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Attn: Ms Pumela Cokie

ICASA

Draft DTT Regs 2025

Email: PCokie@icasa.org.za

12 August 2025

Dear Ms Cokie

MMA SUBMISSIONS ON THE DRAFT DIGITAL TERRESTRIAL TELEVISION REGULATIONS 2025

1. INTRODUCTION

- 1.1 On 4 July 2025 ICASA published its Draft Digital Terrestrial Television Regulations, 2025 in Notice 3355 published in the government Gazette number 52946 (the Draft DTT Regs) and invited public comment thereon within 30 (thirty) working days.
- 1.2 Media Monitoring Africa (MMA) thanks the Independent Communications Authority of South Africa (ICASA) for the opportunity to make written submissions on the Draft DTT Regs and requests an opportunity to make oral submissions at any hearings to be held thereon.
- 1.3 MMA is an NGO that has been monitoring the media since 1993. We aim to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are, media ethics, media quality and media freedom. In this regard:
 - 1.3.1 MMA's vision is a just and fair society empowered by a free, responsible and quality media; in the last 32 years MMA has conducted hundreds of different media monitoring projects - all of which relate to key human rights issues, and at the same time to issues of media quality. MMA has challenged, and continues to challenge, the media on a range of issues always with the overt objective of promoting human rights and democracy through the media. In this time MMA has also been one of the few civil society organisations that has consistently sought to

deepen democracy and hold media accountable through engagement in policy and law-making processes; and

1.3.2 MMA has made submissions relating to Public Broadcasting, as well as numerous presentations to Parliaments Portfolio Committee on Communication as well as the National Council of Provinces and numerous submissions to ICASA, from CCC complaints to public submissions. In addition, MMA has made submissions to Broadcasters, the Press Council, the South African Human Rights Commission and a variety of international human rights bodies. MMA also actively seeks to encourage ordinary citizens to engage in the process of holding media accountable through the various means available - all of which can be found on MMA's website (www.mediamonitoringafrica.org).

1.4 MMA does not intend to respond to each and every aspect of the Draft DTT Regs but instead proposes to comment on those key aspects thereof which are of vital importance to the public interest.

2. AD 1 – PURPOSE OF THE REGULATIONS AND CONCERNS REGARDING LOCAL CONTENT AND INDEPENDENT PRODUCTION

2.1 MMA is extremely concerned providing for local content and independent production for DTT is not mentioned as part of the purpose of the Draft DTT Regs.

2.2 This is particularly so given that the Draft DTT Regs repeal and replace the existing:

2.2.1 Digital Migration Regulations, 2012, which provide at:

2.2.1.1 Regulation 12(7) thereof that each of the terrestrial television broadcasting service licensees must comply with ICASA's South African television content regulations for each channel broadcasts, noting that where this is not possible (for example for sports content) that an exemption may be applied for by the broadcasting question; and

2.2.1.2 Regulation 14 thereof that ICASA is to establish a Digital Television Content Advisory Group (DTCAG) with the aim of, inter alia, advising ICASA on the most effective way to ensure "monitoring and compliance with content obligations"; and

2.2.2 Promotion of Diversity and Competition on Digital Terrestrial Television Regulations, 2014, which provide at Regulation 7(3) thereof that each of the terrestrial television broadcasting service licensees must comply with ICASA's South African television content regulations for each channel broadcasts, noting that where this is not possible (for example for sports content) that an exemption may be applied for by the broadcasting question.

- 2.3 Indeed the Draft DTT Regs make no mention of local content or independent television production requirements of any kind for DTT, and it appears that DTCAG is to entirely disappear as the result of these Draft DTT Regs more because the obligation upon ICASA to establish the DTCAG would fall away due to the repeal of the Promotion of Diversity and Competition on Digital Terrestrial Television Regulations, 2014.
 - 2.4 MMA submits that this is extremely concerning and that the need for:
 - 2.4.1 local content and independent production obligations for DTT broadcasters; and
 - 2.4.2 an overhaul of the monitoring and enforcement systems for local content and independent production in the light of DTT,are clearly public interest issues that ICASA must address in the Draft DTT Regs.
 3. AD 3 - FRAMEWORK FOR DIGITAL TERRESTRIAL TELEVISION
 - 3.1 MMA submits that the framework (indeed the entirety of the Draft DTT Regs) is confusing as it is not clear if these provisions are meant to address the dual illumination period (which is still ongoing) or the period after the Analogue Switch Off (ASO).
 - 3.2 If it is the latter, ie post ASO, then MMA submits that the three years (36 months) given to licensees to fully utilise their allocated MUX capacity is too long and will result in unused MUX capacity which could be reallocated to other/new licensees to promote one of the key objectives of the Electronic Communications Act, 2005 (the ECA), namely “ensuring efficient use of the Radio Frequency Spectrum” – s2(e).
 - 3.3 MMA is of the view that post ASO, licensees should be required to fully utilize their mux capacity within two years or twenty-four months in line with the “Commencement of Operations” provisions contained in clause 5(1)(b) and (c) of the Standard Terms and Conditions for Individual Licensees Regulations, 2010 as amended.
 4. AD 4 – MULTIPLEX ALLOCATION
 - 4.1 MMA is concerned that community television broadcasting services are required to not exceed 15% of Multiplex 2 in terms of regulation 4(3) of the Draft DTT Regs.
 - 4.2 MMA is concerned about this and queries why no provision is being made for future community television broadcasting services in the Mux allocations as is done for public, commercial Free to Air (FTA) and subscription television services in draft regulations 4(1)(b), 4(2)(b), 4(5) and for new services in regulation 4(8) of the Draft DTT Regs.

- 4.3 The position of new community television broadcasting services and their accommodation on a MUX must be clarified.
- 4.4 MMA respectfully submits that the carriage of existing public, commercial and community sound broadcasting services be specifically provided for in the Draft DTT Regs, and that allocations therefor on appropriate multiplexes be specifically made in regulation 4.
5. AD 5 – CHANNEL AUTHORISATION PROCEDURE
- 5.1 MMA is concerned at the differential treatment of community television broadcasting services in regulation 5 of the of the Draft DTT Regs.
- 5.2 Draft regulation 5(1) appears to be specifically exclude community television broadcasting services from the obligation to apply to ICASA for authorisation to broadcast a specific digital television channel on the multiplexes.
- 5.3 MMA’s position is that all broadcasters should apply to ICASA for authorisation to broadcast a specific digital television channel on the multiplexes and that community television broadcasting services should not be excluded from that obligation.
- 5.4 However, if the intention of the Draft DTT Regs is that community television broadcasting services are not *entitled* (our emphasis) to broadcast more than one channel (that is, to broadcast more than their existing community broadcasting licence provides for) then MMA submits that this is unfair and disadvantages community broadcasting licensees *vis a vis* the public and commercial counterparts. Further, this would appear to be at odds with the provisions of draft regulation 8(4) which authorise all terrestrial television broadcasting service licensees to provide multi-channel broadcasting services.
- 5.5 MMA is of the view that multi-channel community television broadcasters would contribute to the diversity of the overall broadcasting eco-system and the provision should be made for the possibility of such multichannel community broadcasters in the Draft DTT Regulations.
6. AD 6 – SIGNAL DISTRIBUTION OF THE DTT SERVICES
- 6.1 MMA notes the contents of the draft regulation 6 of the Draft DTT Regs, particularly the provisions regarding licensing new electronic communications network services (ECNS) licensees to provide for signal distribution services for DTT in draft regulation 6(5) to (9) and respectfully requests ICASA to clarify these as they are unclear.
- 6.2 It appears that ICASA is envisaging (in draft regulation 6(5)) that a broadcaster’s chosen ECNS provider may not be able to achieve the roll out targets specified in its licence or in as specified in

section 62 of the ECA, in which event, an Invitation to Apply (ITA) will be issued to (existing? – this is unclear) ECNS licensees to provide signal distribution services to the terrestrial television broadcasting service licensee.

6.3 What the regulations do not specify, and MMA is of the view that it is essential that this is specified in the Draft DTT Regs, is that should:

6.3.1 a DTT licensee not wish, or is unable, to self-provide signal distribution services as envisaged in draft regulation 6(3): and

6.3.2 no ECNS licensee responds to a published ITA,

that Sentech Soc Limited (Sentech), as the common carrier signal distributor, must be required to provide the necessary DTT signal distribution services in accordance with its legislative mandate.

7. AD 7 – MULTIPLEX OPERATOR FOR DTT

7.1 MMA queries whether the “electronic communications service network” licence referred to in draft regulation 7(2) Draft DTT Regs, is an ECNS licence and if so, MMA respectfully requests ICASA to correct the description thereof.

7.2 MMA is also extremely confused by the reference, in draft regulation 7(4), to a “Provincial DTT Multiplexer” because the provisions of Draft Regulation 4 of the Draft DTT Regs make no reference to a Provincial DTT Multiplexer and it is unclear what services would be provided for thereon as community television broadcasting services are to be carried on Multiplex 2 in terms of draft regulation 4(3) of the Draft DTT Regs which multiplex must, of necessity, be national in scope given that 85% of the capacity thereon is for etv.

7.3 MMA queries the provisions of draft regulation 7(9) of the Draft DTT Regs which provides that the duration of the radio frequency spectrum licence for the Mux Operator shall run concurrently with the duration of the service licence of the television broadcasting service licensee to whom it operates the multiplex. The obvious problem that may arise is that different broadcasters have different licence terms. The Multiplex operator or Multiplex 2 for example is to provide services to both commercial and community television broadcasting service licensees. MMA respectfully requests ICASA to clarify this issue to avoid future confusion.

8. AD 8 – GENERAL OBLIGATIONS

8.1 MMA is of the view that the issue of the carriage of sound broadcasting services on DTT multiplexes is one of principle and cannot be left to the vagaries of the market, that is, to whether or not a

commercial agreement between sound broadcaster and DTT broadcasting service licensee is reached as is provided for in draft regulation 8(2) and (3) of the Draft DTT Regs.

8.2 MMA respectfully reiterates that the carriage of existing public, commercial and community sound broadcasting services be specifically provided for in the Draft DTT Regs, and that allocations therefor on appropriate multiplexes be specifically made in regulation 4.

8.3 MMA respectfully reiterates that draft regulation 8(4) envisages that all terrestrial television broadcasting service licensees are authorised to provide a multichannel broadcasting service upon the ASO.

9. THE VEXED ISSUE OF THE ASO – WHAT IS TO BE DONE?

9.1 MMA is extremely concerned at what it perceives to be ICASA's failure to engage proactively with the issue of the ASO date to the detriment of the FTA television sector, particularly the public broadcaster, the SABC, and of the public as a whole, particularly the poorest quartile of the population who lack access to alternatives.

9.2 MMA is aware that the Minister determined, in the 2008 Digital Migration Policy (as amended) published in Notice 958, Government Gazette No 31408, dated 8 September 2008 (the DM Policy) that the Minister will announce the ASO date in consultation with Cabinet, in terms of clause 3.1 of the DM Policy.

9.3 However, as ICASA is aware, the determination of the date of the ASO has been beset by legal challenges (every one of which has been successful) because of the damage that will accrue to the various FTA terrestrial broadcasters and to the public if the ASO was to take place before audiences have migrated to digital alternatives, whether DTT or otherwise.

9.4 MMA is of the view that it is not correct that the Minister should determine the ASO date given that it is ICASA that has a much more immediate and indeed better understanding of the broadcasting sector as a whole and is, in any event, constitutionally mandated to regulate broadcasting in the public interest in terms of section 192 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

9.5 Further, as ICASA is aware, ICASA is not required to adhere to Ministerial policies such as the DM Policy. In terms of section 3(4) of the ECA ICASA is specifically required only to "consider" policies made by the Minister when "exercising its powers and performing its duties in terms of the ECA and related legislation".

9.6 MMA is of the view that it is past time for ICASA to step in to stop the circus that the determination of the ASO has become and to develop a principled, pro-poor approach to determining the ASO date

in accordance with the requirements of the public interest and in consultation with, among others, existing terrestrial television broadcasters and relevant civil society bodies, including MMA.

- 9.7 In this regard, MMA is of the respectfully view that the Draft DTT Regulations should state that it is ICASA that will determine the ASO date and that such a determination will not take place unless at least 95% of the population of the Republic of South Africa makes use of Direct to Home (DTH) television services, DTT services and/or broadband internet services to ensure universal access to television-like content. If ICASA were to stipulate such a condition precedent for the determination of the ASO date, it would clearly be foregrounding the needs of the most information-poor sectors of the population which are those who currently lack access to television-like content on any platform other than terrestrial analogue television services provided by the SABC, etv and the community television broadcasting licensees.

10. CONCLUSION

- 10.1 MMA thanks ICASA for the opportunity of making these written submissions and looks forward to the oral hearings in due course.
- 10.2 Please do not hesitate to contact the writer should you have any queries or require any further information.

Thank you

Yours Sincerely

A handwritten signature in black ink, appearing to read 'W Bird', written over a horizontal line.

William Bird

Director