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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY

No. R. 97

15 February 2010



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

DIGITAL MIGRATION REGULATIONS

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("the Authority") hereby approve and publish the Digital Migration Regulations set out in the Schedule and made by the Authority in terms of sections 30(2)(c) and (d) read with sections 4(1) (a) (b) and (d) of the Electronic Communications Act, 2005 (Act No. 36 of 2005). The Broadcasting Digital Migration Policy for South Africa which was issued by the Minister of Communications in terms of section 3(1) of the Act and published under Government Notice 958 in *Government Gazette* 31408 of 8 September 2008 has been considered by the Authority.

A handwritten signature in black ink, appearing to read 'Paris Mashile'. The signature is fluid and cursive, with a large loop at the top and a long, sweeping tail that ends in a small flourish.

PARIS MASHILE
CHAIRPERSON

SCHEDULE

1. DEFINITIONS

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned and -

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

“**analogue broadcasting**” means terrestrial broadcasting where the broadcast signal is in analogue format and “**analogue broadcast**” shall be construed accordingly;

“**Broadcasting Act**” means the Broadcasting Act, 1999 (Act No. 4 of 1999);

“**broadcast frequency plan**” means the Terrestrial Broadcasting Frequency Plan 2008 published under Government Notice 1538, *Government Gazette* 32728 of 18 November 2009;

“**Charter**” means the Charter of the SABC, as outlined in Chapter IV of the Broadcasting Act;

“**commercial service division**” means the commercial service operational division of the SABC, as provided for in section 9(1)(b) of the Broadcasting Act;

“**Committee**” means the Joint Spectrum Advisory Committee to be established in terms of regulation 13(1)

“**Department**” means the Department of Communications;

“**digital broadcasting**” means terrestrial broadcasting where the broadcast signal is in a digital format and “**digital broadcast**” shall be construed accordingly;

“**digital incentive channel**” means a new digital channel to be provided by an incumbent licensee in addition to the existing television channel or channels broadcast by that licensee as an incentive for digital migration and to incentivise consumers to take the steps necessary for successful digital migration;

“**digital migration**” means the transition from analogue broadcasting of a television channel to digital broadcasting of that channel;

“**Digital Terrestrial Television**” or “**DTT**” means digital broadcasting of television broadcasting services over a terrestrial electronic communications network which employs radio frequency

spectrum in the transmission of the broadcast signal, and does not include television broadcasting services transmitted over a cable or satellite electronic communications network;

“dual illumination” means the simulcast analogue and digital broadcasting of a television channel;

“e.tv” means e.tv (Proprietary) Limited;

“e.tv channel” means the existing television channel broadcast by e.tv at the commencement of these Regulations in terms of the individual licence to provide a commercial free-to-air broadcasting service held by e.tv;

“incumbent broadcasting licensee” means the SABC, e.tv, M-Net and TBN;

“existing television channel” means a television channel provided by an incumbent broadcasting service licensee as an analogue broadcast at the commencement of these Regulations;

“M-Net” means Electronic Media Network Limited;

“M-Net channels” means the existing television channels broadcast by M-Net at the commencement of these Regulations in terms of the individual licence to provide a commercial subscription broadcasting service held by M-Net;

“Multiplex 1” means the frequencies designated as “DTT1” in Annexure F to the broadcast frequency plan;

“Multiplex 2” means the frequencies designated as “DTT2” in Annexure F to the broadcast frequency plan;

“performance period” means the period commencing on the date set by the Authority by notice in the *Gazette*, for the purposes of dual illumination.

“public service channel” means a channel broadcast by the SABC which is broadcast for the public benefit rather than for the maximization of revenues;

“public service division” means the public service operational division of the SABC, as provided for in section 9(1) of the Broadcasting Act;

“**public value test**” is a test of whether a channel will be of value to the public and will not have an adverse impact on the relevant market in which the incumbent broadcasting service licensee providing the channel operates;

“**Process and Procedures Regulations (Class Licences)**” means the Regulations on Licensing Processes and Procedures published under General Notice 397 in *Government Gazette* 30914 of 31 March 2008;

“**Process and Procedures Regulations (Individual Licences)**” means the Regulations on Licensing Processes and Procedures published under General Notice 398 in *Government Gazette* 30916 of 31 March 2008;

“**SABC**” means the South African Broadcasting Corporation Limited;

“**SABC channels**” means the existing television channels, SABC 1, SABC 2 and SABC 3, broadcast by the SABC at the commencement of these Regulations in terms of the individual licences to provide public free-to-air broadcasting services held by the SABC;

“**SABC commercial service channel**” means a commercially operated channel broadcast by the SABC;

“**Standard Definition Television (SDTV)**” means digital transmissions with a resolution of at most 720 x 576 pixels, either interlaced/interfaced or progressive scanned formats;

“**TBN**” means the Trinity Broadcasting Network (Section 21 company);

“**TBN channel**” means the existing television channel broadcast by TBN at the commencement of these Regulations in terms of the class licence to provide a free-to-air community broadcasting service held by TBN.

2. PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to: -

- (a) regulate the digital migration of the existing television channels;
- (b) prescribe the conditions for the allocation of channel capacity in Multiplex 1 and Multiplex 2 for the purposes of digital migration;

- (c) prescribe the procedure for the authorisation of digital incentive channels; and
- (d) set the time frames within which digital migration is to be achieved by the incumbent broadcasting service licensees.

3. **FRAMEWORK FOR DIGITAL MIGRATION**

- (1) During the performance period, there shall be dual illumination of the SABC channels, e.tv channel, M-Net channels and TBN channel so as to achieve the phased digital migration of those channels in the whole of the Republic.
- (2) During the performance period, the digital broadcast of the SABC channels, e.tv channel, M-Net channels and TBN channel and any digital incentive channels which the SABC, e.tv, M-Net and TBN are authorised to provide in accordance with these Regulations shall also be broadcast in Standard Definition Television (SDTV) mode.
- (3) All television broadcasting service licensees other than M-Net, the SABC, e.tv, and TBN shall continue to broadcast in analogue format on the radio frequencies allocated to them for this purpose and are not subject to the requirement to commence the process of digital migration, as provided for in these Regulations.
- (4) Each incumbent broadcasting service licensee must ensure that the analogue broadcast signal of its existing television channel or channels is switched off by the last day of the performance period, in the case of the SABC channels, the e.tv channel, the M-Net channels and the TBN channel;
- (5) During the performance period, the SABC, e.tv, M-Net and TBN channels shall broadcast in Multiplex 1 or Multiplex 2, as the case may be, only the existing television channels and any digital incentive channels which they are authorised to provide in accordance with the procedures provided for in these Regulations, using the capacity in those Multiplexes which they are authorised to use.

- (6) Where any allocated capacity in Multiplex 1 and Multiplex 2 which is allocated in terms of these Regulations to be used by an incumbent broadcasting service licensee, is not being utilised by that licensee as at the end of the performance period, such capacity shall be regarded as being forfeited to the Authority.
- (7) Where any digital incentive channel in Multiplex 1 and Multiplex 2 which is authorised in terms of these Regulations to be broadcast by an incumbent broadcasting service licensee, is not being broadcast by that licensee as at the end of the performance period, the capacity related to that channel shall be regarded as being forfeited to the Authority.

4. **MULTIPLEX ALLOCATION - MULTIPLEX 1**

- (1) Subject to sub-regulation (2), the SABC may use the available capacity in Multiplex 1 for the digital broadcasting of -
- (a) the SABC channels; and
 - (b) any digital incentive channels, which the SABC is authorised to provide, in accordance with the procedures set out in these Regulations.
- (2) During the performance period and any additional period set by the Authority by notice in the *Gazette*, TBN may use such capacity in Multiplex 1 as is sufficient to broadcast the TBN channel and one digital incentive channel, authorised in terms of the procedures set out in these Regulations, in its licence area of the Eastern Cape Province.
- (3) The SABC and TBN shall commence the digital migration of their existing television channels at the start of the performance period.
- (4) The SABC shall maintain a ratio of not less than three (3) public service channels to one (1) commercial service channel and ensure that at least three quarters of its allocated capacity in Multiplex 1 is dedicated towards the provision of public service television.

5. MULTIPLEX ALLOCATION - MULTIPLEX 2

- (1) e.tv may use up to fifty per cent (50%) of the available capacity in Multiplex 2 for the digital broadcasting of -
 - (a) the e.tv channel; and
 - (b) any digital incentive channels, which e.tv is authorised to provide, in accordance with the procedures set out in these Regulations.
- (2) e.tv shall commence the digital migration of the e.tv channel at the start of the performance period.
- (3) M-Net may use up to forty percent (40%) of the available capacity in Multiplex 2 for the digital broadcasting of –
 - (a) The M-Net channels
 - (b) Any digital incentive channels, which M-Net is authorised to provide, in accordance with the procedures set out in these Regulations
- (4) M-Net shall commence the digital migration of the M-Net channels at the start of the performance period.
- (5) During the performance period, any person, other than an incumbent broadcasting service licensee, may apply to the Authority in accordance with the Process and Procedures Regulations for a special temporary authorisation to conduct test services using the available capacity in Multiplex 2, which has not been authorised to be used by e.tv and M-Net in terms of these Regulations.

6. DIGITAL INCENTIVE CHANNEL AUTHORISATION AND PROCEDURE

- (1) An incumbent broadcasting service licensee must make an application, in writing, to the Authority for prior written authorisation to broadcast a digital incentive channel.
- (2) The SABC, e.tv, M-Net and TBN may make application during the performance period for authorisation to broadcast a digital incentive channel or channels.
- (3) An application for authorisation to broadcast a digital incentive channel shall be subject to the public value test, for which purpose the Authority shall –
 - (a) publish notice of the application in the *Gazette* and invite comments from interested persons within the period specified in the notice, on the application and the criteria to be taken into account by the Authority in assessing the public value of the addition of the proposed digital incentive channel; and
 - (b) afford the incumbent broadcasting service licensee an opportunity to submit written responses to representations received in relation to the application and public value criteria within the period specified by the Authority.
- (4) The Authority may conduct a public hearing in relation to the application submitted in terms of sub-regulation 1.
- (5) Where a digital incentive channel is authorised by the Authority in terms of these Regulations, the incumbent broadcasting service licensee must commence broadcasting the channel within ninety (90) days of the date on which the authorisation is granted unless the Authority grants, on good cause shown, an extended period for commencement of the channel on written application by the licensee, prior to the expiry of the ninety (90) day period.

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

(1) In any application by the SABC for authorisation to broadcast a digital incentive channel that is a public service channel and that will fall under the public service division, the SABC must include –

- (a) a market impact analysis, including the implications of the addition of the proposed channel to the SABC's broadcasting service for diversity of programming and other broadcasting services;
- (b) the name of the proposed channel;
- (c) the primary language(s) of the proposed channel;
- (d) a programming plan, including local content; and
- (e) information on the extent to which the addition of the proposed digital incentive channel to the SABC's broadcasting service will contribute to the achievement of the public service requirements to be met by the SABC in terms of the Charter.

(2) In any application by the SABC for authorisation to broadcast a digital incentive channel that is a commercial service channel and that will fall under the commercial service division, the SABC must include in its application the information that is required to be provided in an application by a commercial broadcasting service licensee, as specified in regulation 9.

(3) An application submitted in terms of this regulation 7 that does not contain the information required to be included in terms of these Regulations will not be considered by the Authority.

(4) In evaluating an application in terms of this regulation 7, the Authority will consider –

- (a) whether the public value test is met; and
- (b) the extent to which the commercial service requirements to be met by the SABC in terms of the Charter will be met and the objects set out in section 2 of the Act will be achieved, if the application is granted.

8. AUTHORISATION TO BROADCAST A DIGITAL INCENTIVE CHANNEL IN MULTIPLEX 1 AND MULTIPLEX 2

- (1) An application by e.tv, TBN or M-Net for authorisation to broadcast a digital incentive channel in Multiplex 1 or, Multiplex 2, as the case may be, must include -
- (a) the name of the proposed channel;
 - (b) a market impact analysis, including the implications of the addition of the proposed channel to the relevant broadcasting service for diversity of programming and other DTT services;
 - (c) the primary language(s) of the channel;
 - (d) proof of financial viability;
 - (e) a programming plan, including local content; and
 - (f) any other related information as may be required by the Authority.
- (2) An application in terms of sub-regulation (1) that does not contain the information that is required to be included in terms of these Regulations will not be considered.
- (3) In evaluating an application in terms of this regulation 8, the Authority shall consider –
- (a) whether the public value test is met; and
 - (b) the extent to which the objects set out in section 2 of the Act will be achieved, if the application is granted.
- (4) An incumbent broadcasting service licensee who provides a subscription broadcasting service must follow the procedures set out in these Regulations to obtain the Authority's authorisation to broadcast a digital incentive channel rather than the procedures set out in the Subscription Broadcasting Regulations, 2006.

9. SIGNAL DISTRIBUTION OF THE DTT SERVICES BROADCAST IN MULTIPLEXES 1 AND 2

- (1) Signal distribution services shall be provided to each of the incumbent broadcasting service licensees for digital broadcasting in Multiplex 1 and Multiplex 2, as the case may

be, by an electronic communications network services licensee or licensees appointed in terms of this regulation 9.

- (2) Each incumbent broadcasting service licensee must seek to conclude a commercial agreement with an electronic communications network services licensee to provide signal distribution services.
- (3) The agreement concluded between an incumbent broadcasting licensee and the electronic communications network services licensee selected to provide signal distribution services shall be submitted to the Authority prior to the commencement of the performance period, together with -
 - (a) a roll-out plan in line with the coverage targets stated in regulation 10;
 - (b) a technical plan consistent with the broadcast frequency plan; and
 - (c) tariff structure for signal distribution.
- (4) Where an incumbent broadcasting service licensee fails to comply with sub-regulation (2) or where the Authority is not satisfied that the electronic communications network service licensee selected by an incumbent broadcasting service licensee will achieve the roll-out targets or the broadcasting signal distribution objectives specified in section 62 of the Act, the Authority must issue an invitation inviting interested persons who hold an individual licence to provide electronic communications network services to apply to provide signal distribution services to the incumbent broadcasting service licensee.
- (5) An application submitted in response to an invitation to apply referred to in sub-regulation (4) must include details of: -
 - (a) the tariff framework to be applied;
 - (b) a roll-out plan in line with the coverage targets stated in regulation 10(1);
 - (c) a technical plan consistent with the broadcast frequency plan; and
 - (d) the electronic communications network service licensee's compliance with section 62 of the Act.

- (6) Where the Authority believes that it is necessary as a matter of procedural fairness, the Authority may take any or all of the following steps –
- (a) invite interested persons to submit written representations in relation to application(s) received from electronic communications network service licensees to provide signal distribution services to an incumbent broadcasting service licensee within the period specified in the notice;
 - (b) allow the applicant(s) an opportunity to submit written responses to representations received in relation to the application within the period specified by the Authority; and
 - (c) conduct a public hearing in relation to the application.
- (7) The Authority may, after considering the application(s) submitted in response to an invitation to apply in terms of sub-regulation (4) and any written representations made in relation to an application, appoint an electronic communications network service licensee to provide signal distribution services to the incumbent broadcasting service licensee in question and shall stipulate the terms and conditions on which the electronic communications network service licensee is appointed, taking into account the requirements of section 62 of the Act.
- (8) Where any electronic communications network services licensee appointed in terms of this regulation 9 to provide signal distribution services receives any government subsidy intended to subsidise the signal distribution costs incurred by any incumbent broadcasting service licensee or licensees for digital broadcasting during the performance period, that electronic communications network services licensee must reduce the tariffs charged to the incumbent broadcasting service licensee or licensees by the amount of the subsidy and must, in appropriate circumstances, provide such signal distribution services free of charge.
- (9) Where, pursuant to section 67 of the Act, the tariffs charged by an electronic communications network services licensee appointed in terms of this regulation 10 to provide signal distribution services are subject to regulation by the Authority, the tariffs charged by the electronic communications network service licensee shall be in accordance with such regulation and any agreement between the electronic

communications network service licensee and the incumbent broadcasting service licensee shall be modified accordingly.

10. ROLL-OUT TARGETS

- (1) The electronic communications network service licensees appointed to provide signal distribution services to the SABC, e.tv, M-Net and TBN must ensure that the digital broadcast signal for DTT services reaches -
 - (a) 50% of the population of the Republic within twelve (12) months of the commencement of the performance period;
 - (b) 80% of the population of the Republic within twenty-four (24) months of the commencement of the performance period; and
 - (c) 90% of the population of the Republic within thirty six (36) months of the commencement of the performance period.

- (2) An electronic communications network services licensee appointed in terms of regulation 9 must submit quarterly reports to the Authority on quality of service, 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 Southern African region, to be submitted to the Authority within one (1) month after the end of the electronic communications network services licensee's financial year and every six(6) months thereafter.

- (3) An electronic communications network services licensee appointed in terms of regulation 9 must keep records of all incidences of harmful frequency interference and include such in the quarterly reports to be submitted to the Authority in terms of sub-regulation (2).

11. GENERAL OBLIGATIONS

- (1) An incumbent broadcasting service licensee must ensure that an Electronic Programme Guide, being a schedule of forthcoming available programmes broadcast by the licensee at defined intervals, and Electronic Programme Information, being information in relation to the nature and content of programming, are made available to consumers in relation to the programming broadcast on a particular channel.
- (2) An incumbent broadcasting service licensee may provide data services using the capacity authorised to be used in Multiplex 1 and 2, as the case may be, for the purpose of enhancing service to consumers: provided that any data services provided may not utilise more than fifteen per cent (15%) of the capacity allocated to an incumbent broadcasting service licensee.
- (3) Licensed sound broadcasters may be accommodated on the various multiplexes subject to a commercial agreement with the incumbent broadcasters.

12. TRANSITIONAL PROVISIONS

- (1) The Authority will amend, in accordance with section 10(1)(d) of the Act and the procedures contained in the Process and Procedures Regulations (Individual Licences) or in accordance with the procedures contained in the Process and Procedures Regulations (Class Licences), as the case may be, each of the broadcasting service licences (collectively referred to as "incumbent broadcasting service licences" for the purposes of this regulation 12) held by the incumbent television broadcasting service licensees as at the commencement of these Regulations to reflect the fact that multi-channel services will be made available by those licensees using DTT.
- (2) Until such time as the incumbent broadcasting service licences have been amended as contemplated in sub-regulation (1), each of the incumbent broadcasting service licensees is considered to be authorised to provide a multi-channel broadcasting service as provided for in these Regulations and the incumbent broadcasting service licences are deemed to confer such authorisation.

- (3) The Authority will amend, in accordance with section 31(4)(c) of the Act, each of the radio frequency spectrum licences (collectively referred to as "existing radio frequency spectrum licences" for the purposes of this regulation 12) held by the incumbent broadcasting service licensees as at the commencement of these Regulations to reflect the radio frequency spectrum which they are authorised to use for the purposes of DTT in accordance with these Regulations.
- (4) Until such time as the existing radio frequency spectrum licences have been amended as contemplated in sub-regulation (3), each of the incumbent broadcasting service licensees is considered to be authorised to utilise the radio frequencies included in Multiplex 1, or 2 as the case may be, in accordance with these Regulations, and the existing radio frequency spectrum licences are deemed to confer such authorisation.
- (5) For the purpose of these regulations it is deemed that the electronic communications network service licensee which is appointed by a broadcaster to provide signal distribution in terms of regulation 9 does so as an agent of the incumbent broadcasting service licensee and therefore will be deemed to be in compliance with section 31 of the ECA.
- (6) At the end of the performance period, the broadcasting service licences and radio frequency spectrum licences held by each of the SABC, e.tv, M-Net and TBN at that time, will be amended in terms of the relevant provisions of the Act, the Process and Procedures Regulations (Individual Licences) and the Process and Procedures Regulations (Class Licences) to reflect the fact that those incumbent broadcasting service licensees have ceased analogue broadcasting and are no longer authorised to utilise the radio frequency spectrum which was previously assigned to them for analogue broadcasting purposes.
- (7) Until such time as they are repealed or amended, each of the incumbent broadcasting service licensees must comply with the ICASA South African Television Content Regulations published under General Notice 154 in *Government Gazette* 28454 of 31 January 2006, as at the date of the commencement of these Regulations, for each channel broadcast by it, provided that those channels which by the nature of the programming provided, including channels which consist exclusively of sport or

education programming, cannot comply with the ICASA South African Television Content Regulations may be exempted by the Authority from this requirement, upon written application by the incumbent broadcasting service licensee.

13. JOINT SPECTRUM ADVISORY COMMITTEE

- (1) In order to promote the efficient co-ordination of frequency spectrum and interference resolution during the performance period the Authority will establish a Joint Spectrum Advisory Committee (JSAC), as a consultative forum, with the incumbent broadcasting service licensees and the electronic communications network service licensees appointed in terms of regulation 9 to perform signal distribution services, to co-ordinate usage of radio frequencies during digital migration.
- (2) The Committee 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 digital migration.
- (3) The Committee shall comprise -
 - (a) two (2) representatives from each incumbent broadcasting service licensee and electronic communications network service licensee appointed in terms of regulation 9;
 - (b) two (2) officials from the Authority; and
 - (c) a person designated as a Chairperson by the Authority: provided that participation in the Committee is voluntary and the incumbent broadcasting service licensees and electronic communications network service licensees appointed in terms of regulation 9 are not obliged to join the Committee
- (4) The Committee will be dissolved within six (6) months after the end of the performance period.
- (5) The Committee shall make recommendations to the Authority in relation to the matters referred to in sub-regulation (2).

- (6) Decisions of the Committee regarding the recommendations to be made to the Authority are to be reached by consensus.
- (7) Where the members of the Committee are unable to reach consensus on the recommendation to be made to the Authority, each incumbent broadcasting service licensee and electronic communications network service licensee referred to in sub-regulation (1) may make a separate recommendation to the Authority.
- (8) A quorum of a meeting of the Committee is a majority of the members of the Committee, including the person designated as Chairperson of the Committee.
- (9) The existence of the Committee does not affect the rights of any licensee to file complaints, or the Authority's powers to enforce compliance in terms of the law.

14. PENALTIES

(1) Where the Complaints and Compliance Committee finds, in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), that there has been a failure by an incumbent broadcasting licensee to comply with regulations:

- a) 3(1)-(5),
- b) 4(3)-(4),
- c) 5(1)-(5)
- d) 6(1) and (4),

the Authority may impose a fine not exceeding five hundred thousand rands (R500 000) for each day that the incumbent broadcasting service licensee was in contravention of that regulation

- (2) Where the Complaints and Compliance Committee finds, in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), that there has been a failure by an Electronic Communications Network Service licensee to comply with regulations:

(a) 10 (1) – (3),

the Authority may impose a fine not exceeding five hundred thousand rands (R500 000) for each day that the ECNS licensee was in contravention of that regulation;

(3) The Authority may impose a fine not exceeding two hundred thousand rands (R200 000) where an incumbent broadcaster or ECNS is found to be in contravention of any other sub regulation.

15. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Digital Migration Regulations, 2010, and will come into effect upon publication in the *Gazette*.

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