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SABC submission on the Draft Digital Terrestrial Television Regulations

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The SABC Panel

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1. Background

- The first Digital Migration Regulations were published in February 2010 following the development and publication of a Digital Migration Policy in 2008
- On 28 September 2011 published new draft regulations intended to repeal the existing regulations i.e. *Explanatory Memorandum on the repeal of the Digital Migration Regulations and the Draft Digital Migration Terrestrial Television Regulations*
- The proposed regulations were premature as there was a process underway to amend the Broadcasting Digital Migration policy
- The policy was finally amended on 17 February 2012 by the Minister of Communications.

1. Background.....

- ICASA reissued another set of draft DTT regulations on 10 July 2012 for comment
- We raised various concerns regarding the procedure and merit of some of the proposed regulations which are still relevant such as the following:
 - New competition
 - Market research
 - Need to incentivise existing broadcasters
 - Costs for DTT and impact on existing business
 - Need for policy clarification e.g. Regional Television, performance period
 - Channel authorisation

1. Background.....

- The Promotion of Administrative Justice Act , 2000 enjoins Administrators to promote procedurally fair administrative actions by advancing reasons for all decisions taken; specifically in the interest of parties affected by such decisions
- The Authority should consistently provide reasons and clear rationale in instances where it differs with the industry players on critical matters affecting their interests

2. Introduction of new players during dual illumination period

- The policy is published as the *Broadcasting Digital Migration Policy for South Africa* and is aimed at addressing migration of existing broadcasters from analogue to digital terrestrial television
- However, the draft regulations intends to introduce new players , i.e. FTA commercial television, subscription television and commercial sound broadcasting services
- The regulations also make reference to new players such as Regional Public Television and Regional Commercial Television
- While there is no objection to new players, however the timing is critical for viability of existing broadcasters
- By introducing new channels, the existing broadcasters are themselves introducing new competition

2. Introduction of new players ...

- The migration of incumbent broadcasters will be very costly, hence the call for incentivisation of existing broadcasters worldwide. The existing players will incur major capital outlays, with no guarantee of a return in order to successfully migrate.
- Further, it cannot be easily determined from the outset the revenue and audience potential that new channels will have within the networks of the broadcasters. Instead it might have a negative impact, where there could be implosion or migration of audiences within the network causing audience fragmentation.
- New players will not incur migration costs nor experience fragmentation of audiences, instead their novelty can attract more audiences shared from incumbent broadcasters including the public broadcaster whose viability and integrity must be protected by the Authority given its role and mandate in society.
- The existing players will have to seek alternative revenue sources as the advertising pie will not increase but shrink.

2. Introduction of new players ...

- Given that existing broadcasters will be migrating into digital for the national good, it is recommended that the Authority should protect viability of the public broadcaster during the accelerated dual illumination period and beyond
- In terms of COMESA and the SADC Digital Migration Roadmaps, member states (of which South Africa is a signatory) agreed that there should be a limit on competition (moratorium on new licenses) in the interest of protecting the existing broadcasters from new competition during the dual illumination period*
- Furthermore member states were advised to establish ex-ante competition regulatory frameworks in order to address competition matters, South Africa is yet to implement this provisions through the Chapter 10 Inquiry

*SADC Roadmap for Digital Broadcasting Migration, November 2010, pages 4 & 6

*COMESA Digital Migration Roadmap, 25 November 2011, page 10

2. Introduction of new players ...

- The SABC will still be required to fulfill its mandate obligations of which some of it does not generate revenue for the Corporation, the Authority needs to enable the Corporation to deliver with ease on its legislative mandate
- A regulatory impact assessment and market study by the Authority is required before introducing new players

COUNTRY	OFFICIAL LAUNCH	END SWITCH OFF OF	NEW PLAYERS DURING DUAL ILLUMINATION /SIMULCAST PERIOD
Australia	01 Jan 2001	2013	None
China	2006	2015	None
Finland	27 Aug 2001	2007 (completed)	None
Germany	March 2003	2008 (completed)	None
France	31 March 2005	November 2011	None
Netherlands	2003	2006 (completed)	None
United Kingdom	15 Nov 1998	2012	None
United States	29 Oct 1998	2015	None
Mauritius	2005	2007	None

Source:http://en.wikipedia.org/wiki/Digital_terrestrial_television



3. Multiplex Allocation

- ❑ Three multiplexes will be allocated, in the previous regulations only 2 multiplexes were allocated.
- ❑ Multiplex 1
 - 90% capacity allocated to SABC
 - 10% to community television
- ❑ Multiplex 2
 - 50% capacity allocated to e-tv
 - 40% to M-Net
 - 10% to tests licences
- ❑ Multiplex 3,
 - 50% to new FTA commercial tv
 - 40% capacity allocated to subscription tv
 - 10% to commercial sound broadcasting services

3.1 Implications of the Multiplex allocation

- Not all community television broadcasters allocated on the same mux as the SABC will be accommodated on the multiplex
- Most community television broadcasters including TBN are regionally based with limited coverage, therefore to have all of them on a national multiplex will require significant adjustments to the operations of multiplex .
- There will be increased costs as a full duplicate set of coding and multiplex architecture will be required to provide for them, unless the coverage of community television will be national
- Community television broadcasters will have to contribute to the costs of signal distribution
- There is need to review the regulatory framework for community tv, to deal with the scope of the service including coverage



4. Regional Television

- The regulations state that Regional Public Television and Regional Commercial Television (RTV) shall provide an open window to community television programme within the region concerned for a minimum period of 30 minutes during the hours of 6 -10 p.m
- There are no definitions of 'Regional Public Television Service' and 'Regional Commercial Television Service' in the regulations or legislation, except that section 22A of the Broadcasting Act as amended, enjoins the SABC to apply for two regional television licences, which were granted in principle by ICASA to the SABC
- However, the licences were never issued as the SABC was required to appropriate money from parliament

4.1 Implications regarding Regional Television

- There is no regulatory framework for regional television
- It is not clear from policy and regulations how many community or regional television services will be licensed
- The provision on open window may be onerous to RTV
- There maybe numerous community TV broadcasters in one region or province, meaning that more air-time will be reserved by RTV for those community broadcasters. This may not make business sense for the RTV licensee that is trying to generate revenue and grow audiences;
- The advent of open window means RTV will have to surrender its space, infrastructure, air-time and audience to community TV broadcasters;
- There will be cost for carriage of community TV onto RTV. Such costs will be onerous if transferred to the RTV licensee. The Policy and/or Regulations need to clarify who will bear the transmission costs;



4.1 Implications regarding Regional Television

- The regulations need to clarify whether the RTV channels retain editorial independence and further able to decide the nature or type of programming required for an open window. This is because there is a need for RTV to retain its audiences during open window slots with compelling programming /content.
- The Electronic Communications Amendment Bill published on 18 July 2012 introduces “provincial” public broadcasting service which contradicts the terms such as ‘regional public television services’ and ‘regional commercial television services’ in the draft regulations.
- The Bill also speaks of a community broadcasting services that serves a geographically defined community and yet the open window provision and Mux 1 allocation threatens the coverage parameters prescribed by legislation as community broadcasters stand to extend their coverage areas
- It is recommended that the draft regulations should be aligned to the legislation

5. Local Content for new DTT channels

- The regulations provides that a minimum of 50% original television content shall be broadcast on each new channel
- In case of public service channels, 55% of that local content shall be original South African Content
- In case of commercial incentive channels, 35% shall be original South African television content
- In case of subscription incentive channels 10% of that shall be original South African television content

5.1 Implications of local content quotas

- It is not clear the basis on which the Authority decided on the proposed quotas
- It is expected of the Authority to do a proper public review of the Local Content Regulations before imposing new quotas on the new DTT channels
- The Broadcasting Digital Migration policy recognises the need for greater flexibility in local content regulation. It states the following:

“The traditional model for South African content regulation is based in minimum percentages and took into account factors which applied in a single channel analogue environment. Given the new digital broadcasting era, these content quotas shall be reviewed to embrace the new digital regime.”
- The Authority has in the previous regulations and communiqué with the SABC committed to do a review of the local content regulation for a DTT environment
- Lack of such a review will deny the SABC an opportunity to have its licensing conditions reviewed for a multichannel DTT network

5.1 Implications of the local content regulation

- We submit that going into the dual illumination period, the status quo should remain for SABC 1, 2 and 3.
- However, the new incentive channels should be exempted from local content regulations compliance until such time that the Regulations are reviewed to apply to all digital channels.

6.Channel Authorisation

□ Criteria

- The regulations set conditions that the SABC has to meet before a digital incentive channel could be authorised such as having to conduct market impact analysis, languages of broadcast, programming, information on how the new channel will contribute to the achievement of the public service requirements to be met by the SABC in terms of the charter
- We submit that the public value test for authorising new channels should focus on the terms in the Broadcasting Act such as the following:
 - Quality language programming
 - News and Public Affairs programming
 - Traditional and contemporary artistic expression
 - National sports programming as well as developmental and minority sports

6. Channel Authorisation

❑ Less cumbersome process

- We submit that the channel authorisation process should not be onerous on both the broadcasters and the Authority.
- Similar process to that of pay television for channel authorisation should be followed
- We are of the view that the EC Act contemplates this to be a purely administrative process which does not require public consultation by the Authority as it does with all license applications.
- Public consultation would have been necessary if the public value test was not a prerequisite for channel authorization as proposed in the draft regulations.

6. Channel Authorisation

❑ Time frames

- Draft regulation 7(4) states that after channel authorisation, the licensee must commence broadcasting the channel within ninety (90) days of the date on which the authorisation was granted.
- The ninety (90) days provision is unrealistic in the public broadcasting domain.
- It is submitted that 18 months implementation period should be adopted

7. Definition of public service channel

- The regulation defines public service channel as “a channel broadcast by the SABC which is broadcast for the public benefit rather than for the maximization of revenue”
- The assumption that public service channel is not supposed to maximise on revenue is wrong and has no legal basis
- No where in the legislation is there a limitation on any channel of the SABC to maximise on revenue
- Therefore, public service channel should simply be defined as a channel broadcast by the SABC for the public benefit.

8. Conclusion

- We submit that the Authority should ensure that it protects the integrity and viability of the public broadcaster as required by legislation in the migration to DTT
- The Authority focuses on existing broadcasters to ensure successful migration
- That it considers new players after the migration is completed
- The Authority should conduct market and regulatory impact analysis before licensing new players
- That it conducts a full enquiry on the review of local content regulations before imposing quotas on new channels
- That it conducts an inquiry on Regional Television to develop a regulatory framework
- The Authority adopts a less onerous process to authorize channels



Thank You