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Independent Communications Authority of South Africa

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**EMEDIA (PTY) LTD SUBMISSION ON THE DRAFT DIGITAL TERRESTRIAL
TELEVISION REGULATIONS, 2025.**

1. eMedia Investments (Pty) Ltd (“**eMedia**”) hereby makes its submission to the Independent Communication Authority of South Africa (“**ICASA**” or “the **Authority**”) on the draft Digital Terrestrial Television Regulations, 2025 (“**the Draft Regulations**”) as published in Government Gazette No. 52946 dated 4 July 2025.
2. eMedia is the holding company for a wide range of broadcasting interests. These interests include:
 - 2.1. e.tv (Pty) Ltd – the first private free-to-air broadcaster in South Africa which operates in terms of an Individual Broadcasting Licence – which has been allocated 85% of Mux 2;
 - 2.2. e.sat (Pty) Ltd – which is the holder of a Subscription Broadcasting Licence and currently broadcasts to pay channels on the platform known as Openview;
 - 2.3. Platco Digital (Pty) Ltd – which broadcasts Openview as a free-to-air satellite service;
 - 2.4. YFM (Pty) Ltd – which has a Radio Broadcasting Licence and broadcasts on the FM frequency; and

- 2.5. eVOD, a video on demand service.
3. eMedia hereby requests an opportunity to make oral representations should the Authority decide to hold public hearings on the Draft Regulations. eMedia maintains that given the importance of these Draft Regulations - particularly in the context of the ongoing Analogue Switch Off ("**ASO**") issues - hearings are essential.

Executive Summary

4. eMedia's central submission is that the proposed regulations are premature in their current form. They assume a viable DTT platform despite ongoing barriers to ASO, low household uptake, and structural disadvantages compared to DTH.
5. eMedia believes that:
 - 5.1. DTT has not achieved meaningful traction in South Africa and faces declining relevance internationally.
 - 5.2. DTH offers a more practical, scalable and cost-effective route to universal access, with the potential to integrate emerging technologies such as 5G broadcasting.
 - 5.3. A transitional regulatory framework should be developed that supports co-existence and gradual migration to future-proof technologies rather than embedding a platform with limited viability.

Preliminary Remarks

6. eMedia has previously raised concerns about how a new multi-platform, multi-channel digital television environment will operate in the everchanging landscape of audio and audiovisual service provision. Additionally, eMedia remains concerned that any amendment to the existing Regulations which the Draft Regulations are intended to replace, before ASO has taken place, is premature.

7. In the context of the Draft Regulations and ASO, eMedia holds the view that the existing Regulations are obsolete. eMedia says this as it views DTT is a failed project. This ought to be recognised not only by the Authority, but by the Department of Communications and Digital Technologies (“**the Department**”). Recognising this, and that there is no need for ASO in the current and everchanging technological environment, will enable all parties to focus their attention and resources on new and developing technologies including DTH and 5G.
8. The Draft Regulations are entirely focused on DTT as a platform. In this way, the Draft Regulations seem to ignore the current reality of how digital television is viewed in South Africa. The DTT platform has, in practice, been unsuccessful: uptake has been low compared with DTH. Coupled with ongoing and numerous problems associated with ASO - and with low levels of government-subsidised set-top box (“**STB**”) registration and installation - the future of DTT remains uncertain and, in eMedia’s view, no longer viable.
9. The Broadcasting Digital Migration Policy of 8 September 2008 and its subsequent amendments (“**BDM Policy**”) made provision for DTT as well as DTH satellite. The BDM Policy recognised that a combination of these two means of signal distribution are complimentary, and that, from a technical point of view, DTT networks are fed by the same signal (data stream) carried on the DTH platform. For those areas in the country with low population density, that are either difficult to reach by terrestrial broadcasting or where constructing the necessary transmission infrastructure for terrestrial broadcasting to those areas is not economically viable, satellite DTH is the only means to achieve universal population coverage. Since the footprint of the DTH platform covers almost 100% of total South African population regardless of where they reside, DTH will reach even those areas which cannot receive terrestrial signals. Many viewers or potential viewers of television have also come to recognise that DTH offers more Free-to-Air (“**FTA**”) television channels when compared to DTT. Attention should therefore be focused on DTH and DTH platforms, rather than a technology which is clearly obsolete and has gained little traction.

10. The Draft Regulations appear to ignore the reality of how television in South Africa is currently being watched. The Draft Regulations lack any incentive for viewers to migrate to the DTT platform. eMedia's views regarding the future of broadcasting, and the fact that DTT has no future, is fortified by the current impossibility of ASO taking place. Over the last few years, litigation has ensued between, *inter alia*, eMedia / e.tv and the Minister of the Department. The Authority is well aware of these litigious matters, the content of the various affidavits filed in the matters as well as the judgments as it has been party to these proceedings. The outcome of the litigation and the stagnation of ASO speaks for itself.
11. However, even if, notwithstanding the aforesaid judgments, an attempt is made to revive ASO, it is clear that the various problems identified in the litigation, particularly the most recent, 2025 litigation, will remain. DTT STBs are no longer being manufactured. There are insufficient DTT STBs available to distribute and install at households entitled to receive subsidised STBs. Many of the STBs which remain available are old, obsolete and may not function. Rollout of these STBs has stagnated. The matter is made worse by the existence of what has been described as the missing millions - those who are above the subsidised threshold, but still cannot afford an STB, or those who can afford an STB, but cannot purchase one due to their unavailability in the retail market.
12. Until the necessary rollout ASO targets are reached to enable at least 95% of the population reliant on FTA television to continue watching such FTA television, there cannot be ASO or a full transition to DTT.
13. In these circumstances, eMedia reiterates that the Draft Regulations are not only premature, but unlikely to be viable. Without a full transition to DTT and ASO, no Regulations are needed. Further, even if there is a transition to DTT and ASO takes place at some unknown point in the future, by the time that ASO does occur, the Draft Regulations may need to be updated and amended or redrafted entirely. Clearly the current exercise is unnecessary and wasteful.

14. While the Authority may view eMedia's submission that DTT has no future with surprise (although it ought not to as eMedia has made similar submissions on various occasions in the past), it ought to consider that DTT has failed in in certain jurisdictions, while in others (such as Belgium and Switzerland) it is seen as having no future.
15. In the United Kingdom, the future of Freeview is being evaluated and the possibility that it will be phased out in due course is not out of the question. While internet access in South Africa differs to those in other jurisdictions where an IP switchover is resulting in many viewers only viewing television over the internet, this too may change in South Africa given the recognition by the Government and the Authority for the need to increase accessibility to the internet and decrease data prices. What is beyond doubt is that FTA television on the DTH platform is both a better and more viable solution. Unlike DTT, many more HD channels can be watched and DTH STBs are readily available while DTT STBs are not.
16. In 2024 , the Portuguese government recognised and admitted that DTT was “a costly failure” which needed to be re-evaluated. Much like South Africa, the uptake of DTT was minimal, thereby reaching a small percentage of the population. It is time for the Authority and the Department to recognise that the same situation applies in South Africa.
17. The following quote bears repeating in circumstances in which various countries are abandoning DTT platform:

“While some countries use many multiplexes of DTT to serve large amounts of channels, others have reduced this down to a single multiplex or even switched off DTT entirely. Further, the share of population reached by DTT varies hugely from over 50% down to low single-digit percentage figures, even in countries where substantial DTT offerings”.¹

18. The aforesaid quote is equally applicable to DTT as a platform in South Africa. The DTT platform is not viable for the following reasons:

¹ The future use of UHF spectrum in ITU Region 1© 2021 Plum Consulting.

- 18.1. High transmission costs.
 - 18.2. Low or lack of penetration.
 - 18.3. Lost access to FTA television to members of the public (the poor) solely reliant on FTA television in those provinces in which the SABC's analogue transmitters have been switched off – with the resultant negative cost impact on the SABC.
 - 18.4. The platform was designed for SD channels with limited HD capability in circumstances where HD channels are now the norm and essential to compete effectively.
 - 18.5. Limited HD capability means that fewer channels will be available to the public when compared to other technologies such as DTH or television over the internet. This means that DTT will provide inferior content compared to DTH offerings thereby discriminating against the poor.
 - 18.6. The infrastructure network will likely require significant re-investment for little return – the “costly failure” which occurred in Portugal.
 - 18.7. The Mux allocation and plan means that a Mux is limited to six HD channels bearing in mind that HD channels are now the norm.
 - 18.8. There will be a severe impact on free-to-air service providers as they will be unable to compete with other audio- visual service providers able to offer a substantially greater number of HD channels. This will make FTA in South Africa unsustainable.
 - 18.9. In order to compete effectively with an increased number of HD channels, there will need to be greater Mux allocation at a substantial and likely prohibitive cost to FTA broadcasters.
19. The delay in digital migration in South Africa has meant that the country is in a position in which it can re-think digital migration as well as the future of

broadcasting. It can skip DTT and engage in new technologies as is happening in many other jurisdictions. By means of example, rapid technological developments mean that by not transitioning to DTT, the country can leapfrog ahead, save costs and introduce the latest in technological development that would allow broadcasting and IMT services to co-exist. The question of 5G television looms large.

20. What follows are eMedia's responses to the specific sections in the Draft Regulations.

21. Regulation 2: Purpose of the Regulations

21.1. The purpose of the Regulation is to establish a regulatory framework for the future – a future which may never happen. The Draft Regulations are therefore premature for the reasons set out elsewhere in these submissions.

22. Regulation 3: Framework for DTT

22.1. eMedia is concerned with the suggestion that a licensee will forfeit any unutilised capacity assigned to it after 36 months. Given the various delays with ASO, there is still not clear end date for analogue transmission.

22.2. This Regulation therefore needs to be reconsidered in its entirety.

23. Regulation 4: Multiplex Allocation

23.1. eMedia does not understand how the Authority has determined the various Multiplex allocations. This is not dealt with in the explanatory memorandum accompanying the Draft Regulations. There is no logic to the allocations for the reasons outlined below.

23.2. eMedia is concerned about the percentage allocation of only 85% to it.

- 23.3. Previously, the SABC was allocated 85% of Mux 1 while the remaining 15% was allocated to community broadcasters. This issue was dealt with head-on in the Findings Document on the Review of the Digital Migration Regulations, 2012, issued by the Authority and published as notice 3090 of 2025 in GG 52392 of 27 March 2025 (**“the Discussion Document”**).
- 23.4. Having considered stakeholders submissions in relation to the allocation on Mux 1 and the requirement that a FTA service (the SABC) share the Mux with community broadcasters, the Authority found as follows:
- “The current capacity allocation for Mux 1 is not conducive for community broadcasters to share a multiplex with the public broadcaster due to different licence obligations. The current capacity allocation for Mux 1 also limits the ability to expand into high-definition (HD) broadcasting...”*
- The Authority also found that SFN configurations are unsustainable for community broadcasters due to high costs...”*
- 23.5. The same reasoning concerning the sharing of a Mux between the SABC and community broadcasters applies equally to e.tv. It is not conducive for e.tv to share a multiplex with community broadcasters as, much like the SABC, e.tv has different licence obligations to community broadcasters. Additionally, the allocation of 15% of Mux 2 to community broadcasters limits e.tv’s ability to expand into HD broadcasting which, as explained above, is essential to enable e.tv to compete in the audiovisual arena. It will mean that it will lose at least one HD channel by reason of having to share the Mux.
- 23.6. The initial allocation of Mux capacity by the Authority was based on standard definition (SD). SD is no longer relevant anywhere in the world, and high definition (HD) has become the entry level offering to viewers. Many viewers now own an HD flat screen television set, and view content of their choice in HD. If television broadcasters offer viewers SD they will not be able to attract viewers, which will directly

impact their business. To make the DTT platform as attractive as DTH, broadcasters will have to offer their channels in HD and to compete with the wider multi-channel offering on available via DTH.

- 23.7. It is estimated that each Mux can accommodate 20 SD channels, or four to five HD channels based on the DVB-T2 transmission parameters in South Africa. The carrying capacity of the 7 Muxes is 140 channels based on SD or 28 to 35 channels based on HD. As mentioned previously the entry level for digital television has become HD. This is one of the major limiting factors of the current DTT scenario in South Africa.
- 23.8. e.tv has only been allocated 85% of Mux 2. This means it can only offer, at most, 5 HD channels – one more than it currently offers. This is not a compelling offering for an existing or new television broadcaster, nor it is a major incentive for consumers to invest in buying a DTT STB (if they can afford or find one, which is well nigh impossible).
- 23.9. However, not only is there no reasoning behind why e.tv has been given 85% of a Mux, but the reallocation discriminates against e.tv. The reallocation and granting the SABC two Muxes, means that the SABC has increased its percentage allocation of a Mux (or Muxes) from 85% to 200%, being an increase of approximately 135%. However, e.tv's allocation increased from 55% to 85% of a single Mux which is an increase of approximately 54.5%. There is no plausible reason for such discrimination between e.tv and the SABC, nor can there be.
- 23.10. If e.tv's allocation of 55% increased by 135% as has the SABC's allocation, this would entitle e.tv to approximately 130% of a Mux (or Muxes). This means that e.tv should be allocated 100% of Mux 2 and at least 30% of Mux 3 which has, according to the Authority in its Explanatory Memorandum, been reserved for private FTA incumbents of which e.tv is now the only one. In any event, it is clearly possible given that 55% of Mux 3 has been allocated to KWESE which is

described as an incumbent. Although initially granted an FTA licence, KWESE no longer operates. This means that the entirety of Mux 3 is available given that the remaining 45% of Mux 3 is reserved for future use by one or more commercial FTA broadcasters who may enter the market.

- 23.11. There should be no such reservation for future FTA broadcasters on Mux 3. Since 1998, a period of 27 years, only two FTA broadcasters have been licensed. One was unable to compete and in the changing broadcasting sector and audiovisual service environment, it is unlikely that the introduction of any new FTA broadcaster will be possible. If a new FTA broadcasting licence is granted it will be many years away given the process which will need to be followed before such a licence is granted (A position paper for comment; a findings document and then a competitive application process).
- 23.12. In fact, the remaining 70% of the capacity on Mux 3 after e.tv has been allocated 30% should be made available for use by both SABC and e.tv proportionate to their existing allocations.
- 23.13. In the Findings Document, the Authority recognised that as the “key subscription broadcaster” had surrendered its Mux capacity, this created “an opportunity to review the allocation process to better align with the needs of FTA broadcasters” (see the Authority’s Finding at p 14).
- 23.14. Given that the only terrestrial subscription broadcaster recognised that there was no future in subscription broadcasting by terrestrial means and gave up its allocation of Mux capacity, the use by a commercial subscription broadcasting television service licensee of Mux capacity to broadcast terrestrially is so remote as to be impossible. This means that Mux 4 should also be allocated to FTA broadcasters and should be divvied up on the same basis as suggested above in respect of Mux 3.

- 23.15. The greater allocation of Mux capacity to FTA broadcasters, the greater number of HD channels can be broadcast, the greater that FTA broadcasters can compete in the current environment, the greater the access of those reliant on FTA broadcasting, particularly the poor, to higher quality television and substantially more content.
- 23.16. eMedia has no difficulty with the manner in which Muxes 6 and 7 are to be reserved – i.e. for future innovation and trials.
- 23.17. Insofar as community broadcasting is concerned, quoting from the Authority's summary in the Findings Document:

“Community broadcasters state that Multiplex sharing has resulted in both challenges and opportunities for community broadcasters. The opportunity is that community channels are now available everywhere despite being geographically restricted. The challenge is the cost implication due to increased coverage. When it comes to the question of Multiplex sharing, accommodating community channels means including them at both national and local levels. Community broadcasters have suggested that community channels be accommodated on a Mux, which has been allocated to serve local areas.”

- 23.18. There is more than sufficient capacity to accommodate community broadcasters in this manner (Mux 6 or 7 would be ideal and is available) with a recognition of, and sensitivity towards, the role community broadcasters play in the communities in which they broadcast and the cost implications of sharing a Mux with e.tv (or the SABC for that matter) as is currently proposed.

24. Regulation 5: Channel Authorisation Procedure

- 24.1. Internationally it has been found that to ensure that viewers make the additional investment to migrate from analogue to digital transmission, they need to be made aware of the benefits of doing so. Other than the improvement in the picture and sound quality, additional channels are

a major benefit for viewers to migrate which would encourage broadcasters to make this additional investment. For many consumers DTT and DTH FTA television is the first taste of multi-channel offerings they have experienced. From a broadcaster's point-of-view, these incentive channels require new compelling content to attract audiences, which increases broadcaster's content budgets substantially. Viewers should not be denied what those who can afford subscription broadcasting services are able to access.

- 24.2. To level the playing fields between broadcasters, the process to obtain authorization of a new channel should be the same. In a multi-channel environment non-performing channels are regularly removed and replaced by new channels should there be a commercial rationale for doing so. The process should be quick and simple and, save where content may be objectionable, should be authorised as a matter of course given that broadcasters will be in touch with the demand, need and support by their audiences for such channels.
- 24.3. The Draft Regulations propose a highly cumbersome channel authorisation regime in which the Authority can decide to hold public hearings following a channel authorisation application.
- 24.4. The only possible time where a hearing may be appropriate is where the channel offers content on a regular basis which may be contrary to the provisions in the relevant BCCSA Codes of Conduct or contrary to legislation such as the Film and Publications Act. There currently is no, nor has there ever been, such a channel.
- 24.5. Importantly, in the Findings Document, the Authority found as follows:

“The Authority found support amongst stakeholders for streamlining the channel authorisation process to promote innovation and improve operational efficiency. Current requirements, which may include public hearings for certain broadcasters, were identified as barriers to timely channel deployment. ...”

[See the Authority's Finding at p 24]

- 24.6. Notwithstanding this, the Authority has done the reverse. Rather than streamlining the authorisation process to promote operational efficiency, it has made it substantially more cumbersome, costly and time-consuming. The suggestion that an application to authorise a channel may be open for public comment and a public hearing is startling. Given the Authority's current backlog, and that certain enquiries have been going on for years, if not decades, this would mean that from the time the Authority received an application to authorise a channel until it was authorised, could take years. The commercial implications for broadcasters and the industry and public at large are so obvious they do not bear discussion.
- 24.7. The channel authorisation process should be streamlined so that it is the same for all broadcasters – free, subscription, analogue, DTT, DTH or any other form of transmission. eMedia therefore suggests that a provision is drafted along the lines of the provision which currently applies to subscription broadcasters and that this appears in the Regulations dealing with general licence conditions for holders of individual broadcasting licences.

25. Regulation 6: Signal Distribution of DTT Services

- 25.1. Due to the high cost of DTT transmission in South Africa and the limited bandwidth allocated to each television broadcaster licensed during digital migration, it is highly unlikely that any broadcaster would allocate excessive amounts of bandwidth to data at the expense of limiting the number of television channels they are able to offer their viewers.
- 25.2. Should the Authority be inclined to continue with the regulatory process notwithstanding what is set out herein, then Regulation 6 will need to coincide with the Final Signal Distribution Services Regulations when they are promulgated following the upcoming hearings.

26. Regulation 7: Multiplex Operator for the DTT

- 26.1. eMedia supports the idea of a consultation process for the establishment of a regular framework for a Multiplex Operator tasked with managing and facilitating access to multiplex capacity.
- 26.2. eMedia takes no issue with the requirements pertaining to any Multiplex Operator as set out in draft Regulation 7 and the application process contemplated therein.

27. Regulation 10: Penalties

- 27.1. The imposition of a penalty on a broadcasting service licensee contravening Regulation 4(2) to (5) and (9) makes no sense.
- 27.2. Regulation 4 deals with Mux allocation. In the Draft Regulations, allocation Regulation 4 as it stands, contains a mechanism which penalises a broadcaster who does not utilise any Mux capacity allocated to it. The contemplation of a further penalty cannot be intended. There can be no plausible reason for a double penalty being imposed for a failure to utilise certain capacity.
- 27.3. Additionally, how a penalty could apply to, for example, draft Regulation 4(2) which solely deals with the allocation of capacity on Multiplex 2, is non-sensical.
- 27.4. Further, an indiscriminate lumping together for purposes of a contravention and penalty of all the Regulations under draft Regulation 7 is equally non-sensical.
- 27.5. As an example, it makes no sense how a provision that an ECNS licensee providing services during the dual illumination period and being given the option to apply for the amendment of their licence can constitute an offence.

- 27.6. Similarly, draft Regulation 8(2) merely provides that a terrestrial broadcasting service licensee may provide data and radio services. There is no positive obligation in this draft Regulation and accordingly, it cannot be contravened. Its inclusion in this section is therefore erroneous.
- 27.7. Finally, a fine is meant to sanction a party breaching a regulation, not have the effect of possibly putting them out of business. The proposed fine is accordingly excessive. Any fine should not be based on a daily breach.

Conclusion

28. eMedia looks forward to participating in any oral hearings in relation to the Draft Regulations.



Yours sincerely

Philippa Rafferty

eMedia Investments: Legal and Regulatory