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Promoting human rights and democracy through the media since 1993

Ms. Pumela Cokie

Independent Communications Authority of South Africa

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By Email: PCokie@icasa.org.za

13 June 2024

Dear Ms Cokie

SOS AND MMA SUBMISSION ON ICASA'S REVIEW OF THE DIGITAL MIGRATION REGULATIONS 2012.

ABOUT THE SUBMITTING ORGANISATIONS

SOS Support Public Broadcasting Coalition (SOS)

SOS Support Public Broadcasting Coalition (SOS) is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is its primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is a coalition made up of a broad range of civil society organisations, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations, and individuals (including academics, freedom of expression activists, policy and legal consultants, film makers, producers, etc.

SOS campaigns tirelessly for an independent and effective public broadcaster. We engage with policymakers, regulators, and lawmakers to secure changes that will promote citizen- friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.

Media Monitoring Africa (MMA)

Media Monitoring Africa (MMA) is a not-for-profit organisation, based in South Africa, that advocates for access to information, freedom of expression, and the responsible free flow of information to the public. MMA strives to encourage a fair and just society in which the public, media, and the powerful respect a culture of human rights.

Children's rights play a central role in MMA's work, which includes pioneering efforts in meaningful children's participation through empowering children using media and digital literacy workshops, providing editorial guidelines and principles for the reporting of children in the media, and making parliamentary submissions with and on behalf of children.

Together with child participants, MMA has developed a Digital Rights Charter that seeks to give effect to an internet that is accessible, safe, and empowering, and that advances the development of children in line with their rights and interests. Most recently, MMA released a discussion document focusing on disinformation through a children's rights lens.

1. BACKGROUND TO ICASA DTT REGULATIONS AND INTRODUCTION TO SOS AND MMA SUBMISSION ON DISCUSSION DOCUMENT

- 1.1. The Independent Communications Authority of South Africa (ICASA) in terms of the Electronic Communications Act (36/2005) (ECA) published Draft Broadcasting Digital Migration Framework Regulations on 03 October 2008 in Government Gazette Notice 1240 of 2008. The civil society coalition, Save our SABC (as the Coalition was then known, now the SOS Support Public Broadcasting Coalition) submitted written representations and made presentations at the oral hearings.
- 1.2. At the hearings ICASA gave all interested parties the opportunity to submit additional comments by 23 January 2009. The Coalition duly submitted these. On 31 March 2009, ICASA again published draft Regulations for comment in Government Gazette No 32083, Notice 344 of 2009. The Coalition made a further submission. On 3 July 2009, ICASA then published the Regulations. However, the Regulations were then later withdrawn and then republished on 4 September 2009 for further comment in Government Gazette Notice 32559 of 2009. The final version of the Regulations was published on 14 December 2012 in Government Gazette No. 36000 ("the Regulations").
- 1.3. SOS and MMA (the Organisations) wish to thank ICASA for the opportunity to make these written representations on the review of the Regulations and the accompanying Discussion Document ("The Discussion Document"). Several of the issues raised in this submission have been raised before by the Coalition in the numerous submissions made to ICASA by the Organisations, as well as during policy processes to the Department of Communications and Digital Technologies ("DCDT"), more specifically in response to the DCDT's Draft White Paper on Audio and Audiovisual Media Services and Online Content

Safety¹. However, SOS and MMA feel that they are still relevant and have not been sufficiently addressed by ICASA in the Discussion Document.

- 1.4. Issues that still need to be addressed include: the objectives of the Regulations, the definition of incentive channels, allocation of multiplexes, digital incentive channel authorisation and procedures, and local content issues.
- 1.5. These Regulations are currently in force, at least until the date of the Analogue Switch Off (ASO) and their purpose is to:
 - 1.5.1. regulate the digital migration of the existing television channels;
 - 1.5.2. prescribe the conditions for the assignment of channel capacity in Multiplex 1 and Multiplex 2 for digital migration and the creation of a platform for DTT;
 - 1.5.3. prescribe the procedure for the authorisation of digital incentive channels; and
 - 1.5.4. set the time frames within which the terrestrial television broadcasting service licensees must provide for dual illumination.

Outline of this Submission

- 1.6. This submission is therefore structured in two parts:
 - 1.6.1. A general overview of the SOS and MMA response to the issues raised in the Discussion Document outlining the views and certain concerns regarding the review of the Regulations; and
 - 1.6.2. A detailed response to the questions posed in the Discussion Document. We have also elected not to answer every single question, for example those relating to technical issues and those questions posed to broadcasters specifically, and to rather focus on the questions and issues that relate to matters the Coalition has been lobbying and advocating for since the publication of the draft regulation in 2009.

2. GENERAL OVERVIEW

- 2.1. As a starting point the Organisations are of the view that the Discussion Document raises some important issues, for example under questions, but that these belong more properly in a policy discussion such as the one which has been ongoing in connection with the Draft White Paper. However, where possible we have made our comments on these issues which we hope will assist ICASA in this process.
- 2.2. A second point to be made about the overall objective of the Discussion Document, which is to review the Regulations, is that it appears to be at odds with the aim to “redefine the purpose of the existing regulations, aligning them

¹ Department of Communications and Digital Technologies. (2023). The Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety: A New Vision for South Africa. Government Gazette No. 49052.

with the post-digital migration landscape based on inputs from stakeholders”². It is therefore not clear whether ICASA intends to develop new regulations for the post ASO period, or review the current regulations.

2.3. It is our understanding that the Regulations were designed to cater for the period leading up to the Analogue Switch Off (ASO), and technically these would lapse on the 31 of December 2024, the date announced by the minister as the date of the final ASO³. We hope that this matter will be clarified by ICASA as the process unfolds. It is in this regard that we made the point above that the Discussion Document includes consideration of matters that are either the subject of the White Paper policy review process or that should be addressed in such a process. The organisations have made extensive submissions on the various iterations of the Draft White Paper, specifically regarding the future sustainability of the public service broadcaster, the SABC, and we keenly await the conclusion of that process.

2.4. The Organisations reiterate concerns made in previous submissions that the ASO is premature. On 28 June 2022 the Constitutional Court delivered its judgment in the matter of *e.tv (Pty) Ltd v Minister of Communication and Digital Technologies & Others; Media Monitoring Africa & Another v e.tv (Pty) Ltd & Others 2022 (9) BCLR 1055 (CC)* (“**the judgment**”). The judgement found that the Minister lacked the necessary information regarding the number of individuals eligible and interested in registering for STBs before the analogue switch-off date, as stated in paragraph 74 of the judgment. In fact, the government has not been forthcoming about the number of households that will be impacted by the ASO date. The Constitutional Court’s unanimous reasoning in this regard was that: At paragraph [78]:

The flaws in the process leading up to the determination of the analogue switch off date meant that the determination was made without any reliable sense of its impact on millions of indigent persons, whose currently working television sets will be rendered useless.

If a central purpose of the analogue switch off decision is to mitigate the adverse impact of switch off, a process that failed to provide guidance on the number of households requiring STBs is inevitably coloured with irrationality.

At paragraph [79]:

...what tainted her decision with irrationality, was to adopt a process which meant that the analogue switch off date was determined without considering the numbers of households which would be adversely affected by such switch off.

2.5. There is uncertainty surrounding: (a) the quantity of non-functional installed Set-Top Boxes (STBs); (b) the actual number of households that have self-migrated, as opposed to those assumed to have done so; this includes

² At paragraph 3.1.1 of the Discussion Document.

³ Notice 3554 in Government Gazette 48793 dated 15 June 2023

investigating the reasons behind why those who have not migrated or registered have chosen not to do so. Failure for the current final ASO to guarantee that the issues highlighted in the court judgement which made the previous ASO date unconstitutional have been corrected, deems this ASO determination unconstitutional. To date, there is no information regarding commercial set top boxes for those who do not qualify for the subsidised installations.

- 2.6. SOS and MMA are extremely concerned about the impact of the ASO date on the public broadcaster, the South African Broadcasting Corporation (the SABC), particularly given the 40% audience loss the SABC experienced when 5 provinces switched off the analogue signal. The SABC stands to lose more if the switch off happens prematurely without adequate roll out of STB installations.
- 2.7. There has not been effective communication on the proceedings of the STB installations since the announcement of the ASO date in July 2023. Parliament has also failed to adequately play its oversight role to ensure that the DCDT is held accountable for a fair digital migration process that truly leaves no one behind. It is important to note that the Parliamentary Portfolio Committee on Communication Digital Technologies (PPCCDT) will soon begin its term of office. It is likely to be made up of new political parties and new representatives who still need to be inducted into their oversight role. This means that even though the final ASO date is fast approaching, there is no sufficient oversight being provided during this process.
- 2.8. Subsequently, it is not clear whether installations are ongoing. The DCDT is not forthcoming with information on where and how the indigent should apply for STB's. Further, many post offices are no longer functional, making the registration even more inaccessible for the poor and those in rural areas. There are no campaigns online and offline to drive information and maximise publicity on the ASO. ICASA must satisfy itself that the STB rollout process has been a success and accordingly, the BRC TAMS figures must reflect digitally enabled households.
- 2.9. The Organisations believe that the objectives of the Regulations do not sufficiently focus on the importance of the public interest content, audience needs, and protection of the public's right to universal access to a range of broadcasting services. We thus propose that the objectives of the Regulations include a clause highlighting the need to provide a framework to ensure audience needs and expectations are met through ensuring universal access to choice, quality programming, across all three tiers of the broadcasting ecosystem.
- 2.10. In this regard the Organisations support the submissions made by the Community Television collective of which one of the members of SOS, Cape Town TV, is a part. Specifically, we support the idea that any future regulation of digital television broadcasts must recognise the fact that, in addition to Direct-to-Home (DTH) and Digital Terrestrial Television (DTT), the ecosystem traditionally comprising legacy broadcasters now includes unlicensed online

streaming platforms and Over-the-Top services. All traditional broadcasters now make their services available across all three of these platforms and consequently any new regulatory framework being considered by ICASA needs to make provision for this reality.

- 2.11. Finally, by way of introduction to our response, we urge ICASA to undertake a thorough audit of the status of the rollout of DTT, specifically the extent to which this has had an impact on licensees required to migrate off the analogue distribution platform. This review of the Regulations would be an exercise in futility if licensees were unable to fulfil their licence obligations and comply with the regulations if the technical and commercial viability of the DTT platform is in doubt.
- 2.12. Audience adoption of the new technology is the key critical success factor of digital migration. This is recognised in Government's Broadcasting Digital Migration Policy which states that a core objective of the policy is to "create an environment for the uptake of digital terrestrial television by TV households, including the poor"⁴. The Organisations recommends that ICASA carefully reviews any information available to determine how many households will be affected by the ASO and critically, the reasons why those who have not migrated or registered have omitted to do so.
- 2.13. The insufficient rollout of STBs to citizens and the non-availability of STBs in retail outlets six months before the ASO date raises doubts about the viability of the DTT platform and the spectre of millions of people left without access to free-to-air television, a matter SOS and MMA and community and commercial broadcasters have been at pains to address, including through litigation. It is not just the future of DTT that is at risk but the availability of free-to-air television, and concomitant potential denial of the right to access news and information of the most vulnerable and marginalised.
- 2.14. Therefore, SOS and MMA expect ICASA to:
 - 2.14.1. Represent the public interest, particularly the poor, in ensuring universal service to television content during the digital migration process.
 - 2.14.2. Consider the migration to DTT as an abject failure if it means that a third of South Africans will no longer have access to television.
 - 2.14.3. To set numerical targets regarding the reasonable number (in percentages) of South Africans who must have migrated to digital TV (DTH, DTT) before the final ASO takes place. In our view 85% of the population must have digitally migrated for a fair and just ASO to happen.
 - 2.14.4. To ensure that the Minister cannot press ahead with an arbitrary ASO date if this will result in a third of the population losing access to television.
 - 2.14.5. Constantly remember that s192 demands that the migration regulatory regime set numerical targets for government to ensure adoption of digital TV BEFORE the ASO can happen, as opposed to just following the Minister's demands.

3. RESPONSES TO QUESTIONS RAISED IN THE DISCUSSION DOCUMENT

⁴ Clause 1.2.3 (b), Broadcasting Digital Migration Policy for South Africa, published by the Department of Communications on 08 September 2008 in Government Gazette No 31408.

In this section SOS and MMA provide their responses to several of the questions posed in the Discussion Document. We have elected to use a specific format for answering the selected questions. The response identifies the policy principle which we consider relevant to the topic raised by ICASA, and we then answer by proposing what we consider to be the appropriate regulatory instrument or intervention. Questions that deal with a similar topic are grouped together and a single response is made to the topic rather than the individual question.

Q NO.	SOS AND MMA RESPONSE
1,2	<p>In considering international practices such as the UK's competitive bidding for Multiplex allocation and Australia's mix of competitive allocation and licensing processes, what insights and recommendations do stakeholders offer for the assignment of Multiplexes in South Africa's DTT framework, aiming to ensure fairness, competition and sustainability within the three-tier system?</p> <p>2. How do stakeholders perceive the current capacity allocations within the DTT Multiplexes, especially in Multiplex 1 where the SABC holds 85% and community broadcasting services have been allocated 15%?</p> <p>2.1. Considering the ongoing licensing process for the remaining 15% in Multiplex 1, what recommendations or insights do stakeholders have regarding the equitable distribution of this capacity?</p>
	<p>POLICY PRINCIPLE: Equitable allocation of Mux capacity , with preference given to the needs of public and community broadcasting services.</p>
	<p>SOS and MMA recommend that assignments of capacity on the multiplexes must ensure the future viability of the SABC and community broadcasters. Therefore these two classes of licensee should not be subject to competitive licensing process but instead be guaranteed capacity on the proposed DTT multiplexes and DTH platforms provided by any signal distributor designated as a common carrier in section 1 of the ECA.</p>
	<p>REGULATORY INSTRUMENT: The licence conditions of the SABC and community broadcasters need to reflect the guarantees provided in regard to multiplex allocation give rise to certain obligations to prioritise South African content (however this is defined in terms of geographical coverage: local, provincial or national).</p>

Q NO.	SOS AND MMA RESPONSE
3, 4, 5, 7, 8	<p>Similarly, in Multiplex 2, where e.tv initially had 50% and M-Net had 40%, with the remaining 10% used by temporary licence holders and later divided equally between e.tv and M-Net, are there suggestions for improving the allocation in Multiplex 2?</p>

	<p>4. For Multiplex 3, where 55% is assigned to commercial free-to-air television broadcasting services and 45% to commercial subscription broadcasting services, and considering the specific licence awarded to Kwese Tv for 55% of MUX 3 capacity, what are stakeholders' perspectives on the balance between free-to-air and subscription services?</p> <p>4.1 Are there recommendations for ensuring diversity and competition within this multiplex?</p> <p>5. Overall, what considerations and recommendations do stakeholders propose to enhance the effectiveness and fairness of the DTT Multiplex capacity allocations?</p>
	<p>POLICY PRINCIPLE 1: Equitable allocation of Mux capacity, with preference given to the needs of public and community broadcasting services.</p> <p>POLICY PRINCIPLE 2: Ensuring fair competition in the broadcasting sector and provide for a diverse range of public, commercial and community broadcasting services</p>
	<p>SOS and MMA recommend that the principle of ensuring fair competition in the broadcasting sector which will in turn ensure diversity of ownership and of content be the guiding principle here. The Regulations in their current form give preference to incumbent broadcasters for reasons outlined in the Regulations, including the fact that they have already made significant investments and will be expected to continue to do so as they migrate off the analogue networks.</p> <p>This principle must be balanced with the need to attract new and further investment in the sector from existing broadcasters and new players. ICASA should review the reasons for the failure of other players, for instance those entitled to apply for capacity on Mux 3 that have failed to do so or failed to launch even after being awarded a spectrum licence.</p> <p>In accordance with our position that states that in all decisions regarding the regulations for DTT preference should be given to those broadcasters that provide public interest programming and content, whether they be public, commercial or community, in the allocation of multiplex capacity.</p> <p>In summary Mux allocation should not be just a numbers game, allocating a percentage of capacity, but rather an award of capacity based on the type of content to be provided. From a citizens perspective the DTT platform should provide multi-channel television free-to-air – this is something that the majority of South Africans have been expecting as one of the benefits of Going Digital and will encourage adoption of STBs, a necessary pre-condition for a successful commercial launch of DTT.</p>
	<p>REGULATORY INSTRUMENT: Regulations should provide that broadcasters who provide public interest content, including majority South African content, should be given preference in the allocation of Mux capacity. ICASA should consider imposing pro-competitive licence</p>

	conditions where applicable and where this will prevent larger players dominating the Mux and will encourage fair competition between broadcasters and strictly enforce licence conditions that require licensees to launch services within a specific timeframe.

Q NO.	SOS AND MMA RESPONSE
10 10.1	<p>What are stakeholders' perspectives on the consequences of assigning digital incentive channels to broadcasters?</p> <p>Do stakeholders believe this allocation is essential in the Digital Terrestrial Television (DTT) environment? Stakeholders are requested to provide insights and recommendations on ensuring efficient spectrum use, including considerations for frequency reuse where appropriate.</p>
	<p>POLICY PRINCIPLE 1: Universal Access to broadcasting services by all citizens irrespective of geographical location.</p> <p>POLICY PRINCIPLE 2: Diversity of ownership and of content.</p>
	<p>SOS and MMA note that ICASA's definition of "digital incentive channels" continues to focus on broadcasters rather than audiences. The definition states that these channels should be an incentive to broadcasters to ensure the success of digital migration. However, the Organisations propose rather that the key objective of such channels is to incentivise viewers to invest in the necessary equipment to ensure access to digital terrestrial television.</p> <p>The necessity of ensuring that digital television adds value to audiences in order to encourage viewers to buy Set Top Boxes (STBs) is also recognised internationally as critical to the successful migration from analogue to digital broadcasting. As stated in previous submissions the then Australian Minister for Communications, Information Technology and the Arts for example stated in 2006 when announcing plans for digital television in that country that the introduction of new digital channels would "make digital television more attractive ... to act as an additional incentive for consumers to take-up digital television"[1]. In line with this, in April 2009 the Australian Government announced the introduction of a dedicated children's television channel on the ABC "providing Australian families with more great new television content and a further reason to switch to digital".[2] In the United Kingdom as well, the government vision for digital television states that they have placed consumers at the centre of the plan for digital migration stating that households need to make "a willing decision" to make the switch and that only "a compelling offering will foster this".[3]</p> <p>The Organisations emphasise the importance of including this objective (i.e. placing viewers at the centre) in the definition of digital incentive channels</p>

as it provides a framework and context for both ICASA and broadcasters to consider the content of such channels in the process of authorising channels – and ensure that such channels are focused on encouraging audiences to take-up the necessary technology. Given the relatively short dual illumination period in South Africa, such considerations are particularly important.

The role of the independent production sector in attracting a diverse audience base and catering to the needs of diverse audiences cannot be over emphasised. The independent television production sector was almost decimated during the past decade because of the problems at the SABC, and it is vital that the needs of that sector are placed high on the agenda of this review process.

The Organisations believe that the public value test, prior to licensing digital incentive channels, is appropriate for the SABC, as a public service broadcaster, but should not be an undue hindrance nor place unnecessary regulatory burden on the SABC and other broadcasters.

SOS and MMA recommend that, firstly, the Public Value Test should focus on public value across the SABC's bouquet of channels. Secondly, it should focus on public value at three different levels - value for money, value to the individual citizen and value to society. In terms of "value for money", the SABC needs to cost its offerings and demonstrate how it would be able to sustainably provide for these. In terms of "value to the individual citizen" the SABC needs to outline its proposed offerings and show how each channel would enhance diversity of content and language across its bouquet of public channels. Further, the SABC needs to demonstrate that a variety of different audiences, or a number of marginalised groups or audiences are catered for (e.g. children) and would actually be interested in watching its programming. Finally, in terms of "value to society" the SABC needs to demonstrate that its offerings, across its bouquet of channels, will contribute to the deepening of democracy, the fulfilment of its goals outlined in its Charter and ensure greater diversity of content within the broadcasting environment as a whole.

SOS and MMA further recommend ex-ante tests that go hand in hand with public value tests. These are critical for process legitimacy and counterbalance the public value and market impact of any proposed new media service (channels in this instance) prior to approval. They ensure that mechanisms allow open and equitable participation for all the relevant stakeholders from industry, citizens, etc, and are insistent on at least one open consultations process. Most importantly, apart from advancing broad public participation, through transparency, they ensure that the decision making is made public and open to public scrutiny. It would be ideal for ex-ante and public value tests to be carried out.

As ICASA has started to do, it needs to specify the kind of documentation required to demonstrate the above. This should include but not be limited to market impact analyses and proposed programming schedules.

	<p>REGULATORY INSTRUMENT: ICASA must ensure that licence conditions and quotas on local content promote the principles of universal service and access, and promote a diverse range of content in a multi-channel environment. ICASA must monitor compliance with licence conditions and local content quotas to ensure the local content production sector grows as more channels come on stream.</p> <p>Specifically in regard to channel authorisation, SOS and MMA believes that the process of channel authorisation should be an instrument for giving preference to South African owned and packaged channels, and consequently these channels should be given preference when granting channel authorisations for broadcasters to include them in their offering.</p>

Q NO.	SOS AND MMA RESPONSE
11	<p>What factors should be considered to maintain a diverse and competitive broadcasting landscape in the post-ASO period in relation to channel authorisation? Stakeholders are requested to provide insights and recommendations on ensuring efficient spectrum use, including considerations for frequency reuse where appropriate.</p>
	<p>POLICY PRINCIPLE: Universal Access to broadcasting services by all citizens irrespective of geographical location.</p>
	<p>The Organisations made extensive submission on this point and we wish to reiterate our position regarding the need for effective competition in the post ASO period. As stated in the Regulations multiplex 1 is reserved for public and community broadcasting services. The Organisations again confirm their support for the allocation of a multiplex for public and community broadcasting services. However, we need to reiterate our concerns as regards community television and its future needs. We do not believe that these have been adequately provided for. While it might be appropriate in the short term to have community television licensees remaining on analogue this will surely not be appropriate once migration is complete and permanent licenses are on offer. The question then is - what capacity has been set aside for new community TV stations? The Regulations do not appear to have catered for this.</p> <p>In relation to e.tv and MNet, the Regulations have reserved multiplex 2 for commercial free-to-air television services and allocated 60% of the capacity of this multiplex to e.tv. Multiplex 3 is reserved for subscription terrestrial television broadcasting services. It is proposed that 50% of this is allocated to M-Net. Whilst the split between M-Net and e.tv might be fair, it still remains impossible to evaluate this proposal as the Regulations give no reasons for this decision. The Organisations therefore remains unable, in the absence of motivations from ICASA, to make meaningful submissions on this proposal.</p>

	<p>More importantly though, the Organisations are concerned about the effect these allocations may have on fair competition and audience choice. Whilst the proposed Regulations reserve the additional capacity on both multiplexes 2 and 3 for future authorisation they seem to provide reduced capacity to potential new operators. This raises issues of fair competition which inevitably negatively affect access to choice by audiences. This seems to defeat one of the key motivations for digital migration of terrestrial television i.e. to allow more players and competition and therefore promote more audience choice. Further, in terms of MNet the Organisations are surprised that the latter has been given such a significant portion of the capacity of multiplex 3 (i.e. 50%). MNet through Multichoice is already dominant in the satellite subscription market. The Organisations are not aware of any other broadcaster internationally that has both terrestrial subscription broadcast and satellite subscription broadcast licenses. Multichoice’s dominance in the broadcasting landscape is thus being further entrenched.</p> <p>SOS and MMA also support the recommendations made by the Community TV broadcasters that “community channels be accommodated on a Mux which has been allocated to serving local areas. Until this level of infrastructure is achieved, we recommend that the community channels continue broadcasting on Mux 1, but that no carriage fees be charged by Sentech until such time as a) the community channels are migrated to local muxes and b) an effective fiscal mechanism is instituted to support the transmission costs of community TV broadcasters in the digital environment.”</p>
	<p>REGULATORY INSTRUMENT: Specific licence conditions and quotas on local content giving preference to public interest and South Africa content.</p>

Q NO.	SOS AND MMA RESPONSE
12	<p>Do stakeholders believe there is a need for specific coverage targets in the DTT landscape post-ASO? (Yes/No) What considerations or criteria do stakeholders propose for establishing and evaluating these coverage targets to ensure an effective and inclusive DTT environment?</p>
	<p>POLICY PRINCIPLE: Universal Access to broadcasting services by all citizens irrespective of geographical location.</p>
	<p>SOS and MMA recommend that consideration needs to be given first and foremost to the costs broadcasters will incur to make their services available. In setting coverage targets ICASA should consider the millions of poor citizens who will no longer have access to television should the ASO happen in the absence of alternatives access to television Information. A target of 85% of their of the population should be have access via DTT and/or DTH before the ASO can lawfully be implemented.</p>

	ICASA should also needs to consider what other platforms citizens now have available. The decision about which platform to use and should be left to the discretion of broadcasters, in line with the regulatory principle of technology neutral regulation.
	REGULATORY INSTRUMENT: Setting coverage targets should be considered only in so far as this assists in achieving universal access to broadcasting services for all citizens, and prioritises public interest content.

Q NO.	SOS AND MMA RESPONSE
13, 21,22, 23	<p>Are there any foreseeable issues or concerns that should be considered regarding the appointment of a signal distributor to provide signals within a multiplex post-ASO?</p> <p>How can such a licensing approach be structured to accommodate the interests of various stakeholders, including the common carrier and other potential service providers?</p> <p>What do you propose as a fair and transparent method for allocating the required Mb/s for the engineering service within the broadcast transmission?</p> <p>What are stakeholders' opinions on licensing the engineering service capacity to a common carrier on the Multiplex, designated by the Authority, to ensure transparency and non-discrimination?</p>
	<p>POLICY PRINCIPLE 1: Universal Access to broadcasting services by all citizens irrespective of geographical location.</p> <p>POLICY PRINCIPLE 2: Competition between signal distributors, or ECNS licensees</p> <p>POLICY PRINCIPLE 3: Fair competition and Equitable allocation of Mux capacity , with preference given to the needs of PBS and Community broadcasters</p>
	<p>ICASA analysis in its Supplementary Discussion Document on Signal Distribution Service Market Inquiry, has determined that Sentech has significant market power:</p> <p><i>Sentech is dominant in the market for digital terrestrial signal distribution in television with 100% market shares. In addition, Sentech is dominant in the market for the provision of analogue and digital terrestrial radio signal distribution with a share that is 100% for national and regional distribution.</i></p> <p>Sentech's dominance permits exorbitant signal distribution prices, impacting on the sustainability of the broadcasters, particularly the SABC. For years, the SABC has complained about the unreasonable prices it pays for the</p>

	<p>signal. As a result, it has been struggling for years and owes stench more than 700 million. Competition is key for regulating unreasonable pricing in the market and without competition.</p> <p>At the backdrop of the SABC losing Audiences due to the digital migration, signal distribution prices in the digital environment should not advance unsustainability of the public broadcaster.</p>
	<p>REGULATORY INSTRUMENT: Only in so far as this assist in achieving universal access to broadcasting services for all citizens. Access for community broadcasters at a reasonable and affordable rates should be considered, including regulation of tariffs for the SABC, community broadcasters and all broadcasters providing public interest content.</p> <p>ICASA must impose licence conditions on Signal Distributors (or ECNS licensees) to ensure non-discrimination between different categories of broadcasting service</p>

Q NO.	SOS AND MMA RESPONSE
15	What specific services should be considered as "data services" within the context of the DTT?
	<p>SOS and MMA recommend that at a minimum these include Electronic Programme Guide (EPG) data, engineering service channel and Service Information for efficient operation of digital distribution platforms. Again preference should be given to broadcasters providing public interest content, and in so far as they provide channels, these should be given prominence on the EPG.</p>

Q NO.	SOS AND MMA RESPONSE
25, 27, 28, 29, 31, 33, 34	<p>How effectively has JSAG facilitated the coordination of frequency spectrum usage and management of interference during the Digital Migration Performance Period as outlined in Regulation 13?</p> <p>Are there identified gaps or challenges in the current regulatory framework that may necessitate the establishment of new advisory or coordination bodies post-ASO?</p>
	<p>POLICY PRINCIPLE: Effective stakeholder consultation and public participation</p>
	<p>The experience of SOS members and MMA who participated on both JSAG and the DTCAG was perceived as serving the needs of the major players.</p>

	<p>However they were of the view that they did indeed provide a valuable platform for multi-stakeholder consultation. SOS and MMA negotiated the right to sit on the DTCAG and our experience was that the needs and voices of smaller players, mainly community broadcasters were ignored or marginalised.</p> <p>The organisations also note that a critical issue, surrounding monitoring and compliance and designing new systems and processes was not addressed despite it being a key component of the mandate of the DTCAG. Accordingly we submit that this aspect forms a critical component that must still urgently be addressed or we run the risk of a system that cannot be monitored, or that is too onerous and impractical.</p> <p>The Organisations reiterate that it is absolutely necessary to ensure all voices are heard by regulator ICASA. The role of civil society is essential to ensure protection of the rights of all citizens. SOS believes there is no need for new advisory bodies, rather ensure effective operation of those already provided for in DTT regulations</p> <p>SOS and MMA recommend that ICASA continue to provide platforms for public participation in regulation making and licensing processes and agrees with the proposal by the community TV broadcasters that ICASA establish a steering committee to oversee the full implementation of the ASO and the full migration to digital of all broadcasters on the DTT and DTH platforms.</p>
	REGULATORY INSTRUMENT:

Q NO.	SOS AND RESPONSE
30, 48	<p>Are there notable successes or challenges in encouraging end-users to acquire set-top boxes and initiating digital television service consumption?</p> <p>How has the adoption of STBs facilitated the reception of DTT services on existing television sets, especially in terms of accessibility and affordability for consumers, particularly those in poor households?</p>
	<p>POLICY PRINCIPLE: Universal Access to broadcasting services by all citizens irrespective of geographical location.</p>
	<p>Failure by government to manage the STB subsidy and to ensure those who do not qualify for a subsidised STB can access DTT after ASO. Note the fact that there are no DTT STB on sale in the retail space.</p> <p>From the information at our disposal only about 2 million households received subsidised STB, but anecdotal evidence is that there has been a high failure rather even within this much reduced number of households that rely on FTA television reception.</p>

	<p>There remains a deep concern that millions will be cut off entirely when the ASO occurs. Not only will this see millions denied access but it will also result in significant budget implications for the SABC, posing beyond a substantial risks to it sustainability. It is rather an existential threat as the SABC stands to lose 68% of its audience when the ASO happens. Further, 80% of the SABC's revenue comes from advertising and without a sufficient audience to sell advertisers, the SABC's revenue generation will be severely impacted.</p> <p>Please see SOS's response to questions 7 and 8 above.</p>
	REGULATORY INSTRUMENT: Strict enforcement of licensees licence conditions.

Q NO.	SOS AND RESPONSE
42	Are there individuals that may face challenges in adopting DTT and how can these challenges be addressed?
	POLICY PRINCIPLE: Protection and Viability of PBS and preference to broadcasters providing public interest content
	<p>We have already seen the challenges faced by many who do not have access to a STB, as evidenced by the decline in audiences watching SABC channels after the switch off of transmitters in 5 of the nine provinces.</p> <p>SOS and MMA recommend that ICASA should review the impact of the ASO on the SABC and community broadcasters to date and ensure new regulations do not further hamper the migration of these broadcasters onto the DTT and DTH platforms.</p> <p>From a citizens perspective ICASA needs to ensure that adequate measures have been taken by broadcasters and relevant stakeholders such as the DCDT to ensure access to STBs for either DTT or DTH reception.</p>
	REGULATORY INSTRUMENT: Monitor compliance with licence conditions and the ability of broadcasters to meet these conditions in the context of ASO.

Q NO.	SOS AND RESPONSE
49, 50, 51, 52	In understanding the costs of the transition to digital broadcasting and its implications for various stakeholders post-ASO, what key factors should the Authority consider when developing post-ASO regulations?

	<p>What timeline would be appropriate for the imposition of new regulations governing DTT post-ASO and what factors should be considered in determining this timeline?</p> <p>What should be the overarching purpose of the revised regulations in the post-digital migration environment?</p> <p>How can the new regulatory purpose best support the evolving needs and dynamics of the digital broadcasting landscape?</p>
	<p>SOS and MMA are of the view that these are broad general questions that involve both policy and regulatory matters, and as such the Organisations wish to reiterate our primary policy perspective that priority should be given to the PSM and community media, ensuring universal access to broadcasting services and protecting the public interest.</p>

Conclusion:

SOS and MMA thank ICASA for the opportunity to make this submission and are keen to make oral submissions should ICASA decide to host public engagements on this process.



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