



Registration Number: 2006/017925/07  
Vat Registration Number: 4730241678

The Ambridge Office Park  
Cornastone Building  
Vrede Avenue  
Douglasdale Ext 5  
Bryanston, 2021  
**SOUTH AFRICA**

P.O. Box 2026  
Sunninghill  
2157  
Telephone: +2711 463 2636  
Facsimile: +2711 463 8456  
www.wowtv.co.za

---

30 July 2012

Ms Refilwe Ramatlo  
Independent Communications Authority of South Africa  
BLOCK A, Pinmill Farm  
164 Katherine Street  
**SANDTON**  
2146

**RE: REPRESENTATIONS BY WALKING ON WATER TELEVISION ON THE DRAFT DIGITAL TERRESTRIAL TELEVISION REGULATIONS 2012**

Walking on Water Television (Pty) Ltd would like to take this opportunity and thank ICASA for the opportunity to make representations with regards to the Draft DTT Regulations.

Should hearings be held on these Draft Regulations, we wish to indicate our interest in being afforded the opportunity to make oral representations. Once again, we have structured our comments in the same sequence as that in the Draft Regulations.

As you shall see below, we have comments on Schedule 1; 2; 3, and 5 of the Draft DTT Regulations 2012.

Please register our absolute displeasure at the blatant disregard by the Authority of the fact that MNet is a connected person to Dstv/MultiChoice and that these Regulations cannot ignore such a fact without unfairly prejudicing other existing subscription television broadcasters such as WOWtv.

If you have any further queries, please do not hesitate to contact the undersigned on [nontokoza@wowtv.co.za](mailto:nontokoza@wowtv.co.za)

Regards,

**Nontokoza Mangguku**  
Chief Executive Officer  
Walking On Water Television (Pty) Ltd

---

**Directors:**

Hamilton Ratshefola\*; Nontokoza Mangguku; Xolisa Vitsha\*; Nokuthula Mzizi\*; Luyanda Mangguku

\*Non-executive directors

# **DIGITAL TERRESTRIAL TELEVISION REGULATIONS**

## **SCHEDULE**

### **1. DEFINITIONS**

Under 'DEFINITIONS', the definition of the phrase 'existing broadcasting licensee' is excluded.

It is disturbing to see yet again the exclusion of two existing broadcasters in the definitions, which brings about an untrue reflection of the broadcasting domain in South Africa. M-net (Multichoice) and e-tv are not the only licensed broadcasters in South Africa and Multichoice is certainly not the only licensed subscription broadcaster.

The 'DEFINITIONS' give an unsettling indication that the DTT Regulation have been drafted only for the benefit of two commercial broadcasters, namely M-net (Multichoice, Naspers group) and e-tv and for only one television subscription broadcaster, namely M-net (Multichoice, Naspers group)

It is our humble view that such a definition, or to be more exact, the definition 'existing subscription broadcasting licensee', should be included under 'Definitions' due to its significance in the context of these Regulations and Walking On Water Television (WOWtv) and On Digital Media - Top tv should be included in the 'DEFINITIONS, as they are also licensed broadcasters by the Authority.

As we have submitted before, in the current draft DTT Regulations, all existing South African television broadcasting licensees are accommodated to the glaring exclusion of only two existing subscription television broadcasters and it is for this reason that we propose that a definition termed 'existing subscription broadcasting licensee' be included under definitions.

The definition of 'existing subscription broadcasting licensee' should include all subscription television broadcasting licensees in existence at the commencement of these Regulations. Ignoring other existing subscription broadcasting licensee exposes the Authority and these Regulations to unintended consequences of being seen to be favouring certain existing subscription broadcasting licensees over other existing subscription broadcasting licensees and thus creating an unfair, unlevel and monopolistic playing field which goes directly against the spirit of Chapter 10 of the Electronic Communications Act, 2005.

The significance of including the definition 'existing subscription broadcasting licensee' in these Regulations as proposed above is based on the fact that one of the terrestrial broadcasters catered for in these Regulations is M-Net, an existing subscription broadcasting licensee which is a sister company and a connected/ related entity to Multi-Choice, another existing subscription broadcasting licensee with undeniable significant market power and dominance in the subscription television broadcast space in South Africa. In other words, these Regulations ought to be drafted in such a manner that an equitable landscape is created for all existing players in the industry, otherwise they open themselves to being challenged on grounds of failing a reasonable fairness test.

It is not inconceivable that the Authority will, at some stage, invite applications for new subscription broadcasting licensees and as WOWtv, we have always been very welcoming to new players in the market, however, at the moment, existing players should not be ignored and or disadvantaged by being grouped together with possible future players that may qualify for 'future use' of Multiplex capacity.

It is very clear that these draft Regulations afford only M-Net (in other words, Multi-Choice) capacity in Multiplex 2 whilst excluding Walking On Water Television (WOWtv) and On Digital Media (Top-tv) although these players are all existing subscription broadcasting licensees.

We submit that due to the fact that M-Net (in other words, Multi-Choice) is allocated capacity on Multiplex 2, there can be no valid, fair or equitable reason not to allocate capacity to WOWtv and Top-tv at the same time.

## 2. PURPOSE OF THE REGULATIONS

It is our well considered view that the Authority should always seek to include in the 'purpose' of its Regulations an unwavering and clear commitment to creating a fair and equitable landscape for ALL players in the industry. This is supported by the fact that the Authority is an 'Independent' body which should be and be seen in fact to be independent and objective in all its conduct, including the manner in which Regulations are drafted.

For this reason, we hereby propose the amendment and inclusion of the key wording under Section 2.

Sub-section 2(b) should be modified to include the words 'fair and equitable' and read as follows:

'prescribe **fair and equitable** conditions for the assignment of channel capacity in Multiplex 1 Multiplex 2 and Multiplex 3 for the purposes of digital migration and the creation of a platform for digital terrestrial television'

Sub-section 2(e) should be modified to include the words 'fair and equitable' and read as follows:

'Make provision for **fair and equitable** conditions on the assignment of capacity in any additional Multiplex (Multiplex 'n') for the purposes of providing Digital Terrestrial Television during and/ or after migration.

### **3. FRAMEWORK FOR DIGITAL MIGRATION**

An additional sub-section should be added under Section 3 to address digital migration framework in relation to 'existing subscription television broadcasters' that are not broadcasting an analogue signal. The sub-section should read as follows:

"Existing subscription television broadcasting licensees shall not be required to dual illuminate during the performance period but must ensure that they are able to launch their digital terrestrial television by the start of the performance period".

Section 3(7) should also be amended by including 'existing broadcast licensee(s)' (as proposed in our submission) in addition to the existing television channels and additional incentive channels.

In other words, Section 3(7) should be amended to read as follows:

"During the dual illumination period, only the existing broadcast licensees, existing television channels and any digital incentive channels shall broadcast in Multiplex 1 or Multiplex 2, as authorised."

#### **4. MULTIPLEX ALLOCATION – MULTIPLEX 1**

**No comment.**

## **5. MULTIPLEX ALLOCATION – MULTIPLEX 2**

In the current form, the allocation of Multiplex 2 capacity is prejudicial to other existing subscription broadcasting licensees due to the Regulations allocating capacity to only M-Net, a subscription broadcasting licensee to the exclusion of all other existing subscription broadcasting licensees.

Once again, we wish to bring to the attention of the Authority that M-Net is a sister company and a connected/related entity to Multi-Choice, an existing subscription broadcasting licensee. This fact is always conveniently forgotten when the issue of Digital Terrestrial Television capacity is in discussion. Allocating capacity to M-Net is indirectly allocating capacity to Multi-Choice and this is creating unfair and unlevel playing field in the subscription television broadcast industry if similar capacity is not allocated to Walking On Water Television and On Digital Media, at the same time.

At this very moment, it is public knowledge that Multi-Choice, which perfected its services and skills through M-net has market dominance in the commercial subscription television space in South Africa because it had all the time, no regulations and no competition to disadvantage them in any manner. The licensing of additional players in the space by the Authority was seen as an attempt to introduce competition in this space by allowing new players that are historically disadvantaged to have the opportunity to take part whilst creating massive benefits for the South African consumer in terms of subscription television choice and its pricing. The allocation of capacity to M-Net and indirectly Multi-Choice to the exclusion of all other existing commercial subscription television broadcasters would be undermining all the efforts which the Authority sought to re-dress by introducing competition in the subscription television space in South Africa.

Such a practice is not only unfair and inequitable to existing subscription broadcasters but it also is creating and or entrenching an uncompetitive landscape in the subscription broadcasting space.

We would like to remind the Authority that M-net is a commercial subscription television broadcaster, just as WOWtv and Top tv are commercial subscription television broadcasters. Though M-net is a terrestrial broadcaster, which must not be the cause of prejudicial and preferential practices, M-net still offers its services in exchange for subscription fees. Therefore the same conditions must apply and equal allocation of capacity must be made to all licensed commercial subscription television broadcasters in South Africa, regardless of their medium of broadcasting. M-net (Multichoice) should not be further advantaged because it launched before the Authority existed, instead the Authority should create a leveled field in this industry by giving the new licensed commercial subscription television broadcasters (WOWtv and Top tv) an opportunity to compete in a fair, equitable and just environment.

Under Chapter 10 of the Electronic Communications Act, 2005, the Authority is positioned as an independent, neutral body to arbitrate and regulate on any uncompetitive conduct amongst the licensees but for the Authority to actually create a situation where there is a possibility that the Authority itself might stand accused of breaching the very legislation it is meant to protect and enforce would be catastrophic to the integrity of the Authority. It is for this reason that we request the Authority to accept that M-Net and Multi-Choice are connected/ related parties and that allocating capacity to one should not negate the consideration of consequences of such an act on existing players.

One begins to wonder what the purpose of regulating the communications industry is if the previously advantaged, will continue to be given an advantage, through regulations that highly favour them and the previously disadvantaged will continue to be unfairly disadvantaged, also through regulations by the very body and regulations formed to supposedly correct and redress the evils of the pre-democracy regime. Who must then benefit from these DTT Regulations 2012, the broadcasters who monopolized the commercial subscription television space through an unjust apartheid regime or all licensed commercial subscription television broadcasters must benefit?

We therefore submit that the Authority allocates Multiplex 2 capacity as follows:

- 40% to e-tv;
- 10% to M-Net (Multi-Choice);
- 10% to Walking On Water Television;
- 10% to Top-tv; and
- 30% set aside for future use



**6. MULTIPLEX ALLOCATION – MULTIPLEX 3**

**No comment.**

## **7. DIGITAL INCENTIVE CHANNEL AUTHORISATION AND PROCEDURE**

**No comment.**

**8. LOCAL CONTENT FOR DIGITAL INCENTIVE CHANNELS AND NEW DIGITAL CHANNELS**

**No comment.**

**9. AUTHORISATION FOR THE SABC TO BROADCAST A DIGITAL INCENTIVE CHANNEL IN MULTIPLEX 1**

**No comment.**

## **10. REGIONAL OPEN WINDOWS**

**No comment.**

**11. AUTHORISATION TO BROADCAST A DIGITAL INCENTIVE CHANNEL  
MULTIPLEX 2**

**No comment.**

**12. AUTHORISATION TO BROADCAST A DIGITAL TELEVISION CHANNEL  
MULTIPLEX 3**

**No comment.**

**13. SIGNAL DISTRIBUTION OF THE DTT SERVICES BROADCAST IN MULTIPLEXES  
1, 2 AND 3**

**No comment.**



#### **14. ROLL-OUT TARGETS**

**No comment.**

**15. DIGITAL TELEVISION CONTENT ADVISORY GROUP**

**No comment.**

## **16. GENERAL OBLIGATIONS**

**No comment.**

## **17. TRANSITIONAL PROVISIONS**

**No comment.**

**18. JOINT SPECTRUM ADVISORY GROUP**

**No comment.**

## **19. PENALTIES**

**No comment.**

## **20. REPEAL OF REGULATIONS**

**No comment.**

## **21. SHORT TITLE AND COMMENCEMENT**

**No comment.**