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GENERAL NOTICE

Independent Communications Authority of South Africa

General Notice

344 Electronic Communications Act (36/2005): Notice in terms of section 4 (7), section 30 (2) (d) and section 31 (4) (c) 3 32083

GENERAL NOTICE

NOTICE 344 OF 2009



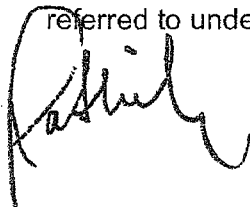
NOTICE IN TERMS OF SECTION 4(7), SECTION 30(2)(d) AND SECTION 31(4)(c) OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005).

The Independent Communications Authority of South Africa ("the Authority") hereby publishes the Digital Terrestrial Television Regulations in terms of section 30(2)(d) read with section 31(4)(c) of the Electronic Communications Act ("the Act") and further read with section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000, as amended and herein after referred to as "the ICASA Act") and further in consideration of the Broadcasting Digital Migration Policy issued by the Minister in terms of section 3(1) of the Act and published in the Government Gazette No. 31408 dated 8 September 2008.

The Authority hereby gives notice that it is inviting interested parties, in terms of section 4(7) of the Act, to make written representations on the draft regulations.

- (1) A copy of the proposed regulation will be made available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at No. 164 Katherine Street, Pin Mill Farm, (Ground Floor at Block D), SANDTON between 09h00 and 16h00, Monday to Friday only.
- (2) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h00 on 30 April 2009** by post, hand delivery or electronically (in Microsoft Word) and marked specifically **Attention: Ms Refilwe Ramatlo**. **Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton.** Further enquiries in that regard may be directed to her via e-mail at: Rramatlo@icasa.org.za or lpholosi@icasa.org.za or by facsimile: 011 566-3252; between 10h00 and 16h00, Monday to Friday only.

- (3) Any written representation(s) submitted to ICASA pursuant to this notice, will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable upon payment of the prescribed fee.
- (4) At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion thereof.
- (5) The final regulations following the conclusion of the consultative process will be published in the Government Gazette and made available on the website referred to under (1) above.



PARIS MASHILE
CHAIRPERSON

Schedule

DIGITAL TERRESTRIAL TELEVISION (DTT) REGULATIONS

1. PURPOSE OF THE REGULATIONS

(1) The objectives of these regulations are to: -

- (a) regulate the transition of terrestrial television broadcasting services from Analogue transmission to Digital Terrestrial Television (DTT) transmission during the dual illumination period;
- (b) prescribe a procedure and conditions for assignment of the DTT multiplexes to the existing television broadcasting services;
- (c) provide for the allocation and authorisation of digital incentive channels;
- (d) provide for the provision of universally accessible, quality television broadcasting;
- (e) Set out the time frames for the rollout of the digital terrestrial television throughout the Republic.

2. DEFINITIONS

In these Regulations, unless the context indicates otherwise, any word or expression that has a meaning assigned in the Act has the meaning so assigned:

“the Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“Analogue broadcasting” means a transmission of a continuously variable signal which takes the form of electromagnetic waves;

“Channel authorisation” means the granting of permission by the Authority to a licensee to commence broadcasting a digital channel within the capacity allocated in terms of these regulations;

“Digital incentive channel” means an additional channel, other than the channel that existed prior to these regulations, to be authorised in terms of these regulations, subject to the capacity allocated to the broadcasting service licensee as an incentive for migration from analogue to digital television;

“DTT” (Digital Terrestrial Television) means an implementation of digital technology to provide a greater number of channels and/or better quality of picture (via HDTV) and sound through a conventional antenna instead of a satellite dish or cable connection;

“Dual illumination” means the transmission of the same broadcast content in both analogue and digital technology for the purpose of allowing digital adoption by the members of the public;

“Dual illumination period” means the period between 01 November 2008 to 30 November 2011;

“Electronic Programme Guide (EPG)” means on-screen guide to scheduled broadcast television or radio programs;

“Existing television broadcasting services” means the broadcasting services, which were licensed to provide terrestrial television broadcasting services prior to the coming into force of the Act;

“Hard-switchover” means a direct transition from analogue to digital broadcasting without first undergoing dual illumination in terms of these regulations, which must take place within a period not exceeding twelve (12) months;

“Joint Spectrum Advisory Committee (JSAC)” means an advisory forum established by the Authority to assist in the co-ordination of the usage of frequencies to minimise or prevent harmful interference during the transition from analogue to digital technology;

“Marginalized languages” means isiNdebele, siSwati, XiTsonga and TshiVenda;

“Multiplex” means a stream of digital signals containing several radio or television programmes, services and/or other data in a digital form for simultaneously transmission via a frequency channel;

“Multiplex 1” means a multiplex allocated to public and community broadcasting television services;

“Multiplex 2” means a multiplex allocated to commercial free-to-air broadcasting television services;

“Multiplex 3” means a multiplex allocated to subscription terrestrial television services subject to M-Net conducting a hard switchover;

“Public Value Test” means a requirement that the authorisation of the digital incentive channels to the public wing of the SABC should seek to meet the programming objectives in regulation 9(2) of these regulations and may be subjected to further public processes;

“Standard Definition Television (SDTV)” means digital transmissions with 720x 576 resolutions, either interlaced/interfaced or progressive scanned formats.

3. FRAMEWORK FOR DTT MULTIPLEXES

(1) The allocation of multiplexes must take into account the following factors:

- (a) Three (3) DTT multiplexes will be reserved for existing television broadcasting service licensees;
- (b) During the dual illumination period, the same broadcast content must be broadcast in both digital and analogue technologies in Standard Definition Television (SDTV) mode.

4. DTT CAPACITY ALLOCATION

(1) Allocation of capacity to the existing television broadcasting service licensees in DTT multiplexes is based on the following criteria:

- (a) Incentivise all existing television broadcasting service licensees involved in the migration process, having taken into consideration the size of the broadcaster and the cost of migration;
- (b) Increase the channel capacity allocated to the SABC for the purposes of meeting the objectives of the Public Value Test, including regional programming;
- (c) Equitably allocate capacity for the commercial broadcasting channels of e-tv and M-Net having taken into consideration the size of the broadcasting licensee and, consequently, the cost of the migration from analogue to digital technology.

5. MULTIPLEX 1 (PUBLIC AND COMMUNITY BROADCASTING SERVICES)

(1) A single Multiplex (multiplex 1) for the purposes of public and community broadcasting is herewith set aside, subject to the following restrictions:

- (a) The SABC must in addition to free to air commercial and public channels, broadcast two regional channels for the purposes of meeting regional and language programming;
- (b) The SABC must make available channel capacity for the benefit of Trinity Broadcasting Network (TBN) to provide community broadcasting services within multiplex 1;
- (c) The capacity allocated to TBN must not exceed ten (10) percent of the overall capacity of the multiplex within the coverage area;
- (d) Only TBN, as a permanently licensed community television service, must participate in the multiplex, while temporary community television services may continue to broadcast on analogue frequencies; and
- (e) TBN channels must be restricted to the licensed coverage area, in the Eastern Cape Province, subject to the frequency plan and in terms of the standard terms and conditions for class licensees.

6. MULTIPLEX 2 (COMMERCIAL FREE-TO-AIR TELEVISION BROADCASTING SERVICES)

- (1) A single multiplex (multiplex 2) for commercial free-to-air television broadcasting services is herewith set aside, subject to the following conditions:
 - (a) e-tv must utilise 60 (sixty) percent capacity in the multiplex for the purpose of broadcasting commercial free to air channels;
 - (b) Channels in multiplex-2 must be confined to free-to-air television broadcasting services and cannot be substituted to provide subscription television broadcasting services; and
 - (c) The remaining channel capacity on Multiplex 2 will be set aside for future authorisation.

7. MULTIPLEX 3 (SUBSCRIPTION TERRESTRIAL TELEVISION BROADCASTING SERVICES)

- (1) A single Multiplex (multiplex 3) for M-Net to make use of 50% capacity for the purposes of broadcasting commercial subscription channels is herewith set aside, subject to the following conditions:
 - (a) M-Net conducting a hard switch over;
 - (b) Channels in multiplex 3 must be confined to subscription terrestrial television services and cannot be substituted to provide free-to-air terrestrial television services;
 - (c) The remaining channel capacity on multiplex 3 will be set aside for future authorisation.

8. DIGITAL INCENTIVE CHANNEL AUTHORISATION

- (1) An existing television broadcasting service licensee may not operate a digital incentive within the allocated capacity in terms of regulation 4 of these regulations without the prior written authorisation of the Authority;
- (2) An existing television broadcasting services licensee intending to operate the digital incentive channel must submit an application in writing to the Authority, for the authorisation referred to in regulations 6(1)(c) and 7(1)(c) of these regulations.

9. MULTIPLEX 1 (PUBLIC BROADCASTING SERVICES)

- (1) Authorisation of public channels as allocated in Multiplex 1 will be subjected to a public value test and may be subjected to a public process;
- (2) The Public Value Test, as applied within the proposed channel, will include the following factors:

-
- (a) The level of educational programming;
- (b) The distribution of different languages with an emphasis on the marginalized languages;
- (c) The promotion of cultural diversity;
- (d) Programming aimed at persons with disabilities, children, youth and women;
- (e) The social development of persons in the Republic including programs providing entertainment and information;
- (f) Multi-Genre programming;
- (g) The promotion of democracy education and participation;
- (h) In following the public process envisaged in regulation 12(3) of these regulations, the Authority will follow a procedure which may include any or all of the following steps: -
- (i) Publish a notice in the *Gazette* of the application for the channel authorisation;
- (ii) Invite comments from interested persons in relation to the application within the period specified in the notice;
- (iii) Afford an opportunity to the applicant to submit written responses to representations received in relation to the application within the period specified by the Authority; and
- (iv) Conduct a public hearing in relation to the application.
- (3) The Authority will conclude the Public Value Test process within sixty (60) days of the filing of the request for public service channel authorisation;

- (4) The SABC must include in all its applications for new public channel authorisation, a Market Impact Analysis (MIA), including the implication of the proposed channel on diversity of programming, other DTT services and subscription television services;
- (5) Commercial services under the SABC will be subjected to the same authorisation requirements as those set out for commercial services in terms of regulation 7 of these regulations.

10. MULTIPLEX 2 (COMMERCIAL FREE-TO-AIR BROADCASTING SERVICES)

- (1) The application for the digital incentive channel authorisation for channels in Multiplex 2 must be accompanied by the following information: -
 - (a) the name of the proposed channel;
 - (b) primary research conducted to establish the demand of the channel;
 - (c) market impact analysis, including the implication of the proposed channel on diversity of programming, other DTT services and subscription television services;
 - (d) the primary language(s) of the channel;
 - (e) proof of financial viability ;
 - (f) submission of a detailed programming plan, including the provision of local content; and
 - (g) submission of any other related information as may be required by the Authority.

- (2) Channels allocated in Multiplex 2 will only be authorised upon the receipt of an application made in terms of these regulations, subject to compliance with regulation 7 of these regulations;
- (3) A decision on an application made in terms of these regulations will be communicated to an applicant within ninety (90) days of the submission of an application, failing which the digital incentive channel will be considered as having been authorised ;
- (4) Where the Authority refuses to authorise a channel, the Authority must give written reasons thereof to the applicant within sixty (60) days of the decision not to authorise the digital incentive channel;
- (5) Where a digital incentive channel is authorised in terms of these regulations, the licensee must commence broadcasting on the channel within ninety (90) days after the issue of the certification for authorisation by the Authority.

11. MULTIPLEX 3 (SUBSCRIPTION TERRESTRIAL TELEVISION BROADCASTING SERVICES)

- (1) The authorisation of subscription terrestrial digital incentive channels in multiplex 3 must follow the same procedure as that followed by the commercial free-to-air services in multiplex 2 in regulation 10 of these regulations.

12. ELECTRONIC COMMUNICATION NETWORK SERVICE (ECNS) LICENSEE

- (1) Where multiple broadcasting service licensees are allocated in one multiplex, the broadcasting services licensees are required to:
 - (a) agree on the ECNS licensee to provide the signal distribution services; or
 - (b) apply for an ECNS licence in the event the licensee(s) choose to self provide, subject to the provisions of section 5(6) of the Act.

- (2) The relationship between the broadcasting services licensees and the ECNS licensee will be based on commercial agreement between the respective parties;
- (3) Within Sixty (60) days of the finalisation of these regulations, the existing television broadcasting services must notify the Authority in writing of its preferred ECNS provider;
- (4) The Notice to be filed in terms of sub-regulation 12 (3) of these regulations must include the commercial agreement entered into and concluded between the parties;
- (5) The Notice contemplated in (4) above must include agreement regarding who, between the broadcasting service licensee and the ECNS, takes responsibility for the statistical multiplexing;
- (6) Within sixty (60) days of the receipt of the notice and commercial agreement entered into and concluded between the broadcasting service licensee and the ECNS, the preferred ECNS will be required to submit technical plans, including transmission plans;
- (7) The agreement between the two parties can be terminated by mutual consent in which case the broadcasting service licensee will continue to use the assigned frequencies, subject to entering into and concluding a new agreement with another ECNS licensee;
- (8) The ECNS licensee providing free-to-air signal distribution services will be held liable for all technical aspects of signal distribution including but not limited to interference with other frequency assignments.
- (9) Upon the receipt of the agreement, the ECNS would provide broadcasting signal distribution services using the same frequencies as those assigned to the broadcasting service licensee;
- (10) The ECNS licensee must ensure that the broadcast signal reaches the following percentage of the population in the Republic:

- (a) 50% coverage at the end of 2009;
 - (b) 60% coverage at the end of 2010;
 - (c) 95 % coverage at the end of 2011.
- (11) ECNS licensees must provide the Authority with quarterly reports on the quality of standards, including progress in meeting required technical standards and measures undertaken or to be undertaken to manage and prevent frequency interference within South Africa and in the region.
- (12) ECNS licensees must keep records of all incidences of harmful frequency interference and include them in their quarterly reports to be submitted to the Authority.

13. LICENSEE OBLIGATIONS, DATA AND AUDIO CAP RESTRICTIONS

- (1) All the multiplexes reserved by the Authority must prioritise the provision of Digital terrestrial television services;
- (2) The data services included on the programming will prioritise Electronic Programme Guide and Electronic Programme Information, which must always be available to the viewers;
- (3) Additional data services introduced for the purposes of enhancing innovation and better service to consumer must not exceed fifteen (15) percent of the allocated capacity in each multiplex, and must not include services that require a return path;
- (4) The broadcasting services licensee must provide both the Electronic Programme Information (EPI) and Electronic Programme Guide (EPG) in the language(s) of broadcast on each commercial channel and at least two official languages, other than English in the case of the public service channels;
- (5) The SABC shall within sixty (60) days of the coming into effect of these regulations, submit a promise of performance regarding the inclusion of sub-titles

in at least two official languages, including marginalised languages, in all its public channels;

- (6) No sound broadcasting services must be broadcast on the DTT multiplexes unless it is for test purposes, in which case, such test broadcasts must first be authorised by the Authority in terms of the applicable regulations.

14. COMPETITION AND DTT TRIALS

- (1) In anticipation of the introduction of competition in the provision of Digital Terrestrial Television services, at the end of the dual illumination period, any licensee or other interested person can apply to provide test services on Multiplex 2 and 3 subject to the following conditions:

(a) the Standard Terms and Condition Regulations and Process Regulations shall apply to all test services provided on the DTT Multiplexes;

(b) the licensee or any other interested person must pay its signal distribution costs charged by the ECNS providing such services to the existing broadcasting service licensee;

(c) in the case of multiplex 3, the licensee or other interested person will enter into a commercial agreement regarding access to conditional access provided by M-Net;

(d) the licensee or any other person providing test services must participate in the Joint Spectrum Co-ordinating Committee;

(e) the licensee or any other person providing test services must participate in the Joint Spectrum Co-ordinating Committee.

- (2) Subject to the availability of frequencies and taking into consideration the need to reduce incidences of frequency interference, any licensee or other interested person can apply for separate frequencies to conduct DTT trials outside Multiplexes 2 and 3.

15. PROVISION OF MOBILE TELEVISION SERVICES ON THE DTT MULTIPLEXES

- (1) Mobile television services, that require additional capacity, must not be provided on the DTT multiplexes without prior authorisation by the Authority;
- (2) The authorisation of mobile television services, that require additional capacity on the DTT multiplexes, will be based on similar licensing conditions as those that apply to the commercial channels in multiplexes 1, 2, and 3.

16. JOINT SPECTRUM ADVISORY COMMITTEE

- (1) In order to promote the efficient co-ordination of frequency spectrum and interference resolution during the dual illumination period, the Authority will establish a Joint Spectrum Advisory Committee (JSAC), as a consultative forum, with broadcasting service licensees and their respective ECNS providers to co-ordinate usage of frequencies;
- (2) The JSAC will advise the Authority on the most efficient processes to be adopted in resolving matters related to spectrum management to minimise or prevent harmful interference during the transition from analogue to digital technology;
- (3) The establishment of the JSAC is subject to the following:
 - (a) participation on the JSAC is voluntary;
 - (b) the committee is to comprise of:
 - (i) two (2) representatives per broadcasting service licensee and ECNS licensee at each JSAC meeting;
 - (ii) two (2) officials of the Authority; and

- (iii) a person designated as a Chairperson by the Authority;
- (4) The JSAC will cease to exist within six (6) months from the date of the switch off of the analogue signal;
- (5) Decisions of the JSAC are to be reached by consensus submitted to the Authority as a recommendation. Where the votes are equal, the Councillor has a casting vote.
- (6) For a quorum of the meeting of the JSAC:
 - (a) the person designated as a Chairperson in terms of regulation 16(3)(b)(iii) must be present, including acting as the Chairperson of the JSAC;
 - (b) attendance by no less than 50% of persons entitled to attend the meeting must be secured.

17. TRANSITIONAL MEASURES

Within three (3) months of the coming into effect of these regulations, the broadcasting services licences issued to the SABC, namely SABC 1, SABC 2, SABC 3, SABC 4, SABC 5, are to be consolidated into a single broadcasting licence to provide any type of television services, subject to section 10 of the ECA.

18. CONTRAVENTIONS AND PENALTIES

Any person who fails to comply with these regulations is guilty of an offence and may on conviction be liable to a fine not exceeding an amount of R 500 000,00 by the Authority, in addition, to any other sanctions as prescribed in section 17E of the ICASA Act.

19. REPEAL AND AMENDMENT OF THE REGULATIONS

The Authority may amend or repeal these regulations, as and when it deems it necessary, by Notice in the Gazette

20. SHORT TITLE AND COMMENCEMENT

These Regulations will be called the Digital Terrestrial Television (DTT) Regulations, 2009, and will commence upon publication in the Gazette.

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