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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. 1069

14 December 2012



ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)

DRAFT PROMOTION OF DIVERSITY AND COMPETITION ON DIGITAL TERRESTRIAL TELEVISION REGULATIONS

1. BACKGROUND AND REASONS

The Independent Communications Authority of South Africa ("the Authority") hereby gives notice on its intention to make regulations on the promotion of diversity and competition on Digital Terrestrial Television (DTT) in terms of section 30(2)(c) and (d) read with sections 4(1)(a), (b) and (d) of the Electronic Communications Act 36 of 2005 ("the ECA").

The Minister of Communications published the Broadcasting Digital Migration Policy Amendment published in Government Gazette No. 35051 on 17 February 2012 and indicated that 'the government continues to be committed to increasing diversity of ownership and content of the broadcasting sector and facilitating the development of a dynamic, competitive environment. In this regard, ICASA, shall, taking into account its powers and mandate as set out in relevant legislation explore how to best introduce new services and licensees to facilitate such diversity. The increased capacity and spectrum availability given the availability of DTT provides an opportunity for the licensing of new pay television service providers in the short term, and new free to air services in the medium to long term. Competition is needed to achieve a range of national policy imperatives including consumer choice, economic empowerment, promote domestic and foreign investments'.

The Authority wishes to explore the use of the of the second mobile television multiplex as a third DTT multiplex to provide capacity for new subscription, free to air commercial and community television broadcasting services to contribute to the goal of greater diversity and competition in the DTT sector.

2. INVITATION FOR WRITTEN REPRESENTATIONS

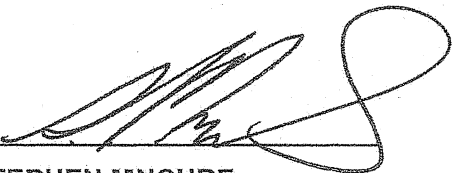
In terms of section 4(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), interested persons are hereby invited to submit their written representations on the draft Promotion of Diversity and Competition on DTT regulations published herewith by the Authority. A copy of the proposed regulation 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 within forty five days (45) of the date of publication of this notice by post, hand delivery or electronically (in Microsoft Word) and marked specifically **Attention: Ms Ngwako Serumula. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton.** Further enquiries in that regard may be directed to her via e-mail at: **NSerumula@icasa.org.za** or by facsimile: **011 566-3228** or by telephone: **011 566-3227**; between 10h00 and 16h00, Monday to Friday only. Interested parties must indicate in their written representations if they would like to be afforded an opportunity to make an oral presentation in the event that the Authority decides to conduct public hearings on this matter.

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

PROMOTION OF DIVERSITY AND COMPETITION ON 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);

“Astronomy Geographic Advantage Act” means the Astronomy Geographic Advantage Act, 2007 (Act No. 21 of 2007);

“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;

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

“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;

“High Definition Television (HDTV)” means DTT transmissions with a resolution of at least 1280x720 pixels, progressive format;

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

“new entrant terrestrial television broadcasting service licensee” means any of the television broadcasting service licensees licensed in terms of the Act which are not allocated capacity for digital broadcasting in Multiplexes 1 and 2, in terms of the Digital Migration Regulations.

“Process and Procedures Regulations” means the Class Licensing Processes and Procedures Regulations, 2010 published under Government Notice R526 in *Government Gazette* 33297 of 14 June 2010, as amended or replaced from time to time and the ; Individual Licensing Processes and Procedures Regulations, 2010 published under Government Notice R522 in *Government Gazette* 33293 of 14 June 2010, as amended or replaced from time to time;

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

“Subscription Broadcasting Regulations” means the Subscription Broadcasting Services Regulations, 2006 published by the Authority under General Notice 152 in *Government Gazette* 28452 of 31 January 2006, as amended or replaced from time to time;

“terrestrial television broadcasting service licensee” means any of the television broadcasting service licensees licensed in terms of the Act to provide the existing television channels.

2. PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to: -

- (a) Promote diversity and competition on digital terrestrial television;
- (b) prescribe the conditions for the assignment of channel capacity in Multiplex 3 for the purpose of promoting diversity and competition on the DTT platform;
- (c) prescribe the procedure for the authorisation of digital television channels on Multiplex 3.

3. FRAMEWORK FOR PROMOTING DIVERSITY AND COMPETITION ON DTT

- (1) Digital broadcasting must be in accordance with the Second Generation Digital Video Broadcast Transmission (DVB-T2) standard and fourth generation Moving Picture Experts Group (MPEG-4) compression standard and future versions of the standards.
- (2) The digital broadcast of terrestrial television broadcasting services may be in Standard Definition Television (SDTV) mode or High Definition Television (HDTV) mode, or both.

- (3) Capacity on Multiplex 3 shall be assigned to new entrant terrestrial television broadcasting service licensees.
- (4) Where any capacity in Multiplex 3 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 on the date 36 months after the commencement of the licensee's DTT services, the unutilised capacity shall be forfeited.
- (5) A community terrestrial television broadcasting service licensee shall be allocated capacity on Multiplex 3 sufficient for the broadcasting of one digital television channel.
- (6) Terrestrial television broadcasting licensees must exercise their rights in terms of these Regulations in accordance with any requirements imposed in terms of the Astronomy Geographic Advantage Act or regulations or notices published under that Act.

4. MULTIPLEX ALLOCATION – MULTIPLEX 3

- (1) The capacity on MDTT2 shall be used for the provision of subscription, commercial free-to-air and community digital terrestrial television services.
- (2) The capacity on MDTT2 shall be allocated as follows –
 - (a) Up to forty percent (40%) of the available capacity on Multiplex 3 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) Up to forty percent (40%) of the available capacity on Multiplex 3 shall be made available to a new free-to-air commercial television service licensee to be licensed through an Invitation to Apply in terms of section 9 of the Act; and
 - (c) Up to twenty percent (20%) of the available capacity on Multiplex 3 shall be made available to new community television broadcasting service licensees.
- (3) Terrestrial television broadcasting service licensees, that are allocated capacity on Multiplex 3 in terms of sub-regulation (2), may broadcast any digital television channels they are authorised to provide, in accordance with the procedures set out in these Regulations.

- (4) Terrestrial television broadcasting service licensees, that are allocated capacity on Multiplex 3 in terms of sub-regulation (2), may broadcast radio channels and data services, subject to regulation 9(2).
- (5) No new free-to-air commercial television broadcasting service licensee may commence service on Multiplex 3 before 18 June 2015.
- (6) 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 up to ten percent (10%) of the available capacity on the second mobile digital terrestrial television multiplex (MDTT2), provided that no tests or trials shall take place after 31 December 2014.
- (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 (5) 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.

5. DIGITAL TELEVISION CHANNEL AUTHORISATION PROCEDURE

- (1) A terrestrial television broadcasting service licensee shall make application, in writing, to the Authority for the authorisation to broadcast a digital television channel(s).
- (2) The Authority may invite public comments and conduct a public hearing in relation to an application to authorise a digital television channel where it considers it necessary in the interests of public fairness to do so.
- (3) A terrestrial television broadcasting service licensee may not broadcast a digital television channel except where the Authority has given its prior written authorisation for the channel.
- (4) Within sixty days of receipt of an application made in terms of this regulation, the Authority shall issue a certificate authorising or refusing to authorise the channel, unless the Authority has elected to hold a public hearing in terms of sub-regulation (2).

- (5) If on the expiry of the sixty day period contemplated in sub-regulation 4, the Authority has not issued such a certificate or indicated its intention to hold a public hearing, the channel shall be regarded as having been authorised.
- (6) If the Authority refuses to authorise a channel, the Authority shall give written reasons thereof to the applicant within thirty days of the issuing of the certificate.

6. AUTHORISATION TO BROADCAST A DIGITAL TELEVISION CHANNEL ON 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) the primary language(s) of the channel;
 - (c) a programming plan, including local content;
 - (d) the country where the channel was packaged;
 - (e) the full name of the channel supplier; 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 which provides a subscription broadcasting service must submit an application for authorisation to broadcast a digital incentive channel in terms of the procedures set out in the Subscription Broadcasting Regulations and will be considered by the Authority on the basis of the criteria stipulated in those Regulations, except insofar as the Authority elects to hold a public hearing in terms of regulation 5(2).

7. SIGNAL DISTRIBUTION OF THE DTT SERVICES BROADCAST IN MULTIPLEX 3

- (1) Signal distribution services shall be provided to each of the terrestrial television broadcasting service licensees for digital broadcasting in Multiplex 3 by an electronic communications network services licensee or licensees appointed in terms of this regulation 7.

-
- (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 for digital broadcasting.
- (3) The agreement referred to in sub-regulation (2) shall be submitted to the Authority, together with -
- (a) a roll-out plan in line with the coverage targets stated in regulation 8;
 - (b) a technical plan consistent with the broadcast frequency plan; and
 - (c) the tariff structure for the signal distribution services.
- (4) Where a terrestrial television broadcasting service licensee fails to comply with sub-regulation (3) or if the Authority is not satisfied that the electronic communications network service licensee selected by the terrestrial television broadcasting service licensee will achieve the roll-out targets provided for in regulation 8 the Authority must issue an invitation to interested persons who hold individual licences 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 10;
 - (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 the terrestrial television broadcasting service licensee within the period specified by the Authority;
 - (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/or
- (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, pursuant to section 67 of the Act, the tariffs charged by an electronic communications network services licensee appointed in terms of this regulation 7 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.
- (9) Where an existing broadcasting service licensee is granted a licence to provide electronic communications network services in order to self-provide signal distribution services in terms of section 63 of the Act, that licensee –
- (a) may elect to self-provide signal distribution services for the digital broadcasting of its authorized channels and services; and
 - (b) has the right to terminate the appointment of the electronic communications network service licensee where that licensee was appointed in terms of sub-regulation (7) upon 6 (six) months' notice to the electronic communications network service licensee and the Authority.

8. ROLL-OUT TARGETS

- (1) The coverage requirements for DTT in Multiplex 3 will be based on the terrestrial television broadcasting service licensee's licence conditions.
- (2) An electronic communications network services licensee appointed in terms of regulation 7 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 of the electronic communications network services licensee's first financial year end following the commencement of the signal distribution services and every six (6) months thereafter.

- (3) An electronic communications network services licensee appointed in terms of regulation 7 must keep records of all incidences of harmful frequency interference and include such in the reports to be submitted to the Authority in terms of sub-regulation (2).

9. 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 end-users in relation to the programming broadcast on a particular digital channel.
- (2) A terrestrial television broadcasting service licensee may provide data services and, subject to agreement with the relevant channel provider, radio channels using the capacity allocated to it in Multiplex 3 for the purpose of enhancing service to end-users: provided that any data services and radio channels may not utilise more than fifteen percent (15%) collectively of the capacity allocated to the licensee.
- (3) For the purpose of these Regulations it is deemed that an electronic communications network service licensee which is appointed by a terrestrial television broadcasting service licensee in terms of regulation 7 to provide signal distribution services provides those services 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.
- (4) 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.

- (5) Two (2) representatives from each terrestrial television broadcasting service licensee and electronic communications network service licensee appointed in terms of regulation 9 may participate in the activities of the Joint Spectrum Advisory Group, established in terms of the Digital Migration Regulations.
- (6) One (1) representative from each terrestrial television broadcasting service licensee may participate in the activities of the Digital Television Content Advisory Group, established in terms of the Digital Migration Regulations.

10. PENALTIES

- (1) Where the CCC finds, in terms of the ICASA Act, that there has been a failure by a terrestrial television broadcasting service licensee to comply with regulations:

- (a) 4(1), 4(3) and 4(4);
- (b) 5;
- (c) 9(1)

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) The Authority may impose a fine not exceeding two hundred thousand rands (R200 000) where a terrestrial television broadcasting service licensee or electronic communications network service licensee is found to be in contravention of any regulation other than the regulations specified in this regulation 10.

11. AMENDMENT OF REGULATIONS

- (1) 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.'

12. SHORT TITLE AND COMMENCEMENT

These Regulations shall be called the Promotion of Diversity and Competition on Digital Terrestrial Television Regulations, 2012, and will come into effect upon publication in the *Gazette*.

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