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GENERAL NOTICE

NOTICE 682 OF 2014



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

PROMOTION OF DIVERSITY AND COMPETITION ON DIGITAL TERRESTRIAL TELEVISION REGULATIONS

I, Dr Stephen Siphon Mncube, Chairperson of the Independent Communications Authority of South Africa ("the Authority") hereby approve and publish, the Promotion of Diversity and Competition on Digital Terrestrial Television Regulations as set out in the schedule and made by the Authority in terms of section 30(2) (c) and (d); read with section 4(1) (a), (b) and (d) of the Electronic Communications Act 36 of 2005. The Authority also considered the Broadcasting Digital Migration Policy for South Africa which was issued by the Minister of Communications in terms of section 3(1) of the Act and published under Government Notice 958 in *Government Gazette* 31408 of September 2008 (as amended and published under Government Notice 124 in *Government Gazette* 35051 of 17 February 2012).

A handwritten signature in black ink, appearing to be 'MS', written over a horizontal line.

Dr Stephen Siphon Mncube

Chairperson

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);

“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;

“CCC” means the Complaints and Compliance Committee established by the Authority in terms of the ICASA Act;

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

“Digital Migration Regulations” means the Digital Migration Regulations, 2012 published under Government Notice R1070 in *Government Gazette* 36000 of 14 December 2012, as amended or replaced from time to time;

“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 1280 x 720 pixels, progressive format;

"ICASA Act" means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

"Multiplex 1" has the meaning given in the Digital Migration Regulations;

"Multiplex 2" has the meaning given in the Digital Migration Regulations;

"Multiplex 3" means the frequencies designated as "DTT3" in the broadcast frequency plan, as amended or replaced from time to time;

"Processes and Procedures Regulations" means 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;

"Radio Frequency Spectrum Regulations" means the Radio Frequency Spectrum Regulations, 2011 published under Government Notice R184 in *Government Gazette* 34172 of 31 March 2011, 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 under General Notice 152 in *Government Gazette* 28452 of 31 January 2006, as amended or replaced from time to time;

"television broadcasting service licensee" means a television broadcasting service licensee licensed in terms of the Act that is a new entrant television broadcasting service licensee and that has not been assigned capacity on Multiplex 1 or Multiplex 2 in terms of the Digital Migration Regulations;

"terrestrial television broadcasting service licensee" has the meaning given in the Digital Migration Regulations.

2. PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to: -

- (a) promote diversity and competition on the DTT platform;
- (b) prescribe conditions for the assignment of channel capacity in Multiplex 3;
- (c) prescribe conditions for the assignment of excess channel capacity in Multiplex 1; and
- (d) prescribe the procedure for the authorisation of digital television channels on Multiplex 3.

3. FRAMEWORK FOR PROMOTING DIVERSITY AND COMPETITION ON DTT

- (1) Television broadcasting service licensees authorised to utilise capacity on Multiplex 1 or Multiplex 3 in terms of these Regulations must comply with regulation 3(2) of the Digital Migration Regulations.
- (2) The digital broadcast of television broadcasting services in terms of these Regulations may be in Standard Definition Television (SDTV) mode or High Definition Television (HDTV) mode, or both.
- (3) Capacity on Multiplex 1 and Multiplex 3 shall be assigned to television broadcasting service licensees by the Authority in order to promote diversity and competition on the DTT platform.
- (4) Where any capacity in Multiplex 1 and Multiplex 3 which is assigned in terms of these Regulations to be used by a television broadcasting service licensee, is not being fully utilised for content provision by that licensee on the date thirty-six (36) months after the issue of the radio frequency spectrum licence in respect of the capacity in question, the unutilised capacity shall be forfeited.
- (5) In the circumstances contemplated in sub-regulation (4), notwithstanding regulation 12(3) of the Radio Frequency Spectrum Regulations, the Authority shall, as soon as possible after the date contemplated in sub-regulation (4),

amend the radio frequency spectrum licence issued to the television broadcasting service licensee to reflect the forfeiture of the unutilised capacity.

4. MULTIPLEX ALLOCATION – MULTIPLEX 1

- (1) Any capacity on Multiplex 1 that is assigned in terms of the Digital Migration Regulations to terrestrial television broadcasting service licensees that provide community broadcasting services that is not required for the digital broadcasting of those licensees' channels, shall be assigned by the Authority in terms of these Regulations to television broadcasting service licensees that provide community broadcasting services.
- (2) The assignment contemplated in sub-regulation (1) shall be undertaken pursuant to an invitation to apply for a radio frequency spectrum licence issued in terms of regulation 7 of the Radio Frequency Spectrum Regulations.

5. MULTIPLEX ALLOCATION – MULTIPLEX 3

- (1) The capacity on Multiplex 3 shall be allocated as follows –
 - (a) Up to forty-five per cent (45%) of the available capacity on Multiplex 3 shall be assigned to one or more commercial subscription television broadcasting service licensees pursuant to one or more invitations to apply for a radio frequency spectrum licence issued in terms of regulation 7 of the Radio Frequency Spectrum Regulations;
 - (b) Up to fifty-five per cent (55%) of the available capacity on Multiplex 3 shall be assigned to one or more commercial free-to-air television broadcasting service licensees pursuant to one or more invitations to apply for a radio frequency spectrum licence issued in terms of regulation 7 of the Radio Frequency Spectrum Regulations.
- (2) A television broadcasting service licensee that is assigned capacity on Multiplex 3 in terms of sub-regulation (1) may use its capacity on Multiplex 3 for the digital broadcasting of-

- (a) any digital channels, which the television broadcasting service licensee is authorised to provide, in accordance with the procedures set out in these Regulations; and
 - (b) subject to regulation 7(2), radio channels and data services.
- (3) Any person, other than a television broadcasting service licensee or terrestrial television broadcasting service licensee, may apply to the Authority in accordance with the Processes and Procedures Regulations [and regulation 35(4) of the Radio Frequency Spectrum Regulations] for a special temporary authorisation to conduct services on a test or trial basis using up to ten per cent (10%) of the available capacity on Multiplex 3, provided that no test or trial services shall be conducted after 31 December 2014, or such later date as may be set by the Authority by notice in the *Gazette*.

6. DIGITAL TELEVISION CHANNEL AUTHORISATION PROCEDURE

- (1) A television broadcasting service licensee which has been assigned capacity on Multiplex 1 or Multiplex 3 shall make application, in writing, to the Authority for authorisation to broadcast a specific digital television channel on those multiplexes.
- (2) The Authority may invite public comments and conduct a public hearing in relation to an application to authorise a digital television channel in terms of sub-regulation (1) where it considers it necessary in the interests of procedural fairness to do so.
- (3) Subject to sub-regulation (5), a television broadcasting service licensee may not commence broadcasting a digital television channel except where the Authority has given its prior written authorisation for the channel.
- (4) Within sixty (60) days of receipt of an application made in terms of sub-regulation (1), 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 (60) 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 to the applicant in respect of its decision within thirty (30) days of the refusal to issue a certificate.
- (7) An application in terms of sub-regulation (1) by a television broadcasting service licensee which provides a free-to-air broadcasting service for authorisation to broadcast a 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, where applicable;
 - (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.
- (8) An application in terms of sub-regulation (1) by a television broadcasting service licensee which provides a subscription broadcasting service must include the information stipulated in the Subscription Broadcasting Regulations for channel approval applications.
- (9) 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 may not be considered.

7. GENERAL OBLIGATIONS AND PROVISIONS

- (1) A television broadcasting service licensee which is assigned capacity on Multiplex 1 or Multiplex 3 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) For the purpose of these Regulations it is deemed that an electronic communications network service licensee which is appointed by a television broadcasting service licensee to provide signal distribution services provides those services as an agent of the television broadcasting service licensee and therefore will be deemed to be in compliance with section 31 of the Act.
- (3) Until such time as they are repealed or amended, each of the 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 television broadcasting service licensee.
- (4) Two (2) representatives from each television broadcasting service licensee which is assigned capacity on Multiplex 1 or Multiplex 3, as the case may be, and each electronic communications network service licensee which is appointed by a television and broadcasting service to provide signal distribution services, may participate in the activities of the Joint Spectrum Advisory Group (JSAG), established in terms of the Digital Migration Regulations.
- (5) One (1) representative from each television broadcasting service licensee which is assigned capacity on Multiplex 1 or Multiplex 3, as the case may be, may participate in the activities of the Digital Television Content Advisory Group (DTCAG), established in terms of the Digital Migration Regulations.

8. PENALTIES

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

- (a) 3(1);
- (b) 5(2); or
- (c) 6(3).

the Authority may impose a fine not exceeding five hundred thousand rands (R500 000) for each day that the 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 television broadcasting service licensee is found to be in contravention of any regulation other than the regulations specified in sub-regulation (1).

9. AMENDMENT OF REGULATIONS

These regulations amend the Mobile Television Regulations, published under Government Notice R318 in *Government Gazette* 33125 of 16 April 2010, as follows:

- (a) by the deletion of the definition of "mobile TV2 multiplex" as set out in regulation 1(e);
- (b) by the substitution of regulation 3(b) with the following:

"(b) Licensees which 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"; and
- (c) by the substitution of regulation 5(a) with the following:

"(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".

10. SHORT TITLE AND COMMENCEMENT

These Regulations shall be called the Promotion of Diversity and Competition on Digital Terrestrial Television Regulations, 2014, and come into effect upon publication in the *Gazette*.

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