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# GENERAL NOTICE

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## NOTICE 119 OF 2013



**Independent Communications Authority of South Africa**  
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**INDEPENDENT COMMUNICATIONS AUTHORITY  
OF SOUTH AFRICA**

### **GENERAL NOTICE – POSITION PAPER ON DIGITAL MIGRATION REGULATIONS, 2012**

#### **I Introduction**

1. The Republic of South Africa is obliged, in the context of the global transition from analogue television broadcasting to digital broadcasting, to effect the migration of existing terrestrial television services from analogue to digital broadcasting modes. Amongst the benefits that will be realised through the migration of the analogue terrestrial television services to digital is the release of the “digital dividend”, being those frequencies previously utilised for the purposes of analogue broadcasting, on the basis that the digital technology utilises the radio frequency spectrum in a more efficient manner than analogue technology and that the frequency allocation required for digital broadcasting is significantly less than that required for analogue. The availability of the digital dividend will, in turn, allow for the introduction of further services utilising the released radio frequency spectrum, including both electronic communications (telecommunications) services and broadcasting services.
2. The Independent Communications Authority of South Africa (“the Authority”) is the regulatory body tasked with managing the radio frequency spectrum in South Africa, in accordance with the applicable standards and requirements of the International Telecommunications Union (“ITU”), as agreed to and adopted by the Republic of South Africa. The Authority is, as such, the body responsible for managing the process whereby existing analogue terrestrial television services are migrated to digital. In making provision for the digital migration process, the Authority has acted in terms of its powers in terms of the Electronic Communications Act 36 of 2005 (“the ECA”), the Broadcasting Act 4 of 1999 and the Independent Communications Authority of South Africa Act 13 of 2000 (“the ICASA Act”) and has sought to promote relevant regulatory objectives, as provided for in that legislation.

3. The Authority has now finalised and adopted the Digital Migration Regulations, 2012 (previously referred to as the Digital Terrestrial Television Regulations) specifically in relation to the process to be followed for digital migration, as published under **GN 1070 in Government Gazette 36000 of 14 December 2012**. The Digital Migration Regulations deal primarily with the manner in which the digital migration of existing analogue terrestrial television services presently being broadcast in South Africa will be migrated to a digital platform and radio frequency spectrum will be utilised for this purpose. As such, the Digital Migration Regulations are specifically aimed at providing a framework that will ensure the smooth migration of existing analogue terrestrial television services within the required time periods. The Digital Migration Regulations also deal with certain ancillary issues. However, the Digital Migration Regulations do not provide for the manner in which the digital dividend will be utilised; these issues will be considered during further public processes to be conducted by the Authority and will be addressed in further regulations to be published by the Authority in due course.
4. In this Position Paper, the Authority has set out the basis for its decisions in relation to the digital migration process. The Authority has also considered the Broadcasting Digital Migration Policy for South Africa published under **GN 958 in Government Gazette 31408 of 8 September 2008** (“the Ministerial Policy”) by the Minister of Communications (“the Minister”), as well as the amended Broadcasting Digital Migration Policy for South Africa published under **GN 97 in Government Gazette 35014 of 17 February 2012** (“the amended Ministerial Policy”).
5. The Authority has also considered each of the written and oral representations and submissions received from interested parties in relation to the digital migration process and the various draft regulations which were published for public comment. While the Authority has not addressed each and every one of the comments made by interested parties in this Position Paper the Authority has sought to set out its position in relation to the material issues raised. The Authority has also adopted and published this Position Paper with the intention of providing clarity to participants in the communications sector, particularly with regard to the steps which the Authority intends to take in relation to matters which have not been dealt with in the Digital Migration Regulations.

## **II Procedures followed**

6. In accordance with her powers to make policies in terms of section 3(1) of the ECA the erstwhile Minister, Dr Ivy Matsepe-Casaburri, adopted the Ministerial Policy. In terms of section 3(4) of the ECA, the Authority is required, when exercising its powers and performing its duties, to “consider policies made by the Minister”.

7. The Authority published the First Draft Broadcasting Digital Migration Framework Regulations (“the First Draft Regulations”) under **GN 1240 in Government Gazette 31490 of 3 October 2008**. The Authority invited interested parties to submit written representations on the First Draft Regulations by 7 November 2008.
8. The Authority convened public hearings on 28 November and 1 December 2008 at which interested parties who had requested an opportunity to participate were afforded an opportunity to make representations in support of their written submissions on the First Draft Regulations.
9. Following the hearings, the Authority published the Second Draft Digital Terrestrial Television Regulations (“the Second Draft DTT Regulations”) under **GN 344 in Government Gazette 32083 of 31 March 2009**. Comments on the Second Draft Regulations were required to be submitted by 30 April 2009.
10. On 3 July 2009, the Authority published a final version of the Digital Terrestrial Television Regulations, 2009 (“the DTT Regulations”) and the Position Paper on Digital Terrestrial Television under **GN R720 in Government Gazette 32377 of 3 July 2009**.
11. In September 2009, the Authority withdrew the DTT Regulations and the Position Paper for further public consultation, published a revised version of the DTT Regulations (“the Third Draft DTT Regulations”) for public comment under **GN R896 in Government Gazette 32559 of 4 September 2009**, and also issued an Explanatory Memorandum to clarify the reasons behind the withdrawal of the DTT Regulations and the publication of the Third Draft DTT Regulations.
12. Following the publication of the Third Draft DTT Regulations for further public consultation, the Authority received twenty submissions from interested industry players and members of the general public. The Authority convened public hearings in relation to the Third Draft DTT Regulations on 29 and 30 October 2009.
13. Following the hearings, the Authority published the final Digital Migration Regulations (“the DM Regulations”) under **GN R97 in Government Gazette 32956 of 15 February 2010** and the Reasons Document on Digital Migration Regulations under **GN 132 in Government Gazette 32957 of 15 February 2010**.
14. In September 2011, the Authority withdrew the DM Regulations and the Reasons Document, published a revised version of the DM Regulations (“the Fourth Draft DTT Regulations”) for public comment under **GN 680 in Government Gazette 34642 of 28 September 2011**, and also published an Explanatory Memorandum to clarify the

reasons behind the withdrawal of the DM Regulations and the publication of the Fourth Draft DTT Regulations.

15. Before the public hearings in relation to the Fourth Draft DTT Regulations, the Minister published the amended Ministerial Policy in February 2012.
16. Following the publication of the Fourth Draft DTT Regulations for further public consultation, the Authority received twenty submissions from interested industry players and members of the general public. The Authority then convened public hearings in relation to the Fourth Draft DTT Regulations from 12 to 14 March 2012.
17. Following the public hearings, the Authority published a revised version of the Regulations (“the Fifth Draft DTT Regulations”) for public comment under **GN 532 in Government Gazette 35508 of 10 July 2012**. The Authority also published an Explanatory Memorandum in respect of its decision to amend the Fourth Draft DTT Regulations. Following the publication of the Fifth Draft DTT Regulations, the Authority received twenty submissions from interested industry players and members of the general public. The Authority convened public hearings in relation to the Fifth Draft DTT Regulations from 21 to 23 August 2012 and then again on 6 September 2012.
18. Following the most recent round of public consultations, the Authority took into consideration the submissions received from interested parties and published the revised final Digital Migration Regulations, 2012.

### **III The amended Ministerial Policy**

19. As set out above, the Ministerial Policy which was published in September 2008, was amended in February 2012 when the Minister published the amended Ministerial Policy. The Authority is required to take the policies made by the Minister into consideration in the performance of its regulatory functions but is not bound by any such policy.
20. The Minister’s policy determinations in relation to the digital migration of television services in South Africa, as set out in the amended Ministerial Policy, included that –
  - 20.1 the digital terrestrial television signal would be switched-on in the last quarter of 2012, and the date for analogue switch-off would be determined by the Minister after engaging with the Cabinet and relevant broadcasting sector stakeholders;
  - 20.2 national broadcasting digital signal coverage for Multiplex 1, or any multiplex allocated for the public broadcaster, should be achieved in a phased manner so as to reach 74% of the population by early 2012 and close to 95% by late 2013. Areas that are deemed to be difficult or uneconomical to reach should be

- covered through direct-to-home (“DTH”) by satellite means. The coverage requirements for transmitters for Multiplex 2 will be based on the broadcasters’ licence conditions;
- 20.3 during dual illumination, two multiplexes should be reserved for incumbent broadcasters, designated for public, commercial, and community broadcasting services;
- 20.4 the network of frequencies designated for public broadcasting should be co-assigned and managed by Sentech SOC Limited (“Sentech”) as the common carrier on a non-preferential and non-discriminatory basis;
- 20.5 Sentech should also provide broadcasting signal distribution to the commercial and community services, which should be provided on a non-preferential and non-discriminatory basis;
- 20.6 the public broadcaster, the South African Broadcasting Corporation SOC Limited (“the SABC”), on its own or in partnership, should cater for three public regional television channels as well as channels prioritising education, health, youth, sports, small, medium and micro enterprises, parliamentary and government, and interactive service needs;
- 20.7 regional television services should be required to provide an open window for community television broadcasting for a minimum period to be determined by the Authority;
- 20.8 the Authority must also ensure that community television broadcasting services are accommodated in the existing multiplexes, given the important role that the community broadcasting sector plays in fostering social and economic development at the local level;
- 20.9 in line with ITU recommendations, part of the digital dividend will be set aside for mobile communications services, and government will also consider opportunities to facilitate the introduction of Video on Demand and digital audio broadcasting services. In particular, two metropolitan networks of frequencies designated for the provision of mobile broadcasting services will be made available;
- 20.10 approximately sixteen standard definition digital channels will be created per radio frequency currently assigned to one analogue channel;
- 20.11 DVB-T2 is the national standard for broadcasting digital terrestrial television

(“DTT”) in South Africa, DVB-S2 is the national standard for broadcasting digital satellite television in South Africa, and MPEG-4 is the compression standard for the DTT roll-out in South Africa. Existing DTH services should continue to use the MPEG-2 standard with the option of migrating to MPEG-4 when commercially viable;

- 20.12 the set top boxes (“STBs”) to be used to receive DTT services will be enabled to receive services from different platforms and operators to allow different service providers to gain access to the same consumers and for consumers to be able to change service providers. STBs will be made affordable and will be sourced from South African manufacturers and government will consider finding means of making the STBs available to the poorest television-owning households. STBs will also have special features (including a return path capability) to enable access to e-government services for citizens and will include features such as closed captioning to meet the needs of disabled citizens;
- 20.13 Digital Content Generation Hubs aimed at generating content for digital broadcasting will be established to contribute to the development of the creative industries and job creation. A special skills development programme will be established to support the growth of the creative industries;
- 20.14 the Authority should ensure that universal access to public broadcasting services is sought to be achieved and the “must carry” requirements must be retained;
- 20.15 digital broadcasting should be used as a means to develop and disseminate local content in all eleven official languages;
- 20.16 the manner in which requirements are imposed in relation to minimum levels of South African content is suited to a single channel analogue environment and the Authority should review the existing content quotas to reflect the multi-channel digital environment;
- 20.17 competition should be promoted within the limits of the available spectrum in order to ensure a smooth migration to digital broadcasting in the country and to provide a multiplicity of sustainable services to benefit both the public and broadcasters; and
- 20.18 the Digital Migration Project Office will be established to manage and monitor the implementation of digital migration in South Africa.

#### **IV Submissions received from interested parties**

21. The Authority received submissions from interested persons on a range of issues in relation to the digital migration process, DTT more generally and other regulatory matters on which the Authority was urged to take action. The Authority has not sought in this Position Paper to respond to each and every one of the submissions received from interested parties but has set out the basis for its policy determinations in relation to the most significant matters raised. In addition, the Authority has set out its intended approach in relation to those matters which have not been dealt with in the Digital Migration Regulations, where the Authority is of the view that such matters are more appropriately dealt with in further regulatory processes and regulations.

22. The interested parties who made submissions on the Fifth Draft DTT Regulations were as follows:

- 22.1 Avusa Media Limited (“Avusa Media”);
- 22.2 BanziNet;
- 22.3 Cape Town TV;
- 22.4 Electronic Media Network Limited (“M-Net”);
- 22.5 e.tv Proprietary Limited (“e.tv”);
- 22.6 Kagiso Media Limited (“Kagiso”);
- 22.7 Highway Africa;
- 22.8 the National Digital Radio Mondiale;
- 22.9 Mindset Network;
- 22.10 Mobile TV;
- 22.11 On Digital Media Proprietary Limited (“Top TV”);
- 22.12 Primedia;
- 22.13 Right2Know;
- 22.14 the SABC;
- 22.15 Sentech;

- 22.16 Siyaya TV (“Siyaya”);
- 22.17 South African SKA Project Office (“SKA”);
- 22.18 Support Public Broadcasting Coalition (“SOS”);
- 22.19 Telkom SA SOC Limited (“Telkom”); and
- 22.20 Walking on Water Television Proprietary Limited.
23. Many of these parties also made representations in relation to previous drafts of the regulations. Specific reference has not been made in this Position Paper to submissions received in the context of previous public participation processes as the Authority is of the view that the most significant issues raised in those submissions were also addressed in the context of the most recent process.
24. In broad terms, the most significant concerns raised by interested parties in relation to the Fifth Draft DTT Regulations, and previous versions of the draft regulations, related to –
- 24.1 competition issues, including the restriction of the regulations to the incumbent broadcasters, the need for an inquiry regarding the introduction of competition in the broadcasting sector, and the allocation of the third multiplex to the new entrants;
- 24.2 the period for which dual illumination (i.e. simulcast broadcasting in both analogue and digital formats) should be required;
- 24.3 the granting of rights to the existing terrestrial broadcasters to broadcast new digital incentive channels and the processes and criteria to be employed by the Authority in considering whether to grant such rights;
- 24.4 the inclusion of Multiplex 3, the amendment of the Mobile Television Regulations, 2010 published by the Authority under GN R318 in *Government Gazette* 33125 of 16 April 2010, and the amendment of the Terrestrial Broadcast Frequency Plan, 2008 (“the broadcasting frequency plan”) which was published by the Authority under GN 1538 in *Government Gazette* 32728 of 18 November 2009;
- 24.5 the roll-out targets for the migrated DTT services;
- 24.6 the appointment of providers of signal distribution services to provide digital transmission services and the types of activities to be performed by the provider



of signal distribution services on the one hand and the existing terrestrial broadcasters, on the other hand;

- 24.7 community broadcasting services and regional services;
- 24.8 radio frequency spectrum licensing;
- 24.9 the requirements of public service broadcasting;
- 24.10 local content;
- 24.11 the accommodation of sound broadcasting services;
- 24.12 the composition and role of the Joint Spectrum Advisory Group ("JSAG"); and
- 24.13 the accommodation of the SKA.

## **V The Authority's Policy and Regulatory Positions**

25. The various policy decisions made by the Authority, and the basis for those positions in the context of the issues raised by the interested parties, are set out below. The concerns raised and submissions made by interested parties have been addressed in this Position Paper in line with the broad themes outlined above.

### **26. Competition considerations**

26.1 A major issue on which the Authority received submissions regarding the digital migration process to be followed in South Africa (which was an issue that has repeatedly been addressed in submissions received throughout the public consultation process on the digital migration process), was that of competition and the necessity to foster competition in the DTT market. In particular, one issue that the Authority explored with stakeholders during the public hearings in respect of the Fifth Draft DTT Regulations was the balance between regulatory intervention, on the one hand, and market forces, on the other hand, in determining appropriate market entry conditions for new entrants.

26.2 The Fifth Draft DTT Regulations provided that during dual illumination, when the transition from analogue to digital is to be achieved, the only broadcasters who would be accommodated on Multiplex 1 and Multiplex 2, would be those broadcasters who, at the present time, provide analogue terrestrial services (i.e. the existing broadcasting services defined as the terrestrial television broadcasting service licensees in the Digital Migration Regulations). These are: the SABC, e.tv, M-Net and the terrestrial television broadcasting service

licensees which provide community broadcasting services. In the Fifth Draft DTT Regulations, the Authority also made provision for the opening of the market to new subscription and free-to-air television broadcasters as contemplated in the amended Ministerial Policy.

26.3 In this regard, the Executive Summary of the amended Ministerial Policy provides as follows:

*“... Although the digital migration process focuses on incumbent broadcasters, especially the free to air services, government continues to be committed to increasing diversity of ownership and content of the broadcasting sector and facilitating the development of a dynamic, competitive environment.*

*In this regard, [the Authority], shall, taking into account its powers and mandate as set out in relevant legislation explore how to best introduce new services and licensees to facilitate such diversity. The increased capacity and spectrum availability given the introduction of DTT provides an opportunity for the licensing of new pay television service providers in the short term, and new free to air services in the medium to long term. Competition is needed to achieve a range of national policy imperatives including consumer choice, economic empowerment, [and the promotion of] domestic and foreign investments”.*

26.4 The Authority received a range of submissions regarding the entry of competitors onto the DTT platform. Certain parties (including e.tv) were of the view that there should be no licensing of new entrants during the dual illumination period. Certain other parties (including Telkom, Siyaya, Right2Know, Mobile TV, Mindset Network, Avusa Media, and Kagiso) were of the view that new entrants should be permitted to enter the market as soon as possible. In this regard, various aspirant broadcasters, such as Kagiso Media, submitted that they did not see the need for a market study as they were of the view that their own assessment of the risk of market entry was sufficient and they were willing to bear that risk.

26.5 Other parties, including the SABC, submitted that the Authority should first undertake a feasibility study and/or an inquiry in terms of Chapter 10 of the ECA before allowing the entry of new entrants into the market. In this regard, the SABC further submitted that new players should only be considered after the dual illumination period, particularly as digital migration is a process meant solely for existing broadcasting service licensees who are currently broadcasting on an analogue, whereas new competitors will not be expected to migrate services or simulcast their services. The SABC submitted further that, while the amended Ministerial Policy acknowledges the need for new entrants, it does not dictate the timeframe within which competition should be introduced.

26.6 e.tv also raised issues around the Authority’s licensing of five subscription television services, of which only one went on air (being TopTV), and argued that

the Authority should have taken steps to ensure that all five were successful in the market. The Authority has taken note of these submissions but does not intend addressing these issues within the context of the Digital Migration Regulations.

- 26.7 After duly considering the various submissions, the Authority has decided to restrict the Digital Migration Regulations to deal only with the digital migration process and the manner in which most of the existing broadcasting services who are presently providing analogue terrestrial broadcasting services will be migrated from using their existing radio frequency spectrum allocations for analogue broadcasting purposes to Multiplex 1 and Multiplex 2, so as to release radio frequency spectrum that may then be used for other purposes. (The issue of Multiplex 3 is discussed in further detail below.)
- 26.8 As such, the Authority has focussed at the present time on migrating only those terrestrial television broadcasting service licensees whose radio frequency spectrum allocations are significant and strategic in the context of the digital dividend (i.e. the SABC, e.tv, M-Net and the terrestrial television broadcasting service licensees which provide community broadcasting services). One of the main reasons for this approach is that the Authority is concerned primarily with securing the release of the digital dividend as quickly as possible so as to allow for the introduction of further services.
- 26.9 In the interests of promoting competition, the Authority has published draft Promotion of Diversity and Competition on Digital Terrestrial Television Regulations, under GN 1069 in *Government Gazette* 35998 of 14 December 2012 for public comment. These draft Regulations deal with the allocation of a third multiplex to new entrants. At this point in time, the Authority is contemplating using the frequencies presently allocated to the second mobile broadcasting multiplex, MDTT2, in the broadcast frequency plan for the purposes of a third multiplex. In order to utilise the MDTT2 multiplex for digital broadcasting, both the broadcast frequency plan and the Mobile Television Regulations would have to be amended. The Authority intends to follow a public consultation process in this regard.
- 26.10 The Authority has interpreted the amended Ministerial Policy not as directing it to conduct an inquiry into whether or not to introduce new services, but rather to explore how best to introduce such services. In broad terms, the Authority is of the view that there should be no licensing or any similar barrier to market entry for the supply of broadcast content to television watchers, except where

necessary to manage the use of a finite resource such as radio frequency spectrum, to promote diversity of ownership and control, and to promote the empowerment of historically disadvantaged persons.

26.11 Although the Digital Migration Regulations are concerned primarily with the migration of existing services onto the DTT platform, certain provisions of the Regulations necessarily relate also to the period after the end of the dual illumination period (by which time all the existing broadcasting services should have achieved analogue switch-off). The existing terrestrial television broadcasting service licensees to which capacity in the Multiplex 1 and Multiplex 2 has been allocated will continue to be accommodated on those multiplexes. Going forward, those broadcasters will be authorised to utilise such capacity on the multiplexes as is necessary to broadcast their existing channels as well as any digital incentive channels which they were authorised, during the dual illumination period (in the case of the SABC, e.tv, and M-Net), to broadcast subject to the limits on the capacity allocated to them. The Authority has decided that, where a terrestrial television broadcasting service licensee has not utilised its full allocation of capacity to broadcast its existing television channels on a date 36 months after the commencement of the dual illumination period, the unutilised capacity in the relevant multiplex will be forfeited and the Authority may award the capacity to other licensees. The Authority has further decided that, where a digital incentive channel in either of the multiplexes, which is authorised to be broadcast by a terrestrial television broadcasting service licensee, is not being broadcast by such licensee on a date 18 months after the authorisation of the channel, the unutilised capacity related to that channel shall be forfeited.

26.12 In summary, the Authority has decided to separate the digital migration process (involving the actual migration of existing terrestrial television services from analogue to digital broadcasting modes during the dual illumination period) from the accommodation of new entrants on the DTT platform. The Digital Migration Regulations, accordingly, provide for the digital migration of terrestrial television broadcasting service licensees in respect of the public, commercial and community services. Allocations have been made on Multiplex 1 and Multiplex 2 for the digital migration of the SABC, e.tv, M-Net, and the terrestrial television broadcasting service licensees which provide community broadcasting services. In this way, the Authority will give effect to the intention expressed in the Ministerial Policy to focus on the digital migration of incumbent broadcasters, "especially the free to air services". By publishing the draft Promotion of Diversity and Competition on DTT Regulations which deal with the proposed allocation of capacity in a third multiplex, the Authority has also given effect to the intention

expressed in the amended Ministerial Policy that “[the Authority] shall, taking into account its powers and mandate as set out in relevant legislation explore how best to introduce new services and licensees to facilitate such diversity”.

- 26.13 During the course of the 2010/2011 and 2011/2012 financial years, the Authority commenced with an inquiry into the broadcasting sector and, in particular, the role of Sentech, in terms of section 67 of the ECA. This is a key project for the Authority. Although the Authority accepts that it has the power to conduct an inquiry in terms of section 4B(1)(a) of the ICASA Act and is not restricted only to conducting inquiries in terms of section 67 of the ECA, little purpose would be served if such an inquiry were to be conducted outside of the processes provided for in section 67. The fact that the legislature has provided for a particular process to be followed before certain requirements are imposed on licensees, means that the Authority may only impose such requirements in accordance with the stipulated processes. The Authority has also included, in regulation 9(9) of the Digital Migration Regulations, for the sake of clarity, a provision that, in the event that the tariffs charged by an electronic communications network services (“ECNS”) licensee appointed by a broadcaster to provide signal distribution services are subject to regulation by the Authority pursuant to section 67 of the ECA, any agreement between such an ECNS licensee and the broadcaster with which it has contracted will be modified. As such, in the event that pro-competitive conditions in relation to tariffs are ultimately imposed on Sentech, any agreement between Sentech and any other party for the provision of digital signal distribution services will be amended to reflect the tariffs which may be levied by Sentech in light of the relevant pro-competitive condition.

27. Period for dual illumination

- 27.1 In determining the period for which the terrestrial television broadcasting service licensees *are required* to dual illuminate their existing analogue channels, the Authority has considered the amended Ministerial Policy which provides as follows:

*“... Government has decided that the digital signal should be switched on by the end of the 2012/2013 financial year. A final date for the commencement of the dual illumination period will be announced by the [Minister] after engaging with Cabinet and all relevant stakeholders, including the broadcasting industry. The date for the final switch-off of the analogue signal will similarly be announced by the [Minister] after engaging with Cabinet and other relevant stakeholders and assessing the extent of take up by audiences of the necessary equipment to facilitate universal access to broadcasting services”.*

- 27.2 Given the delays which have been experienced by the Department of

Communications, the Authority has decided to wait for the Minister's announcement on both the commencement of the dual illumination period and the final switch-off of the analogue signal. The dual illumination period will, accordingly, commence and end on the dates directed by the Minister.

27.3 The Authority has also imposed the requirement to migrate and to dual illuminate for a specific period only on those broadcasters which occupy strategic spectrum and which, in the Authority's view, are in a position to migrate. As such, for example, the Authority has not imposed such requirements on terrestrial television broadcasting service licensees which provide community broadcasting services who are not presently in a financial position which would allow them to dual illuminate.

28. Digital incentive channels

28.1 The Authority has considered the submissions by interested parties (including e.tv) that the switchover of the incumbent analogue broadcasters to digital is not necessarily in their interests as it imposes more competition (i.e. the risk of lower advertising revenues in the face of a fragmenting audience) and potentially higher transmission costs where a period of dual illumination is required and that, on this basis, incumbent broadcasters require incentives to migrate their services.

28.2 Digital incentive channels are new digital channels which the terrestrial television broadcasting service licensees may be authorised to provide, in addition to their existing analogue channels, as at the commencement of the Digital Migration Regulations, as an incentive for digital migration and to encourage consumers to take the steps necessary for a successful digital migration. As provided for in previous drafts of the regulations, including the Fifth Draft DTT Regulations, terrestrial television broadcasting service licensees are required to make application for authorisation to provide a new channel, new digital incentive channels can only be authorised before and during the dual illumination period and terrestrial television broadcasting service licensees can utilise the capacity allocated to them in a particular multiplex to broadcast their existing television channels together with any digital incentive channels that they were authorised to provide.

28.3 The Authority has determined that affording the terrestrial television broadcasting service licensees, as defined, the right to apply to broadcast further channels is an appropriate mechanism to compensate the terrestrial television broadcasting service licensees for the costs of digital migration and dual illumination as well as

to facilitate a wider range of programming and services in addition to those presently provided by them, and to encourage consumers to purchase STBs to access the programming in question. In this regard, the costs incurred by the existing terrestrial broadcasters include: the further resources which will need to be invested in technology and infrastructure within the relatively short time period within which digital migration is required to enable a digital broadcast signal to be made available (any subsidy which may be given to Sentech to subsidise the costs of dual illumination will relate only to transmission costs and will not include these further (significant) costs), and the costs incurred in marketing the digital channels and informing consumers of the need to obtain a STB. The Authority considers that the value of the spectrum which will be released through the migration of the existing analogue services justifies incentivising the existing broadcasters with the possibility of additional broadcasting rights for the successful completion of the digital migration process. In addition, in the case of the SABC, the right to broadcast additional channels will allow for an expansion of the SABC's public service programming in compliance with the SABC's obligations in terms of its Charter ("the Charter"), as contained in Chapter IV of the Broadcasting Act.

- 28.4 In this regard, the SABC submitted that the channel authorisation process should not be onerous and should be a purely administrative process which does not require any public consultation or any form of analysis or approval by the Authority. The SABC also submitted that the Authority should authorise an application for channel authorisation and provide reasons within 90 days of receipt of the application. Given that the authorisation of new digital incentive channels involves the right to use valuable radio frequency spectrum (being capacity in a multiplex), the Authority has determined that the public may have an interest in the allocations, whether the broadcaster provides a public or commercial broadcasting service. As such, the Authority has provided in the Digital Migration Regulations that a public process may be followed where any broadcaster makes application for authorisation to broadcast a digital incentive channel, where the Authority considers it necessary in the interests of fairness to do so. This will allow interested parties, including potential competitors for the capacity, to comment on the claims made in support of an application for authorisation and will assist the Authority in testing the claims made. The Authority has provided that all applications by the SABC for authorisation to broadcast a new digital incentive channel shall be subject to a public value assessment, being an assessment as to whether the channel will be of value to the public and will not have an adverse impact (i.e. anti-competitive effect) on the

market in which the broadcaster operates. This will include consideration of whether a proposed channel will contribute to diversity and whether it satisfies the requirements of section 10 of the Broadcasting Act.

- 28.5 The Authority included specific regulations in the Digital Migration Regulations requiring that the SABC, e.tv and M-Net must apply for authorisation to broadcast a new digital incentive channel and that the Authority will issue a certificate either to authorise or refuse authorisation of a digital incentive channel within 60 days of receipt of an application to authorise such a channel. Where the Authority refuses to authorise a digital incentive channel, the Digital Migration Regulations require that the Authority provides written reasons within 30 days of such a certificate being issued.
- 28.6 The Authority has further determined that an application by e.tv for authorisation to broadcast a digital incentive channel must include: (i) the name of the proposed channel; (ii) the primary language(s) of the channel; (iii) a programming plan, including local content; (iv) the country where the channel was packaged; (v) the full name of the channel supplier; and (vi) any other related information as may be required by the Authority.
- 28.7 Given that the Authority has decided that terrestrial television broadcasting service licensees which provide community broadcasting services are not required to dual illuminate, such broadcasters will not be entitled to apply for, or be awarded, new digital incentive channels.
- 28.8 M-Net submitted that there is no need for a detailed application process for a subscription broadcasting service, and that it is not clear why this process cannot be dealt with in terms of the Subscription Broadcasting Service Regulations, 2006 published by the Authority under GN 152 in *Government Gazette* 28452 of 31 January 2006. In other words, M-Net submitted that the Digital Migration Regulations should only deal with the procedure for the authorisation of channels to the extent that there are no existing regulations in place. The Authority agrees with this submission and has determined that subscription broadcasting services must follow the authorisation procedures set out in the Subscription Broadcasting Services Regulations prior to broadcasting a digital incentive channel.
- 28.9 In recognition of the fact that capacity on the DTT multiplexes is valuable and that it could potentially be utilised by other broadcasters, the Authority will only authorise the existing broadcasters (other than community broadcasters) to provide digital incentive channels within their allocated capacity in the relevant multiplexes, during the dual illumination period. (For the sake of clarity, such



broadcasters will have the right to provide the digital incentive channels after the dual illumination period has ended but they will not be permitted to apply to provide any new digital incentive channels.) The Digital Migration Regulations also provide that, as from the date that the Regulations come into effect, existing broadcasters may apply for authorisation to broadcast additional digital incentive channels. Accordingly, the existing broadcasters will not necessarily have to wait for the dual illumination period to commence before applying to the Authority.

28.10 If, on a date 18 months after the authorisation of the digital incentive channel, a broadcaster is not broadcasting the channel, the capacity related to that channel will be forfeited. The Authority may potentially conduct a competitive process with regard to the allocation of remaining capacity in the multiplexes and may authorise other broadcasters to provide services utilising the capacity in question. As such, the existing broadcasters will have to act quickly to come up with appropriate new channel offerings, which meet the criteria specified in the Digital Migration Regulations. The Authority anticipates that the availability of new programming will incentivise consumers to switch to digital in order to access the programming.

29. Multiplex 3

29.1 The amended Ministerial Policy provides for the creation of two multiplexes for the provision of DTT services and the digital migration of existing analogue television services, as does the ITU's Regional Radio Conference, 2006 (RRC 06). The Fourth Draft DTT Regulations reflected this policy, but the Fifth Draft DTT Regulations proposed the creation of a third multiplex or "Multiplex 3". Further consultation with interested parties was necessary as the creation of Multiplex 3 did not form part of the Fourth Draft DTT Regulations. Instead, the idea around the creation of a third multiplex arose during the public hearings which were held in March 2012, partly as a response to the amended Ministerial Policy which stated that "[c]ompetition is needed to achieve a range of national policy imperatives including consumer choice, economic empowerment, [and the promotion of] domestic and foreign investments".

29.2 Given the current parameters of the broadcast frequency plan, and so as to address the amended Ministerial Policy, the Authority consulted with interested parties on the matter of redesigning the second Mobile DTT Multiplex (or MDTT2) to create Multiplex 3 so as to accommodate new entrants to stimulate the uptake of DTT services, foster content and enhance consumer choice and to address the need for future services in the short term during the dual illumination

period.

- 29.3 Certain parties (including Telkom, Siyaya, Right2Know, Mobile TV, Mindset Network and Avusa Media) expressed support for the use of MDTT2 as Multiplex 3. While Sentech agreed with the inclusion of a third multiplex, it submitted that a third multiplex could not be accommodated within the same period as Multiplex 1 and Multiplex 2. Furthermore, Kagiso submitted that Multiplex 3 should only be referred to in the regulations to the extent that it would be operational by the third quarter of 2013 (with an inquiry, including a market study in respect of the viability of new market entrants, concluded by the end of the first half of 2013) to enable new players to roll out services before the end of 2013. Kagiso submitted further that, while it supported the introduction of Multiplex 3 to accommodate new players, it was concerned that Sentech would not be ready to roll out Multiplex 3 due to funding and technical constraints.
- 29.4 On the other hand, e.tv was opposed to the introduction of a third multiplex to accommodate new licensees during the dual illumination period and submitted that no new entrants should be licensed unless and until additional terrestrial spectrum becomes available after analogue switch-off. e.tv submitted further that the proposal to introduce Multiplex 3 would only delay or inhibit the roll out of DTT in the country (i.e. the introduction of Multiplex 3 would require an amendment to the broadcast frequency plan which could impact on the current plan for DTT and Multiplex 3 would, in any event, be very expensive to construct).
- 29.5 The Authority has decided to remove the reference to Multiplex 3 in the Digital Migration Regulations. Although the proposal for the creation of Multiplex 3 sought to facilitate the introduction of competition in the subscription television market in the short term, and the introduction of competition in the commercial free-to-air market and community television market in the medium term, the Authority has taken note of the divergent views regarding the introduction of Multiplex 3. The Authority has also taken cognisance of the primary purpose of the Digital Migration Regulations, to provide a framework that will ensure the *smooth migration of existing analogue terrestrial television services* within the required time periods.
- 29.6 The Authority is aware of the potential benefits of competition and the wish that has been expressed by a number of parties to be accommodated on the DTT platform. As such, the Authority will continue to explore the proposal of creating Multiplex 3, which will require an amendment to the broadcast frequency plan

and potentially an amendment to the Mobile Television Regulations, but this will take place in a process parallel to, but separate from, the publication of the Digital Migration Regulations.

29.7 In terms of section 34(15) of the ECA, the Authority is required to follow a public process in respect of the amendment of the radio frequency plan, of which the broadcast frequency plan forms part. In this regard, the Authority is considering the frequencies to be included in the third multiplex and will give notice in the *Government Gazette* of the frequencies which are proposed to be included. The Authority will then follow the procedures set out in sections 34(8) to (12) of the ECA.

30. Roll-out targets

30.1 As set out above, the amended Ministerial Policy envisages that (1) the national broadcasting digital signal coverage for Multiplex 1, or any multiplex allocated for the public broadcaster, should be achieved in a phased manner so as to reach 74% of the population by early 2012 and close to 95% by late 2013, enabling analogue switch-off, and (2) hard-to-reach areas should be covered through DTH by satellite rather than DTT. The amended Ministerial Policy further contemplates that the coverage requirements for transmitters for Multiplex 2 will be based on the broadcasters' licence conditions. In the Fifth Draft DTT Regulations, the Authority provided that the providers of signal distribution services appointed by the existing terrestrial broadcasters were required to ensure that the digital broadcast signal for public service DTT services reached: 74% of the population of South Africa, within six months after the commencement date of digital terrestrial television switch-on; and 95% of the population of South Africa by the end of the dual illumination period.

30.2 Sentech submitted that the current broadcast frequency plan is capable of ensuring only 85% population coverage, and that such coverage obligations should remain an obligation of the broadcasters and not the electronic communications network services licensees.

30.3 The Authority has considered the amended Ministerial Policy which envisages a certain national broadcasting digital signal coverage for Multiplex 1, and has decided that the SABC must achieve DTT coverage in accordance with the roll-out targets specified in the amended Ministerial Policy, so as to achieve universal coverage. The Authority has further decided that coverage requirements for DTT in Multiplex 2 will be based on the terrestrial television broadcasting service licensees' licence conditions, although the licensees are encouraged to expand

their DTT coverage beyond what is stipulated in their licences.

31. Digital signal distribution services and the appointment of providers

31.1 The multichannel environment for which digital broadcasting allows has raised questions regarding the appropriate role to be played by the entities which provide signal distribution services to the terrestrial television broadcasting services licensees. Under the previous regulatory system and during the period in which terrestrial television services were transmitted as analogue services, the broadcasting service licensees had the right to decide on who they would appoint to provide signal distribution services. Such broadcasting service licensees were also permitted to self-provide their own signal distribution services. In terms of the ECA, a provider of signal distribution services must be licensed to provide ECNS (i.e. signal distribution services are a sub-category of ECNS).

31.2 e.tv made extensive submissions regarding the manner in which Sentech's tariffs should be regulated, so as to ensure that e.tv is not required to pay inflated and uncompetitive fees for signal distribution. e.tv also submitted that Sentech is supposed to be subsidised by government during the dual illumination period for the provision of signal distribution services. Sentech indicated that it has requested funding from government for the dual illumination period. This issue is being addressed by the Authority in a separate process in terms of section 67 of the ECA to consider whether pro-competitive conditions should be imposed on ECNS licensees operating in the broadcasting sector. This may include the imposition of price controls and the regulation of Sentech's tariffs.

31.3 e.tv submitted that the Fifth Draft DTT Regulations did not deal with a situation in which broadcasters sharing a multiplex, are unable to reach agreement on the configuration of the multiplex or the appointment of a signal distributor, or when one broadcaster unilaterally decides to configure the multiplex and launch DTT services without agreement with its multiplex partner.

31.4 In future, it is likely to become difficult to allow broadcasting service licensees operating on the DTT platform to enter into their own commercial arrangements with ECNS licensees who provide signal distribution services. This is because a single multiplex, which must be transmitted by a single provider of signal distribution services, may be allocated to two or more different broadcasting service licensees. The Authority intends to examine this issue to determine the most appropriate regulatory intervention. In the meantime, for the purpose of the digital migration process, the Authority has decided to allow the existing

broadcasters to choose and appoint their own providers of signal distribution services. The Authority will intervene in this appointment process only in instances where the existing broadcasters are not able to appoint their preferred providers of signal distribution services prior to the commencement of the dual illumination period or where the Authority is of the view that the proposed provider will not be in a position to meet the roll-out targets stipulated in the Digital Migration Regulations.

31.5 The SABC submitted that the time period within which broadcasters are required to submit their agreements with ECNS licensees to the Authority should not be limited, that the agreements should merely be required to be submitted after they are concluded and that the Authority should encourage the conclusion of agreements within 120 days. Sentech submitted that the period within which transmission agreements are required to be submitted to the Authority should be extended to 90 days with the possibility of a further extension. The incumbent broadcasters also submitted that the Authority should not interfere in the commercial arrangements between ECNS licensees and broadcasters regarding the provision of digital signal distribution services and that the Authority does not have the power to intervene to appoint a signal distributor. In terms of the Digital Migration Regulations, the broadcasters are required to submit the transmission agreements concluded with ECNS licensees to the Authority, to enable the Authority to perform an oversight role. The Authority has decided that these agreements must be submitted within three months of the Minister's publication of the date for the commencement of the dual illumination period.

31.6 On the basis that Sentech may receive a government subsidy to cover the costs of dual illumination during the performance period, a requirement has been included in the Digital Migration Regulations that any such subsidy which is received by an ECNS licensee which provides signal distribution services must be applied in the reduction of the tariffs levied on the broadcasters utilising those services and, where applicable, digital signal distribution services in respect of the broadcasters' existing analogue channels (i.e. the channels that are dual illuminated) should be provided free-of-charge. However, terrestrial television broadcasting service licensees whose dual illumination costs will be subsidised (through any subsidy granted to Sentech) must nevertheless conclude a transmission agreement with an ECNS licensee (except to the extent that the Authority appoints a signal distributor) given that the parties must provide contractually for matters other than the applicable fees alone.

31.7 The Authority has included a provision in the Digital Migration Regulations that

broadcasters may cancel their arrangements with ECNS licensees who were appointed by the Authority on six months' notice to the ECNS licensee and the Authority where such broadcasters are granted the right to self-provide signal distribution services. This provision has been included to ensure that broadcasters will not be locked into a contract with a particular provider of signal distribution services, once the broadcaster is in a position to choose another provider and to balance the fact that, at present, broadcasters have a limited choice of appropriate providers of signal distribution services. Where broadcasters conclude commercial agreements with ECNS licensees, they should address this issue in their agreements.

31.8 The Authority also received submissions in relation to the respective roles of the broadcaster, on the one hand, and the provider of signal distribution services on the other. The manner in which the Fifth Draft DTT Regulations was drafted suggested that the ECNS licensees appointed by the terrestrial television broadcasting service licensees would be responsible for multiplexing. The incumbent analogue broadcasters had submitted previously that signal distribution does not extend to multiplexing and coding, which affects matters such as the quality of the channel, the provision of an Electronic Programme Guide and associated data for channels, and editorial control over content, and which is the responsibility of the broadcaster rather than the provider of signal distribution services. As such, it was submitted that it is unnecessary for the Authority to regulate the process of multiplex operation and that this should be left to the broadcaster. Sentech disagreed with these submissions and made representations previously to the effect that the digital migration regulations should make it clear that the broadcaster will provide content and that the ECNS licensee will be responsible for statistical multiplexing.

31.9 The Authority has decided that the question as to who will assume responsibility for multiplexing will be left to the terrestrial television broadcasting service licensees on the basis that multiplexing is not, in and of itself, a licensable activity in terms of the ECA and does not constitute ECNS.

## 32. Community and regional broadcasting services

32.1 The Authority received several submissions in relation to community broadcasting. As set out above, the amended Ministerial Policy envisaged that community television services would be accommodated initially on the public broadcasting multiplex and that the regional public services should be required to provide an open window for community television broadcasting services. In this

regard, the Fifth Draft DTT Regulations provided that 10% of the capacity in Multiplex 1 was reserved for community broadcasters.

32.2 A number of interested parties expressed dissatisfaction with the proportion of capacity allocated to community broadcasters; Cape Town TV, Right2Know and Highway Africa submitted that community television was severely disadvantaged in the allocation of capacity across the three multiplexes and that commercial television had been awarded the majority of the available capacity. Mindset Network submitted that an allocation of capacity on Multiplex 3 must be made for broadcasters who offered broadcasting for public benefit such as education. Sentech submitted that a 10% capacity allocation in Multiplex 1 is insufficient for community broadcasting services, and suggested that the Authority should allocate 20% of Multiplex 1 to community broadcasters nationally, with a maximum of three broadcasters per province during the dual illumination period. Cape Town TV agreed that the allocation of 10% of Multiplex 1 is not sufficient bandwidth for two community channels in one area. Cape Town TV thus submitted that at least 10% of Multiplex 2 should be allocated to new community channels, and at least 20% of overall multiplex bandwidth should be allocated to community television and 30% to the public service channels of the SABC. SOS submitted similarly that community television and the future needs of community television had not been adequately dealt with in the Fifth Draft DTT Regulations.

32.3 The accommodation of terrestrial television broadcasting service licensees which provide community broadcasting services on Multiplex 1 is intended to be on a temporary basis until such time as further spectrum becomes available for community television broadcasting purposes. In light of the various submissions received by interested parties and on the basis that there are three licensed community broadcasters per province, the Authority has decided to increase the capacity allocation for terrestrial television broadcasting service licensees which provide community broadcasting services from 10% of the available capacity in Multiplex 1 to 15% of the available capacity in Multiplex 1. As such, the Digital Migration Regulations now provide that the SABC may use up to 85% of the available capacity in Multiplex 1. The Digital Migration Regulations provide further that terrestrial television broadcasting service licensees which provide community broadcasting services are not required to provide for dual illumination of their community broadcasting services, but must ensure that they have completed digital migration to DTT by the end of the dual illumination period.

32.4 In relation to the regional services which were intended to be launched by the SABC, e.tv submitted that the digital migration regulations should set a fixed time

period within which the regional channels should be launched to avoid a situation where the SABC is authorised to broadcast further digital incentive channels on a regional basis but does not ever commence broadcasting. e.tv submitted that the SABC should be required to launch SABC 4 and 5 no later than the date of launch of any other digital incentive channel. The SABC submitted that the licences granted to the SABC were granted subject to funding from Parliament and that the issue of the SABC 4 and 5 regional channels should not be dealt with in the context of regulations dealing with digital migration.

- 32.5 The Authority intends to accommodate regional services once the digital dividend has been released, and intends to engage in further consultation in respect of this issue. The Authority has not yet issued licences in respect of SABC 4 or 5 to the SABC, as the decision to award licences to the SABC in respect of these channels was premised on adequate funding being made available by government. This has not yet occurred. As such, the SABC has no obligation at the present time to broadcast those channels on analogue. The question as to whether the SABC should be permitted to broadcast further digital incentive channels in Multiplex 1 without first launching the regional channels, will be considered in the process for the authorisation of any digital incentive channels in the context of the public value assessment and the requirements of the Charter. The process which is currently underway for the review of the regulatory framework, within which the public broadcasting service operates, is also likely to affect the requirements with which the SABC must comply in fulfilling its public service mandate.

33. Radio frequency spectrum licensing

- 33.1 Sentech submitted that, in terms of section 31 of the ECA, it is necessary for the radio frequencies which are assigned to the broadcasting services also to be assigned to the entity which provides signal distribution services. Sentech submitted that frequencies should be assigned to the ECNS licensee providing broadcast signal distribution services on a primary basis and to the broadcaster on a secondary basis, taking into account the investment made by the ECNS licensee to enable it to provide signal distribution services on the frequencies in question. Sentech argued that any concerns on the Authority's part that co-assignment will limit the options of the broadcaster if it wants to self-provide or seek the services of another ECNS licensee are not reasonable or rational given that failure to co-assign the frequencies to Sentech will result in it contravening the ECA. Sentech proposed that any radio frequency spectrum licence held by Sentech in respect of any co-assigned frequencies could be made subject to the



condition either that it will expire on the date that the radio frequency spectrum licence issued to the broadcaster expires or on the date that the Authority is notified of the discontinuation of Sentech's contractual arrangement with the relevant broadcaster. Sentech submitted that the requirement that it hold a licence to provide signal distribution services to broadcasting service licensees on the radio frequencies assigned to those broadcasters is not removed by the transitional provisions of the ECA in terms of which any previous unlicensed use of radio frequency spectrum continues to be authorised in terms of the ECA. This is on the basis that Sentech did not have a historical right to use the frequencies which will be used for DTT transmission and that these frequencies are not subject to the same transmission parameters as the analogue frequencies in relation to which Sentech previously provided signal distribution services to the SABC and e.tv.

- 33.2 Section 31(1) of the ECA, which provides for radio frequency spectrum licensing, provides as follows –

*“Subject to subsections (5) and (6), no person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence granted by the Authority to such person in terms of [the ECA]” (emphasis added).*

- 33.3 In the past, the frequencies used for broadcasting purposes have been assigned only to the broadcaster. This is despite the fact that the broadcaster is generally not the entity performing the physical transmission via radio signals of the broadcast signal. This is on the basis that the broadcaster has the right to provide its broadcasting service on a particular frequency and is required to comply with a range of programming and other obligations in light of the fact that the radio frequency spectrum is a scarce resource and that there are a finite number of frequencies available for broadcasting (i.e. it is not possible simply to allow any person who wishes to do so, to commence broadcasting using radio frequency spectrum). The Authority has attempted to address this issue by declaring the ECNS licensee providing signal distribution to be an agent of the terrestrial television broadcasting service licensees. Effectively this means that any ECNS licensee providing the signal is deemed to be in compliance with section 31(1) of the ECA.

- 33.4 The SABC submitted that the licensing model in terms of which the terrestrial television broadcasting service licensees are licensed needs to be reviewed in the context of the multi-channel environment to which the broadcasters are moving before licence conditions can be imposed on broadcasters.

33.5 The Authority recognises that it is necessary to amend the broadcasting service licences of the terrestrial television broadcasting service licensees who will be migrating their services to take account of the fact that they will be operating in a multi-channel environment. The existing broadcasting service licences held by the terrestrial television broadcasting service licensees are specific to a single channel, analogue environment. In addition, it is necessary for the Authority to amend the radio frequency spectrum licences issued to the terrestrial television broadcasting service licensees given that, during the dual illumination period, they will be utilising both their existing frequencies and the capacity allocated to them in the DTT multiplexes, in terms of the Digital Migration Regulations. The Authority will commence the necessary processes for the amendment of the licences held by the terrestrial television broadcasting service licensees in accordance with its powers in terms of the ECA but has provided in the Digital Migration Regulations for transitional provisions pending the finalisation of the licence amendment processes. As such, the broadcasters' existing broadcasting service and radio frequency spectrum licences are deemed to authorise them to provide services and utilise capacity in the relevant DTT multiplexes, on the basis provided for in the Digital Migration Regulations.

34. Local content

34.1 In the Fifth Draft DTT Regulations, the Authority proposed the introduction of an interim solution to use original television content to incentivise viewers to acquire STBs and to set minimum requirements for local television content on digital incentive channels and new digital channels during the dual illumination period or until such time as the ICASA South African Local Television Content Regulations, 2006 published under GN 154 in *Government Gazette* 28454 of 31 January 2006 ("the Local Content Regulations"), are amended. The Authority also proposed the formation of a Digital Television Content Advisory Group ("DTCAG") to advise on the most effective way to ensure the supply of digital television content to encourage consumers to acquire STBs in order to begin viewing digital television services.

34.2 Amongst the submissions which the Authority received on the Fifth Draft DTT Regulations were submissions regarding the local content obligations with which the terrestrial television broadcasting service licensees broadcasting on the DTT platform are required to comply. Siyaya and Mobile TV proposed the introduction of local content percentages during prime time of 50% for public services, 35% for commercial services, and 10% for subscription services, so as to align with the Local Content Regulations. Mobile TV submitted further that the Authority's

proposed minimum requirements for local television content on digital television channels during the dual illumination period is a positive step. Avusa Media submitted that the regulations should reflect that during the dual illumination period, digital incentive channels and new channels will be required to make certain undertakings or promises of performance relating to the broadcast of local content, which will be benchmarked against the Local Content Regulations. On the other hand, the SABC submitted that the current Local Content Regulations cannot be applicable to digital incentive channels (i.e. the Local Content Regulations are aimed at a single channel environment and an analogue platform), while the e.tv submitted that it supported the Authority's acknowledgement that the existing Local Content Regulations are not appropriate to the DTT environment.

34.3 The Authority intends to review the Local Content Regulations to provide more specifically for the obligations with which terrestrial television broadcasting service licensees are required to comply in a multi-channel environment. This will necessarily involve a comprehensive public consultation process during which all interested parties will have an opportunity to make representations in relation to the policy approach to be adopted by the Authority. The Authority has also decided that it will not make any interim local content rules specifically for digital incentive channels and new digital channels. Incumbent broadcasters will need to maintain their current licence and regulatory obligations regarding local television content on their channels until the Authority's review of the Local Content Regulations is completed and new regulations are in place.

34.4 The Authority has also decided to retain the regulation providing for the establishment of the DTCAG. The DTCAG will help to promote the availability of digital television content during the dual illumination and will advise the Authority on the most effective way to ensure the supply of digital television content to encourage end-users to acquire STBs in order to begin viewing digital television services as well as monitoring compliance with content obligations.

### 35. Must Carry

35.1 The Authority has considered that "must carry" rules were formulated in an analogue environment when there were limited terrestrial television broadcasting services that could easily be accommodated on a satellite DTH or cable platform without placing excessive compliance burdens on operators. In a digital broadcasting environment, where one frequency can potentially accommodate up to 21 channels (if MPEG 4 compression is used), it would have a considerable

impact on satellite and cable operators to require them to carry the whole range of public free-to-air channels as it would restrict the subscription operators' ability to use their own capacity freely and in a competitive manner.

- 35.2 The Authority has decided that the ICASA Must Carry Regulations, 2008, published under GN 1271 in *Government Gazette* 31500 of 10 October 2008, will continue to apply in relation to the existing analogue channels broadcast by the SABC until the Authority has finalised a comprehensive public consultation process during which all interested parties will have an opportunity to make representations in relation to the policy approach to be adopted by the Authority in addressing must-carry obligations.

36. Language diversity

As part of its review of the existing Local Content Regulations, the Authority intends to consider the most appropriate means to facilitate diversity of languages in the television broadcast sector in the digital broadcasting, multi-channel environment. At present, terrestrial television broadcasting service licensees must continue to comply with the language requirements specified in their existing licences for their existing channels (which will continue to be broadcast on analogue during the dual illumination period). In addition, where the SABC makes application for authorisation to broadcast a digital incentive channel, one of the factors which will be taken into account by the Authority is the extent to which the addition of the channel will contribute to the SABC meeting the requirements of sections 10(1)(a), (b) and (c) of the Broadcasting Act.

37. Sound broadcasting services

- 37.1 With regard to sound broadcasting services, the SABC submitted that it should be permitted to broadcast its public sound broadcasting services on Multiplex 1 and that these services could be accommodated within the 15% of its allocated capacity which may be used for the provision of data services. e.tv submitted that radio services other than the SABC's public radio stations should also be permitted to be broadcast on the multiplexes.
- 37.2 It is not possible for the Authority to provide that all the existing radio stations may be broadcast on the DTT multiplexes until after the dual illumination period, given the number of radio services which are available and the need for the DTT multiplexes to be utilised primarily for the provision of digital television services. However, the Authority has decided that a terrestrial television broadcasting service licensee may provide data services and, subject to agreement with the relevant channel provider, radio channels using the capacity allocated to it in

Multiplex 1 or Multiplex 2 for the purpose of enhancing service to end-users. Any such data services and radio channels may not utilise more than fifteen percent (15%) collectively of the capacity allocated to the relevant licensee.

38. JSAG

38.1 Previous drafts of the digital migration regulations made provision for the establishment of a Joint Spectrum Advisory Committee or Joint Spectrum Advisory Group (JSAG) representing the broadcasters which are subject to digital migration. In their comments in relation to all of the previous drafts of the digital migration regulations, interested parties, and especially providers of electronic communications services, submitted that they should also be represented on the JSAG given that they too have an interest in a smooth migration process. In the context of the Fifth Draft DTT Regulations, Siyaya and Mobile TV submitted that the composition of the JSAG must include independent persons who are not directly affected by the process or subject to the Digital Migration Regulations (given that, in the view of Siyaya and Mobile TV, the composition of the JSAG has the potential to facilitate anti-competitive behaviour). Sentech submitted that, given that the JSAG's mandate with regard to spectrum matters is limited to the dual illumination period, so too must the regulations constituting the JSAG only be limited to the dual illumination period. M-Net also submitted that the Fifth Draft DTT Regulations extended the scope of the JSAG beyond spectrum management into the realm of the management of common DTT resources such as the Electronic Programme Guide. M-Net submitted that such commercial activities should not fall within the domain of the JSAG.

38.2 The sole purpose for the establishment of the JSAG is to allow an opportunity for those entities which are required to migrate from analogue to digital to make submissions and recommendations to the Authority regarding the digital migration process. As set out above, the question as to how the digital dividend will be used will be addressed in further comprehensive public processes to be conducted by the Authority and will not be dealt with by the JSAG. In addition, there are sufficient processes in terms of the ECA and ICASA Act which provide for the monitoring of compliance with applicable regulatory requirements and licence conditions that make it unnecessary for compliance monitoring to be dealt with by the JSAG. As such, the Authority does not regard it as necessary for any persons other than those who are required to migrate their existing television services in terms of the Digital Migration Regulations and the ECNS licensees involved in the digital migration process, to be represented on the JSAG.

39. SKA

The Authority has included provisions in the Digital Migration Regulations confirming the requirement for affected broadcasters and signal distribution providers to adhere to any restrictions imposed in relation to certain geographic areas in terms of the Astronomy Geographic Advantage Act 21 of 2007 ("AGA Act"). The Digital Migration Regulations also confirm that certain designated transmitters situated in the Northern Cape Province will be required to switch off the analogue broadcast signal transmitted from those transmitters by the end of December 2015 at the latest. This will apply even to the extent that the dual illumination period only ends after that date. The Authority has included these provisions to take account of the requirements of the SKA project.

40. Other issues in the amended Ministerial Policy

40.1 The Authority has decided to specify the current standards applicable to digital broadcasting in the Digital Migration Regulations (i.e. that digital broadcasting must be in accordance with the Second Generation Digital Video Broadcast Transmission (DVB-T2) standard and fourth generation Moving Picture Experts Group (MPEG-4) compression standard) but has also further provided that digital broadcasting must also be in accordance with future versions of those standards.

40.2 Amongst the submissions which the Authority received on the Fifth Draft DTT Regulations were submissions regarding the bandwidth that would be required if the DVB-T2 and MPEG-4 standards were to apply. Both e.tv and M-Net disagreed with the Authority's estimates that DVB-T2 yields 32.5 Mb/s on MPEG-4 and has the capacity to accommodate 21 Standard Definition channels or approximately 6 High Definition ("HD") channels. Both parties submitted that the bit rate allocated per channel is a business decision which should be controlled by the broadcasters concerned.

40.3 A number of interested parties (such as SOS, Right2Know and Cape Town TV) submitted that the Authority should give an express direction that not all channels may be in HD, as this may "hinder the freeing up of spectrum for new channels". In particular, Right2Know submitted that the digital migration regulations should disallow broadcasting in HD unless good cause is shown. e.tv also submitted that its 50% multiplex capacity, as permitted in terms of the Fifth Draft DTT Regulations, does not allow for the roll-out of any viable multi-channel offering including HD channels.

40.4 The Authority has decided, consistent with the amended Ministerial Policy, that

HD will not be prescribed as a requirement during the digital migration process as the costs appear to outweigh the potential benefits at this stage. As such, the Authority has decided to give terrestrial television broadcasting service licensees the option to broadcast digital television either in the Standard Definition Television (SDTV) mode or in the HDTV mode, or both. The Authority has further decided not to limit the number of channels which may be broadcast in each multiplex so as to encourage technological innovation and the efficient utilisation of the radio frequency spectrum in the use of the allocated capacity.

- 40.5 The Authority has further decided not to make provision in the Digital Migration Regulations for the manner in which e-government services are to be made available. As set out above, the amended Ministerial Policy indicates that STBs will include features allowing for the provision of such services. However, although the socio-economic rationale for the provision of e-government services is clear, it seems that the manner in which such services must be provided is primarily something to be dealt with by government, which is driving the STB process. Further ministerial policy determinations will inform the Authority's regulatory approach to e-government services.

## VI CONCLUSION

41. Consistent with the amended Ministerial Policy, the Authority has decided that given the current limitation in the broadcasting frequency plan, it is essential to rearrange the capacity in the two national multiplexes (as demonstrated in the table below). As such, the SABC will be allocated 85% of the available capacity in Multiplex 1 and the remaining 15% of available capacity will be allocated to terrestrial television broadcasting service licensees which provide community broadcasting services. In Multiplex 2, e.tv will be allocated 50% of the available capacity, while M-Net will be allocated 40% of the available capacity. The remaining 10% of the available capacity in Multiplex 2, which is currently being utilised by test and/or trial licensees, will be equally shared between e.tv and M-Net upon the expiry of such licences.

| Broadcaster          | Multiplex 1 | Multiplex 2 |
|----------------------|-------------|-------------|
| SABC                 | 85%         |             |
| Community television | 15%         |             |
| e.tv <sup>1</sup>    |             | 50% + 5%    |
| M-Net <sup>2</sup>   |             | 40% + 5%    |

<sup>1</sup> The total allocation for e.tv will thus be 55% once the test licences expire.

<sup>2</sup> The total allocation for M-Net will thus be 45% once the test licences expire.

42. The finalisation of the Digital Migration Regulations paves the way for the broadcast industry to commence the process towards analogue switch-off and the provision of commercial DTT services and for the necessary public processes in respect of the digital dividend to be initiated with the aim of introducing further competition in both the broadcasting and electronic communications markets. The Authority remains committed to engaging with stakeholders on better and more innovative ways to achieve digital migration and release the digital dividend, which will lay the required foundation for the introduction of competition in both the pay and free-to-air markets.
43. As part of facilitating a successful migration process, and should it be necessary, the Authority will make policy or legislative recommendations to the Minister. Going forward, it may be necessary to consider some legislative amendments to introduce a new DTT licensing environment to enable the smooth functioning of a multi-channel environment.
44. Furthermore, as set out above, the amended Ministerial Policy stated that competition should be promoted within the limits of the available spectrum, first, to ensure a smooth digital migration process and, secondly, to provide a range of different but sustainable services to benefit both the public and the broadcasters. The fact that the Digital Migration Regulations are confined to the dual illumination period is not an indication that the Authority is not mindful of the potential benefits of introducing further competition. The issue of how a third multiplex will be created will be resolved in tandem with the requisite amendments to the broadcast frequency plan in accordance with the requirements of the ECA. The Authority has published, for public comment, the draft Promotion of Diversity and Competition on DTT Regulations in relation to the allocation of capacity in the third multiplex. The Authority will also conduct appropriate licensing processes in due course.



**DR STEPHEN MNCUBE**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

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