume a viable DTT platform and transition to ASO despite ongoing barriers to ASO and the uncertainty as to whether or when ASO will take place.
- Regulations need to be evidence based.
- In the absence of a independent research conducted by the Authority relating to current international trends, the technical and cost implication of allocating 7 Muxes, progressing DTT in the form of draft regulations is premature.
- The Authority’s starting point will be uninformed.

- The regulations solely focuses on DTT as a platform and ignore the reality of how digital television is viewed in South Africa.
- The DTT platform has been unsuccessful and uptake extremely low.
- Approved DTT STBs are not available in retail and even the Government is now relying on DTH STBs for distribution to those who have registered for DTT.
- The draft regulations do not take into account the technical and cost implications of rolling out an additional 5 Muxes. Currently only 2 Muxes are operational. To extend the DTT network to 7 Muxes, as per the draft regulations, it would cost the Government billions.
- This is in the context of a failed digital migration process where the DCDDT has had to ask Treasury for an additional R800m to fund dual illumination.
- This cost is nothing compared to the cost of rolling out 5 additional Muxes.

Digital Migration has been a failure

- Despite the passing of many years DTT has not achieved meaningful traction in South Africa and is unlikely to do so.
- The problems encountered to date, which formed a core part of the litigation between eMedia and others and the Minister of the DCDT, related to the reasons why DTT had not gained traction and ASO could likely not be achieved at all alternatively not in the immediate future.

- Broadcast Total TV – 06h00-24h00 (Households)

Target \ Year	Jan-Dec 2023	%	Jan-Dec 2024	%	Jan-Aug 2025	%
Households	15,876,571		15,876,569		15,876,572	
Households Analogue	4,554,288	29%	4,338,595	27%	4,191,485	26%
DStv Households	7,460,182	47%	7,460,182	47%	7,460,182	47%
Openview Households	2,707,606	17%	2,947,833	19%	3,121,405	20%
DTT Households	1,555,771	10%	1,488,322	9%	1,447,176	9%

Source: Arianna Dayparts (January 2023- August 2025); Universe (Households)

- Many of the indigent still do not have Set Top Boxes (“**STBs**”) despite registering years ago.
- Others have not registered and there are many who earn above the threshold who either cannot afford or access STBs.
- Until there is 95% coverage, enabling the poorest of the poor to continue receiving free-to-air television, ASO cannot take place – this was a government promise .
- The failure of DTT and ASO was seen in those provinces where the SABC’s transmitters were turned off denying many access to free-to-air television.
- DTH and other technologies such as 5G broadcasting are a more viable and cost-effective method of ensuring universal access.

- These hearings take place in the context of submissions in relation to the Draft White Paper dealing with audio and audio visual services in the future and how they will be regulated taking place.
- Issues pertaining to DTT have been raised in the context of the Draft White Paper and these need to be resolved before any regulations are passed as they may be outdated when there is a change in regulation or a delay in ASO.
- Not clear what research the Authority has undertaken that underpins the draft regulations.
- No JSAG meetings have taken place for years.
- In light of the above these regulations are premature and may in fact be obsolete.

- DTH is the only means to achieve universal population coverage given that there are areas in the country with low population density which may not be able to receive DTT broadcasting due to a lack of infrastructure.
- The cost of signal distribution of DTT is very expensive compared to DTH.
- The capacity in the Muxes does not take into account that signal distribution now takes place in HD (SD is now obsolete)
- A single mux will be able to broadcast no more than 5/6 HD channels.
- DTT will accordingly provide inferior content compared to DTH.

DTT COSTS

- DTT versus DTH cost per household

<u>Potential DTT cost per household</u>		<u>DTH Cost per household</u>	
R	97.00	R	20.96

The Need for a Detailed Study and investigation Before Regulating.

- The Authority has done no study into the viability of creating additional Muxes beyond the 2 that exist.
- It is not clear who will fund the new transmitters which are needed for the additional Muxes and how much broadcasters would be expected to pay in signal distribution costs.
- The additional muxes may therefore never come into being and may not be needed. They cater for non-existent entities and entities which will likely never see the light of day – Kwese, New pay and FTA Operator.

The Need for a Detailed Study and investigation Before Regulating.

- Had a study been done, the Authority would have seen that issues with DTT are not isolated to South Africa – other jurisdictions are moving away from DTT.
- In the United Kingdom, the future of free view is being evaluated and may be phased out in due course .
- In 2024, the Portuguese government recognised that DTT was “*a costly failure*” which needed to be re-evaluated due to the minimal take-up

*“While some countries use many multiplexes of DTT to serve large amounts of channels, other have reduced this down to a single multiplex or even switched-off DTT entirely. Further, the share of population reached by DTT varies hugely from over 50% down to low single-digit percentage figures even in countries with substantial DTT offerings.”**

* The future use of UHF spectrum in the ITU are Region 1 – 2021 – Plum Consulting

Legal principles

- As the Authority has not conducted any studies and has based its decision to regulate on speculative assumptions, this decision is susceptible to be set aside by a court.
- According to existing case law, Administrative action must be lawful, reasonable and rationally connection to the purposes for which it is exercised
- Regulations which are speculative, based on scenarios which may never come into being or are detached from reality, can be set aside as being unreasonable.
- Regulating for 7 Muxes falls into this category of a decision which is unreasonable and irrational as it is based on an unfounded assumption that there will be the necessary finance to develop the infrastructure for 7 Muxes, or that they are needed.
- Other grounds for irrationality include allocating Mux capacity to non-existing entities and the manner in which capacity has been allocated.
- If the Authority proceeds with the regulations they therefore be arbitrary, irrational and invalid.

Reasons why these regulations should be abandoned

- It is clear that the future of broadcasting in South Africa cannot rely on DTT which has only managed to get to 1.4 million households.
- The future of broadcasting needs to rely on DTH and other technologies.
- Even the DCDDT has realised this and is currently only installing DTH STBs. Only this will enable the requisite 95% of the population reliant on free-to-air television to continue watching free-to-air channels.
- DTT has high transmission costs and a lack of penetration impacting loss of FTA television to the poor.
- Given the Government's recognition of the pivotal role played by free-to-air channels and the fact that OTT services impact them as well, an inferior platform will impact FTA broadcasters ability to compete making them less viable.

Response to specific clauses in the draft regulations

Regulation 3 : framework for DTT

- Given that the date for ASO is uncertain, the suggestion that a licensee will forfeit unutilised capacity assigned in 36 months ought to be revisited.

Regulation 4 : Multiplex allocation

- There is no rational explanation how mux allocation was determined by the Authority – it is not dealt with in the explanatory memorandum.

The Mux allocation is illogical

- e.tv is only allocated 85% of a mux to be shared with community broadcasters.
- When the SABC was allocated 85% of a mux with 15% allocated to community broadcasters, the Authority found that this was *“not conducive for community broadcasters to share a multiplex with a public broadcaster due to different licence obligations. The current capacity allocation for mux also limits the ability to expand into high-definition (HD) broadcasting ... SFN configurations are unsustainable for community broadcasters due to high costs ...”*
- Accordingly, the same logic applies to e.tv and the decision in this regard is irrational and unworkable. It impacts e.tv’s ability to expand into HD broadcasting necessary to compete in the audio visual space.
- This is not a compelling offering compared to the number of channels eMedia currently makes available on DTH.

- The SABC is granted two muxes increasing its initial mux allocation from 85% to 200%. – an increase of 135%. This is unsustainable given the SABC cannot currently pay its signal distribution costs to Sentech.
- e.tv's allocation increased from 55% to 85% of a single mux. This is an increase of 54%.
- There is no rational reason why e.tv and SABC have been treated differently – this is an additional ground as to why the regulations are irrational.
- Mux 3 has been reserved for private free-to-air broadcasting service licensees – there are no other licensees apart from e.tv so it is not clear how the Authority determined this allocation. The previous FTA licensee, Kwese, which is allocated capacity on a Mux, failed.
- The last twenty years and the changed broadcasting environment including the introduction of new OTT players show that there is unlikely to be a new FTA licensee in the foreseeable future, if ever.
- It is also not clear why Mux 4 has been allocated to a terrestrial subscription broadcaster, which does not exist and will likely never exist.
- These allocations show an irrationality and lack of insight into the existing situation in SA.

Regulation 5 : Channel authorisation procedure

- The introduction of new DTT channels encourages people to invest to migrate from analogue to digital.
- Additional channels are a major factor in attracting viewers.
- This comes at a cost to broadcasters .
- The channel authorisation process is overly cumbersome and may result in costly and lengthy delays before a channel comes on air.
- Authorisation of new channels should be the same for all broadcasters with no distinction between FTA and subscription.
- To compete effectively, channels may be removed and replaced to attract audiences.
- The process to authorise channels therefore needs to be quick and simple as it currently is for subscription broadcasters.

- The regulations create a highly cumbersome authorisation process which may include public hearings which could take months if not years to finalise.
- This is unnecessary unless it involves unusual content such as adult content.
- The Authority found that it was necessary to streamline the channel authorisation process to promote innovation and improve operational efficiency.
- It also found that public hearings could be barriers to timely channel development.
- The Authority's about-turn in this regard is irrational and ought to be reversed.
- The authorisation process should be in line with the process currently applicable to subscription broadcasters. If it is not it is discriminatory against FTAS broadcasters.
- The channel authorisation process must be standardised and can be contained in the general conditions applicable to all licensees.

Regulation 10 : Penalties

- Given the substance of regulation 4(2) to (5) and (9) the imposition of a penalty for a breach of these regulations is nonsensical.
- In any event, regulation 4 already contains a mechanism which penalises a broadcaster and there should be no double jeopardy.
- Similar considerations apply in respect of regulation 7 in respect of which there are numerous provisions, many of which cannot be, by their very nature, be penalised.
- Regulation 8(2) is descriptive with no positive obligation which can be breached. It therefore cannot be contravened and penalised.
- The proposed fine is excessive. A fine is meant to sanction a party to incentivise them from not breaching in the future. The proposed fine could put a broadcaster out of business and needs to be re-assessed.
- The manner in which this section is drafted also points to irrationality and invalidity.

e.Media Investments wishes to thank the Authority for the opportunity to make this presentation and would welcome any questions concerning the presentation

Thank you