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ICASA

Attention: Broadcasting Unit

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Dear Sirs

## **AME's RESPONSE TO ICASA DRAFT DSB REGULATIONS, GAZETTE 43900 OF 13 NOVEMBER 2020**

African Media Entertainment Ltd (AME) is listed on the Johannesburg Stock Exchange. It has ownership interests in 3 sound broadcasters. We make this submission on AME's behalf.

All of the broadcasters in which AME holds shares have been allocated spectrum in the FM band, and are analogue broadcasters. AME would therefore like to contribute to this important consultation which will doubtless have a significant and enduring effect on the sound broadcasting industry in South Africa, if the draft Digital Sound Broadcasting Regulations<sup>1</sup> (draft Regulations) are published in final form.

AME has set out its submission in response to the draft Regulations in two parts – one in which general comments are made in relation to the objectives of the Regulation, digital technologies, competition in the industry and the proposed approach (section A); and one in which we comment on the draft as it stands, by clause (section B). At the outset we wish to also express our support for the submissions made by SADIBA, on this topic.

### **A. General comments**

#### **1. Introduction**

1.1 In a 2014 paper prepared for the GSMA on digital audio broadcasting in the UK, Plum Consulting<sup>2</sup> said this:

- **Consumer benefits** arising from digital switchover are widely recognised, happen relatively quickly and are primarily driven by increases in programming and quality. There are also broader benefits to society of introducing digital TV including the potential to use digital broadcasting to narrow the digital divide, reach unserved areas, and to provide e-government and other digital services.

<sup>1</sup> Gazette 43900 of 13 November 2020.

<sup>2</sup> Benefits of digital broadcasting. Plum Consulting. 2014.

- The **costs [for broadcasters]** for the transition to digital broadcasting are substantial and most of these occur at the early phases of digital switchover, particularly during DTT rollout and while transmissions are simulcast. So, while consumers will see immediate benefits, those for the broadcasting industry will take longer to accrue.
- **Consumers can also face significant costs** to make the transition to digital, especially those in lower income groups or similar circumstances. Subsidy is usually required to ensure adoption within these groups and a key role of government is to ensure that the finances and organisation of the transition to digital broadcasting are well thought out and implemented with suitable governance.

In AME's view this is a good introduction to the topic. Despite there being many benefits to digital sound broadcasting, there are several issues that must be considered, particularly at this point in time in South Africa. AME wholeheartedly supports the introduction of digital sound broadcasting but urges ICASA to take account of the costs that will accrue in seeking to force sound broadcasters to migrate, or to follow a regulatory path that is too cumbersome or expensive.

- 1.2 It is important to recognise that there are not many things wrong with FM broadcasting other than the limited available bandwidth – which is a limitation relative only to demand. In considering demand, one must also consider if the current commercial sound broadcasting market can accommodate many more stations. In AME's view, the answer is no. This is both because of the number of licensees already in the market, the continued shrinking in this economy of advertising revenue, and the significant effect of COVID-19 on the South African economy in general.
- 1.3 Although we understand that several car manufacturers install digital receivers in new cars, the same manufacturers also include a slot for a 3G/4G/5G SIM card. In addition, to the extent that digital receivers are available in cars, they are only available in cars that are available to higher LSMs – not to the general consumer market. As indicated in the Plum reference above, other consumer devices are also likely to be costly – again not appealing for the wider market, particularly those that ICASA would like to reach via sound broadcasting.
- 1.4 It is also worth considering that migrating analogue to digital services is not an easy or a quick journey – South Africa's digital terrestrial television migration began in 2008 and has yet to be concluded. In most other countries, switching off analogue radio is not a priority.

## 2. Competition

- 2.1 Having said this, AME believes that the secondary market may well tolerate smaller digital stations that cannot compete in the established primary markets. Allowing secondary market players to enter the market as digital sound broadcasters may give them an opportunity to compete for listeners.
- 2.2 The draft Regulations distinguish between primary and secondary markets with reference to the geographical markets of Gauteng and the metropolitan areas of and around Cape Town and Durban. We understand that the purpose of this distinction is to provide for a phased introduction of DSB services. However, it is not clear why such a phased approach is necessary. It will tend to prefer strong incumbent broadcasters whose position is largely already secure.

2.3 AME does not support a phased approach. However, if ICASA proceeds with two phases, then phase one should endure for the shortest possible timeframe, allowing phase two to begin as soon as possible so that the secondary market licensees can seize the opportunity to enter the DSB market without delay. This will have a knock-on effect on the switch-off proposal, which we discuss later. Suffice it to say we do not believe that an analogue switch-off for FM broadcasters should be a priority.

2.4 In this regard, we note that the Minister of Communications and Digital Technologies (the Minister) provided in her Policy Direction of 10 July 2020 in paragraph 2.1.1 that DSB services are to be offered alongside analogue sound broadcasting services.

### 3. Technical issues

3.1 ICASA stated in paragraph 6.6.3.4 of its Findings Document and Position Paper on the use of DSB, that digital and analogue services should co-exist. The standards applicable for DSB services (i.e. DRM 30, DRM+ and DAB+) are included in section 6 of the draft Regulations to 'complement' AM and FM services and not to substitute these services. The draft Regulations must be aligned with the Policy Direction and with ICASA's own approach. The draft Regulations are not clear because:

- (a) DRM30 uses the AM frequency band range, while DRM+ uses the FM range. DRM+ will obviously therefore affect existing FM broadcasters;
- (b) DRM+ has been shown to have notable interference issues with adjacent channels (see EBU Tech 3357);
- (c) One of the advantages of a digital system is that a single frequency is used for all transmitters and it is not necessary to use different carrier frequency on an adjacent transmitter as is the case with FM. However, we note that FM spectrum currently in use is earmarked for an extension of the DRM DSB system (old AM) system. In addition, it also appears to us that a number of FM frequencies may be sacrificed to accommodate DRM+ while FM stations are still operational. This needs to be clarified, and the timeframe for transition to digital (if any licensee wishes to do so) must be clear; and
- (d) If an existing licensee does not wish to migrate then it should not have to do so, but should be able to continue to use its existing frequency.

3.2 The draft Regulation defines DAB+ services as being situated in the 214-240MHz band. This differs from the available frequency range of 174-230MHz previously defined and gazetted, and offers significantly less bandwidth. The trials that have taken place have been repeatedly authorised to use 239.2MHz (Ch: 13F) which is outside the defined band.

3.3 Finally, on this point, it is not likely that a network can be up and running within 24 months with the optimal number of available receivers. The cost to install digital transmitters is very high, particularly if the number of devices and consumers with receivers is going to be relatively low (and within a limited LSM group). The rollout of transmitters in an area should be phased to test the appetite of consumers as well as the market's ability to provide appropriate receivers before an entire network can be rolled out. Any obligations in this regard must be reconsidered, particularly where they would result in a cost burden on licensees.

#### **4. The multiplex requirements**

4.1 The multiplex or MUX enables carriage of a number of different services on one frequency or at a fixed level of capacity. To date Sentech has been considered to be the primary provider of MUX services, however, we are concerned about its performance and pricing, neither of which are competitive.

(a) We are aware that Sentech has not carried out the necessary activities in the trials of DSB and we note that the draft Regulations do not include any detail on how price must be calculated.

(b) As a monopoly provider with dominance, if Sentech applies to operate a MUX in terms of regulation 5 of the draft Regulation, then Sentech's prices must be regulated by ICASA. We recommend that the Regulations include a cost model or provide for ICASA to create a cost model in order to regulate Sentech's prices.

(c) Both of these factors must be dealt with in detail in the Regulations to avoid uncertainty and exploitation.

4.2 The Minister has also recently announced a potential merger between various state-owned companies including Sentech, and the process of the integration of Sentech with one or more other companies (and their technologies and staff) is likely to be significantly disruptive in the coming years.

4.3 It is unclear whether an incumbent in a secondary or other market can apply for space on a MUX in a different geographical location, and although the draft Regulations give primary markets first bite, as we indicate above, this will likely destroy competition for secondary market licensees.

#### **5. Other**

5.1 These draft Regulations do not mention whether the ownership restrictions contained in the ECA would continue to apply to digital sound broadcasters.

5.2 Digital sound can be broadcast without the same geographical limitations, and channels can be added with ICASA's approval. There is also no FM and AM distinction in the digital broadcasting world.

5.3 We are aware that primary legislation should always apply until amended by Parliament and cannot be amended by ICASA's regulations. AME would appreciate clarification from ICASA in this regard.

#### **B. Specific comments**

##### **6. Definitions (regulation 1)**

6.1 Internationally standard definitions of "analogue" and "digital" should be used. Currently both of these definitions are circular, and the definition of "digital" is repetitive; as a result, the definition of "Digital Sound Broadcasting" is also circular.

- (a) We recommend that “Digital Sound Broadcasting” be defined as “a digital standard for sound broadcasting which is an efficient way of providing sound broadcasting services other than on FM or AM frequency bands”.
- (b) The term “analogue broadcasting” can be defined as “current commercial sound broadcasting licensees broadcasting on either the FM or AM frequency bands”.
- 6.2 “applicant” must therefore be defined more simply as “a person who applies to ICASA for a licence to provide digital sound broadcasting”.
- 6.3 “digital sound broadcasting services” should be defined in the same way as communications services are currently defined in the ECA, namely by referring to the type of licence authorising that service. The definition of DSB would be “the provision of DSB services by a licensee”.
- 6.4 A “multiplex” or MUX is not a network of frequencies – it is in fact the process for combining multiple analogue or digital signals into a single data stream over a shared medium or platform. The definition should be revised.
- 6.5 If ICASA accepts that all licensees should either be able to apply at the same time for DSB licences, then the definitions of “primary” and “secondary” markets are not required. Currently they increase the competitive gap between the primary and secondary market players.
- 6.6 The definition of “multi-channel distribution service” in the ECA constitutes a better foundation for the definition of “multiplex”.
- 6.7 The definition of “simulcast” should be improved. Currently it refers to “transmission of the same radio programme” when the ECA and all other regulations refer to “sound broadcasting service”. It also refers to “channels or media”. In our view it would be more appropriate to define this term as “the broadcasting of programmes or events across more than one medium, or more than one service on the same medium, at exactly the same time.” However, since it is only used in the context of one regulation (regulation 4(2)), the definition could simply refer to that regulation as it explains in any event what is meant in this context.

## 7. Objectives (regulation 2)

It is common for ICASA to set out the goals and objectives or the vision for a draft regulation. Regulation should never take place in a vacuum, and yet these regulations appear to be simply procedural in nature, rather than having any fundamental legal, technical or operational reason or indeed any indication that to introduce them would be to improve the landscape for sound broadcasters, existing or future. We recommend that these objectives be improved.

## 8. Scope (regulation 3)

The Regulations do not only apply to existing licensees “wishing to provide digital sound broadcasting services”. In their own words they also apply to new entrants, and they apply to persons that are in fact licensed as digital sound broadcasters. The scope must be extended to include the other two groups.

## 9. Framework for DSB services (regulation 4)

- 9.1 The language of regulation 4 needs to be corrected: the migration of licensees in primary markets will take place in Phase 1 while the migration of licensees in secondary markets will take place in Phase 2. This wording mirrors what appears to be the current intention of the draft Regulations which is that only existing licensees in primary markets are able to apply for DSB licences during the relevant period – giving them a significant competitive advantage over both licensees in secondary markets and potential new entrants.
- 9.2 AME does not support this approach and regards it as having a chilling effect on the sound broadcasting market. It also assumes that all primary market licensees will want to migrate. This may not be the case. It may also not be the case that all secondary market licensees will want to migrate.
- 9.3 Furthermore, there is no definition of these “phases”, although regulation 4(3) suggests that Phase 1 might last for 2 years, alternatively Phases 1 and 2 might both last for 2 years – which would be an impossibly short time period.
- 9.4 As we have indicated in section A of this submission, even 2 years is too short a time to create a new digital network, and also an unnecessarily limited time period if ICASA accepts that the opportunity to migrate should be open to all at the same time.
- 9.5 The provisions of regulation 4(4) delay the important step of creating a technical advisory group, in fact one might call it the critical step. Without the inputs of this group, introducing these draft Regulations at all would appear to be premature. This group, still to be created under regulation, cannot have the power that ICASA proposes to give it in regulation 4(4). This is because ICASA does not itself have the power to delegate its authority in relation to the rollout of digital broadcasting services to any person other than an ICASA committee, under section 17 of the ICASA Act. We also note that the last sentence does not make sense and appears to be missing some words.
- 9.6 As we have indicated in section A of this submission, it is unclear why an analogue switch-off date is necessary, and since this would deprive all sound broadcasting licensees of their ability to execute their duties and exercise their powers under their current licences, a switch-off date should be consulted on with industry and affected parties before the Minister publishes any such date.
- (a) Licensees may choose not to apply for a digital sound broadcasting licence and they should be free to make this choice.
- (b) ICASA has not indicated that all licensees must migrate off their analogue frequencies – and the Minister’s sanction for migration is required under section 34 of the ECA in any event.

## 10. Multi-channel distributor for DSB services (regulation 5)

The wording of regulation 5 suggests, when read with section 63 of the ECA, that any person may self-provide a MUX. If this is the case, then it would be useful to understand how regulation 5(5) can operate at the same time as regulation 4(3) as then both the MUX operator and all digital sound broadcasters have to be ready to broadcast on the same MUX, in two years. As we have



indicated, this is a very short time period for both activities, and particularly for both to take place together.

### **11. Standards applicable to DSB services (regulation 6)**

AME is concerned that there has been insufficient consultation on these standards and bands. There is similarly inadequate explanation for the choice of standards and frequencies, and open questions as set out in section A of this submission, concerning the obligation on existing licensees to migrate off FM frequencies, whether or not they wish to obtain a digital sound broadcasting licence or not.

### **12. DSB MUX allocation (regulation 7)**

- 12.1 This draft Regulation deals only with commercial sound broadcasters as far as we can tell, since the Process and Procedures Regulations, 2010 (as amended) do not apply to the public broadcaster. We do not understand, therefore, why regulation 7 refers to public broadcasters.
- 12.2 In addition, since community broadcasting licences are not granted in 'primary' or 'secondary' markets but instead on the basis of a geographically founded community, or a community of common interest, we do not understand these draft Regulations to apply to community broadcasters either. Accordingly, we do not know why regulation 7 refers to community broadcasters.

### **13. Licensing of DSB services (regulation 8)**

- 13.1 The concerns we have expressed throughout our submission regarding the phased approach to licensing of primary and secondary market licensees, the timing of migration and the so-called "analogue switch-off" and the reference to a 2-year period, are heightened by this regulation 8.
- 13.2 This regulation provides that licences will be granted on application but "subject to the availability of capacity on a MUX". This regulation suggests that not all analogue sound broadcasters will be able to find MUX capacity and may be left without digital sound broadcasting licences as a result.
- 13.3 This may be what they want as indicated above, as we accept that transitioning to digital sound broadcasting creates additional layers of cost for existing broadcasters, but then the remainder of the draft Regulation must be reviewed to remove the uncertainty around the timelines for migration and reference to switch-off.
- 13.4 If licensees apply to self-provide and for spectrum to operate a MUX, it is also unclear why it is ICASA who would then have to determine if there is availability on a MUX. This may simply be poor wording in regulation 8(1), but perhaps this could be clarified, particularly as regulation 8(3) states categorically that ICASA shall determine if a MUX operator may grant capacity to a sound broadcasting licensee. In fact, the two read together operate in conflict with one another. It would be impossible for an applicant for a DSB licence to know whether or not a MUX provider has capacity if ICASA has to make this determination, and ICASA does not make this determination unless there is an applicant for a licence.
- 13.5 As a result of this conflict, regulation 8(4) must also be amended.

#### 14. Channel authorisation (regulation 9)

- 14.1 We do not understand the reference to “channels” in the context of a sound broadcasting licence. Does ICASA intend to suggest that a commercial sound broadcasting licensee could operate more than one “station” (to use the old-fashioned word)?
- 14.2 The authorisation of channels has long been an established tool in the digital television market. It is unclear how it would be transposed to sound broadcasting.
- 14.3 All sound broadcasters offer different programmes throughout the day including news, weather, sports updates, and different music genres. Would each such slot have to be approved as a “channel”? This would make no sense if the entire offering of the licensee could simply be broadcast on one signal.
- 14.4 It is also unclear to us why the authorisation of a single channel would take 60 days. Is it possible to indicate what is involved that would take so much time? We know that telecommunications operators have to lodge tariffs with ICASA prior to launching new products, but in that case, the tariff is deemed to be approved within 7 days of lodging it if ICASA does not object. There does not seem to be a major difference in concept between a new ‘package’ for telecommunications and a new ‘channel’ for radio, particularly as consumers do not have to pay for a channel.
- 14.5 It would be administratively fair to indicate on what basis ICASA may refuse a channel ahead of the application for approval; otherwise applicants for channels (whatever these might be) could very well be applying in a manner or for a type of channel that ICASA is not inclined to grant approval for. Regulation 9(4) should be amended to indicate what types of reasons may apply for refusal of a channel before and not after the fact. Annexure A does not indicate any such reasons, it merely sets out the information that is needed for an application form to be correctly completed.

AME thanks ICASA for the opportunity to make this submission and hope that it is helpful. AME would like to participate in any hearings.

Yours faithfully



**Kerron Edmunson (Mrs)**