



SENTECH
connecting You

Second Draft Signal Distribution Services Regulations, 2026



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1. Introduction

- 1.1. SENTECH thanks the Independent Communications Authority of South Africa (ICASA) (“Authority”) for the opportunity to submit on the *Second Draft Signal Distribution Services Regulations, 2026*, published in Government Gazette No.53966 on 16 January 2026 (“Second Draft SDS Regulations”).
- 1.2. SENTECH seeks the opportunity to make an oral presentation on the Second Draft SDS Regulations.

2. Principle: Structural change to agreements

- 2.1. SENTECH acknowledges that the Second Draft SDS Regulations propose a structural change to agreements between SENTECH and broadcasting licensees, effectively shifting arrangements from purely commercial contracts to a more regulated framework.
- 2.2. SENTECH notes that the Second Draft SDS Regulations not only define a Reference Offer (RO), but extend beyond a definitional framework through sub-regulations 8(b) and 8(c), thereby prescribing substantive regulatory consequences to the RO.
- 2.3. The Second Draft SDS Regulations require that the RO be submitted to and approved by ICASA, potentially published for public comment, formally published after approval, comply with the minimum requirements set out in Appendix A of the Regulations, and only become effective once ICASA approval has been obtained.
- 2.4. In this context, the RO is not negotiated per customer, is not purely contractual in nature, and is not privately amendable at the discretion of the parties. Instead, it operates as a regulatory instrument containing standardised terms that are subject to prior regulatory approval. Customers may appropriately comment on the principles underpinning the RO during the Authority’s public consultation processes, but not on the specific commercial terms and prices contained therein once approved.
- 2.5. Consequently, the RO functions as a regulated template that establishes baseline terms upon which SENTECH must offer services to broadcasters in a defined wholesale market. However, comparative regulatory practice, such as guidance issued by the UK regulator in relation to Arqiva, recognises that reference offers typically set out indicative prices and commercial terms against a notional specification.
- 2.6. In such frameworks, actual prices may justifiably vary depending on the specific services provided, and customers remain free to negotiate alternative technical and commercial arrangements. This underscores that while a reference offer may serve as a benchmark for transparency and non-discrimination, it does not necessarily eliminate commercial flexibility in individual agreements.

3. Digital Terrestrial Television Regulations

- 3.1. The Authority must be cognizant of the draft Digital Terrestrial Television (DTT) Regulations (“draft Regulations”) as published in Government Gazette No. 52946 on 4 July 2025. Clarity is required regarding the Authority’s intention as to how the Draft SDS Regulations will interact with the final DTT framework, especially if structural changes to the value chain are introduced.
- 3.2. The draft Regulations introduce a new link in the DTT value chain, namely a Multiplex Operator. This development raises important questions as to whether the SDS Regulations are intended to apply only to wholesale terrestrial signal distribution services provided by SENTECH to broadcasting service licensees, or whether they will also extend to services provided to Multiplex Operators (as defined in sub-regulation 7 of the draft DTT Regulations). If the latter, the Authority should clarify whether the nature of the service offered to Multiplex Operators would differ from that offered to broadcasters.
- 3.3. It is therefore crucial that the final DTT and SDS Regulations are published within aligned or similar timeframes to ensure regulatory coherence. A delay in finalising one set of regulations may result in misalignment, particularly where the Second Draft SDS Regulations anticipate a Reference Offer (RO) for terrestrial television services structured around a broadcaster-only model, while the final DTT Regulations may introduce a Multiplex Operator layer into the value chain.
- 3.4. The consequence of such a delay is that the RO for terrestrial television services, as anticipated by the Second Draft SDS Regulations, may not be applicable or appropriately structured if the final DTT Regulations are concluded later and include the requirement of a Multiplex Operator. This may necessitate a reconsideration of the scope and structure of the RO. For example, international practice demonstrates that different regulated services may apply within the broadcasting transmission value chain.
- 3.5. In the United Kingdom, the regulatory framework applicable to Arqiva distinguishes between Network Access (i.e., access to shared broadcast infrastructure such as masts and towers) and Managed Transmission Services (i.e., end-to-end signal transmission to licensed broadcast frequencies). Should the final DTT Regulations introduce Multiplex Operators, the Authority may need to consider whether a similar distinction between infrastructure access and managed transmission services is required in the South African context.
- 3.6. In addition, the Authority should clarify the intended status and function of the Reference Offer within this evolving value chain. Typically, a Reference Offer serves as a fallback option to commercially negotiated contracts: it must be offered to all qualifying customers on a non-discriminatory basis, but it need not be taken by all customers. Negotiated

contracts may continue to exist, provided that they comply with overarching principles such as cost-orientation under sub-regulation 8(a).

- 3.7. It would be beneficial for the Draft SDS Regulations to make explicit that the RO constitutes a baseline set of standardised terms and prices, rather than a mandatory, uniform contract applicable to all SENTECH customers.
- 3.8. Furthermore, the Authority should clarify how existing contracts will be treated once the SDS Regulations come into force. Specifically, it should address whether:
 - 3.8.1. the SDS Regulations apply only to new contracts;
 - 3.8.2. existing customers may elect to terminate or vary their current agreements in order to adopt the RO;
 - 3.8.3. customers may renegotiate existing agreements without formally adopting the RO; and
 - 3.8.4. a customer must demonstrate non-compliance with sub-regulation 8(a) (e.g., cost-orientation) before seeking a revision of existing terms.
- 3.9. Clear guidance on the treatment of existing contracts is essential to ensure legal certainty and avoid disputes. Absent such clarification, there is a risk of regulatory uncertainty and inconsistent application during the transition to the new framework.

4. Definitions

- 4.1. The definition of *Terrestrial signal distribution for television broadcasting services market* is not sufficiently clear to determine whether the Second Draft SDS Regulations apply to analogue, digital, or both terrestrial signal distribution services.
- 4.2. SENTECH is confident that the definitions of sound broadcasting services markets clearly refer to terrestrial analogue.
- 4.3. SENTECH suggests that when regulation imposes cost-based tariff obligations, Reference Offer requirements, and market power findings, there should be no ambiguity or any legal uncertainty because of the underlying technology.
- 4.4. SENTECH seeks clarity on what services to define at a detailed level in the cost model, taking into consideration that it would be unduly burdensome to define ROs for analogue services that are being phased out.

5. Commencement

- 5.1. SENTECH proposes that the implementation of the approved Reference Offers (ROs) be targeted for the 2027/28 financial year, taking into consideration that finalisation and publication of the SDS Regulations is likely steered for the end of the current financial year.
- 5.2. There is a need for the Authority to budget time for separate engagements with SENTECH on the principles that will underpin the RO pricing process.

- 5.3. It is important that SENTECH and ICASA are fully aligned on an approach before any analysis is undertaken or the ROs are published for public consultation, as this will save time, money and effort, and it will demonstrate to the market that there is a robust, transparent process being followed.
- 5.4. In Phase 1, SENTECH will define the approach the company will adopt with respect to the different conceptual options for the building blocks of the RO pricing (i.e. implications linked to the asset valuation approach and weighted average cost of capital (WACC)) when constructing ROs and then discuss and agree on the methodological principles with the Authority.
- 5.5. Phase 1 is in line with the comments from the Authority, 1.10.1, on cost modelling.
- 5.6. Phase 2, once there is an agreement between SENTECH and ICASA on the methodological principles, the former will complete the analysis and modelling needed to help finalise its formal ROs (including price, terms and conditions) for each of the designated services (TV, FM, AM).
- 5.7. The outcome of Phase 2 will be ROs submitted for approval with the Authority.

6. Sub-Regulation 8(b)

- 6.1. SENTECH advances that it will be challenging for the company to comply with the proposal of 45 (days) as proposed in sub-regulation 8(b)(i) when taking into consideration discussions that will take place after the publication of the final regulations, namely, the “cost modelling phase”.
- 6.2. SENTECH’s readiness for the commercial implementation of the ROs is premised on the following proposed schedule:

Task No.	Task Description	Phase	Start Month	End Month
1	Publication of the final regulations (ICASA)	Phase 1		31 March 2026
2	Workshop and Principles report	Phase 1	02 March 2026	24 April 2026
3	Consultation & ICASA engagement	Phase 1	07 April 2026	15 May 2026
4	Execution planning	Phase 1	18 May 2026	29 May 2026
5	Asset revaluation	Phase 2	01 June 2026	24 July 2026
6	WACC study	Phase 2	01 June 2026	10 July 2026
7	Pricing model development	Phase 2	01 June 2026	21 August 2026
8	Consultation & ICASA engagement	Phase 2	27 July 2026	21 August 2026
9	Draft technical specifications and performance levels	Reference Offer	23 March 2026	15 May 2026
10	Draft contractual terms and conditions	Reference Offer	15 June 2026	14 August 2026
11	Prepare pricing schedules	Reference Offer	24 August 2026	18 September 2026
12	Draft final Reference Offer and supporting annexes	Reference Offer	15 June 2026	02 October 2026
13	SENTECH Board Consultation	Reference Offer	12 October 2026	16 October 2026
14	Consultation & ICASA engagement	Reference Offer	19 October 2026	30 October 2026

15	Final SENTECH Board Approval	Reference Offer	09 November 2026	13 November 2026
16	Finalise Reference Offer	Reference Offer	16 November 2026	04 December 2026
17	Submit ROs to ICASA	Reference Offer	07 December 2026	07 December 2026
18	Publication of ROs for public comment	Reference Offer	18 December 2026	29 January 2027
19	Approval of ROs	Reference Offer		26 February 2027
20	Publication of ROs on SENTECH's website	Reference Offer		05 March 2027

7. Sub-Regulation 8(d)

- 7.1. SENTECH is resolute that dispute resolution, as anticipated in the proposed Regulations, cannot relate to the conclusion, form, or content of a Reference Offer (RO).
- 7.2. SENTECH's understanding is that once proposed sub-regulation 8(c) is applied, ROs are no longer negotiable instruments. Rather, they are standardised offers submitted to the Authority for approval.
- 7.3. The effect of applying proposed sub-regulation 8(c) is that ROs are submitted by SENTECH, assessed for compliance, approved by the Authority, potentially subjected to public consultation, and published only after such approval.
- 7.4. Legally, once approved, the ROs transform into regulatory instruments with binding force, rather than mere commercial templates.
- 7.5. In this form, ROs reflect the Authority's regulatory judgment, signifying that they have passed competition assessment, public participation processes, and administrative approval.
- 7.6. In light of this, and in terms of the currently proposed sub-regulation 8(d)(i), it is unclear what would properly constitute a dispute if the Authority has already approved the RO. There should not be disputes about the form and content of the RO once ICASA has approved it.
- 7.7. The current wording creates a scenario in which ICASA may effectively be required to re-adjudicate its own prior approval decision in the absence of a formal amendment process or review mechanism, thereby undermining legal certainty and administrative finality.
- 7.8. Proposed sub-regulation 8(b)(iii) already contemplates the Authority's role in determining compliance with the Regulations prior to approval of the RO. Once that compliance assessment has been completed and approval granted, the regulatory process relating to the content of the RO should be regarded as final.
- 7.9. SENTECH posits that disputes concerning the implementation, interpretation, or application of an approved RO constitute the only coherent and legally sustainable basis for dispute resolution.
- 7.10. Such disputes may include, for example: whether SENTECH has correctly applied an approved tariff; whether quality of service (QoS) metrics in the ROs are being met; whether

a broadcaster qualifies for a specific service under the terms of the RO; or whether the RO's terms have otherwise not been adhered to.

- 7.11. Accordingly, dispute resolution should be limited to compliance with, or interpretation of, an approved regulatory instrument, and not extend to challenges to its substantive content.
- 7.12. Furthermore, the Authority has indicated that “where a broadcaster and SENTECH have been unable to conclude a RO, either party may refer the dispute to the Authority for resolution.” This formulation requires clarification. If this is intended to mean that parties have been unable to negotiate alternative commercial terms, such an approach would be inconsistent with the nature of a Reference Offer as a pre-defined, regulated backstop. A Reference Offer represents benchmark pricing and standard terms that customers have the option of taking if they are unable to negotiate more favourable arrangements. Customers should not be entitled to raise a dispute simply because they choose not to accept the published Reference Offer.
- 7.13. The RO should therefore be expressly recognised as a baseline offer that must be made available to all qualifying customers on a non-discriminatory basis, but which need not be taken where parties successfully negotiate alternative arrangements—provided that such negotiated contracts comply with sub-regulation 8(a), which requires that tariffs be reasonably derived from the cost of provision, allow recovery of efficiently incurred costs, and provide a return commensurate with risk.
- 7.14. In this context, ICASA's dispute resolution role may more appropriately extend to advising or determining whether negotiated tariffs comply with the cost-orientation principles in sub-regulation 8(a), including whether costs are efficiently incurred and whether returns are commensurate with risk. This would mirror comparative practice, such as in the United Kingdom where the adjudicative framework applicable to Arqiva allows disputes concerning the interpretation and application of pro-competitive obligations, rather than reopening the substance of an approved reference offer.
- 7.15. SENTECH accordingly proposes a restructuring of Regulation 8:
 - 7.15.1. Sub-regulations 8(b) and 8(c) should clearly establish that approved ROs are binding regulatory instruments.
 - 7.15.2. A new sub-regulation 8(d) should address compliance monitoring and enforcement by the Authority.
- 7.16. A renumbered sub-regulation 8(e) (previously 8(d)) should confine dispute resolution strictly to matters of interpretation, implementation, or compliance with approved ROs and cost-orientation obligations under 8(a), and not to challenges to the substantive content of the RO itself.

8. Conclusion

- 8.1. SENTECH appreciates the Authority's commitment to developing a coherent regulatory framework for signal distribution services and welcomes the opportunity to engage constructively on the Second Draft Signal Distribution Services Regulations, 2026 ("Second Draft SDS Regulations").
- 8.2. The Second Draft SDS Regulations represent a meaningful shift from purely commercial arrangements to a regulated framework. SENTECH supports this transition in principle but emphasises that the regulatory framework must be clearly defined, legally certain, and practically implementable.
- 8.3. Central to this is the need for the Authority to articulate the precise role and status of the Reference Offer ("RO"). The RO should be understood as a regulator-approved baseline, a backstop available to all qualifying customers on a non-discriminatory basis, rather than a mandatory, uniform contract binding on all parties. Where customers and SENTECH successfully negotiate alternative commercial arrangements that comply with the cost-orientation requirements of sub-regulation 8(a), such agreements should remain permissible.
- 8.4. SENTECH urges the Authority to ensure definitional clarity, particularly with respect to whether the Second Draft SDS Regulations apply to digital terrestrial television services only, and to align the finalisation of the SDS Regulations with the forthcoming DTT Regulations to avoid regulatory incoherence.
- 8.5. On implementation, SENTECH proposes that approved Reference Offers be targeted for the 2027/28 financial year, reflecting the substantial preparatory work required across both Phase 1 and Phase 2 of the RO development process. A phased, collaborative approach between SENTECH and ICASA will ensure that the ROs are methodologically sound, transparently developed, and practically workable.
- 8.6. Finally, SENTECH maintains that the Authority's dispute resolution function should be confined to matters of interpretation, implementation, and compliance with approved ROs and cost-orientation obligations. Disputes regarding the substantive content of an approved RO are legally and administratively untenable once ICASA has completed its compliance assessment and granted approval.
- 8.7. SENTECH remains committed to engaging openly and constructively with the Authority and looks forward to continued collaboration in building a regulatory framework that serves the interests of the broadcasting sector and the South African public.