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ICASA Digital Dividend and Digital Migration Committee

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**SIYAYA FREE TO AIR (PTY) LTD WRITTEN RESPONSE TO ICASA'S
REVISED DRAFT REGULATIONS PUBLISHED ON 10 JULY IN
GOVERNMENT GAZETTE 35508 IN RESPECT OF DIGITAL
TERRESTRIAL TELEVISION (DTT).**

Siyaya Free To Air (PTY) LTD, hereafter welcomes the Authority's revised DTT regulations and notes the urgency with which the Authority seeks to finalize this set of regulations. Siyaya TV is further encouraged to see that in response to the Minister's call to explore how best to introduce new services and licensees' (while ensuring that the digital migration process gives priority to incumbent broadcasters), the Authority is proposing to use a second Mobile Digital Terrestrial Television multiplex as a third DTT multiplex during the dual illumination period to accommodate new entrants. It is noted that for MDTT2, the Authority proposes the licensing of new entrants following an ITA (invitation to apply) process, it is recommended that such ITA will follow a robust economic viability study prior to any licensing to ensure healthy and sustainable competition in the future. The Authority is reminded that its mandate is to promote competition within the ICT sector (*ECA, S2f*) and to promote an environment of open, fair and non-discriminatory access to broadcasting services, electronic communications networks and electronic communications services (*ECA, S2g*).



17 February 2012, the Minister of Communications gazetted the Ministerial Policy on DTT (No 35051 Government Notice 124 Electronic Communications Act (36/2005): Amendment Broadcasting Digital Migration Policy, substitution of paragraphs 1 to 18 of Government Notice 97, Broadcasting Digital Migration Policy) in terms of section 3 of the Electronic Communications Act, 2005 Section of the ECA states that:-‘The Minister may make policies in matters of national policy applicable to the ICT sector, consistent with the objects of this Act and other related legislation in relation to.....’

Amongst others, the DTT policy takes the following decisions:

- Introduction of competition in the Subscription DTT and Free to Air;
- No conditional access in the STB and
- No interoperability

Section 3 (4) of the Electronic Communications Act, 2005, state that:

‘The Authority, in exercising its powers and performing its duties in terms of this Act and the related legislation must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2)’

- This means that it is a must that the Authority takes into consideration the policies issued by the Minister.

General approach to DTT regulations: technology neutral

Siyaya TV supports the introduction of a third DTT multiplex to meet the stated objectives of stimulating the uptake of DTT services, foster content and enhance consumer choice. As a current holder of an ICASA DTT test license, Siyaya TV believes that the Authority has provided a legitimate expectation for aspirant players (such as itself) to provide new technology solutions to foster consumer choice and strengthen competition.

Therefore the regulations can’t enforce the interoperability in the DTT set-top-box. This will allow aspirant players (such as Siyaya) to provide its owned STB with their own new technology solutions to foster consumer choice and strengthen competition.

The Authority has a responsibility to promote consumer interest and as such as they can’t enforce STB interoperability. The decision of the interoperability must be left to the industry service providers to decide as they will be providing different services supported by their own technology solutions. The regulator can’t be seen involving themselves in any disputes related to the discussions of the commercial agreements and taking into account the security of the systems.



Who owns the STB is the company which own its IP, have design the set-top-box, providing its technology solution, subsidized and marketed the set-top-box.

If a company decide to enter the subscription space they need to invest in the industry as it is their own choice to enter the space. Authority cannot play any role in enforcing the interoperability.

Regulations and Licensing

Siyaya has observed the need for the alignment between various processes being undertaken by the Authority; In particular, there should be a clear link between this process and the licensing of the new subscription TV services and free to air.

(7) Digital Incentive Channel: Public Value Criteria

The public purposes spelt out in this section includes, supporting citizenship, consumer protection and civil society; providing fair and impartial news and current affairs; promoting education and learning, stimulating creativity and cultural excellence; and representing South Africa in all its diversity. The latter criteria (representing SA in all its diversity), does not capture fully the challenge of representing South African languages in all its diversity. It is therefore recommended that an additional criterion be considered i.e. representation of South African languages, in particular marginalized African languages.

(8) Local Content: Digital Incentive Channels and New Digital Channels

The Authority's proposed minimum requirements for local television content on digital TV channels during the dual illumination period is a positive step toward maintaining the ever popular local programming fare and investment in South African production. The screening of original content during prime time on new digital TV channels is to be commended as this will provide the necessary injection into local production and further the national objective of growing local talent and building a uniquely South African broadcasting industry. Siyaya TV agrees that this is essential to providing the stimulus for viewers to acquire set-top boxes and migrate to the DTT platform. The proposed local content percentages during prime time (6pm to 10pm) of 50% for public services, 35% for commercial services and 10% for subscription services is aligned with the existing local content regulations and is a good entry point for DTT.

(10) Regional Windows

The creation of open windows for community television on regional public and commercial services must be welcomed by the community sector. However it is suggested that the 30 minute slot during the total 4 hour performance period (6pm to 10pm) be regarded as the minimum time allocated for such an open window as this should be subject to negotiation between the parties.



15) ICASA Advisory Bodies

Siyaya TV notes that the Policy expressed by the Minister is for further competition in both the free to air and pay television markets once spectrum is increased through the DTT process. To that end, Siyaya TV fully supports the creation of a Joint Spectrum Advisory Group as the national spectrum plan will require revision. However, the composition of the Joint Spectrum Advisory Group has a potential of creating more anti-competitive behaviour on the part of the already protected terrestrial television broadcasting service licensees. It is therefore proposed that the composition of the JSAG must include independent persons who are not directly affected by the process or subject to these regulations.

Conclusion

Siyaya TV wishes to thank the Authority for this public consultation on its revised draft DTT regulations and looks forward to the final version of the regulations as South Africa readies itself for digital migration and new competition

Yours truly,

Abe Mogashoa