

**SUBMISSION BY e.tv (PTY) LIMITED ON THE DECISION TO AMEND THE DRAFT DIGITAL
TERRESTRIAL TELEVISION REGULATIONS**

1. Introduction

- 1.1. On 10 July 2012 in Government Gazette number 35508, the Independent Communications Authority of South Africa ("the Authority") published the "Explanatory Memorandum on the Decision to Amend the Draft Digital Terrestrial Television Regulations for Public Comment" ("the memorandum") together with an amended version of the draft Digital Terrestrial Television regulations ("the draft DTT regulations") which were initially published in September 2011.
- 1.2. In terms of Section 4(4) of the Electronic Communications Act, the Authority invited parties to make written submissions on the draft DTT regulations by 30 July 2012. e.tv notes that it was afforded less than three weeks from the date the Government Gazette was promulgated within which to make its written submissions.
- 1.3. e.tv hereby makes submissions on the draft DTT regulations.
- 1.4. As the Authority has introduced entirely new requirements (in the form of prime time original content and South African content quotas and the introduction of a third multiplex) into the draft DTT regulations for the first time since the DTT policy-making process began, e.tv submits that it is critical that the Authority holds hearings into this version of the DTT Regulations.
- 1.5. In this regard, e.tv notes that the introduction of prime time original content and original South African content quotas does not arise from any submissions made into the draft Digital Terrestrial Television Regulations promulgated in Government Gazette No 34642 on 28 September 2011 ("the September 2011 Draft DTT Regulations"). e.tv further notes that this constitutes an entirely new programming condition on television licensees as well as a radical amendment to the local content regulations and the position set out in the September 2011 Draft DTT Regulations.
- 1.6. Accordingly, it would be severely prejudicial to e.tv if the proposals concerning the third multiplex and the content quotas are implemented without affording e.tv the right to a proper hearing at which it is allowed to make oral submissions. The potential harm brought on by the introduction of the aforesaid new requirements (both in respect of the content quotas and multiplex 3) means that to deny e.tv a hearing (particularly in circumstances where the time for making written submissions was truncated) would be unreasonable and unfair.
- 1.7. e.tv will require at least one hour to present its submissions at any oral hearings convened by the Authority

1.8.e.tv has already made written and oral representations on previous versions of the regulations. The purpose of these submissions, therefore, is to focus on material changes to the approach adopted by the regulations and not to repeat substantially the submissions made in respect of previous versions of the regulations. It should be noted, however, that many of the submissions made by e.tv in relation to previous versions of the regulations remain valid in relation to the draft regulations, particularly those matters relating to the lack of competition in the broadcasting environment and the increasingly negative effect thereof on free-to-air broadcasters. e.tv accordingly requests the Authority to have reference to the submissions and read them as if incorporated herein

1.9.e.tv's submissions in relation to the draft DTT regulations will cover the following four areas:

- 1.9.1. The issue of DTH satellite transmission to provide 100% population coverage for free-to-air channels;
- 1.9.2. The introduction of a third multiplex and the licensing of new free-to-air and licensees on the third multiplex during dual illumination;
- 1.9.3. The Authority's estimate of the capacity per channel on each multiplex; and
- 1.9.4. The introduction of original content quotas and South African original content quotas during prime time.

2. DTH satellite transmission to provide 100% population coverage

2.1.The memorandum and the draft regulations are based on the acknowledgement of the fact that it will not be possible to achieve 100% population coverage through terrestrial transmission and that DTH satellite provision of channels will therefore be required. This is owing to the following factors:

- 2.1.1. The SKA project in the Northern Cape does not allow for terrestrial transmission within its vicinity; and,
- 2.1.2. It is uneconomical to reach certain parts of the country through terrestrial transmitters.

2.2.The memorandum makes it clear that the regulations must be "future proof" and "should at least last for the next five years" (at paragraph 1 of the memorandum), "meet any future contingencies including the fact that analogue switch-off may not take place in 2015 ..." (at paragraph 3 of the memorandum) and that "the Authority has also considered the Ministerial Policy in ensuring close to 100% coverage for those areas that are difficult to reach, which will be covered through DTH by satellite means" (at

paragraph 6 of the memorandum). In the circumstances, e.tv submits that the draft DTT regulations should include provision for satellite DTH coverage for licensed free-to-air broadcasters.

2.3. The draft DTT regulations include a specific requirement that “analogue television transmitters located in the Northern Cape Province be switched off prior to the end of December 2015 to provide the required protection for radio astronomy in terms of the Astronomy Geographic Advantage Act (Act No. 21 of 2007)” (regulation 3(6) of the draft DTT regulations), thus creating an urgency for licensed free-to-air broadcasters to broadcast via DTH satellite to ensure that viewers in this region continue to receive services.

2.4. e.tv submits that the above could be achieved by the following minor amendments:

2.4.1. By the inclusion of a new regulation 2(f) under “Purposes of Regulations” stating as follows:

“provide for DTH satellite coverage to ensure that digital broadcast of existing television channels, digital incentive channels and digital television channels can be received in those areas which are difficult to reach via terrestrial transmission or in respect of which there are statutory restrictions on terrestrial television for purposes of protecting radio astronomy.”

2.4.2. By the inclusion of a new regulation 14(5) under “Roll-Out Targets”, stating as follows:

“Subject to regulations 14(1) and 14(2) above, the digital broadcast of existing channels, digital incentive channels and/or digital television channels may be transmitted by DTH satellite to ensure 100% population coverage for digital services”.

2.4.3. By the addition in regulation 17(1) under “Transitional Provisions” of the following words at the end of the regulation “and DTH satellite”, i.e. “.... multi-channel services will be made available by those licensees using DTT and DTH satellite”.

3. Introduction of a third multiplex and licensing new free-to-air players during dual illumination

3.1. The draft DTT regulations introduce, for the first time, the concept of a third multiplex which will accommodate new licensees during the dual illumination period. e.tv opposes this proposal for the following reasons:

3.1.1. Incumbent free-to-air broadcasters are carrying the burden of the digital migration process and their existing business will inevitably be prejudiced

during the dual illumination period. Introducing competition during the dual illumination period is contrary to the consistent policy position (over the past ten years) that no new entrants should be licensed before analogue switch-off. It is the incumbent broadcasters which will enable migration to succeed by creating an incentive for viewers of analogue television to migrate to the digital format. Incumbent broadcasters should be compensated for the costs which they will have to incur to migrate and should also be protected from market fragmentation while they are undergoing this process.

- 3.1.2. The introduction of competitors during the dual illumination period when incumbent free-to-air broadcasters are most vulnerable to fragmentation of audiences and revenue would simply weaken the free-to-air broadcasting sector. New licensees will carry none of the burdens of dual illumination and driving migration, while benefiting entirely from the up-side of the new platform.
- 3.1.3. The draft DTT regulations are constructed in a manner which gives new licensees an unfair and unreasonable advantage over incumbents and the motivation for this is not apparent from the draft regulations or the memorandum:
 - 3.1.3.1. Regulation 13(8) suggests that new licensees should receive the benefit of government subsidies passed on from a government – funded ECNS. Given that the new licensees would not be carrying the burden of dual illumination, there is no basis for such a subsidy;
 - 3.1.3.2. Regulation 3(8) states that any allocated capacity on Multiplex 1 and Multiplex 2 which is not utilised within 36 months after the commencement of DTT shall be regarded as being forfeited to the Authority. This forfeiture is not applicable to Multiplex 3 on which new licensees will be introduced;
 - 3.1.3.3. Regulation 8(2) requires public service incentive channels and commercial incentive channels to achieve a minimum quota of original South African television content within the requirement that 50% of prime time programming consists of original television content. New digital channels have no original South African content obligation – they are merely required to ensure that 50% of their prime time content is original programming. This is prejudicial and discriminatory towards public service and commercial incentive channels.
- 3.1.4. e.tv points out once again that the introduction of new free-to-air licensees is happening against the backdrop of an increasing threat to the free-to-air

television sector by the incumbent pay-TV platform, DStv. e.tv reiterates the numerous previous submissions made in this regard that:

3.1.4.1. In the absence of any multi-channel free-to-air television (because of the ongoing DTT delays), DStv has enjoyed aggressive growth in the South African market. Four years ago, 13% of SA TV households had pay TV – in 2012 that figure has grown to 25%. e.tv's market analysis and forecasts (in respect of which no contrary evidence has been presented by the Authority or other stakeholders) indicate that DStv will hold more than 50% of total South African households in five years' time. This is inevitable unless pro-competitive measures are taken to impose pro-competitive conditions on DStv and DTT is established as a viable and compelling free-to-air alternative platform.

3.1.4.2. The introduction of new free-to-air players in the terrestrial market during the dual illumination period will simply serve to financially weaken the terrestrial incumbents by fragmenting the already-shrinking free-to-air advertising pool, thereby even further strengthening the DStv monopoly.

3.2. e.tv further submits that this proposal will merely serve to further delay or inhibit the rollout of DTT in the country for the following reasons:

3.2.1. It will require an amendment to the terrestrial broadcasting frequency plan which may in turn impact on the current plan for DTT.

3.2.2. It will cost hundreds of millions of rands to construct and, as in the case of DTT multiplexes 1 and 2, this cost will have to be borne by the state. Given the serious constraint on state resources in relation to subsidies for DTT as well as the absence of confirmation that incumbent broadcasters will receive transmission subsidies during the dual illumination period, this may jeopardise the extent of the state's transmission subsidies for incumbent broadcasters.

3.3. In paragraph 1 (on page 4) of the memorandum, the Authority states that its approach to the draft DTT regulations is based on ensuring that the regulations are "future proof". In paragraph 7 (on page 5) of the memorandum, the Authority states that "provision for High Definition Television (HDTV) is made to accommodate future trends".

3.4. However, the provision of a viable HD offering while also ensuring a viable multi-channel offering is not possible in terms of the multiplex allocation set out in the draft DTT regulations. ICASA's assumption regarding the capacity of the multiplexes (as set out in paragraph 6 of the memorandum (see paragraph 4 below)) is inaccurate as it maximises capacity while sacrificing quality and the ability of broadcasters to statistically multiplex

according to the content on their channels. e.tv's 50% multiplex capacity does not allow for the roll-out of any viable multi-channel offering including HD channels.

- 3.5. e.tv could not afford to use its 50% capacity to launch only one HD channel if its audience and advertising are going to be fragmented by the introduction of multiple channels by a new competitor as the costs vs benefits of doing so will make the channel unviable. Yet, if the DTT platform does not have HD channels, it will further weaken its position against the DStv platform.
- 3.6. DStv is launching more HD channels onto its platform and using these to drive further subscriptions. The DTT platform will be unable to compete in this regard and, if configured in the manner proposed in the draft regulations, it will become "poor man's" television both in quantity and quality. Moreover, as a commercial broadcaster with 50% of a multiplex, e.tv will either have to sacrifice the quality or quantity of its channels in order to remain competitive on the DTT platform.
- 3.7. If the Authority is serious about future-proofing the regulations and allowing for the introduction of HD, then consideration should be given to reconfiguring the existing multiplex allocations (including multiplex 3) to enable the incumbent free-to-air players to launch viable HD services which allow the DTT platform to compete with DStv and create a strong DTT platform for all South Africans.
- 3.8. In the circumstances, e.tv submits that if multiplex 3 is to be created, priority should be given to the incumbent free-to-air broadcasters on this capacity, and no new entrants should be licensed unless and until additional terrestrial spectrum becomes available after analogue switch-off. This will enable the incumbent broadcasters to create a DTT platform which can compete more fairly with DStv.

4. The Authority's estimate of the capacity per channel on each multiplex

- 4.1. In paragraph 6 of the memorandum, the Authority indicates that DVB-T2 yields 32.5 MB/s on MPEG-4 and has the capacity to accommodate 21 SD channels or approximately 6 HD channels. e.tv disagrees with this estimate and submits that the estimated capacity per channel will result in a weak and poor quality DTT platform that is unable to be competitive against DStv.
- 4.2. e.tv submits that broadcasting at 1.5MB/s on an SD channel is wholly inadequate and that the Authority's estimates per multiplex are flawed. If such estimates are used to direct the extent to and manner in which a free-to-air broadcaster may use its capacity, it will result in a weak, poor quality DTT platform.
- 4.3. Fifty per cent of multiplex 2 equals 16.25 MB/s. With this capacity, e.tv can only carry a maximum of 6 Standard Definition channels at 2.2 MB/s per channel including

overheads. Given this requirement for SD channels, e.tv will not also be able to broadcast in HD within its 50% allocation.

4.4. Regulation 3(8) of the draft DTT regulations states that where any allocated capacity in multiplex 1 and multiplex 2 is not being fully utilised within 36 months of DTT switch-on, such unutilised capacity shall be regarded as being forfeited by the Authority. e.tv is concerned that, in determining whether a licensee has “fully utilised” its capacity, it will make such determination according to the multiplex capacity estimates set out in paragraph 6 of the memorandum.

4.5. e.tv submits that it is beyond ICASA’s authority to regulate the manner in which free-to-air terrestrial broadcasters utilise their capacity. It is inappropriate and unreasonable for the Authority to direct the number of HD and SD channels on the multiplex as well as the capacity per channel and that this should be left to the discretion of the incumbent broadcasters.

4.6. Free-to-air terrestrial broadcasters will compete on content and quality in the digital environment in the same manner as pay-tv satellite broadcasters and telecommunications operators. The assumption that a DTT multiplex will be expected to carry 21 channels averaging 1.5 MB/s per channel is not only unfair to free-to-air terrestrial broadcasters but also weakens the competitiveness of the DTT platform and strengthens the DStv platform which has maximum commercial flexibility in deciding the capacity to be allocated per channel, depending on the type of content.

4.7. e.tv therefore submits that, in order to make the DTT platform competitive (and to allow incumbent free-to-air broadcasters a fair and reasonable opportunity to compete), the Authority must:

4.7.1. allow free-to-air incumbent broadcasters to determine their usage of the capacity according to their commercial requirements (including the cost of transmission); and,

4.7.2. as outlined above in paragraph 3.8 (above), allocate multiplex 3 to incumbent broadcasters to allow them to provide a viable HD and multi-channel offering.

5. Proposal concerning original content and original South African content quotas in prime time

5.1. e.tv welcomes the Authority’s acknowledgement that the existing South African Local Content Regulations are not appropriate in the DTT environment.

5.2. e.tv further submits that the Authority’s proposed regulation 8(2) would be financially prejudicial to incumbent broadcasters carrying the burden of digital migration and would therefore achieve the opposite of the Authority’s desired effect stated in

paragraph 9 of the memorandum, to “use original television content to incentivise viewers to acquire set top boxes”. Accordingly, this provision should be revisited in its entirety.

5.3. Regulation 8(2) states as follows:

“Television content on digital incentive channels or new digital channels shall be regulated as follows-

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

5.4. Aside from the obvious unfair advantage provided to new digital channels which are not subject to a South African television content quota (as already stated at paragraph 3.1.3.3. above), regulation 8(2)(a) is irrational and unreasonable in that:

- 5.4.1. It interferes with the commercial practices of the broadcaster in circumstances where channels should have maximum flexibility in scheduling prime time, regard being had to cost, level of audience attractiveness and revenue potential of the programme.
- 5.4.2. The fact that it is a daily requirement makes the effect of the regulation absurdly restrictive – a channel would be unable to schedule, for example, two x two-hour Hollywood movies (which are strong audience drivers) or a two-hour live sports event during the period 6pm to 10pm because no less than 42 minutes of that 6pm to 10pm period (being 35% of 50% of prime time) has to be original South African content.
- 5.4.3. It reflects a fundamental misunderstanding of the nature and economics of multi-channel television scheduling where prime time repeats (whether of local or international programming) are the international norm. Even mature multi-channel platforms with millions of households repeat programmes on a regular basis throughout the week, month and year – during both prime time and shoulder time. This is because audiences have access to many more channels and therefore require multiple opportunities to view a programme on a particular channel at a time which is convenient to them. However, it is also a matter of economics – with the increasing fragmentation of audiences and revenue, broadcasters simply cannot afford not to repeat programming during prime time. This is a worldwide trend and

an inevitable consequence of multi-channel television. Imposing this condition on the channels on the DTT platform in circumstances where the channels on the DStv platform have no such restrictions, is unduly restrictive and would further weaken the DTT platform against DStv.

- 5.4.4. It would have the unintended consequence of “dulling” the prime time line-up (and thereby making DTT less attractive) as the channels’ scheduling would be artificially restricted by quotas instead of being driven by the demands of the audience. Again, this will lessen the attractiveness of the DTT platform and once again drive viewers to the more varied multi-channel offerings on DStv rather than those on DTT.
- 5.4.5. It does not take account of the fact that when the channels launch, the DTT platform will be at a zero base with no audience and that this audience will only come about with the up-take in set-top boxes. Only when then set top boxes have reached a critical mass (in e.tv’s estimate this is 4 million DTT households¹), can the channels start earning sufficient advertising revenue to cover costs. All programming broadcast until such a critical mass is achieved therefore represents a “sunk cost” by the channels in respect of which no advertising revenue can be earned. To require channels to incur the expenditure on two hours of original programming each and every night in such circumstances is a highly unreasonable.
- 5.4.6. The regulation also disincentivises incumbent commercial broadcasters from introducing a wide variety of channels (some of which may be foreign channels) in order to enhance the attractiveness of the platform. The costs and restrictiveness of operating a single digital incentive channel under the burden of these quotas will discourage broadcasters from adding further digital incentive channels which would drive take-up of set-top boxes.
- 5.4.7. The aggressive growth of DStv over the past few years is precisely because it offers a wide range of different channels – some all local, some entirely foreign, some mixed, all with extensive prime time repeats – on its multi-channel bouquet. The rigid quotas being proposed would inhibit the DTT platform from being able to compete with the DStv platform on variety and volume of channels and would therefore discourage the take-up of DTT set-top boxes and make DStv a far more attractive proposition. This cannot have been intended by the Authority.

5.5. The exemption in regulation 8(2)(b) is not an answer to the issues raised above as it implies that it will apply only in exceptional cases “on good cause shown”. Broadcasters will be reluctant to invest the time and effort in planning a channel which doesn’t comply with regulation 8(2)(a) in case they are unable to pass the “good cause” test in

¹ This information was presented in detail by e.tv to the Authority in its December 2008 DTT hearings

regulation 8(2)(b). As stated above, the regulation simply serves to disincentivise broadcasters from making the DTT platform as attractive and as competitive as possible.

5.6. Incumbent free-to-air broadcasters in South Africa are acutely aware of the commercial need for local content to drive audiences. It is for this reason that e.tv exceeds its annual licensed local content quota (of 45% local programming between the hours of 05h00 and 23h00) every year. e.tv also exceeds its original South African drama quota every year because, despite the huge costs of such drama, it is critical to attracting audiences and therefore to retaining revenue share. Imposing a restrictive and financially unviable prime time original South African content quota will not have the desired result of driving set top box take-up because unrealistic and artificial quotas will merely result in broadcasters sacrificing quality for quantity. Broadcasters will be compelled to reduce the amount of quality output or slash budgets in order to meet the quota, thus replacing high-audience-share dramas, reality and variety shows, with cheaper low-audience-share programming such as studio discussions and interviews. This will have the following effect on the DTT platform and the incumbent broadcasters:

- 5.6.1. It will not drive set top box take-up as the programming will not be compelling enough;
- 5.6.2. It will reinforce the impression of the DTT platform as poor quality television;
- 5.6.3. It will further strengthen the DStv platform which is not subject to such regulatory restraints;
- 5.6.4. It will damage the business of the incumbent broadcasters; if they provide quality programming in line with the original content quotas it will be unaffordable for them and have an extremely adverse effect on their businesses; if they attempt to meet the quotas in a more affordable manner they will be compelled to “dumb down” their content offering and rely heavily on cheaper, lower quality programming which would damage their brands and result in them losing advertisers to channels on the DStv platform who are not subject to the same restrictions.

5.7. In conclusion, it is in the incumbent broadcasters’ own interests to drive take-up of the set top boxes. If they fail to do so, their digital incentive channels will have no viewers and will attract no advertising revenue, thereby running at a loss. They should therefore be allowed to schedule their channels in such a manner as they deem necessary to achieve the necessary advertising income to make their channels viable. It goes without saying that this would have to include a significant original and South African content contribution but the manner in which this investment is made and the scheduling of the content should be left to the broadcasters to decide.

5.8.e.tv therefore proposes the deletion of regulation 8(2) under “Local Content for Digital Incentive Channels and New Digital Channels” and the insertion of the following new regulation 8(2):

“Broadcasters shall keep records of the local content broadcast on digital incentive channels and shall submit such records to the Authority on a quarterly basis in the form prescribed. Eighteen months after the launch of the dual illumination period, the Authority shall undertake an inquiry into the South African Local Television Content regulations and their applicability in a multi-channel television environment.”

5.9.In the event that the Authority intends to proceed with the proposed regulation 8(2) in the draft DTT regulations, then e.tv submits that a hearing must be held in order to provide incumbent broadcasters with a fair opportunity to deal with a matter which greatly impacts on their viability as multi-channel operators and on the viability of the DTT platform on which their future is based. This impact is that much greater on e.tv which depends entirely on advertising for its revenue and which is therefore prejudiced more than any other free-to-air broadcaster in the loss of audiences and advertising to channels on the DStv platform.

6. General

6.1.e.tv reiterates the following submissions made in relation to the previous draft DTT regulations (published in September 2011) which have not been taken into account in the current draft DTT regulations:

6.2.Proposals regulating the carriage of the free-to-air channels on the DTT pay TV bouquet

6.2.1. M-Net’s proprietary DTT set top box will be able to receive the free-to-air DTT channels regardless of whether the free-to-air channels consent to their channels being available. e.tv is concerned that its broadcasts will be exploited by a third party who will want to use the e.tv channels to drive their own commercial objectives. Effectively, M-Net will likely seek to grow its (currently) negligible 85 000² household terrestrial subscriber base to penetrate a much larger terrestrial market by marketing its proprietary box as one which will provide viewers with M-Net services as well as the free-to-air channels. Quite aside from the legality of this, this will undermine the penetration of free-to-air DTT set top boxes in South Africa.

6.2.2. e.tv submits that the regulations should provide that any proprietary pay TV DTT set top box should be set up in such a manner that it may not receive

² As at 2011 – the number has reduced further to 64380 as at March 2012.

the free-to-air DTT channels without the express consent of the free-to-air broadcasters and on commercial terms to be agreed.

6.3. Proposals regulating the relationship between broadcasters sharing a multiplex

- 6.3.1. The DM regulations currently provide that each terrestrial television broadcasting licensee must reach commercial agreement with an electronic communications network services licensee to provide signal distribution services failing which the Authority may intervene, invite proposals from transmission providers and determine the agreement between the broadcaster and the transmission provider. However, they do not deal with a situation where broadcasters sharing a multiplex are unable to reach agreement on the configuration of the multiplex or the appointment of a signal distributor or when one broadcaster unilaterally decides to configure the multiplex and launch DTT services without agreement with its multiplex partner.
- 6.3.2. In July 2011, M-Net made a decision to launch its DTT services in August 2011. As a result of various interventions which are not relevant for present purposes, M-Net decided not to go ahead with its launch. What is relevant, however, is that M-Net made it clear to e.tv its view that it did not have to reach agreement with e.tv regarding the operation of Multiplex 2 prior to launching and that it was entitled to launch unilaterally.
- 6.3.3. To avoid such a situation recurring, e.tv requests the Authority to insert in the regulations a requirement that:
 - 6.3.3.1. An incumbent broadcaster which shares a multiplex may not launch unilaterally without agreeing with the sharing incumbent broadcaster on the operation of the multiplex and the appointment of a signal distributor; and,
 - 6.3.3.2. In the event that the incumbent broadcasters sharing a multiplex cannot agree on the above, the matter shall be determined by arbitration (before an arbitrator appointed by the chairman of the Arbitration Foundation of South Africa and under standard South African arbitration rules) at the cost of the broadcasters.
- 6.3.4. In reaching his/her decision, the arbitrator must take account of the following factors:
 - 6.3.4.1. The relative prejudice to each of the broadcasters in adopting one or other approach to the control of the multiplex and the signal distributor to be appointed; and,

6.3.4.2. The outcome which would most satisfy the public interest taking account of the programming needs of the public, the scarcity of terrestrial spectrum as well as competition issues.

7. Conclusion

7.1. e.tv summarises its submissions made to the Authority as follows:

- 7.1.1. The Authority should amend the draft DTT regulations to provide for the provision of digital channels via satellite to enable digital reception by those areas not covered by terrestrial transmission.
- 7.1.2. The Authority should not licence any new terrestrial free-to-air players unless and until additional capacity becomes available for terrestrial broadcasting after analogue switch-off;
- 7.1.3. If multiplex 3 is created, the multiplex allocation should be reconfigured so that the terrestrial incumbent broadcasters are able to access additional spectrum to provide a viable multi-channel line-up which includes an adequate number of quality HD channels to enable them to compete on the DTT platform against the aggressive growth of the DStv platform;
- 7.1.4. The Authority should allow the free-to-air incumbent broadcasters to determine the capacity allocated to each channel on a commercial basis – rather than the Authority determining the capacity per channel;
- 7.1.5. The Authority should not impose original content quotas or South African content quotas during prime time as envisaged in the draft DTT regulations;
- 7.1.6. The regulations should provide that any proprietary pay TV DTT set top box should be set up in such a manner that it may not receive the free-to-air DTT channels without the consent of the free-to-air broadcasters;
- 7.1.7. The regulations should require for the dispute resolution procedure set out above regarding broadcasters sharing a multiplex.

7.2. e.tv reiterates the need for conducting oral hearings to afford parties a fair opportunity to be heard particularly if the Authority persists with the far reaching changes envisaged by the introduction of multiplex 3 and the introduction of original content quotas and South African original content quotas during prime time.

30 July 2012