



# **Draft Digital Terrestrial Television Regulations, 2025: Supplementary Submission**

**12 September 2025**

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## **1. Introduction**

- 1.1. SENTECH thanks the Independent Communications Authority of South Africa (ICASA) (“Authority”) for the opportunity to make further submissions on the *Draft Signal Distribution Services Regulations 2025*, published in Government Gazette No.52622 on 08 May 2025 (“Draft SDSR”).

## **2. Signal Distribution Services Regulations 2025**

- 2.1. Based on South Africa’s rule of law, SENTECH interprets the proposed regulations as ex-post designed and focusing on influencing future behaviour and contracts rather than retroactively altering existing contractual obligations.
- 2.2. Chapter 10 of the Electronic Communications Act (ECA) does not speak to the Authority issuing retrospective regulations, as the Act does not expressly provide for backwards-looking application of its provisions.
- 2.3. It is also important to note that Courts in South Africa apply a presumption against retrospectivity, meaning that unless the law clearly states otherwise, it is interpreted to apply only prospectively.
- 2.4. Therefore, the proposed provisions in Regulations 8 and 9 of the Draft SDSR apply to future SENTECH contracts.

## **3. Question 1**

Sentech to confirm the cost of compliance with the draft Regulations, assuming that these are published as final Regulations.

- 3.1. SENTECH has systems in place to ensure compliance with the draft Regulations requirements.
- 3.2. SENTECH will be in a better position to determine the actual cost of compliance once the regulations are finalised and once the Authority has issued a compliance template.

## **4. Question 2**

Whether Sentech would experience any challenges in splitting satellite costs between DTT and DTH. Put differently, does Sentech have an accounting mechanism in place to allocate the shared cost of satellite between DTT and DTH?

- 4.1. The context is that, as part of its Terrestrial services, SENTECH is required to provide uplink services through C-band as primary feed and Ku-Band as secondary feed, and DTH services for gap-filler purposes.
- 4.2. Satellite costs are an inherit and integrated as part of the overall distribution DTT platform.
- 4.3. SENTECH has a methodology in place to allocate shared satellite costs between DTT and DTH offered within the company's Media Business portfolio.
- 4.4. The context is that, as part of its services, SENTECH is required to provide uplink services through C-band as primary feed and Ku-Band as secondary feed, and DTH services for gap-filler purposes.
- 4.5. The uplink services referred to in 4.1 are offered under the company's Media Business portfolio.
- 4.6. SENTECH additionally has a different DTH platform for services not linked to the analogue-to-digital migration scope, offered under the company's Satellite Business portfolio.

## 5. Question 3

Key elements that should be included in the proposed dispute resolution relating to Reference Offers (ROs).

- 5.1. SENTECH still argues that the dispute resolution should not be part of the RO.
- 5.2. The constitution of the Complaints and Compliance Committee (CCC) complies with the ICASA Act and is sufficient, including providing the independence in thought required to address any dispute likely to arise between licensees.
- 5.3. It is also important to note that the Authority is part of the CCC.
- 5.4. The other challenge is that any dispute resolution cannot include text that discourages any licensee from approaching the CCC when seeking redress, thereby making the dispute resolution ineffective.

## 6. Question 4

Sentech to provide its view on eMedia's proposal regarding the involvement of broadcasters in the assessment of ROs.

- 6.1. The Authority's independence and objectivity must be maintained throughout the process. Therefore, ICASA must assess the ROs independently without undue interference.
- 6.2. SENTECH is of the view that broadcasting ROs are more commercial contracts, and licensees participate mainly through commercial negotiations rather than the Authority's regulatory review.

- 6.3. It is on this basis that SENTECH raised the concern of overreach with respect to contract negotiation.
- 6.4. Broadcasters' involvement in reviewing ROs could:
  - 6.4.1. Undermine commercial freedom by pushing the Authority to interfere in pricing or technical arrangements that should be negotiated commercially.
  - 6.4.2. Delay implementation of offers and infrastructure upgrades if every revision needs stakeholder consultation.
- 6.5. Blur roles: Licensees are customers, not regulators; letting them shape the RO might feel like "regulation by the regulated."

## **7. Question 5**

Sentech to provide its view on eMedia's proposal that the information to be submitted by Sentech under regulation 9 (monitoring and investigation) should also be shared with broadcasters for transparency purposes.

- 7.1. Answers to Question 4 apply.
- 7.2. SENTECH is concerned that when broadcasters are heavily involved in reviewing or influencing ROs, the signal distributor might face challenges, namely:
  - 7.2.1. Revenue Pressure, as it has been seen that broadcasters are pushing for lower access fees, which may not fully reflect the SENTECH's infrastructure investment costs.
  - 7.2.2. Undermining of the financial sustainability of SENTECH, especially if the company operates under a cost-recovery model.
  - 7.2.3. SENTECH may be faced with reduced investment incentives when ROs are continually challenged, leading to hesitation to invest in new transmitters, upgrades, or coverage expansion, fearing it cannot recover costs.
  - 7.2.4. Increase in operational complexity due to constant renegotiations, consultations, and potential disputes, adding administrative burden and slowing down service rollout.
- 7.3. Risk of Regulatory Capture as a result of stronger broadcasters dominating the consultation process, SENTECH may be pushed into favouring powerful licensees at the expense of smaller ones.

## **8. Question 6**

Sentech to provide its view on the proposal by Primedia and Radio Pulpit that regulation 8(b) should be amended to require Sentech to submit three separate ROs for approval in respect of each of the defined wholesale markets.

- 8.1. SENTECH agrees that the RO's be replicated to include specific items relevant to that product, subject to the company commercially providing the services in line with the PFMA requirements as a schedule 3B entity.
- 8.2. It should be noted that AM services' sustainability is currently challenged

## **9. Question 7**

Sentech's comment on the proposals by Primedia, Radio Pulpit and eMedia that Sentech should be declared a common carrier and be required to provide services to all broadcasters (including AM/MW broadcasters).

- 9.1. SENTECH acknowledges that, through the SENTECH Act and the Electronic Communications Act (ECA), the company has been declared a common carrier.
- 9.2. The Public Finance Management Act (PFMA) requires SENTECH, "as its principal business, [to provide] goods or services in accordance with ordinary business principles; and is financed fully or substantially from sources other than: (i) the National Revenue Fund; or (ii) by way of a tax, levy or other statutory money".

## **10. Question 8**

Sentech to provide its view on eMedia's proposal that the Authority should define common costs, direct costs, etc., under the definitions section of the final Regulations.

- 10.1. SENTECH advocates for consultations and an agreement with the Authority on the principles that will underpin the Reference Offer pricing process.
- 10.2. SENTECH accepts that in accounting and cost management, there are universally accepted terms for different cost categories, though the exact wording can vary slightly between financial accounting, management accounting, and economics.
- 10.3. Section 9.1 speaks to a conceptual definition.
- 10.4. Is the question relating to a conceptual or operational definition?
- 10.4.1. That is, a definition that specifies exactly what items should be included (or excluded) under that definition (laundry list/scope of inclusion).

## **11. Conclusion**

- 11.1. SENTECH thanks the Authority for the opportunity to make additional submissions on the Draft Signal Distribution Services Regulations 2025, published in Government Gazette No.52622 on 08 May 2025.

- 11.2. SENTECH interprets these regulations as applying prospectively rather than retroactively, meaning they will govern future contracts and behaviour rather than altering existing contractual obligations.
- 11.3. The company has accounting methodologies to allocate shared satellite costs between DTT (Digital Terrestrial Television) and DTH (Direct-to-Home) services within its Media Business portfolio.
- 11.4. SENTECH opposes several proposals from broadcasters, particularly regarding their involvement in assessing Reference Offers (ROs) and accessing regulatory information.
- 11.5. The company argues that broadcaster involvement could undermine ICASA's independence, create commercial pressure for lower access fees, reduce investment incentives, and lead to regulatory capture where stronger broadcasters dominate the process.
- 11.6. SENTECH maintains that ROs are primarily commercial contracts that should be negotiated commercially rather than through extensive regulatory review. That dispute resolution should remain with the existing Complaints and Compliance Committee rather than being embedded in the ROs themselves.
- 11.7. Regarding its common carrier status, SENTECH acknowledges its designation under both the SENTECH Act and the Electronic Communications Act but emphasises that this status doesn't require operating at a loss.
- 11.8. The company notes that the Public Finance Management Act requires it to provide services according to ordinary business principles and be substantially financed from sources other than government funds.
- 11.9. SENTECH agrees to provide separate ROs for different wholesale markets, subject to commercial viability and sustainability requirements, particularly noting that AM broadcasting is currently subject to commercial viability constraints.