

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**Case No: 008928/25**

In the matter between:

<b>E.TV (PTY) LIMITED</b>	First Applicant
<b>MEDIA MONITORING AFRICA</b>	Second Applicant
<b>SOS SUPPORT PUBLIC BROADCASTING</b>	Third Applicant
and	
<b>MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES</b>	First Respondent
<b>PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Second Respondent
<b>SENTECH SOC LIMITED</b>	Third Respondent
<b>INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA</b>	Fourth Respondent
<b>SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED</b>	Fifth Respondent
<b>CAPE TOWN TV</b>	Sixth Respondent
<b>TSHWANE TV</b>	Seventh Respondent
<b>SOWETO TV</b>	Eighth Respondent
<b>1KZN TV</b>	Ninth Respondent
<b>FAITH TV</b>	Tenth Respondent
<b>MEDIA DEVELOPMENT AND ADVISORY AGENCY</b>	Eleventh Respondent

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**FILING NOTICE**

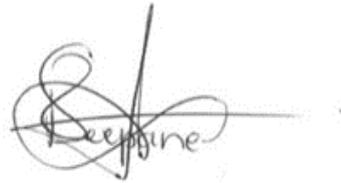
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**BE PLEASED TO TAKE NOTICE** that the First Respondent hereby files the following:

**DOCUMENT FILED:**            **Answering Affidavit.**

**DATE ON THE ROLL:**        **5 March 2025 and 6 March 2025.**

**SIGNED AT CENTURION ON THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**



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**HM CHAANE ATTORNEYS INC.**  
**ATTORNEYS FOR THE FIRST**  
**RESPONDENT**  
IRENE LINK OFFICE PARK  
BUILDING E, GROUND FLOOR  
5 IMPALA AVENUE, DORINGKLOOF  
CENTURION, 0157  
TEL: (012) 880 2195  
FAX: (012) 880 0992 / 086 566 1722  
E-MAIL: [hlengiwe@hmchaane.co.za](mailto:hlengiwe@hmchaane.co.za)/  
[rebokilwe@hmchaane.co.za](mailto:rebokilwe@hmchaane.co.za)  
**REF: R Seepane/H Mahlangu/M00388**

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

**AND TO:**  
**NORTONS INCORPORATED**  
First Applicant's Attorneys  
54 Melville Road  
Illovo  
Johannesburg  
Tel: 011 666 7560

Fax: 086 660 4396

**Ref: Mr A Norton/ Mr A Roets/ Ms Greyling**

Email: [anthony@nortonsinc.com](mailto:anthony@nortonsinc.com); [anton@nortonsinc.com](mailto:anton@nortonsinc.com); [nina@nortonsinc.com](mailto:nina@nortonsinc.com)

PER EMAIL

**AND TO:**

**ROSENGARTEN & FEINBERG**

Second and Third Applicants Attorneys

Le Val, Ground Floor

North Block, South Wing

45 Jan Smuts Avenue

Westcliff

Johannesburg

Tel: 011 486 0242/2

Email: [danr@rf-law.co.za](mailto:danr@rf-law.co.za); [danielb@rf-law.co.za](mailto:danielb@rf-law.co.za)

**Ref: D Rosengarten / D Basckin**

PER EMAIL

**AND TO:**

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

C/O the State Attorney

Ground Floor

SALU Building

316 Thabo Sehume Street

Gauteng

Email: [ichowe@justice.gov.za](mailto:ichowe@justice.gov.za)

PER EMAIL

**AND TO:**

**SENTECH SOC LIMITED**

Sender Technology Park

2040 Octave Road

Honeydew

Tel: 011 471 4400

Email: [Adamssz@sentech.co.za](mailto:Adamssz@sentech.co.za); [legalregulatory@sentech.co.za](mailto:legalregulatory@sentech.co.za)

PER EMAIL

**AND TO:**

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

350 Witch-Hazel Ave

Eco Park Estate

Centurion

Tel: 012 568 3000/3001

Email: [Nrabuli@icasa.org.za](mailto:Nrabuli@icasa.org.za)

PER EMAIL

**AND TO:**  
**SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED**  
Broadcasting Centre  
Auckland Park  
Johannesburg  
Tel: 011 330 9555  
Email: [sadikeT@sabc.co.za](mailto:sadikeT@sabc.co.za); [legalservices@sabc.co.za](mailto:legalservices@sabc.co.za)

PER EMAIL

**AND TO:**  
**CAPE TOWN TV**  
18 Lower Scott Road  
Observatory  
Cape Town  
Email: [mike@capetowntv.org.za](mailto:mike@capetowntv.org.za)

PER EMAIL

**AND TO:**  
**TSHWANE TV**  
75 Twickenham Avenue  
Auckland Park  
Johannesburg  
Email: [kopano@tshwanetv.org.za](mailto:kopano@tshwanetv.org.za)

PER EMAIL

**AND TO:**  
**SOWETO TV**  
8270 Vilakazi Street  
Orlando West  
Soweto  
Email: [Tshepo.thafeng@sowetotv.org.za](mailto:Tshepo.thafeng@sowetotv.org.za)

PER EMAIL

**AND TO:**  
**1KZN TV**  
71 Dollar Frive  
Richards Bay Central  
Richards Bay  
Email: [baytv@webmail.co.za](mailto:baytv@webmail.co.za)

PER EMAIL

**AND TO:**  
**FAITH TV**

74 Studio Office Park  
Cresta  
Johannesburg  
Email: [bvr@tbn.co.za](mailto:bvr@tbn.co.za); [info@tbnafrica.org](mailto:info@tbnafrica.org)

PER EMAIL

**AND TO:**  
**MEDIA DEVELOPMENT AND DIVERSITY AGENCY**  
26 Canary Road  
SABC Auckland Park Campus  
Auckland Park  
Email: [info2mdda.org.za](mailto:info2mdda.org.za)

PER EMAIL

**AND TO:**  
**CHAIRPERSON: NATIONAL ASSEMBLY PORTFOLIO COMMITTEE ON  
COMMUNICATIONS AND DIGITAL TECHNOLOGIES**  
C/O the State Attorney  
Ground Floor  
SALU Building  
316 Thabo Sehume Street  
Gauteng  
Email: [ichowe@justice.gov.za](mailto:ichowe@justice.gov.za); [ksangoni@parliament.gov.za](mailto:ksangoni@parliament.gov.za)

PER EMAIL

**IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA,**

**PRETORIA**

In the matter between:

**Case No.: 2025-008928**

**E.TV (PTY) LTD**

**FIRST APPLICANT**

**MEDIA MONITORING AFRICA**

**SECOND APPLICANT**

**SOS SUPPORT PUBLIC BROADCASTING**

**THIRD APPLICANT**

And

**MINISTER OF COMMUNICATIONS**

**FIRST RESPONDENT**

**PRESIDENT OF THE REPUBLIC OF SA**

**SECOND RESPONDENT**

**SENTECH SOC LTD**

**THIRD RESPONDENT**

**ICASA**

**FOURTH RESPONDENT**

**SABC SOC LTD**

**FIFTH RESPONDENT**

**CAPE TOWN TV**

**SIXTH RESPONDENT**

**TSHWANE TV**

**SEVENTH RESPONDENT**

**SOWETO TV**

**EIGHTH RESPONDENT**

**1KZN TV**

**NINTH RESPONDENT**

**FAITH TV**

**TENTH RESPONDENT**

**MEDIA DEVELOPMENT AGENCY**

**ELEVENTH RESPONDENT**

**CHAIRPERSON PORTFOLIO COMMITTEE**

**TWELFTH RESPONDENT**

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**FIRST RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,

**SOLLY MALATSI**

do hereby make oath and state as set out below.

## **1 INTRODUCTION**

- 1.1 I am an adult male, and the Minister of the Department of Communications and Digital Technologies ("**the Department**"). I am the first respondent in this application. I was appointed to this position in June 2024. In this answering affidavit, the reference to the Minister is to myself and my predecessors.
- 1.2 The Minister and the Department have decided to oppose the relief which the applicants seek in this application. I am duly competent to make this answering affidavit to oppose this application.
- 1.3 Unless the context otherwise indicates, the contents of this answering affidavit fall within my knowledge, and they are both true and correct. In this regard, I have relied on historical information provided to me by the Department's officials and documents which are attached hereto and to the founding affidavit. I believe that the information provided to me by the Department's officials and the contents of the documents upon which I rely are true and correct.

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1.4 I have considered the applicants' founding affidavit and I respond thereto below.

## **2 BROADCASTING DIGITAL MIGRATION**

2.1 The Broadcasting Digital Migration project has been delayed by many years. These delays have resulted in expenditure exceeding R 1.3 billion over the years in dual illumination costs. The government has now taken a policy decision that can no longer afford to fund dual illumination because of limited funds for all of the pressing government needs and priorities to finance.

2.2 The relief which the applicants seek would have the effect of forcing the government to finance dual illumination without its decision not to continue to finance it being directly challenged in this application.

2.3 The latest delays were caused by inadequate consultation and inadequate notice to the public to make informed decisions about migrating and accessing state sponsored STBs which are required by those members of the public who are unable to self-migrate.

2.4 The applicants' main complaint in this application is also about inadequate consultation. But the applicants have been consulted, and their views have been considered by the government before the analogue switch-off date of 31 March 2025 was determined.

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2.5 Whilst the decision to proclaim the analogue switch-off date was taken by the Cabinet of the Republic of South Africa, it was briefed by the Minister on the process that was followed up to the date on which the determination of the analog switch-off date was made. For this reason, the President of the Republic of South Africa will also be opposing this application and will inform the Court of the basis on which the Government opposes the relief which the applicants seek in this application.

### 3 ALLEGED MILLIONS TO BE CUT-OFF

3.1 The applicants allege that millions of people are going to cut off from having access to television broadcasts if the relief which they seek is not granted. They suggest that there is going to be a television blackout suffered by millions of households in the Republic. I deny this.

3.2 The applicants have not in their founding affidavit identified the alleged millions of people whose access to television broadcast is going to be cut-off if the relief which is sought in this application is not granted. Of importance, the applicants have not produced any evidence to prove that the alleged millions of people are people who registered to be supplied with the necessary state sponsored STBs before the closing date for registration.

3.3 The correct position is the following:

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- 3.3.1 The government publicly invited all qualifying households to register to be supplied with government sponsored STBs. The applicants did not challenge the adequacy of this invitation.
- 3.3.2 The government and the broadcasters ran public awareness campaigns to notify the public of the need for qualifying households to register to be supplied with government sponsored STBs and the consequences of not doing so.
- 3.3.3 Whilst the government determined a date on which qualifying households must register to be supplied with government sponsored STBs, the government did not close the registration platforms after that date. Qualifying households continue to register to be supplied with government sponsored STBs.
- 3.3.4 The reason why the government did not close the registration process is to ensure that no qualifying household is left behind in the sense that every qualifying beneficiary must receive a state sponsored STB. This is consistent with the government's commitment not to leave anyone behind. I repeat that promise because the government is committed to keeping that promise. The government, however, will not continue to wait for late registrations forever because that would risk postponing the analogue switch-off date for as long as there are late registrations. In many instances there are late registrations all the time.

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- 3.3.5 A total of 1.8 million households registered to be provided with government sponsored STBs as on the date of this answering affidavit. On the date of this answering affidavit, the government has supplied 1 353 000 STBs to these households.
- 3.3.6 In the light of the above, there are currently 447 000 households which remain to be supplied with government sponsored STBs. Since the registration process was not completely closed to accommodate late registrations and those whose financial positions may have changed, the number of qualifying beneficiaries who must be supplied will grow as and when late registrations take the opportunity to register. This must not be used to postpone the digital migration process.
- 3.4 It is therefore incorrect for the applicants to base their application on the contention that “*millions of people*” are going to lose access to television broadcast on the analogue switch-off date of 31 March 2025. There is simply no evidence to prove who the alleged “*millions of people*” are.
- 3.5 In any event:
- 3.5.1 It is practically not possible to have every qualifying household supplied with a STB on any given date because people continue to register every day for as long as the registration process is not closed. On the other hand, closing the registration platforms would result in qualifying latecomers not being attended. This is undesirable.

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3.5.2 To alleviate the above problem, the government has agreed with broadcasters that an analogue transmitter would be switched-off if 90% of the households who rely on it have migrated. There is, therefore, acceptance by broadcasters, correctly so, that the government does not have to wait for 100% migration to switch-off analogue transmitters. Analogue transmitters which have so far been switched off on this very basis, i.e., that 90% (and not 100%) of the viewers served by a particular transmitter have migrated. It is therefore, nothing new for the government to persist with an analogue switch on 31 March 2025 when not every registered qualifying beneficiary has migrated. The understanding has always been that those who have not received state sponsored STBs on the date on which a particular analogue transmitter is switched off will be attended to thereafter because it would not be a big number of them.

3.5.3 There are only 175 analogue television transmitters which are still operational in the Eastern Cape, Western Cape, KwaZulu-Natal and Gauteng provinces. This is after most of the analogue television transmitters were switched off in the other five provinces. e.tv is the only broadcaster whose licensed analogue transmitters have not yet been switched off in all the nine provinces. In this regard, e.tv has the following 38 remain analogue transmitters throughout the Republic:

3.5.3.1 Eastern Cape: 6.

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3.5.3.2	Free State:	2.
3.5.3.3	Gauteng:	4.
3.5.3.4	Kwazulu-Natal:	10.
3.5.3.5	Limpopo:	4.
3.5.3.6	Mpumalanga:	5.
3.5.3.7	Northern Cape:	1.
3.5.3.8	North-West:	2.
3.5.3.9	Western Cape:	4.

3.5.4 For purposes of broadcasting digital migration, the government is required to and can only mitigate the impact of the analogue switch-off until every household is migrated. This is more so because qualifying households will continue to register, as they do, for as long as the registration platforms are not completely closed. Accordingly, there will always be qualifying households without STBs on any given date. These remaining few households should not be allowed to hold the whole country back from completing the digital migration process which is costing everybody else millions of rands by way of dual illumination costs. The country has to move forward and cannot be held

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ransom by the applicants who, as I will demonstrate below, are motivated by commercial interests which ought not to be allowed to frustrate the digital migration process simply because the government has not agreed to each of their written submissions as to how and when digital migration must be completed.

#### 4 THE NOTICE TO REGISTER FOR SET TOP BOXES

4.1 I do not understand the applicants to quarrel with the Minister's notice to register for government subsidised STBs ("the notice to register"). That notice was published on 8 July 2022 and a copy thereof is attached hereto as AA1.

4.2 In the notice to register, the Minister said:

*"After the Constitutional Court had accepted that subsidised Set-Top-Boxes can only be provided to those who apply and qualify for such assistance, this announcement is made to augment previous calls for applications of government subsidised Set-Top-Boxes. The calls for applications for government subsidised Set-Top-Boxes commenced in October 2015 and I previously set a provisional deadline of 31<sup>st</sup> October 2021. This notice also serves to clarify that whereas the 31<sup>st</sup> October 2021 deadline was provisional as qualifying households still apply for STBs after the analogue switch-off date, the date of the 30 September 2022 is the final date for applications and no new applications will be accepted after this date.*

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*This is the last opportunity to further afford qualifying members of the public a chance to apply for [a] government subsidised Set-Top-Box. The 30<sup>th</sup> September 2022 as final date for applications give members of the public sufficient time to register and have their Set-Top-Boxes installed before the analogue switch off date. I will determine the Analogue Switch Off date based on, amongst others, the number of applications received and the Department's capacity to install a Set-Top-Box for everyone who would have applied by the closing date except as an outcome of force majeure.*

*I therefore urge members of the public (indigent households) earning a monthly income of R3500 or less, to register for Set-Top-Boxes on or before 30 September 2022. Members of the public are encouraged to visit the nearest Post Office to register or utilise the online registration process..."*

4.3 The notice to register makes it clear that government has taken a policy decision to provide government sponsored STBs to members of the public earning a monthly income of R3500 or less. The so-called missing middle who earns more than R3500 per month do not qualify for government sponsored STBs. The applicants did not challenge this policy decision, and it remains of full force and effect and must be respected.

4.4 In issuing the notice to register, the Minister considered, amongst others, the fact that the calls for qualifying beneficiaries to register for government sponsored STBs commenced in October 2015 and that some members of the public had already registered to be provided with government sponsored

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STBs. It is indeed so that the Constitutional Court said that when determining a period for further registration, “*this process is not required to start from scratch, and the Minister may legitimately take into account the opportunities already afforded to qualifying and indigent persons to register.*” In this case, qualifying beneficiaries were given an opportunity to register for the first time in October 2015. This means that qualifying beneficiaries had already been given not less than seven years to register and the digital migration process had been waiting for them to come to the party – at the cost of the whole of the Republic since October 2015.

4.5 When the Minister issued the notice to register, there was no information placed before the Minister to suggest that the prescribed time to register was not adequate.

4.6 After the notice to register was issued, the Department and the relevant broadcasters conducted awareness campaigns to inform the public of the need to register and the consequences of not having registered as on the analogues switch-off date. The Department also concluded agreements with the following entities to broadcast the relevant messages to the public to bring to their attention the need to register for government sponsored STBs and the consequences of failing to do so within the prescribed time period.

4.6.1 The SABC.

4.6.2 1KZN TV.

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4.6.3 Cape Town TV.

4.7 I attach hereto as AA2 a copy of one of the aforesaid agreements concluded with the SABC. These agreements contain the following relevant clauses:

4.7.1 The Executive Authority directed that “*an accelerated implementation plan must be developed to ensure completion of digital migration before the end of December 2024 in line with the Minister’s media statement dated 21 June 2023.*” [Preamble].

4.7.2 The objective of the agreement is to manage the relationship between the parties and to set out the terms and conditions “*for the expedient completion of the Broadcasting Digital Migration by 31 December 2024...*”

4.7.3 The television stations shall embark “*on media campaigns in marketing, the programmes, policies and the awareness on BDM and call for indigent household to register.*”

4.7.4 The television stations “*will monitor and evaluate the effective implementation of the communication plan in meeting its set objectives by providing monthly reports to the Department.*”

4.8 The aforesaid stations complied with their obligations and were paid in excess of R25 million for the one-year duration of the agreements.

- 4.9 The SABC, Cape Town TV and 1KZN TV are cited as respondents in this application and have not filed affidavits to say that:
- 4.9.1 They did not embark on “*media campaigns in marketing the programmes, policies and the awareness on BDM and call for indigent household to register.*”
- 4.9.2 They failed to achieve what they were required to do particularly calling indigent households to register for government subsidised STBs.
- 4.10 In addition to the above, Sentech, the third respondent in this application, whose responsibilities include distributing television signals was engaged by the Department to insert messages on the television screens of the television sets receiving television broadcasts through analogue transmitters informing all of them of the need for qualifying beneficiaries to register for government sponsored STBs. In the light of this, I can safely say that every analogue television set in the Republic received and displayed Sentech’s messages informing all the households receiving analogue television broadcasts of the need to register for government sponsored STBs and the analogue switch-off date.
- 4.11 All the relevant broadcasters, including e.tv agreed to inform their viewers of the need for qualifying households to register for state sponsored STBs and I do not understand e.tv’s case to be that it did not discharge its obligation

in this regard. In fact, e.tv decided to create or write its own messages which it wanted Sentech to insert and have carried over on each of the analogue television sets receiving television broadcasts from analogue transmitters which were going to be switched off on various dates and duration determined by e.tv as part of the broadcasting digital migration process of switching off individual analogue transmitters leading to the final analogue switch-off date.

4.12 As and when e.tv was ready to switch off its analogue transmitters, it addressed correspondence to Sentech in which it advised Sentech of the analogue transmitters licensed to it which had to be switched off together with the wording of the message which it wanted Sentech to send to the relevant analogue television sets then receiving television broadcasts from the analogue transmitters identified to be switched off.

4.13 I attach hereto as AA3, the following e.tv's letters addressed to Sentech in which it identified analogue transmitters to be switched off on various dates together with the dates on which they were to be switched off.

4.13.1 A letter 3 February 2022 in which e.tv identified three analogue transmitters to be switched off on 14 March 2022. On e.tv's version, it was good enough to give the relevant viewers notice of the analogue switch-off date from 2 February when the switch-off date was on 14 March 2022. The switch-off is said to be "*as part of our plan presented*

*to the BDM Technical Committee, to clear above 694MHz.”*

Importantly, e.tv told Sentech that:

*“This letter is the formal notification of this planned first phase analogue switch-off. e.tv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the planned switch-off that will take place on 14 March 2022, ahead of the switch-off. This banner should be displayed on each of these transmitters for a period of thirty days. We request Sentech to adjust the April 2022 E.TV invoice accordingly.”*

4.13.2 A letter dated 13 May 2022 in which it identified three analogue transmitters to be switched off on 13 June 2022 together with a request to display a text message *“that must be displayed on this transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the planned switch off that will take place on 13 June 2022, ahead of the switch-off.”*

4.13.3 A letter dated 25 August 2022 identifying seven analogue transmitters to be switched off with the same message about a text to be displayed on the seven transmitters to be switched off.

4.13.4 A letter dated 29 September 2022 identifying seven analogue transmitters to be switched off. Attached to this letter was the text of

the banner to be displayed on each of the seven transmitters for a minimum period of seven days prior to the switch-off date. In this case, e.tv was of the view that a minimum notice period of seven days was good enough to inform households that had not yet obtained either its Openview decoder or a government sponsored STBs but it seeks to contend, in this application, that the extended notice period given by the government of more than ninety days is not good at all and that it is irrational. This shows that e.tv's concerns are more about itself than the qualifying households to whom government sponsored STBs must be supplied. The text which e.tv provided reads as follows and it is attached to the letter:

*“ATTENTION ALL E.TV VIEWERS:*

*DEADLINE: 17 OCTOBER 2022*

*After this deadline, e.tv analogue service will not be available in your area. To continue enjoying your favourite TV shows and get many more entertaining channels, get an Openview decoder from a retailer near you BEFORE 17 October 2022.”*

- 4.13.5 A letter dated 7 October 2022 identifying four analogue transmitters to be switched off on 7 November 2022 with the same banner message as that quoted above but with a different date.

- 4.13.6 Letters dated 15 June 2023, 5 September 2023, 28 February 2024, 10 June 2024, 18 July 2024, all identifying a list of analogue transmitters to be switched off. In its letters dated 28 February 2024, 10 June 2024, and 18 July 2024, e.tv said that the text banner message must be displayed for a period of fourteen days before the relevant analogue switch-off date.
- 4.14 I draw the court's attention to the fact that e.tv's banner message is directed at those who are able to self-migrate by buying and having installed e.tv's Openview decoder. There is no explanation why e.tv did not also advise the relevant viewers to register and obtain state sponsored STBs if that was a strict condition for migration other than that e.tv sought to promote its own Openview decoder. This undermines its contention that this application is more about protecting the interests of "*millions of people*" who rely on the government to migrate.
- 4.15 From e.tv's letters, it is clear that e.tv's analogue transmitters have been switched off in the Free State, KwaZulu-Natal, Mpumalanga, Gauteng, Western Cape, and North West. It is not e.tv's case that there was an outcry by qualifying beneficiaries whose television sets stopped working when these analogue transmitters were switched off despite the fact that it did not tell them what to do to "*continue enjoying your favourite TV shows and get many more entertaining channels.*" This being the case, the scare tactic that there is going to be a television blackout to "*millions*" of viewers is not sustainable and it is wrong. I say this because e.tv would have told those who

cannot afford its Openview decoders to register for the state sponsored STBs if it was truly of the view that they ran the risk of being left behind with a television set that does not receive its television broadcasts. In addition, e.tv does not say why it would openly risk financial loss by not telling all the qualifying beneficiaries to register for state sponsored STBs if there was this big monster of a risk of a television blackout on the switch-off date of its long list of analogue transmitters switched off on the dates referred to in its letters.

4.16 Since the switch-off of the analogue transmitters which have so far been switched off in the five provinces and some in the remaining provinces to be switched off on 31 March 2025, the department and Sentech have not received complains about people not having been aware of the digital migration process and the analogue switch-off process. The only queries received related to where people must go to get decoders and even then, they were very few queries which were resolved many months ago.

4.17 Despite the deadline of 30 September 2022, the Minister did not close the registration process. This allowed qualifying beneficiaries to continue to register even after 30 September 2022 and they continued to do so. This, again, ensures that qualifying beneficiaries are not left behind simply because they were not diligent enough in managing their television affairs. These beneficiaries, however, should not be used to hold the whole country back from finally migrating from analogue broadcasting to digital migration.

4.18 For the applicants to succeed, they have to prove that qualifying beneficiaries, who registered on or before 30 September 2022 are going to be left behind and even go to the extent of identifying them instead of relying on estimates which do not necessarily tell the Court and the Department as to exactly who it is that they say is going to be left behind. This is something which e.tv or the applicants ought to have addressed in their founding affidavit and they have failed to do so. Without the applicants having addressed this important issue, the application ought to be dismissed with costs. This is because:

4.18.1 The Court cannot simply base its judgment on the assumption that there are “*millions*” of people who are entitled to be provided with state sponsored STBs who are not going to get them even by the end of the year.

4.18.2 The number of qualifying beneficiaries who remain to be provided with state sponsored STBs relied upon by the government is based on the actual number of people who have registered and qualify to be provided with state sponsored STBs and not on speculation or assumptions.

4.19 In any event, the notice to register is not challenged in this application and there is no evidence placed before the Court to prove that there are qualifying beneficiaries who were prevented from registering for government sponsored STBs.

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- 4.20 In the premises, qualifying beneficiaries were given adequate notice and opportunities to register for state sponsored STBs. The Minister cannot, accordingly, be blamed for people who failed to register on time (and even after the expiry of the prescribed deadline) and the whole country cannot now be held back from migrating because of late registrations.
- 4.21 Dual illumination is expensive for the whole country and there is no factual and legal basis for this Court to stop digital migration for the second time to accommodate unidentified “*millions*” of people who the applicants cannot even tell the Court if they registered on or before 30 September 2022 and if so, why they did not register in the first place.
- 4.22 It cannot be correct that the applicants can simply say that “*millions*” of people are going to be left out without at the very least saying that such “*millions*” registered on or before 30 September 2022, or that they were prevented from registering because of something attributable to the government. The suggestion that there were difficulties with the Post Office and the online registration platform does not explain the long period of time which has now passed since the notice to register was published on 8 July 2022.
- 4.23 Considering that Sentech transmitted the relevant message for qualifying beneficiaries to register for government sponsored STBs through each of the analogue transmitters, every qualifying household with an analogue

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television set would have seen the message to register and the need to register.

4.24 In addition, the awareness campaigns conducted by the Department and others adequately delivered the message and made people aware of the need to register and the consequences of a failure to register and get an STB installed before the analogue switch-off date. This being the case, this Court cannot stop digital migration, for the second time, because of people who did not register on time when the call to register was first made in October 2015, about ten years ago.

4.25 As I have stated above, dual illumination, the process of running both digital and analogue transmitters at the same time, is expensive and it is not cost effective. It cannot continue beyond 31 March 2025. The government has already decided that it does not want to spend more money running both analogue and digital transmitters – dual illumination – at the same time.

4.26 The government wants to use its money to meet other government needs and priorities as opposed to continuing to pump up the very same money into dual illumination when there is no justification as to why qualifying beneficiaries did not register on or before 30 September 2022 (and even thereafter). This is the choice which the government has now made, and this Court should be very slow to interfere with that choice. Interfering with that choice would require the government to make money available to continue to run dual illumination beyond 31 March 2025 and this Court is not

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competent to tell the executive branch of the government to stop funding what it has determined to be urgent priorities to enable it to fund dual illumination if analogue switch-off date is postponed beyond 31 March 2025.

4.27 This is not a case where the government is saying that the relief sought by the applicants must not be granted because the government forgot or neglected to budget for it. The government is saying that it has decided not to make provisions for dual illumination because it wants to spend the money to meet other government needs and priorities and not on dual illumination. The executive branch of the government, and not the court, is best placed to make these types of decisions. It is not for the Court to determine where the government should spend its money or what the government's priorities should be.

4.28 In addition, Sentech says that the analogue transmitter infrastructure has passed its best before date and it has become obsolete with a high risk of collapse because it is no longer supported by the original equipment manufacturer and there are no longer reliable spare parts available to maintain it.

4.29 This Court cannot reasonably grant an order which forces Sentech to continue to use analogue infrastructure which is outdated and has a high risk of collapse to the country's prejudice, more so when Sentech simply does not have money to do it, and government has decided that it is not going to give it money to do it. Importantly, this Court cannot ignore the executive's

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choice to spend state monies elsewhere as opposed to spending it on dual illumination using outdated and obsolete infrastructure which can collapse at any time to the prejudice of the whole of the Republic in order to wait for not more than 450 000 people to all be connected with state sponsored STBs.

4.30 In the light of the above, this court must draw a line in the sand, just like the Cabinet has done, and allowed digital migration to come to an end. Every qualifying beneficiary who did not register timeously, will still be accommodated after 31 March 2025 without burdening every taxpayer with dual illumination costs.

4.31 In conclusion on this point, I refer the Court to what the Constitutional Court said in the e.tv judgment:

“[103] *In granting the relief of setting aside the analogue switch-off date, this Court is cognisant of the fact that digital migration will not be effected on 30 June 2022. This relief should not be construed as an invitation for any of the parties before this Court to bring about a further delay of digital migration, through whatever means. All parties agree that there is a need for South Africa to migrate to digital and for the analogue switch-off to imminently take place. Analogue switch-off is an urgent, and unfortunately much-delayed, national priority. Therefore, once adequate notice is given to the public to make informed decisions*

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*on whether to register for an STB, digital migration should proceed without further delay.”*

4.32 The public has been given adequate notice. The public has also been made aware of the need to make their informed decision “*on whether to register for an STB*” and this has been going on since October 2015. Those who wanted to register have registered. Despite the registration deadline of 30 September 2022, the government did not close the opportunity to register. Those who were late were allowed to register even after 30 September 2022. Accordingly, “*digital migration should proceed without further delay.*”

4.33 For the reasons stated above, there is no reason for this Court to accept that there are “*millions*” of qualifying beneficiaries who registered to be provided with government sponsored STBs on or before 30 September 2022 and who are going to be left behind in a television blackout situation. The “*millions*” of people relied upon by the applicants are not in the government’s registration database, are unknown to the government and ought not to cause a further delay to digital migration.

## **5 THE APPLICANTS HAVE BEEN CONSULTED**

5.1 The Department has consulted with the applicants several times on all aspects of the broadcasting digital migration process and the determination of the analogue switch-off date.

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- 5.2 The applicants have also made a long list of written submissions to the government on what they considered to be the appropriate final analogue switch-off date and their reasons for saying so. The government has carefully considered these submissions before determining 31 March 2025 as the final switch-off date.
- 5.3 The applicants' main concern in this application is that "*millions*" of households are going to be left without access to television broadcast on 31 March 2025. To the extent that this is so, those households have not registered with the Department to be provided with government sponsored STBs and I challenge the applicants to disclose who they are. This is more so because SABC analogue transmitters were switched-off in the Free State, Mpumalanga, Northern Cape, North West and the Limpopo provinces as of 2024 and the government has not received "*millions*" of complains about "*millions*" of households experiencing a television blackout.
- 5.4 The applicants are not entitled to endless consultation about the same thing over and over again.
- 5.5 On 28 June 2022, the Constitutional Court delivered what is referred to in the papers as the e.tv judgment. There, the Court said the following:
- 5.5.1 The process of digital migration can be traced back to 2007.

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- 5.5.2 The BDM Policy provides that STBs would be made affordable and available to the poorest TV owing households “*which had to register if they wished to receive state-sponsored STBs*” and that registration for the STBs “*was opened in 2015 and there was no closing date for registration.*”
- 5.5.3 e.tv has switched-off a long list of the analogue transmitters which were licensed to it throughout the Republic.
- 5.5.4 The SABC has also switched-off a long list of analogue transmitters which had been licensed to it throughout the Republic.
- 5.5.5 On 12 October 2021, e.tv launched an urgent application “*on the basis that the analogue switch-off would permanently prevent millions of people, who had not migrated to digital television transmission and who were not in possession of STBs from receiving free-to-air television transmission on their analogue television sets.*” This present application is based on the same complaint.
- 5.5.6 The applicants allege that approximately 2.58 million qualifying households comprising over 8 million would not have migrated by the then proclaimed analogue switch-off date.

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- 5.5.7 The determination of the analogue switch-off date is the implementation of policy, and it is executive in nature and the Court should show appropriate deference.
- 5.5.8 The applicants contended that the Minister had a duty to consult the public and the applicants before determining the STB registration deadline and analogue switch-off date. The same contention is made in this application.
- 5.5.9 Switching-off analogue transmission is an integral part of digital migration and affected parties must be given an opportunity to make representations on the analogue switch-off date because important interests are at stake.
- 5.5.10 It was “*not procedurally rational for the Minister to set the analogue switch-off date without notice to the industry and affected parties like MMA and SOS, to obtain their views on the matter.*” Consequently, “*the Minister’s decision not to give notice and take account of the representations received regarding the analogue switch-off date with the public or affected parties is unlawful.*”
- 5.6 The Constitutional Court also found that the Minister failed to provide reasons for announcing the analogue switch-off date without advance warning. It is on the aforesaid basis that the Court concluded that the decision to announce the analogue switch-off date was unlawful and set it aside.

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- 5.7 After the e.tv judgment, the Department held extensive consultations with interested parties and the applicants. Even on the applicants' version, various meetings and workshops were held leading up to the determination of 31 December 2024 as the analogue switch-off date.

## 6 THE CONSULTATION PROCESS

- 6.1 The fact that the Minister was in law required to consult with the applicants is not in dispute. The Minister consulted with the applicants to the extent of even reaching agreements with broadcasters on the date of analogue switch-off.
- 6.2 The consultation process relevant to this application must be traced back to 9 December 2022 when the Minister publicly invited interested parties to make written submissions on the proposed analogue switch-off date.
- 6.3 In a government notice published in the Government Gazette on 9 December 2022, the Minister said the following which the applicants do not dispute:

*“The Minister of Communications and Digital Technologies in giving effect to the Constitutional Court’s judgment, published a Notice ... dated 8 July 2022 providing members of the public with adequate notification that the deadline to register for Government subsidised Set Top Boxes ... is 30 September 2022 to afford members of the public a further opportunity to*

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*apply. It must be borne in mind that the process to register for STBs started in 2015...*

*Following processes embarked on from 2015 which included amongst others, partnership with provincial governments, imbizos and door-to-door awareness raising campaigns, media platforms were also utilised to inform the public of the deadline for registrations which include the following:*

- 1) SABC Television and Radio Stations;*
- 2) 119 Community Radio Stations;*
- 3) Physical engagement in various provinces in collaboration with Local Government and House of Traditional and Khoisan leaders;*
- 4) Social media platforms and the Department and its portfolio entities.*

*The Minister further embarked on engagements such as the distribution and installations of STBs and held media briefings on Broadcasting Digital Migration...” (Own emphasis).*

- 6.4 In the notice, the Minister told the public of the Minister’s intention “to determine the date for final switch-off of the analogues signal and the date of dual illumination, as 31 March 2023” and then invited all interested parties “to provide written comments on or before 27 January 2023.”

- 6.5 The applicants and other interested parties submitted written comments which the Minister carefully considered and responded to. For purposes of this application, the Minister's responses to the applicants are relevant. In this regard, it must be remembered that there was only one call for interested parties to make written submissions on the proposed analogue switch-off date of 31 March 2023.
- 6.6 In a letter dated 6 March 2023 attached hereto as AA4, the Minister responded to e.tv's written submissions in response to the Minister's invitation to make written submissions. In this letter, the Minister said the following in response to e.tv's written submissions:
- 6.6.1 The Department maintains that adequate notice of the final deadline for registration for state sponsored STBs was given to the public. The notice to register was published in English and all other official languages.
- 6.6.2 The Constitutional Court did not prescribe the procedure that the Minister must follow before determining the analogue switch-off date.
- 6.6.3 The Department "*embarked on an intensive awareness campaign to inform members of the public of the 30 September 2022 deadline for registrations*" and that this was done through, amongst others, television, public and community radio stations, print media, community outreach and use of mobile network.

6.6.4 The Department affirms *“its position that the ASO Notice was comprehensive and clear”* and that this is *“evident from the contents of the written submissions received indicating that those who elected to comment understood what the ASO Notice sought to achieve, which enabled them, including E.TV to respond adequately thereto.”*

6.6.5 The proposed date of 31 March 2023 was informed by:

6.6.5.1 The number of new applications received after the 30 September 2022 deadline, amounting to 178 300.

6.6.5.2 The number of outstanding installations which stood at 185 382 as on 9 December 2022.

6.6.6 The increased capacity for installation resulting in projections being made that all registered households would be installed by 31 March 2023.

6.7 In addition to the above, the Minister further said the following to e.tv:

“10. *With regards to your allegation that 15,7 million indigent South Africans (4.7 million indigent households) will be left without any access to public and free-to-air broadcasting, it is submitted that the Government of South Africa, committed to subsidised registered qualifying indigent households based on a system, namely that those in need of government assistance must raise*

*their hands through a registration process. The registration process commenced as far back as September 2015 and closed on 30 September 2022. The total number of registrations received as at 30 September 2022 is less than 1.6 million. Government holds the view that it did all it could and cannot be held accountable for those households who, despite the calls to register, decided not to do so. Your attention is drawn to the Constitutional Court's judgment where it said that previous processes followed should not be discarded.*

11. *With regards to the call that Government must conduct a study, we wish to reiterate that the Constitutional Court did not direct the Department to conduct a study to ascertain the reason for the number of registrations or why people did not register... the Department put a system in place, that of registrations, and considered verified data at its disposal, indicating the number of new qualifying registered households as 178 300, and not millions as was alleged, after 30 September 2022, demonstrating that there is a decline in registrations.*
  
12. *With regards to your comments on the SABC, it is our view that e.tv has not [been] mandated to speak on behalf of the SABC. Be that as it may, the switch-off of the SABC's analogue transmitters, were carried out with the approval of SABC as the agreed-on threshold between SABC and Sentech was met.*

13. *With regards to your comment that the Broadcasting Digital Migration Policy is outdated, please note that it is the national executive that is seized with policy making powers and not e.tv. Further your allegation that DTT is obsolete is denied.*
14. *Your attention is drawn to the fact that majority of the registered households who applied for STBs have been provided with STB, and we are providing the remaining households with STBs in preparation for Analogue switch-off.*
15. *Please note that we disagree with your assertion that any proclamation by the Minister of 31 March 2023 as the ASO date would be unconstitutional.*
16. *The Department wishes to ensure you that the Minister, as member of the national executive, is committed to uphold the Constitution, the rule of law and South Africa's international obligations and will ensure that those who failed to heed the call to register timeously, be taken care of after the ASO. It is submitted that citizens' failure to respond to the call for registrations cannot hold the Government at ransom, not to proceed with the ASO.*
17. *e.tv is urged to look into the future of broadcasting, embrace digital transformation and support Government to complete the*

*Broadcasting Digital Migration which hold benefits for all South Africans.” (Own emphasis).*

- 6.8 In the light of the above, I state that the Minister considered e.tv’s written submissions and responded thereto. The correct position is that the Minister was not in law required to agree to each of e.tv’s proposal or submission contained in its written submissions replied to as quoted above.
- 6.9 The Minister also received written submissions from MMA and SOS, the other two applicants in this application. Similarly, the Minister considered their written submissions and responded thereto.
- 6.10 The Minister responded to MMA and SOS written submissions in a letter dated 6 March 2023 attached hereto as AA5. In this letter, the Minister recorded the following:
- 6.10.1 The Department “*vehemently disagrees with your statement to the effect that the awareness campaign was ‘wholly insufficient’ as it allegedly commenced six weeks before the deadline as the awareness campaign started in September 2015, and not August 2022.*”
- 6.10.2 The Minister reminded that the Constitutional Court held that “*the process need not to start from scratch and that the Department can build on previous processes followed*” and that this “*is exactly what the Department has done.*”

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6.10.3 The notice in issue complies with the ECA and PAJA “*in that the Minister and the Department elected the notice and comment procedure to consult the public as the subject matter thereof affects the entire country*” and that all “*interested parties were afforded a reasonable opportunity to submit written comments for consideration.*”

6.10.4 The Minister further said the following to SOS and MMA:

“9. *With regards to your statement that 2.5 million indigent households require to register for STBs and that a period of twelve weeks is insufficient to register them all, it is submitted that the Government of South Africa, committed to subsidise registered qualifying indigent households based on a system, namely that those in need of government assistance must raise their hands through a registration process. The number of new applications received 30 September 2022 was 178 300 only. The total number of registrations received between September 2015 and 30 September 2022 is less than 1.6 million. Government holds the view that it did all it could and cannot be held accountable for those households who, despite the calls to register, decided not to do so...*

10. *With regards to the call that Government must conduct a study, we wish to reiterate that the Constitutional Court did not direct the Department to conduct a study to ascertain the reason for the*

*number of registrations or why people did not register. The Department put in place, that of registrations, and considered verified data at its disposal, indicating the number of new qualifying registered households as 178 300, and not millions as alleged, after 30 September 2022, demonstrating that there is a decline in registrations.”*

- 6.11 It is clear from the Minister’s response to SOS and MMA that they raised more or less the same issues as those raised by e.tv in their written submissions.
- 6.12 After considering all the written submissions made to the Minister, the Minister met with broadcasters as well as state owned entities responsible for the technical aspects of digital migration. In this regard, various meetings and workshops were held between the Department’s representatives and these parties. Pursuant to these engagements, the Minister postponed the analogue switch-off date to 31 December 2024.
- 6.13 It is important to bring to the court’s attention the fact that in May and June 2023, the Minister further engaged with amongst others, the SABC, e.tv Cape Community TV, KZN Community TV, Soweto Community TV, Faith Community TV and Sentech. At a workshop held in June, various agreements were reached with these parties. I attach hereto as AA6, a report on the broadcast digital migration consultations and workshop held in June. In this report, the following is recorded:

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### “3. MEETINGS AND WORKSHOP DISCUSSIONS

*The Minister convened the Broadcasting Digital Migration Steering Committee on 02 June 2023 to assess progress and determine the way forward. The Steering Committee adopted the Hybrid approach of clearing up analogue and digital broadcasting transmissions above 694MHz band and retain some analogue services below 694MHz. The period for retaining analogue below 694MHz should be agreed upon for the purpose of Gazetting ASO. It was agreed that workshops and meetings should be convened to determine the viability of the hybrid approach and the time to retain analogues services.*

...

*During these engagements, the Department’s position was for immediate analogue switch-off. Broadcasters highlighted that the number of households that have subscribed to digital platforms and the DTT are not satisfactory to sustain the Free-to-Air broadcasting businesses. National Broadcasters are prospecting that households that are relying on Terrestrial reception are above 4 million, and only 1.5 million of their targeted audience have registered for Government subsidised STBs. Community broadcasters have varying household expectations, where most of their household coverage is below a million households on terrestrial platform.*

Community Broadcasters also raised a concern about the expanded coverage by DTT regulations. This will increase their operating costs and is mainly not affordable, the regulator should be engaged to review the regulations and keep broadcasters within affordable coverage.

There were arguments about how long the registrations period has been open for application and the Broadcasters aspirations of having everyone registering and converted being too optimistic. The public broadcasters highlighted at a minimum, migration of 2.5 million households could be satisfactory for their business sustainability and the arguments remained that the stakeholders do not have control over factors affecting subscription to platforms which included compelling content and economic condition of affording television and associated devices.

The second key submission from the broadcasters related to the impact of COVID, economic decline and impact of loadshedding on their businesses. Broadcasters felt that they need a breather period to recover from these conditions before a full ASO can be implemented.

They are therefore requesting a bit more time to increase registrations and installations before the final national ASO is announced.

The signal distributor highlighted that the analogue technology is obsolete, has reached End-of-Life and does not have manufacturer support. The risk of technology failure is very high and prolonging reliance on analogue is not

sustainable. Secondly, there is no financial provisions for dual illumination and this situation is continuing to affect the signal distributor's financial position.

*The regulator highlighted the Broadcasting above 694MHz is not protected. There is an immediate need to clear all broadcasting assignments above 694MHz by re-arranging all the analogue television assignments to below 694MHz...*

#### 4. THE WAY FORWARD AND PLAN

*Having considered various stakeholder inputs, the workshops considered and worked on a two-step approach to analogue switch-off (ASO) and further analysed its technical viability as follows:*

**Step 1:** *Switch-off analogue above 694MHz band immediately to release spectrum for other Telecommunications use. This process should allow for the Digital to Digital and some high impact analogue site to be accompanied below 694MHz. The agreed ASO date for clearing above 694MHz band is 31 July 2023 ...*

**Step 2:** *Grow the number of STB registrations, subscription to alternative platforms and installations to required levels and terminate analogue services below 694MHz. The agreed ASO date for terminating analogue*

below 694MHz band will be progressive within twelve to sixteen months until 31 December 2024.

...

#### 5. COMMITMENTS MADE BY BROADCASTERS

- The Broadcaster have committed that there will be no further variation to the proposed plan, even if the registration and subscription do not reach their aspiration levels.
- *Broadcasters accept the risk of technology failure and will work with SENTECH to manage the risk.*
- *Broadcasters will contribute towards the dual-illumination costs and have undertaken to continue for paying analogue rates even where they have switched-off. This is done to lower financial burden on the state and Sentech.” (Own emphasis).*

6.14 It is on the basis of the aforesaid that the Minister determined that the analogue switch off date shall be 31 December 2024. In the light of the above, it is very clear that the broadcasters, including e.tv, agreed to the analogue switch-off date of 31 December 2024. I am aware that e.tv suggests that it agreed to this date subject to certain conditions being fulfilled.

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6.15 It is clear from what I have quoted above that broadcasters were not very much concerned about the indigent households but were more concerned about their own financial positions. This is still the position.

6.16 After the aforesaid workshops and meetings and the agreements reached with broadcasters as recorded in the consultations and workshops report to which I have referred above, the Minister addressed identical letters to broadcasters dated 13 June 2023. I attach hereto as AA7, a copy of one of such letters.

6.17 In the aforesaid letters, the Minister said the following:

*“2. Having noted your feedback and considered your inputs from various meetings and workshops regarding the Analogue switch-off approach. The Department of Communications and Digital Technologies has resolved to adopt a two-phase approach towards analogue switch-off as follows:*

*2.1. Phase 1: switch-off analogue services above 694MHz by 31 July 2023 and retune all digital broadcasting services above 694MHz to frequencies below 694MHz.*

*2.2. Phase 2: temporary accommodate analogue services below 694MHz for a period not exceeding 31 December 2024. This will afford Broadcasters the opportunity to increase take-up of broadcasting through digital platforms.*

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3. *To minimise the impact of the extended analogue switch-off period, the Signal Distributor committed to support the analogue network within the financial and technical constraints, whilst Broadcasters committed to accept the risk posed by the continued use of obsolete analogue technology below 694MHz and to compensate Sentech for dual illumination.*
4. *In light of the positive outcome from the engagements, the Minister will announce the analogue switch-off date during this week and thus invite you to the media briefing.*
5. *Kindly confirm in writing your commitment in relation to the above approach towards analogue switch-off including time lines, technical and financial implications. Please do so by no later than Wednesday 14 June 2023.”*

6.18 I attach hereto as AA8 a letter dated 14 June 2023 from the signal distributor, Sentech in response to the Minister’s letter referred to above dated 13 June 2023. In this letter, Sentech advised the Minister as follows:

*“2. Due to the digital migration delay we are experiencing a shift to satellite alternative by broadcasters and viewers resulting in less take-up for terrestrial television. Multichoice has confirmed that they will exit terrestrial broadcasting by March 2024, the SABC has only subscribed*

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*to 55% of the DTT network, and E.TV has not signed up for terrestrial DTT transmission.*

3. *We welcome the development regarding a two-stage approach to ASO and dates set to conclude such stage. This will enable us to release spectrum and focus South Africa on next generation technologies.*
4. *We note the issue raised regarding Technology and Financial constraints and will like to respond as follows:*
  - i. *Analogue technology failure will remain a risk for the dual illumination period leading to the 31 December 2024. We appreciate that the broadcasters have accepted the risk and will do our best to manage services continuity with the limited OEM support.*
  - ii. *Sentech is not [in] a position to fund the dual illumination costs and will rely on the broadcaster's contribution for dual illumination. In case of dual illumination shortfall, the Department should facilitate permission with National Treasury for Sentech to access the remaining portion of the Digital-to-Digital fund."*

6.19 In a letter dated 14 June 2023 attached hereto as AA9, e.tv responded to the Minister's letter dated 13 June 2023 referred to above. Therein, e.tv said the following:

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- “1. We refer to the recent constructive engagements with the Minister’s team in relation to the process for switching off analogue transmitters and digital migration.*
- 2. e.tv welcomes the constructive and collaborative approach that has recently been adopted by the Department in engaging with broadcasters in order to find a potential solution to the challenges that are posed by the switching off of analogue transmitters. Given the fact that millions of South Africans remain dependent on analogue signal to access television.*
- 7. In regard to the envisaged stage II of the process, e.tv remains of the view that as the spectrum band below 694MHz is allocated for use by broadcasters, it can and should continue to be used to allow millions of South Africans to access television via analogue signal until appropriate plans can be devised to migrate South Africans watching television using analogue spectrum below 694MHz to digital means of accessing television. e.tv supports the proposal (subject to the fact that urgent and continued steps need to be taken to ensure that this vast number of South Africans are migrated from analogue to digital platforms for accessing television) that all parties should collaborate to achieve this migration process with a view of seeking to achieve this objective by the end of December 2024. It should be noted, however, that e.tv’s approach in this regard is predicated on the basis that sufficient numbers of South*

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*Africans accessing television through analogue spectrum will have been migrated to other platforms by 31 December 2024.*

9. *In summary, e.tv is broadly supportive of the Minister's proposed two-stage process and will use its very best endeavours to assist in meeting the proposed deadlines outlined by the Minister.*

11. *As regards stage II, e.tv is committed to seeking to assist the Minister to achieve an ASO date of 31 December 2024, but that is subject to a constitutionally-appropriate plan being devised to allow the millions of South Africans to properly migrate watching television using analogue spectrum below 694MHz. In other words, while e.tv will co-operate fully and use its very best endeavours to assist in achieving the deadline of 31 December 2024, this will require comprehensive and appropriate planning, as well as the necessary implementation of such a properly devised plan to achieve this objective."*

6.20 The contents of e.tv's above quoted letter clearly indicate that:

6.20.1 e.tv participated in *"the recent constructive engagements with the Minister's team in relation to the process for switching off analogue transmitters and digital migration"* and that it welcomed *"the constructive and collaborative approach that has recently been adopted by the Department in engaging with broadcasters in order to find a potential solution to the challenges that are posed by the*

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*switching off of analogue transmitters, given the fact that millions of South Africans remain dependent on analogue signal to access television.”*

6.20.2 e.tv agreed to the Minister’s proposal subject to conditions unilaterally prescribed by it.

6.21 It is important to draw the court’s attention to the fact that as on the date of e.tv’s letter quoted above, 14 June 2023, the deadline for qualifying beneficiaries to register for government sponsored STBs had already passed. At that point in time, the Department had not received any complaints from qualifying beneficiaries that they had been locked out of the registration process due to the public not having been given a reasonable opportunity to register for government sponsored STBs.

6.22 On 14 and 15 August 2023, the Department’s representatives and the relevant interested parties held a two day’s workshop at the offices of e.tv to adopt a plan required to give effect to the migration process adopted in June 2023. The parties adopted a plan as they intended to do. In its founding affidavit, e.tv wrongly suggests that the Minister arbitrarily departed from this agreed plan. I deny this.

6.23 The correct position is that the Minister did not arbitrarily depart from the plan agreed upon and adopted at the workshop of 14 and 15 August 2023 held at e.tv’s offices. What happened is simply that some of the activities

forming part of the plan were not achieved within the estimated time. This, by any stretch of the imagination, does not mean that there has been a departure from that plan. By way of an example, there was a delay in activating the online registration platform to be used by qualifying beneficiaries to register for government sponsored STBs, some of the post offices were not readily available to attend to those who wanted to register. These were not permanent impediments that justify the conclusion that the Minister arbitrarily deviated from the agreed plan. In this regard, it must always be remembered that the deadline for registering for government sponsored STBs was 30 September 2022 and it had already passed. This means that e.tv was concerned about qualifying beneficiaries who had already missed the registration deadline by almost a year.

- 6.24 After e.tv took the position that the Minister had arbitrarily deviated from the agreed implementation plan, it and the other applicants stated writing letters to the Minister to complain about the fact that “*millions*” of qualifying beneficiaries will be left behind if the analogue switch-off date of 31 December 2024 was not postponed. The Minister considered all the issues raised in such correspondence and even met with the relevant stakeholders to discuss and consider their concerns. The issues raised in the correspondence and what the Department itself knew is what led to the decision to postpone the analogue switch-off date from 31 December 2024 to 31 March 2025.

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- 6.25 When regard is had to the contents of the letters attached to the applicants' founding affidavit in which they raised concerns about the state of readiness of switching off the remaining analogue transmitters on 31 December 2024, it cannot be said that the Minister did not consider their representations before postponing the analogue switch off date from 31 December 2024 to 31 March 2025 and that the applicants were entitled to another round of consultation to express the same views which they had already expressed.
- 6.26 It would only have been if the government had decided to stick to the 31 December 2024 analogue switch-off date that it could be contended that the Minister did not have regard to the issues raised in the correspondence addressed to the Minister and the President of the Republic about what interested parties such as the applicants considered to be legitimate impediments to the analogue switch-off date of 31 December 2024.
- 6.27 All the issues raised by interested parties in the correspondence were carefully considered by the Minister and it is only thereafter that a decision was taken to postpone the analogue switch-off date to 31 March 2025. The fact that 31 March 2025 is not the date which the applicants asked for does not mean that their views were not considered.
- 6.28 As far as the implementation plan itself is concerned, there is no factual and legal basis for the applicants to contend, as they do, that they were entitled to another round of consultation in the development and implementation of the plan. The suggestion that the Minister promised the applicants and other

interested parties another round of consultation is not correct, and it is not supported by the transcript upon which the applicants rely for that contention.

6.29 In their founding affidavit, the applicants contend that the Minister promised to have another round of a transparent consultation process with them before finalising the plan. This, however, is not entirely correct. In this regard, it is important to have the full context of what the Minister said to interested parties at the meeting of 5 December 2024.

6.30 The purpose of the meeting of 5 December 2024 was for the Minister to inform the broadcasters and other relevant interested parties of cabinet's decision to approve 31 March 2025 as the date for final analogue switch-off. The transcript of that meeting reflects the following engagement:

*“MINISTER: ... Cabinet met yesterday and the resolution by cabinet's decision around the deadline of the 31<sup>st</sup> of December was to grant a postponement until the end of March 2025. So, the resolution was to postpone by three months and to let the end of March be the final deadline with which we will be working with, with regards to the analogue switch-off.*

*So, that represents a relief with regards to the concern around the immediacy of the 31<sup>st</sup> of December. This is what we were able to get out of cabinet. All of you know the historical issues around this. I don't intend to have a repetition of all the discussions that we have had, but based on the fact that*

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*we had had a discussion on Tuesday and committed to reconvening this forum for the purposes of communicating what would have been the outcome of cabinet, we then deemed it that it is necessary to reconvene you in order to share this latest update.*

*I know you may have your own views about it, which are understandable, given the magnitude of the issue, but that is the latest date with regards to the matter of the analogue switch-off and that would be the final determination as the outcome of cabinet. So, we deemed it necessary to come and convene you in order to share this news with you prior to ... the Department, making the communications opening, which we then need to do so.*

*Of course, the next question that would emerge naturally would then be about how we get into making sure that those registered beneficiaries would then be provided with the set-top-boxes and the installations can then take place. We would be able to outline in a matter of a week or two an acceleration plan around those installations and we can get into the details at another time, not necessarily today, wherein in that room the BDM forum or another channel would be able to convene and outline how from the Department's side we think that with this reprieve of three months that we have, we can make further inroads towards the installations that need to happen.*

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*So, basically that is the crux and the purpose of why I really asked that at very short notice we convene this engagement and to be able to present you with this update as the outcome of the cabinet meeting that emerged. That is basically where we are.*

...

*NOMSA: Because it will be great to see the actual project management in terms of what actually is the target now and the 31st of March.*

*MINISTER: Yes, so that technical, you know, we will be able to reconvene once we have gotten over today. We will then be able to convene it and make sure that we can work openly with all of you so that where we are able to help from a community perspective, you can have insights into that Khalid, with those pressures of time, precise to the point.*

*KHALID: Ja, just to the point, thank you, Minister. Just for the record purposes that our silence in this meeting is not, it must not be mistaken as consent to the idea that we move to the 31<sup>st</sup> of March 2025 and that we will work on anticipating our negotiations with you and your team, but I must put it on record that our rights will be reserved depending on how we can look at what the future is going to be. I just didn't want us as eMedia to have remained silent here and that it be said but you didn't say anything when you should. I'm just putting it on record. Thank you.*

MINISTER: *Okay, that's fine. We are all law-abiding citizens and, you know, we set up this forum so that we can have these robust engagements around that and that is fine, but we are committed to laying out the process. We are committed to doing this in a transparent manner and in an inclusive manner and our hope will be that we find each other in that process rather than another one, but you know, organisations and individuals have their rights that they need just to exercise at any given time and we will do that.*  
DM?" (Own emphasis).

- 6.31 The Minister did not in the above quoted engagement say that an implementation plan would not be developed before a transparent consultative process takes place as suggested by e.tv. In any event, without e.tv having placed any evidence before the court to prove that the "millions" alleged by it registered for state sponsored STBs before 30 September 2022, the government cannot be faulted if it is unable to provide all of them with STBs on or before 31 March 2025.
- 6.32 Of importance, these alleged "millions" should not hold the whole country to a ransom so that the digital migration process is not delayed in circumstances where they clearly failed to manage their television affairs timeously. The whole country cannot afford to literally wait for people who have been given adequate notice to register for state sponsored STBs but failed to do so despite the registration process remaining open the entire time. I say this because none of the applicants or other interested parties brought an application in this court to set aside the notice to register on the basis that

it was not adequate. For this reason, the fact that there are people who did not take the opportunity to register for state sponsored STBs on or before 30 September 2022 cannot be used as a basis to hold the whole country to a ransom and then delay digital migration which the Constitutional Court correctly described as an urgent national priority.

6.33 In the premises, I deny the applicants' suggestion that they were entitled to another round of consultation for purposes of developing and implementing a plan to roll out state sponsored STBs to those who have registered for them.

## **7 AD PARAGRAPHS 1 TO 29**

7.1 I deny that the contents of the founding affidavit are true and correct to the extent that they are at variance with the contents of this answering affidavit.

7.2 The contents of paragraph 3 and the 13.9 million number do not take into account people who have self-migrated and those who have recently migrated using state sponsored STBs.

7.3 The contents of paragraph 4 are not in dispute.

7.4 I deny that 12 million people are still reliant on analogue signals to receive television broadcasts. This switch-off in five provinces of the Republic and in some of the remaining four provinces has clearly resulted in a reduction of the number of people relying on analogue transmitters to receive television broadcasts.

- 7.5 Whilst it is correct that some people would not have received their state sponsored STBs on 31 March 2025, the applicants have not produced any evidence to demonstrate that such people registered to receive state sponsored STBs on or before the registration deadline of 30 September 2022.
- 7.6 I deny that the analogue switch-off date of 31 March 2022 “*will also breach a promise made by government*” that it will “*leave no-one behind*” when digital migration takes place. In this regard, the government has given adequate notice to the general public to register to be provided with state sponsored STBs so that they are not left behind. The applicants do not say that the “*millions*” alleged by them consist of people who have registered to receive state sponsored STBs on or before the registration deadline of 30 September 2022.
- 7.7 The contents of paragraph 9 do not take the matter any further in the light of what I have stated above. In addition, an agreement has been reached with broadcasters that an analogue transmitter could be switched off when 90% of the people served by it have migrated. This means that e.tv correctly accepted that some of the qualifying beneficiaries will only receive their state sponsored STBs after their relevant transmitters have been switched off because they could be part of the remaining 10%.
- 7.8 I deny that the analogue switch-off date of 31 March 2025 defies the e.tv judgment. The judgment required the government to give adequate notice to the public to register to be provided with state sponsored STBs and that “*once*

*adequate notice is given to the public to make informed decisions on whether to register for STB, digital migration should proceed without further delay.*”

It is clear from what the Constitutional Court said that all that is required is that “*adequate notice is given to the public to make informed decisions on whether to register for an STB.*” This was done as far back as 8 July 2022 and the public was given until 30 September 2022 to make an informed decision. If a member of the public had made an informed decision to register for an STB, such member of the public had until 30 September 2022 to register for it.

7.9 I deny that the decision to finally switch off analogue transmitters on 31 March 2025 “*was taken without rational consultation*” as suggested in paragraph 11. As stated in the correspondence quoted above, the government adopted a notice and comment procedure in terms of which it invited interested parties to make written submissions on the final analogue switch-off date. This was done on 9 December 2022 and the applicants made written submissions to the Minister and the Minister considered their written submissions before making a decision on the final analogue switch-off date which was then 31 December 2024.

7.10 The date of 31 December 2024 was extended pursuant to the government having considered further written representations made by, amongst others, the applicants that the date of 31 December 2024 was not feasible. It is therefore incorrect to create an impression that the applicants did not

influence the decision to postpone the analogue switch-off date of 31 December 2024.

7.11 The government carefully considered the written representations made by the applicants to postpone the analogue switch-off date of 31 December 2024 and postponed that date to 31 March 2025. After having made the written submissions which they made to persuade the government to postpone the 31 December 2024 date, the applicants could not have been entitled to another round of consultation before the government decided on the date to which to postpone the analogue switch-off date from 31 December 2024.

7.12 It is sufficient that the applicants made written representations to the government to postpone the 31 December 2024 deadline and that the government considered their representations before deciding on 31 March 2025 as the final analogue switch-off date. In this regard, it is again necessary to refer the court to the transcript of the meeting held between relevant parties on 5 December 2024 in which the following is recorded:

*“WILLIAM BIRD: ... I know you said you are going to outline plans for accelerating installations, but given that they have not been able to meet those, it looks like we are setting ourselves up or that the state is setting itself up to fail if they are not providing reasons especially to say this is why we are extending to March because of this one, two, three, four reasons.*

*It sounds, as outsiders, that this seems to be a date that looks to be something to mitigate the extreme anger and profound concern that has been expressed, I know to your office and to the President from a range of stakeholders.*

...

*MINISTER: Okay, thanks. Look, the timeline around March was the resolution of cabinet. It's simply because it's not as a result of the escalation of peace for an extension that happened in the last 48 or 72 hours. It was simply because as a department we had also presented a proposal requesting an extension and you know, following deliberations that took place at cabinet and as you know the confidentiality around the nature of cabinet meetings, I'm not at liberty to get into those but it was through a recognition that there is some time that is still needed to make sure that as we go through the verification around the database with the registered beneficiaries and some of the delays that happened subsequent to the procurement of the set-top-boxes that the installations have not been able to be at the volume and at the size that would have been necessitated meeting the deadline of the analogue switch-off as by the end of this year.*

*So, it was in recognition of all of those factors that the discussion led to a resolution that the extension be to that time, particularly taking into consideration concerns about the longevity of how the project has since then evolved, but the bottom line is that we are coming back to present a solution around this matter and I know, just given the interactions that we have had,*

*some people have their own views about how the solution is helpful or otherwise, but you know, it's necessary for the industry to know the new deadline that we are working with and also to then plan around that, because planning is a key aspect of responding adequately to this proposal ...”*

7.13 The details of the parties as cited in the notice of motion and as set out in paragraphs 16 to 29 are not in dispute.

## **8 AD PARAGRAPHS 30 TO 53**

8.1 The contents of paragraph 31 are not in dispute.

8.2 The contents of paragraph 32 are not in dispute.

8.3 The contents of paragraph 33 are not in dispute.

8.4 The contents of paragraph 34 are not in dispute.

8.5 The contents of paragraph 35 are not in dispute. As it is already apparent from the papers, the government has decided that it will provide qualifying beneficiaries with set-top-boxes so that they are able to migrate.

8.6 The contents of paragraph 36 are not in dispute.

8.7 The contents of paragraph 37 are not in dispute.

- 8.8 The contents of paragraph 37 are not in dispute.
- 8.9 The contents of paragraph 38 are not in dispute.
- 8.10 Whilst it is correct that there are severe consequences if digital migration is not implemented carefully, lawfully and rationally, it does not necessarily follow that the digital migration process must be delayed to accommodate people who have not properly managed their television affairs by registering to be provided with STBs timeously. As stated above, qualifying people were in law required to register for state sponsored STBs by no later than 30 September 2022. It is not the applicants' case that people who registered on or before this date are going to be left out.
- 8.11 The 13.9 million number referred to in paragraph 41 does not take into account the fact that analogue television transmitters have been switched off in five provinces and that this final switch-off must by now have reduced the number of people relying on analogue television transmitters and, accordingly, the number of people who are going to be affected by the final switch-off date of 31 March 2025. In any event, not more than 2 million registered to be provided with state sponsored STBs.
- 8.12 The contents of paragraph 42 are not in dispute.
- 8.13 The contents of paragraphs 43, 44, 45 and 46 are not in dispute.

8.14 The contents of paragraph 49 are denied in the light of what I have stated above.

8.15 The contents of paragraph 50 are not in dispute.

8.16 It is correct that people who do not have set-top-boxes and who have not self-migrated will lose access to e.tv, the SABC and the community television stations which are still transmitting their broadcasts through analogue transmitters.

8.17 Whilst I accept that e.tv, the SABC and community television stations stand to suffer commercial harm if some of its viewers do not have access to their television broadcasts as a result of the analogue switch-off date of 31 March 2025, this is because such viewers have not registered to be supplied with state sponsored STBs. The government was only obliged to give members of the public adequate notice to decide whether or not to register for set-top-boxes and to provide them with set-top-boxes. The deadline to register for set-top-boxes was 30 September 2022 and it is not the applicants' case that the 31% of e.tv's audience "*who are unmigrated*" registered to receive set-top-boxes on or before 30 September 2022.

## 9 AD PARAGRAPHS 54 TO 59

9.1 I admit that e.tv has advanced what it considered to be potential ways of achieving digital migration. The Minister has considered such proposals

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before arriving at the decisions taken by the Minister throughout the digital migration process. The mere fact that the Minister has not agreed with everything proposed by e.tv does not mean that e.tv's efforts were "*to no avail*" as alleged in paragraph 54.

- 9.2 The contents of paragraph 55 are not in dispute.
- 9.3 The contents of paragraph 56 are not in dispute.
- 9.4 The contents of paragraph 57 are not in dispute. Indigent viewers who rely on analogue television broadcasts are not entitled to delay the digital migration process by virtue of them not having timeously registered to be provided with state sponsored STBs.
- 9.5 The contents of paragraph 58 are not in dispute. As I have already demonstrated elsewhere above in this answering affidavit, the government invited all interested parties to register to be provided with state sponsored STBs. The process of registering for state sponsored STBs commenced in October 2015 and the last notice inviting qualifying beneficiaries to register was issued on 8 July 2022 with a final deadline registration date of 30 September 2022.
- 9.6 Despite the aforesaid efforts, there are people who did not timeously register to be provided with state sponsored STBs. Such people continue to register even today. The digital migration process and the whole of the Republic

cannot be held to ransom by such latecomers. The mere fact that the government has not closed the door on indigent people who are latecomers, clearly indicates that the government does not want to leave them behind but at the same time cannot postpone digital migration because of such latecomers, otherwise the digital migration process will never take place because there would always be people coming in late to register for state sponsored STBs. By way of an example, there are obviously people who did not have the need or did not qualify for state sponsored STBs on 30 September 2022 but who now qualify or who qualified after 30 September 2022. Such people cannot be left behind but at the same time they ought not to be used as a basis to postpone digital migration at the expense of everybody else and the limited financial resources of the state. Similarly, there are also those who simply did not take the necessary steps to register for state sponsored STBs on 30 September 2022 even though they qualified for such STBs at that time.

## 10 AD PARAGRAPHS 60 TO 81

- 10.1 The contents of paragraph 60.1 are not in dispute. The country cannot afford to continue with dual illumination considering the fact that the infrastructure that is used for analogue transmission is obsolete and it is no longer supported by the relevant original equipment manufacturers. In addition, from a financial point of view, the government has decided to deploy its financial resources to meet other needs and priorities.

- 10.2 The contents of paragraph 60.2 are not in dispute. Digital migration, however, cannot be postponed time and again because of people who fail to timeously register for state sponsored STBs, such as in this case.
- 10.3 The contents of paragraph 60.3 are not in dispute. This time, however, the government has given adequate notice to the public to register to be provided with government sponsored STBs. In addition, the government has meaningfully consulted with the relevant stakeholders such as the applicants in arriving at the date of analogue switch-off.
- 10.4 I have demonstrated elsewhere above in this answering affidavit that the Minister invited interested parties to make written submissions on the proposed date for analogue switch-off and that the applicants herein made written submissions to which the Minister responded. The applicants also made written submissions to the Minister and the President for the government to postpone the 31 December 2024 analogue switch-off date and the government considered their representations leading up to the postponement of that date to 31 March 2025. Accordingly, the applicants cannot be heard to contend that their views were not taken into account when the government postponed the 31 December 2024 date to 31 March 2025.
- 10.5 The contents of paragraph 60.4 are not in dispute. The date of 31 December 2024 was arrived at after a process of consultation with the relevant stakeholders such as the applicants.

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- 10.6 It is correct that as on 19 November 2024, 469 000 registered beneficiaries had not yet received their government sponsored STBs. This number has now been reduced and Sentech has increased its capacity to install the remaining STBs and has also appointed additional suppliers to supply the necessary STBs.
- 10.7 It is correct that the Minister announced the postponed date of 31 March 2025 on 5 December 2024. The applicants are fully aware of the fact that the Minister motivated for a postponement before the portfolio committee on 19 November 2024. In addition, the applicants wrote a long list of letters to the Minister and the President motivating for a postponement of the 31 December 2024 analogue switch-off date. For this reason, the applicants could not have been surprised by the postponement.
- 10.8 The Minister considered their written representations in their long list of letters and motivated for the postponement of the analogue switch-off date. The mere fact that the applicants do not like 31 March 2025 does not on its own justify the relief which they seek in this application solely to accommodate those who failed to register for STBs on 30 September 2022.
- 10.9 It is correct that not everyone on the list would have received their state sponsored STBs on or before 31 March 2025. This, however, cannot on its own justify the relief which the applicants seek considering that the government gave adequate notice to the public to register for state sponsored

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STBs by no later than 30 September 2022 and people did not timeously register. The whole country cannot be held to a ransom by latecomers.

- 10.10 The contents of paragraph 61 are denied. I specifically deny that the balance of convenience favours the granting of the relief which the applicants seek in this application. The fact that the digital migration process “*has been ongoing for some sixteen years*” on its own justifies the dismissal of the relief which the applicants seek so that the process could continue to finality. There is no room, time and again, to allow latecomers to delay the process.
- 10.11 The contents of paragraph 62 are not in dispute.
- 10.12 The contents of paragraph 63 are not in dispute.
- 10.13 The dual illumination process must now come to an end considering that the analogue transmitters infrastructure is obsolete and can no longer be relied upon. The risk of it failing is so high that there is no rational basis to continue using it. This is more so when regard is had to the fact that the signal distributor, Sentech is on record as saying that it does no longer have the necessary funds to keep it going.
- 10.14 The contents of paragraph 65 do not take the matter any further. The fact that the digital migration process has been delayed for many years is on record and does not on its own now justify another delay in order to accommodate people who clearly did not register for state sponsored STBs on time despite

the government having given adequate notice for people to register for such STBs and kept the registration platforms open.

- 10.15 The contents of paragraph 66 are not in dispute.
- 10.16 The contents of paragraph 67 are not in dispute.
- 10.17 The contents of paragraph 68 are not in dispute.
- 10.18 The contents of paragraph 69 are not in dispute.
- 10.19 The contents of paragraph 70 are not in dispute. The court should, however, consider that the Constitutional Court made it clear that the government must give adequate notice to the public to consider whether they want to register for state sponsored STBs, after which the digital migration process shall proceed. The government has done this.
- 10.20 The mere fact that there are people who did not register timeously should not be used as a basis to grant the relief which the applicants seek simply on the basis that they are going to be left behind. The correct position is that they will be provided with state sponsored STBs after the analogue switch-off date of 31 March 2025. This is a natural consequence of failing to register for STBs on time and it is inevitable in a project of this magnitude where the government must literally reach every qualifying household at their exact location.

- 10.21 The contents of paragraph 71 are not in dispute. The government cannot be held to a ransom due to people who for one reason or the other did not register for state sponsored STBs on time simply on the basis that the government promised not to leave anyone behind. The promise not to leave anyone behind ought not to be stretched to the extent of preventing the completion of digital migration.
- 10.22 The contents of paragraphs 72 and 73 do not take the matter any further because the government does not dispute that it promised to provide state sponsored STBs to those who cannot afford them. Accordingly, the Court should proceed on the basis that the government has made the promise to provide state sponsored STBs to those who cannot afford it and that the government will honour that promise.
- 10.23 The Constitutional Court said the government must give the public adequate notice for qualifying beneficiaries to make an informed decision whether to register for state sponsored STBs. The government has given such adequate notice, and digital migration must now be allowed to proceed to completion without further delays.
- 10.24 The contents of paragraphs 74, 75 and 76 do not take the matter any further in the light of what I have stated above.
- 10.25 The contents of paragraph 77 are not in dispute.

- 10.26 The contents of paragraph 78 are not in dispute. The Constitutional Court did not say that the whole country must wait and postpone the digital migration process forever and ever whilst it waits for latecomers to be provided with state sponsored STBs. The Constitutional Court made it clear that the government must give adequate notice to the public for qualifying beneficiaries to make an informed decision on whether to register for state sponsored STBs, after which digital migration process must then be completed. The government has given such adequate notice and there are people who heeded the call and registered for STBs on or before the deadline of 30 September 2022 and those who did not register on or before the deadline of 30 September 2022 and even after that date.
- 10.27 The contents of paragraph 79 are not in dispute.
- 10.28 The contents of paragraph 80 are not in dispute. What the Minister said at the meeting of 20 December 2024 does not constitute a basis to grant the relief which the applicants seek in this application because it does not mean that the whole of the Republic must wait for latecomers to be supplied with STBs before the digital migration process is concluded. The government will continue to honour its promise to provide STBs to those who cannot afford them even if it is after the analogue switch-off date of 31 March 2025.
- 10.29 The contents of paragraph 81 are irrelevant because the government does not deny that it made the promise to supply STBs to qualifying beneficiaries and that it will continue to honour that promise.

**11 AD PARAGRAPHS 82 TO 87**

- 11.1 The contents of paragraph 82 are not in dispute.
- 11.2 The contents of paragraph 83 are not in dispute.
- 11.3 The contents of paragraph 84 are not in dispute.
- 11.4 The contents of paragraphs 85,86 and 87 do not require a detailed response because the parties will make such submissions as they are entitled to make on the basis of the e.tv judgment referred to in these paragraphs.

**12 AD PARAGRAPHS 88 TO 101**

- 12.1 The contents of paragraph 88 are not in dispute. I have already stated above the process pursuant to which the Minister determined the analogues switch-off date of 31 December 2024. I repeat that the relevant stakeholders agreed to that date whilst e.tv agreed to it subject to the conditions to which I have already referred above. e.tv ought to have challenged the 31 December 2024 deadline if it did not agree with it.
- 12.2 The contents of paragraph 89 are not in dispute and are consistent with what I have already stated above. The government did take urgent and continued steps to provide STBs to those who registered to be provided with state sponsored STBs. It is not unusual for a project of this magnitude to experience delays in its implementation.

- 12.3 The process of supplying state sponsored STBs to qualifying beneficiaries was negatively affected by a long list of factors such as, incorrect addresses having been supplied on the registration database, the failure of manufacturers to supply the requisite STBs timeously; rain in various parts of the Republic which prevented installers from installing STBs from time to time and the fact that some qualifying beneficiaries took their time to register.
- 12.4 The contents of paragraph 90 are not in dispute. I draw the court's attention to the fact that e.tv correctly accepts that there was indeed a "*plan adopted to ensure that the digital migration process would take place in a constitutionally compliant manner.*" The Minister did not abandon this plan. As in every project implementation, the plan experienced delays in its implementation and arrangements have now been put in place to ensure that every qualifying beneficiary registered to be provided with state sponsored STBs will be provided therewith.
- 12.5 Whilst it is clear that not every registered qualifying beneficiary will receive their state sponsored STBs on or before 31 March 2025, this does not on its own constitute a basis to grant the relief which the applicant seeks without the applicants having demonstrated that such qualifying beneficiaries registered on or before the deadline for registration of 30 September 2022.
- 12.6 It is inevitable that in a project of this magnitude, some people will be negatively affected and in this case, no case has been made that those who

are clearly going to be negatively affected are people who registered for STBs on or before the registration deadline of 30 September 2022. Without the applicants having made out such a case, the applicants cannot have a generalised contention that “*deserving*” millions of indigent South Africans will be deprived of access to television. I repeat that there has to be consequences for failure to register for state sponsored STBs on or before the registration deadline of 30 September 2022.

- 12.7 The contents of paragraph 91 are not in dispute and are consistent with what I have already stated above.
- 12.8 I deny that the Minister “*arbitrarily abandoned or failed to implement the plan*” as alleged in paragraph 92. I deny that the Minister “*refused to extend the ASO deadline to a date that allowed for rational and constitutionally compliant digital migration*” as alleged in paragraph 92. The correct position is that delays were experienced in implementing the adopted plan as a result of the factors which I have stated above. In arriving at the decision to postpone the 31 December 2024 analogue switch-off date to 31 March 2025, the government took into account, amongst others, that adequate notice was given to the public to make an informed decision on whether to register for state sponsored STBs and that a long list of qualifying beneficiaries did register on or before the closing date of 30 September 2022 and after that and that the government should not be held to a ransom forever and ever as a result of people who were allowed to register for state sponsored STBs

after the deadline of 30 September 2022 so as to honour its promise that no-one would be left behind.

12.9 In addition, the government took into account the fact that it is no longer sustainable to continue with dual illumination because the analogue transmitter's infrastructure is obsolete and there is a high risk of it collapsing and that the signal distributor assured the government that it would appoint additional installers and procure the remaining STBs within a short period of time so that the majority of the remaining qualifying beneficiaries are supplied with state sponsored STBs on or before 31 March 2025 and that those who are not supplied therewith on that date will be supplied therewith by no later than 31 December 2025.

12.10 I admit that e.tv addressed the letter referred to in paragraph 93 to the Minister. e.tv's letter was addressed to the Minister on 25 October 2023. At that point in time, the deadline for qualifying beneficiaries to register for state sponsored STBs had already passed. In addition, the suggestion that there was a permanent "*lack of physical registration forms*" at post offices is incorrect. I say this because the post office continued to provide a list of qualifying beneficiaries who registered through the post office. In addition, the government continued to run public awareness campaigns as I have stated above to the extent of concluding agreements with some of the broadcasters to which I have referred above.

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- 12.11 The suggestion that there were only 10 000 STBs available nationally is not an indication that the digital migration process has collapsed. It must be remembered that STBs are manufactured as and when required and it is not surprising that there may have been 10 000 STBs available nationally as on 25 October 2023. I have already stated above that the signal distributor, Sentech has procured additional capacity for the supply of the requisite STBs. In any event, that which is referred to in e.tv's letter dated 25 October 2023 reflected the position as on that date.
- 12.12 I admit that e.tv continued to raise concerns after its letter dated 25 October 2023 as alleged in paragraph 94. The fact that the concerns raised by e.tv were not immediately resolved does not mean that steps were not being taken to resolve them. As I have already stated above, it is not unusual for a project of this magnitude to face setbacks and delays from time to time. When that happens, it does not necessarily mean that the project has failed or that it has collapsed. All that is required is that a catch-up plan is adopted and implemented. This has now been done.
- 12.13 I admit that e.tv addressed the letter referred to in paragraph 95 to the Minister.
- 12.14 I admit that e.tv addressed the letter referred to in paragraph 96 to the Minister.

*SM*

- 12.15 I admit that e.tv addressed the letter referred to in paragraph 98 to the Minister.
- 12.16 I admit that e.tv wrote to the Minister as alleged in paragraphs 99 and 100.
- 12.17 The contents of paragraph 101 are not in dispute.
- 12.18 In circumstances where the Minister did not respond to e.tv's letters, the Minister held meetings with e.tv's representatives to discuss the concerns raised in its letters and other matters relevant to the completion of the digital migration process. By way of an example, meetings were held on, amongst other dates, 29 March 2023, 19 April 2023, 31 October 2023, 12 August 2024 and 28 November 2024.
- 12.19 I attach hereto as AA10 draft minutes of the meeting held with Khalik Sheriff of e.tv on 12 August 2024. The following is recorded in these minutes, and I confirm that even though the minutes are marked "Draft", they correctly reflect what was discussed and agreed at that meeting with e.tv:

*"DECISIONS*

- 3.1.8 *The meeting agreed that there is a need for a switch-off as the system is too old and that this not the first time EMedia was informed of the switch-off.*

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3.1.9 *EMedia was advised to ensure that they plan for the continuation of the switch-off.*

3.1.10 *EMedia was further informed that the Minister wish to engage with all the various stakeholders as well as on the matter.*

3.1.11 *EMedia, requested Ministry to consider a reasonable date beyond 31 December 2024 as this was going to affect their business taking into consideration that much still needs to be done with the transition.”*

12.20 In the premises, e.tv has always been aware of the government’s position and it cannot be heard to contend that its views were not considered by the Minister before the decision to postpone the analogue switch-off date of 31 December 2024 to 31 March 2025 was taken.

12.21 It is also important to note that e.tv did not say anything about the analogue switch-off date being prejudicial to its alleged “*millions of people*”. Instead, it requested an extension “*beyond 31 December 2024 as this was going to affect their business.*” There is, therefore, no basis to conclude that this application is about protecting the interests of the alleged “*millions of people*” who continue to be unidentified.

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**13 AD PARAGRAPHS 102 TO 110**

13.1 The contents of paragraph 102 are not in dispute. I admit that annexure FA16 is the presentation made before the Parliamentary Portfolio Committee. I, however, deny that FA17 is the official transcript of the proceedings before the Parliamentary Portfolio Committee, and I dispute its admissibility to prove what transpired before that committee.

13.2 The contents of paragraph 103 are not in dispute insofar as they correctly reflect the contents of the presentation.

13.3 I deny that it will take ten years to install the remaining STBs for currently registered households. According to e.tv, this means that the completion of digital migration must be delayed by another ten years.

13.4 Sentech has advised that it has appointed additional installers and procured additional STBs, and that the installation process would be completed by no later than 31 December 2025.

13.5 The broadcasters with which the government concluded the agreements to which I referred above were obliged to continue with public awareness programmes until 31 December 2024, being the date on which their agreements terminated. The contents of paragraph 105 are denied. As on 21 February 2025, there were 391 513 qualifying beneficiaries which were still to receive their state sponsored STBs. This number is based on installations

completed as on that date. It is therefore incorrect for the applicants to suggest, as they do in paragraph 105, that 3 750 000 households would require a state sponsored STB “*to avoid a deprivation of television access.*” I accordingly challenge the applicants to identify the 3 750 000 households referred to in paragraph 105.

13.6 The contents of paragraph 106 are denied. The correct position is that the government can only provide state sponsored STBs to people who have registered. For this reason, this Court should not base its decision on the numbers referred to in paragraphs 105 and 106 because those numbers do not reflect the number of registered qualifying beneficiaries.

13.7 The contents of paragraph 107 are denied for the reasons stated above.

13.8 The contents of paragraph 108 do not take the matter any further because the 3 750 000 number is allegedly based on the Minister’s statement of 6 October 2021. Since then, the Minister gave adequate notice for interested parties to make an informed decision on whether to register for state sponsored STBs. As on 21 February 2025, the number of remaining qualifying beneficiaries was 391 513. This number is no doubt decrease towards the 31<sup>st</sup> of March 2025 and I will file a supplementary affidavit before the hearing date to update the Court on the number of the remaining beneficiaries.

- 13.9 The Department does not have to deliver STBs “to the 3,75 million households” referred to in paragraph 108.3. The government only has to supply STBs to the remaining 391 513 qualifying registered beneficiaries.
- 13.10 The contents of paragraph 108.4 are denied because they are not supported by any admissible evidence placed before the court.
- 13.11 I do not admit that the transcript referred to in paragraph 109 is the official transcript of the proceedings before the Parliamentary Portfolio Committee. Such a transcript is not admissible as evidence to prove what transpired before that Committee. The contents of paragraph 109 are denied insofar as they are based on an unofficial transcript of the proceedings of the Parliamentary Portfolio Committee.
- 13.12 In any event, the contents of paragraph 109 do not constitute a basis to grant the relief which the applicants seek in this application when regard is had to the following:
- 13.12.1 As on the date of this answering affidavit, the number of registered qualifying beneficiaries is less than 400 000.
- 13.12.2 Sentech has increased its capacity to install STBs by appointing additional STBs installers to meet the demand.

- 13.12.3 The applicants have not made out a case to demonstrate that the people who remain without STBs registered for such and if so, whether they registered on or before the registration deadline of 30 September 2022.

#### 14 AD PARAGRAPHS 111 TO 136

- 14.1 The contents of paragraph 111 do not take the matter any further because the government has postponed the deadline of 31 December 2024 to 31 March 2025. The whole country cannot, however, be held ransom and the digital migration process cannot be delayed forever and ever whilst the country waits for latecomers.
- 14.2 The contents of paragraph 112 are irrelevant because a new decision to postpone the deadline of 31 December 2024 was taken on 4 December 2024.
- 14.3 The contents of paragraph 113 are irrelevant in the light of what I have stated above.
- 14.4 I admit that e.tv addressed the letter referred to in paragraph 114 to the Minister – annexure FA18 to the applicant's founding affidavit.
- 14.5 The contents of paragraph 115 are not in dispute.
- 14.6 The contents of paragraph 116 are not in dispute.
- 14.7 The contents of paragraph 117 are not in dispute.

- 14.8 I admit that the chairperson of the Parliamentary Portfolio Committee wrote to the President to support the Minister's request for an extension of the annual switch-off date of 31 December 2024. I, however, deny that annexure FA21 is the official transcript of proceedings before the parliamentary portfolio committee. I accordingly deny that such a transcript is admissible as evidence of what transpired before the Parliamentary Portfolio Committee.
- 14.9 The contents of paragraph 119 are not in dispute. I have already dealt with the transcript of the meeting of 5 December 2024 elsewhere above in this answering affidavit.
- 14.10 The contents of paragraph 120 are not in dispute. The Minister considered the applicants' representations before the date of 31 March 2025 was determined. Even on the applicants' version, they wrote a long list of letters to the Minister and the President motivating for a postponement of the 31 December 2024 deadline to a later date. Their submissions in this regard were carefully considered by the Minister and it was then decided that the analogue switch-off date should be postponed to 31 March 2025.
- 14.11 I admit that e.tv addressed the letter referred to in paragraph 122 to the Minister. The letter repeats e.tv's concerns which had been communicated to the Minister in previous correspondence.
- 14.12 The contents of paragraph 123 are not in dispute.

14.13 I deny that the meeting of 20 December 2024 was procedurally defective as alleged in paragraph 24. In this regard, it is important to have regard to the purpose of the meeting to demonstrate that the meeting was not procedurally defective. The purpose of the meeting is set out by the Minister on the very first page of the transcript attached to the founding papers as FA26. Therein, the Minister said the following:

*“As we committed in the last engagement that we had with the broadcasters a couple of weeks ago that we would have this engagement today in order for us to outline the efforts that we would make in terms of installations that would then align with the timeline on the extension to March for analogue switch-off and secondly that we would have this opportunity to show case what level of set-top installations we would be able to do.*

*A key aspect of the plan indicates the prioritisation of those key provinces where the volume of installations would be done in order to have a major reduction or a major clearing of the numbers, the households that need to be installed.*

*So, without wasting time, I am going to ask DDG Tinyiko and I think we also have the team from Sentech and USAASA, but I think DDG Tinyiko will be the lead in terms of the presentation of efforts to get as many households connected, installed ahead of the March deadline and I just want to put this on the table for everyone that beyond this, obviously, the technical team on the BDM project will still have to have their regular engagements that they*

*ought to be having so that there is that open communication and to further indicate to the broadcasters and also the colleagues from the media NGOs that we have indeed received correspondence from your legal representatives.*

*We are in the process of also finalising the responses to those correspondences that we have received from your team and with that in mind, this engagement on our end was still necessary, simply because we had committed to having it and also making sure that we can take you through the acceleration plan that will ramp up those installations in the lead-up to March 31<sup>st</sup>. With that, I will invite DDG Tinyiko and his team to take us through the presentation...”*

- 14.14 It is clear from the purpose of the meeting that this was not a meeting at which decisions adversely affecting the applicants were going to be taken. The purpose of the meeting is clear from what I have quoted above and there is no legal basis for the applicants to suggest that they were entitled to be given an opportunity to make representations thereat as if decisions adverse to them were going to be taken. In any event, in paragraph 124.1 of their founding affidavit, the applicants clearly state that the meeting was a briefing and “*it was not a consultation.*” The applicants do not identify the prescribed procedure for a briefing meeting to demonstrate how that procedure was violated. There is no prescribed procedure for a briefing meeting such as the meeting in issue.

- 14.15 In paragraph 124.2, the applicants further state that the subject line of the invitation to the meeting said that it was a briefing on “*ASO Acceleration Plan*” and it was clearly not a meeting for consultation purposes.
- 14.16 The briefing consisted of what the Minister needed to convey to the broadcasters such as the applicants. For this reason, the suggestion that the briefing was “*brief*” does not take the matter any further and certainly does not constitute a basis to grant the relief which the applicants seek in this application.
- 14.17 I deny that there was a failure by government to consult with the applicants on the acceleration plan. I deny that the Minister indicated that the Department “*would produce a plan, after a transparent consultation process with stakeholders*” as suggested in paragraph 124.10. I have already referred this court to the relevant sections of the transcript of the meeting of 5 December 2024. The Minister did not, at that meeting, say that a plan would be produced only “*after a transparent consultation process with stakeholders.*” In the premises, the government did not breach any promise as suggested by the applicants.
- 14.18 The contents of paragraph 125 are not in dispute insofar as they correctly reflect the contents of the presentation made to broadcasters on 20 December 2024. I draw the Court’s attention to the fact that the majority of analogue transmitters have been switched off completely in five of the provinces of the Republic and that only a few of those remain active and it is only those

that are being used by e.tv. Once again, the whole country cannot be held to a ransom because of a very small number of people who are still relying on e.tv's analogue transmitters spread across the Republic.

14.19 The contents of paragraph 126 are denied.

14.20 The contents of paragraphs 129.1 to 129.4 are not in dispute insofar as they correctly reflect what the Minister said during the interview referred to therein.

14.21 The contents of paragraph 129.5 are not entirely correct. During the interview, this is what the Minister said about the acceleration plan:

*“One of the key things that we did towards the end of last year, and this involved an engagement with the broadcasters was to work on an acceleration plan that will target the high dense areas where the largest parts of the population are currently on analogue and those are easily identifiable through some provinces such as the Western Cape and Gauteng, which you know, house some of the largest volumes of traffic that are currently on analogue.*

*The intention is to work robustly through our entity Sentech and the other entities that are responsible to ensure that we reach as many of those South African as possible, because you will bear in mind Shahan, that in order for any transmitter to be switched off, you need to get to at least 90% of the*

*population the traffic that is currently relying on that transmitter in order to get them to migrate and with those provinces, that is where the highest volume of the traffic on analogue is had.”*

- 14.22 The correct position then is that the Minister did engage with broadcasters to the extent that the acceleration plan was presented to broadcasters on 20 December 2024 and broadcasters had an opportunity to raise their concerns about the feasibility thereof. In this regard, the following is apparent from the transcript:

*“KHALID: Thank you, Mr Minister. Firstly, I must say that it took a lot for me to sit through the presentation, but I did it because ... and I beat my tongue through the process because of respect for you, Mr Minister, and people in this room today would testify that in 2021, when a similar presentation was made, we objected whilst the presentation was going on, but this is an attribute to our respect for you as the new minister and hopefully you will be able to listen to us and our suggestions as to how we must move forward.*

*As I'm saying what I say, I must tell you that our contribution to this meeting will be twofold. After I speak, I'm going to ask Johnny Copeland, who is here, to say a few words on his beliefs and feelings around what is the reality, but before I give it over to Johnny Copeland, let me say the following.*

*Mr Minister, we have been in this exactly the same position before. We do not want to prophecy as to what the future will be, but I can tell you the following. As E we have done the responsible thing. We have shut down uneconomical or transmitters we thought or we think that does not impact or will not impact on our business. However, the transmitters that remain are transmitters in the Metro areas and we sing this song all the time, and they address the missing middle ... The missing middle of the three odd million or more that are counted by the currency of television, which is the BRC, but which the Department, even up to this point shows no recognition for.*

*But as broadcasters, if we do not, and we contest that it is only 400 000, but imagine that we accept that, I will come to that point just now, there is another three million odd people who will be in the dark and we make that point all the time to you. That's the first point.*

*The second point is the following. The information presented in this presentation has no real sources. Numbers were thrown at us, but we don't understand the signs of these numbers and we will argue that till the cows come home, if I can tell you that, because those numbers are not justifiable.*

*...Now, these are the practical implications of what we think are problems with this approach and what we think is unachievable and what we think the Department is doing setting themselves up for failure against the risk to the broadcasters. We cannot accept the numbers as you portrayed them today to be of what they are and we challenge that these 52 000 installations in*

*February is almost 1 750 a day. If you take what Multichoice do and what we do on a daily basis, you won't get to those numbers right now in a very, very solid market.*

...

*NOMSA: Yes, so Minister, I must say that what Johnny has said is quite critical and we need an understanding on that. From an SABC perspective, we have written to the Department in terms of our concerns with this roll out, Minister, and we are here to receive a response and I wouldn't want to repeat what is in the formal communication that we have sent. I think the ask on our side is that if we could receive the response, because it does speak to some of the issues that have been raised in this forum.*

*Then perhaps also, you know, one of the key things, Minister, is the issue of the data source that is being used in these presentations is critical, because at the end of the day, as you say, you are dealing with broadcasters, you are dealing with industry. We have the currency, an acceptable currency, which is how we trade, how we survive and I think, for us, it is cause for concern that the data that the department is utilising is not data that the industry utilises. Therefore, there is a massive disconnect in terms of one version of the truth and one version of data that South Africa uses and that we use in order to keep ourselves sustainable and be able to get revenue out of our activities.*

*So, this is something, and as I understand and Tebogo knows, this has been a point of contention since a couple of years ago whereby the data that the Department is using is not verified from a source perspective. So, it becomes very difficult for us to accept that the data is correct. So, if that can be clarified, that will really greatly assist us. If also maybe the DDG can explain the decision that Gauteng and the Western Cape will get DTT boxes. Let's try and understand that. We all know that DTT, for example, is reaching end of life. We notice the DTH focus, but why is Gauteng and Western Cape identified as DTT geographies? So, I will leave it there for now and I will come back later if I have any other questions. Thanks, Minister.*

...

*MR ALDRICH: Yes, so we do support what the other broadcasters are saying about the problems and particularly the missing middle. You know, there are at least three to four million households in that sector and thus really one of the big elephants in the room.*

*So, you know, also the other problems are that there is this policy and uncertainty in what these policy processes, like the previous of the digital broadcasting regulations and the audio and audio visual content services white paper are incomplete and there are no solutions on the table for the enormous problem that faces us, in particular, as community broadcasters and that is what happens after dual illumination when government subsidy of DTT transmission infrastructure comes to an end, because there is*

*absolutely no way that any community broadcaster in this country can afford the transmission costs on DTT?*

...

*WILLIAM: Thanks Minister and thanks for the presentation. I hope we will get a copy of it so what we can reflect on it in a little bit more time and detail in the festive season. I think you can pick up that there is a fair amount of discord and a degree of unhappiness with where we are and, you know, it's not surprising, because we have been calling for consultation and it hasn't happened and you are getting into a position where again, when I asked at the last meeting do we know why cabinet made this decision there was no real answer. They took factors into account apparently, which is nice, but that's not an actual answer.*

...

*MR NGOBENI: Thank you, Minister and thanks for the questions, input received from the colleagues. There was the question around the ... there were several questions around the payment for DTT after ASO. So, as you will recall, I mean it's committed to that dual illumination, which over the years has been paying for that, but I mean, the reality is that at the moment we do not have those funds for dual illumination beyond this date that has been allocated for us. So, at the moment I think that is where we are.*

*Then with regard to the question on why DTT for Gauteng, I think this is also because there is already stock that has over the years and months been allocated across the country. So, the DTT stock that is already allocated for Gauteng, I think what we were also trying to highlight was that because Gauteng has got the additional installer capacity. We believe that that stock that's already there will be able to move, but just to clarify that all the new stock that's been procured or that is going to be procured going forward, it's DTH stock. Thank you.*

...

*MR LESHOPÉ: Thank you, Minister and then I think I also just want to appreciate the questions. You know, I don't think anyone downplays the concerns of the broadcasters here. I think they are all valid and I will be giving context to some of the questions and concerns that they are raising here.*

*On Khalid's questions in terms of how Sentech can do more than what E.TV and Multichoice combined are able to do, it's largely a model difference; Khalid, and I think it was trying to also contextualise this in my summary there to say that a Multichoice model waits for somebody to subscribe before they act on the installation. Similarly, with ease?? model will be like. therefore, you are driven by the market demand largely.*

*In the case of the installation and the rollout of the indigent households, the people have already raised their hands, they are there. So, we have the quantum and we are able to then push a bit more as opposed to waiting for a pull by the market. That's why our numbers are able to go slightly higher than that and it has been the case the past from our experience as well.*

*Then there was also ... but I think there is also a general acceptance that ASO will ... it's a priority. It's something that has to happen, Minister and broadcasters. Perhaps what needs to come out from our all of us, Sentech involved, is the collaborative effort towards making sure it happens and I think with demonstrable actions as opposed to maybe just looking at what the Department and government is trying to do and criticising that, and I will reflect similarly on how I would have reflected to say we all have responsibilities, colleagues, and the government is trying to deal with the indigent households. The issue of the missing middle is mainly dealt with by broadcasters. So, that's where the collaboration of both government from an indigent approach and the broadcasters and Sentech really needs to be felt in this journey to say, yes, maybe we may need to intervene in this manner, but I'm not sensing that coming through, Minister. I'm just sensing the focus on this one plan, which I think the technical colleagues, you know, after this, will be able to, from broadcasters and the Department, be able to go deeper into the implementation details there.*

*Then on Nomsa's question in terms of the varying data source, what you are looking at being presented by the Department, Nomsa, is the number of*

*registered households, indigent registered households. It's not audiences. It's people that have raised their hand to say I need government assistance to be assisted with a set-top-box. I know broadcasters are looking at BRC numbers that may say that from a number of people that are still relying on analogue, who have got these many millions and all that. So, there is a difference. I think that context is very, very key.*

*That's where I think we have also had this discussion in the past. The reasonableness of what the Department focused on was also even tested by the courts to say it is acknowledged that the best way to get people to show interest is to call for registrations. As at last week, the database of registered households is sitting at that 1.8. Yes, we would have wished for more in terms of the arguments that we would have seen, but practically and realistically, analysed and we have sent this back to and forth to corroborate the data, the data that we sit with from indigent households is 1.8 at this point. Yes, there will be some indication of what the upper side is, but I think government is dealing with what is practically recorded here.*

*That's where I think Minister and broadcasters, we may need to reach concessions in terms of how do we deal with the missing middle, as it is called in this conversation, to make sure that the impact on that aspect is minimised, but I think that conversation is not coming out clearly."*

14.23 It is, therefore, clear from what I have quoted above, that after the presentation of the accelerated plan, broadcasters engaged with the Minister,

the DDG who made the presentation and Sentech on their views about what was presented to them. Thereafter, the government considered all the issues raised at that meeting and a revised plan was then prepared considering all the issues raised at that meeting.

14.24 The question as to how Sentech will get the requisite set top boxes to qualifying beneficiaries was answered by Mr Leshope at the meeting of 20 December 2024. For this reason, the contents of paragraph 129.6 do not take the matter any further. Sentech has advised that with its added capacity of additional installers and its ability to move installers from one province to another, it will accelerate the installations to complete installations by 31 December 2025. A confirmatory affidavit by Sentech's relevant official is attached hereto as AA11.

14.25 The contents of paragraph 129.7 do not constitute a basis to grant the relief which the applicants seek in this application. The correct position is that there has indeed been consistent and persistent efforts to ensure registration of eligible households. I have elsewhere in this answering affidavit referred the court to the public awareness campaigns and efforts to get people to register. Of importance, I have referred this court to the insertion or messages sent to each of the analogue transmitters which were then shown on all the television screens receiving television broadcasts through each of the relevant analogue transmitters. In this way, each of every television set receiving television broadcasts through analogue transmitters received such

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a message. Accordingly, it cannot be said that the government has not done enough to get people to register for state sponsored STBs.

- 14.26 The fact that the government did not completely close the registration process further indicates government's commitment not to leave anyone behind. But, as I have repeatedly stated elsewhere above in this answering affidavit, there comes a time when digital migration must be completed and those who did not register on or before the registration deadline of 30 September 2022 must then catch up after the analogue switch-off date of 31 March 2025.
- 14.27 It is not correct for the applicants to suggest that the Minister "*attempts to blame indigent households for their failure to come forward and register for STBs.*" The correct position is that adequate notice was given for qualifying beneficiaries to register either through the post office or the online registration system. The very same notice invited interested parties to call the numbers provided therein if they had difficulties in registering either through the post office or through the online registration platform. To the extent that the online registration platform was not active from the beginning, interested parties had the option of registering through the post office failing which they had the option of calling one of the numbers provided for in the notice to register.
- 14.28 The applicants' criticism of the registration process through the post office is unfounded. I say this because it suggests that at no given point in time the

post office was able to register interested parties. This is not correct. The correct position is that in as much as the post office may have had difficulties from time to time, it is not every post office in the whole of the Republic which necessarily had difficulties.

- 14.29 In any event, the applicants cannot be heard to suggest that people that they think qualify to be provided with state sponsored STBs who have not registered for such did not do so as a result of some or other conduct which must now be attributed to the government and not to the people themselves. This cannot be correct. This is more so when regard is had to the fact that there is no hard evidence placed before this court to prove that there are qualifying beneficiaries who did not register for state sponsored STBs as a result of the government's problems. This Court cannot base its judgment on speculations.
- 14.30 The contents of paragraph 129.9 are now irrelevant considering that a data cleaning exercise has been conducted.
- 14.31 The contents of paragraph 129.10 are irrelevant because the government is now relying on the data obtained from its registration database.
- 14.32 The contents of paragraph 129.11 are denied. The correct position is that the applicants accept that as on the date on which their founding affidavit was deposited to, the remaining number of qualifying beneficiaries who had not yet received state sponsored STBs was 447 000. That number is consistent

with government's records around the time that the founding affidavit was deposed to.

14.33 As far as the so-called missing middle is concerned, government took a policy decision that it would support only those earning R3500 per month or less. No-one has challenged that policy decision. It is, accordingly, not open for the applicants to seek to contend that government should have included *"further households...in its promise...that earn more than R3500 per month but cannot afford to self-migrate."* For as long as government's policy decision to support those earning R3500 per month or less has not been challenged, that is the decision which must be implemented, and the applicants and this court must respect it.

14.34 The position would have been very different if, when the notice to register was issued, the applicants had come to Court to contend that consideration should be given to including the so-called missing middle in the provision of state sponsored STBs. The fact that the so-called missing middle have not been included in the state sponsored STB subsidies, cannot then be used as a basis to delay digital migration and to justify the relief which the applicants seek in this application.

14.35 The contents of paragraph 129 and its sub paragraphs which are not expressly denied herein must be taken to be denied to the extent that they are inconsistent with the contents of this answering affidavit.

- 14.36 The contents of paragraph 130 are not in dispute insofar as they correctly reflect the Minister's letter dated 15 January 2025.
- 14.37 The contents of paragraph 131 are no longer relevant because pursuant to the meeting of 20 December 2024, the accelerated plan has been revised considering the submission made by broadcasters at that meeting.
- 14.38 I admit that e.tv addressed to the Minister the letter referred to in paragraph 132. The Minister considered e.tv's letter but was unable to change the analogue switch-off date of 31 March 2025.
- 14.39 The contents of paragraph 133 are not in dispute.
- 14.40 The contents of paragraph 134 are not in dispute insofar as they correctly reflect the contents of the presentation referred to therein.
- 14.41 The Minister did not retract and reconsider the analogue switch-off date of 31 March 2025 as demanded in the applicants' letter dated 17 January 2025 referred to in paragraph 135.

## 15 AD PARAGRAPHS 137 TO 149

- 15.1 The promise not to leave anyone behind must be considered in its proper context. Whilst the government has made a promise not to leave anyone behind and remains committed to honour that promise, qualifying beneficiaries must still do their part to access the benefits of the promise. In

this regard, the judgment of the Constitutional Court made it clear that all that the government is required to do is to give the public adequate notice to register to benefit from the promise. The government has done this.

- 15.2 The government gave adequate notice, as contemplated in the Constitutional Court judgment, calling upon interested parties to make an informed decision on whether to register for state subsidies STBs. The applicants did not challenge the adequacy of the notice to register and must now proceed on the basis that the notice to register was adequate.
- 15.3 It is not the applicants' case that the remaining number of qualifying beneficiaries registered to receive state sponsored STBs within the registration period the deadline of which was 30 September 2022. Without such a case having been made, it cannot be said that the government "*intends to break its promise.*" I accordingly deny that the government intends to break its promise. I repeat that the government remains committed to ensure that every qualifying beneficiary receives their state sponsored STBs even though they may have registered for it long after the registration deadline of 30 September 2022.
- 15.4 The contents of paragraph 138 are not entirely correct. The contents of paragraph 138 do not tell the court as to exactly how many qualifying beneficiaries the applicants seek to contend registered for state sponsored STBs by no later than 30 September 2022.

- 15.5 The contents of paragraph 139 do not take the matter any further. It is not clear to me as to what exactly is meant by “*unexplained*” data cleaning exercise. It is not as if the government was required to provide an explanation to the applicants. The correct position is that the registration database contained duplicate registrations as well as beneficiaries who are no longer traceable and incorrect addresses. These had to be properly accounted for in what is now referred to as the data cleaning exercise. At the end of the day, and this is worth repeating, every qualifying beneficiary who comes forward will be provided with a state sponsored STB, even if it is after 31 March 2025.
- 15.6 The contents of paragraph 139 are no longer relevant because Sentech has appointed additional installers and has procured additional STBs to ensure that registered qualifying beneficiaries are provided with their state sponsored STBs within a short period of time.
- 15.7 The contents of paragraph 139.2 are no longer relevant for the reasons already stated above.
- 15.8 The contents of paragraph 139.3 are also no longer relevant because Sentech has appointed additional installers and has now procured additional STBs to meet the needs of the registered beneficiaries.
- 15.9 The contents of paragraph 139.4 are irrelevant for the reasons already stated above.

- 15.10 The contents of paragraph 139.5 are irrelevant. The promise not to leave anyone behind must also be considered with due regard to the fact that the promise was not made to broadcasters but was made to qualifying beneficiaries.
- 15.11 From broadcasters' point of view, every qualifying beneficiary must have a state sponsored STBs on or before the remaining analogue transmitters are switched off. This, however, presupposes that every qualifying beneficiary would have registered for state sponsored STBs within the registration time prescribed by the government.
- 15.12 It is now common cause that the government gave interested parties adequate notice to register for states sponsored STBs and that there is a long list of qualifying beneficiaries who did not comply with government's request to register by no later than 30 September 2022. It is therefore unreasonable and irrational for the applicants to seek to suggest that digital migration must now be postponed for another year or two (in fact ten years) to accommodate people who simply did not register for state sponsored STBs within the registration period the deadline of which was 30 September 2024. In the light of this, it must necessarily follow and must be necessarily accepted that not all qualifying beneficiaries would have received their states sponsored STBs on or before 31 March 2025. This, however, does not necessarily mean that the government is no longer going to fulfil its promise of providing every qualifying beneficiary with states sponsored STBs. In that event, the

government will provide all qualifying beneficiaries with state sponsored STBs even after the analogue switch-off date of 31 March 2025.

15.13 The contents of paragraph 139.6 are not entirely correct. Sentech's distribution plan entails that all registered beneficiaries would have received their state sponsored set-top-boxes by no later than 31 December 2025.

15.14 The contents of paragraph 139.7 have been superseded by a revised acceleration plan which takes into account additional installation capacity procured by Sentech and additional set-top-boxes procured by Sentech and which Sentech will continue to procure until all the registered beneficiaries have been provided with their states sponsored STBs.

15.15 The contents of paragraph 139.8 are denied.

15.16 The contents of paragraph 139.9 are denied.

15.17 The contents of paragraph 139.10 are irrelevant in the light of what I have stated above.

15.18 The contents of paragraph 140 do not take the matter any further because the government can only provide state sponsored STBs to those who have registered for such. The alleged 3.75 million households have not registered, and this case cannot be decided on the basis that there are some unknown and unregistered 3.75 million households who may not receive state sponsored STBs on the analogue switch-off date. The position would have

been different if the applicants had produced evidence to demonstrate that the alleged “*eligible*” 3.75 million were unable to register for state sponsored STBs as a result of conduct attributable to the government. There is no such evidence.

15.19 I deny that the government is obliged to provide STBs to 3.75 million households even though they did not register for such. Doing so would defeat the very purpose of the notice to register which the Constitutional Court made it clear must be given by the government. The government has given such adequate notice and the alleged “*eligible*” 3.75 million households did not register.

15.20 The applicants’ persistence that there are 3.75 million households “*determined based on 2018 statistics*” presupposes that their circumstances did not change between 2018 and 2022. This court cannot proceed on that dangerous assumption.

15.21 The contents of paragraph 142 do not constitute a basis to grant the relief which the applicants seek in this application. The government made it clear many years ago that it would provide assistance to people earning R3500 per month or less and the applicants became aware of this decision as and when it was published. The applicants did not challenge that decision on the basis that it does not take into account “*the impact of inflation.*” Accordingly, the contents of paragraph 142 ought to be rejected.

- 15.22 The contents of paragraph 143 are denied.
- 15.23 The contents of paragraph 144 are denied. The government does not have to provide “*what may well be upwards of 2.5 million*” STBs by 31 March 2025 as alleged by the applicants.
- 15.24 The contents of paragraph 145 are irrelevant for the reasons already stated above.
- 15.25 In respect of paragraph 146:
- 15.25.1 The only broadcaster which is still using analogue transmitters in the nine provinces is e.tv. The SABC no longer uses analogue transmitters in five of the provinces of the Republic.
- 15.25.2 e.tv currently uses not more than 40 analogue transmitters. This necessarily means that there is a small number of transmitters as well as the number of households relying on such transmitters. In any event, the contents of paragraph 146.1 are based on the plan presented to the public on 20 December 2024 which has now been superseded by the latest accelerated plan as the Minister has promised would be done.
- 15.25.3 The contents of paragraph 146.2 are irrelevant in the light of what I have stated above.

- 15.25.4 The contents of paragraph 146.3 do not assist the applicants because the number with which this court must work is the number of beneficiaries who have registered for state sponsored STBs. If there are indeed, which I deny, 984 106 households relying on analogue transmitters, they have clearly not registered despite e.tv itself having been sending messages to its viewers to either buy its Openview decoder or register for a state sponsored STB.
- 15.25.5 In addition, Sentech has sent messages to each of the analogue transmitters throughout the country which messages were displayed on each of the television screens receiving television broadcasts through analogue transmitters. Such messages informed the relevant viewers to register for state sponsored STBs so that they are not left behind on the analogue switch-off date.
- 15.25.6 The contents of paragraph 146.4 are irrelevant in the light of what I have stated above.
- 15.25.7 The contents of paragraph 146.5 are irrelevant in the light of what I have stated above.
- 15.25.8 The contents of paragraph 146.6 are denied.
- 15.25.9 The contents of paragraph 146.7 are denied.

- 15.26 The contents of paragraph 147 are denied because they do not take into account the new accelerated plan developed by Sentech after the plan of 20 December 2024 in respect of which the applicants made various submissions at the meeting held on that date to demonstrate its deficiencies.
- 15.27 The contents of paragraph 148 are denied. The correct position is that Sentech has now appointed additional installers and taken the necessary steps to procure additional STBs to meet the demand. In this regard, an affidavit confirming this will be attached to this affidavit.
- 15.28 The contents of paragraph 149 are denied.

## **16 AD PARAGRAPHS 150 TO 152**

- 16.1 The contents of paragraph 150.1 are denied. There is no evidence placed before the court to prove the allegation contained in this paragraph. This is more so because the applicants rely on 2018 statistics figures without an appreciation of the simple fact that the financial position of some of the people referred to therein may have changed and that some of them may have self-migrated.
- 16.2 The government will continue to honour its promise to provide qualifying beneficiaries with set-top-boxes. Qualifying beneficiaries must, however, register because it is only if they register that the government will determine

if they qualify. It is not up to the government to knock on everyone's door to check if they qualify for state sponsored STBs.

- 16.3 I deny that there are "*eight million people who are eligible for*" state sponsored STBs. If there are, they have not registered to be assessed on whether they qualify. Without registering and without satisfying the qualifying criteria, it is wrong for the applicants to say what they say in paragraph 150.3.
- 16.4 The contents of paragraph 151 are denied.
- 16.5 The contents of paragraph 152 are denied. Even on e.tv's version, constructive and meaningful consultation has taken place between the Minister's team and broadcasters. The mere fact that the applicants may have taken different views about what the government proposed to do and when it proposed to do it does not mean that there was no "*proper consultation, with affected stakeholders and the public about the setting of 31 March 2025 as the ASO date.*"
- 16.6 The correct position is that the applicants in this application wrote a long list of letters to the Minister and to the President requesting that the analogue switch-off date of 31 December 2024 must be postponed. The government considered their representations and was not in law bound to agree to a date proposed by them. The government was only required to carefully consider

their submissions, and the government did exactly that and in its own wisdom determined 31 March 2025 as the analogue switch off date.

## 17 AD PARAGRAPHS 153 TO 183

- 17.1 The contents of paragraph 155 are denied. I specifically deny that the decision to postpone the analogue switch-off date to 31 March 2025 is reviewable on the basis that it is irrational, unlawful and unconstitutional as alleged in paragraph 155.
- 17.2 The contents of paragraph 157 do not constitute evidence that the decision in issue is irrational. I state that the government has, in its wisdom and as it was entitled to do, decided not to incur any further costs on dual illumination beyond 31 March 2025. The government made this choice after having due regard to other government priorities and needs as well as the fact that it gave adequate notice to the public to register for state sponsored STBs and that it will not stop providing state sponsored STBs after the analogue switch-off date. In any event, it was never government's promise that analogue switch-off will not happen until such time that every qualifying beneficiary has received their state sponsored STBs.
- 17.3 The postponement of the 31 December 2024 analogue switch off date to 31 March 2025 is reasonable considering that the call for qualifying beneficiaries to register for state sponsored STBs was made for the first time in October 2015 and that the majority of qualifying beneficiaries who have

registered for state sponsored STBs have in fact now received their state sponsored STBs. This is so when regard is had to the fact that a total of 1.8 million qualifying beneficiaries registered for state sponsored STBs and as of 21 February 2025, the government was left with 391 000 registered qualifying beneficiaries. In the premises, the contents of paragraph 158 are denied.

- 17.4 The contents of paragraph 159 are denied.
- 17.5 The contents of paragraph 160 are denied. The purpose of analogue switch-off will be achieved when analogue switch-off is implemented on 31 March 2025. The purpose of analogue switch-off is to migrate from the use of analogue transmitters to digital television broadcasting.
- 17.6 It is correct that the Constitutional Court found that the central purpose of the analogue switch-off is to “*mitigate the adverse impact of switch-off.*” The Constitutional Court did not say that all the adverse impact of an analogue switch-off must be completely eliminated. Instead, it wisely chose the word “*mitigate*” which does not mean eliminate completely. The government has mitigated the adverse impact of analogue switch-off by giving interested parties an opportunity to decide whether they want to migrate and those who want to migrate with state assistance were given an opportunity to register for state sponsored STBs.

17.7 The government is in the process of assisting those qualifying beneficiaries and will continue to do so even after the date of analogue switch-off. When regard is had to the fact that the first call to register for state sponsored STBs was made in October 2015 and that qualifying beneficiaries have been registering since then, I state that the government has taken the necessary steps to mitigate the adverse impact of digital migration on qualifying beneficiaries. In this regard, the court must not lose sight of the fact that out of the 1.8 million who registered for state sponsored STBs, the government is only left with less than 400 000 qualifying beneficiaries who must still be connected with STBs. This small number does not justify another postponement of the analogue switch-off date.

17.8 In addition to the above, the government has taken a policy decision that it will no longer finance dual illumination beyond 31 March 2025. The relief which the applicants seek would have the effect of forcing the government to finance something which the government has now decided not to finance. The court should be very slow to grant such relief.

17.9 Whilst it is correct that the Minister said what is alleged in paragraph 162, it is important to draw the court's attention to the fact that the Minister said that "*we have to ensure that everyone who needs to migrate*" is not negatively affected by the analogue switch-off. In this regard, the Constitutional Court said that the Minister must give adequate notice to the public for members of the public to make an informed decision on whether to register for state sponsored STBs.

- 17.10 Only 1.8 million people registered for state sponsored STBs and out of those, the government is only left with less than 400 000 qualifying beneficiaries to supply with state sponsored STBs. Accordingly, the government has taken all the necessary steps to mitigate the negative impact of digital migration.
- 17.11 The government has taken the necessary steps to protect those who require its protection as far as the impact of digital migration is concerned. In the premises, the government has done exactly that which is contemplated in paragraph 163.
- 17.12 The contents of paragraph 164 are denied. The contents of paragraph 164 are based on the assumption, and indeed the applicants' contention that every qualifying beneficiary must in fact have installed a state sponsored STB on or before the date of analogue switch-off. This amounts to completely eliminating as opposed to mitigating the adverse impact of digital migration. This is not possible in circumstances where people continue to register even after the deadline of 30 September 2022. It would have been irrational to close registration opportunities after 30 September 2022 considering the possibility of, amongst others, people's financial position changing and the fact that there are always latecomers. In the premises, the contents of paragraph 164 are denied.
- 17.13 The contents of paragraph 165 are denied for the reasons which are already stated above.

- 17.14 The contents of paragraph 166 are denied.
- 17.15 The contents of paragraph 167 are denied.
- 17.16 The contents of paragraph 168 are denied.
- 17.17 The contents of paragraphs 169.1 and 169.2 are denied. I have already stated above that a data cleaning exercise was conducted to eliminate duplicates and to ensure that those who are registered on the Department's database are contactable and that it would be possible for the installers to attend at the addresses given for installation. In the premises, the suggestion that the government does not "*know the location or existence*" of the qualifying beneficiaries registered with it is wrong. Of course, the government would not know the location and existence of "*all indigent households*" until such time that they register and provide their necessary details such as location and existence.
- 17.18 The contents of paragraph 169.3 do not take the matter any further when regard is had to the fact that the registration process started in October 2015 and that the Department did not actually close the doors on anyone to register. The government did provide funding for public awareness campaigns as it is apparent from the agreements to which I referred above.

- 17.19 I have already dealt with the issue of public awareness campaigns and the registration of qualifying beneficiaries elsewhere above in this answering affidavit.
- 17.20 The contents of paragraph 169.5 are denied. I have already stated above that people who may have had difficulties in registering in the post office and through the online platform had an opportunity to contact the government on the telephone numbers provided. It is not the applicants' case that this has happened and that there are people who have not registered as a result of conduct attributable to the government.
- 17.21 The contents of paragraph 169.6 do not constitute a basis to grant the relief which the applicants seek in this application. At the present moment, the government relies on the fact that a total of 1.8 million qualifying beneficiaries registered for state sponsored STBs and that the government is only left with less than 400 000 of those to supply state sponsored STBs. It is the applicants' who rely heavily on what they now say is "*outdated data from 2018.*"
- 17.22 The contents of paragraph 169.7 are denied.
- 17.23 The contents of paragraph 169.8 are denied.
- 17.24 The contents of paragraph 170 are not entirely correct. The government considered the fact that Sentech which is responsible for the installation of

state sponsored STBs will appoint additional installers and procure additional STBs to meet the demand. It is not necessary that all the require must be at Sentech's warehouses even when Sentech has not scheduled to instal them. It is sufficient that provision is made for them to be available as and when the installers plan to go and install them at the designated households. It cannot be the applicants' case that this will not happen.

17.25 The contents of paragraph 170.2 are denied. The correct position is that all the stakeholders, including the applicants, expressed their views about what they preferred and how they wanted to see digital migration unfolding. Their submissions are contained in a long list of letters which form part of the record. It cannot be suggested that the applicants withheld back some of their submissions.

17.26 The government considered all those representations or submissions made by the relevant stakeholders including the applicants before arriving at the analogue switch-off date of 31 March 2025. In any event, it is not only the applicants' submissions which had to be considered. The government also had to consider whether it could afford to finance dual illumination and the government decided that it no longer affords to finance dual illumination and that it would rather spend its money to meet other government needs and priorities. The government is entitled to do this because in the context of this case, it does not result in any qualifying beneficiary not being able to be supplied with state sponsored STBs.

- 17.27 The contents of paragraph 170.3 are irrelevant in the light of what I have already stated above.
- 17.28 The contents of paragraph 171 are denied. The government is fully aware of the impact of digital migration on broadcasters. It is indeed so that that is what is driving this application and delaying digital migration. The fact that this is so is well documented in the report of the meetings and workshops to which I have referred elsewhere above.
- 17.29 The commercial needs of e.tv, the SABC and community broadcasters do not outweigh the needs of the whole of the Republic to migrate more so when regard is had to the fact that adequate notice was given for interested parties to make an informed decision on whether to migrate and if so, to register for state sponsored STBs. The government is currently left with less than 400 000 qualifying beneficiaries who must still receive state sponsored STBs.
- 17.30 The contents of paragraph 172 are denied.
- 17.31 The contents of paragraph 173 are denied. It is wrong for the applicants to suggest that the government ignored the issues raised by the applicants relevant to DTT. The applicants are correct in saying that these issues were raised in meetings and correspondence.

- 17.32 The government considered the issues raised by the applicants and did not consider them to be weighty enough to justify a further delay to the completion of the digital migration process. In this regard, sight must not be lost of the fact that the government cannot afford to finance dual illumination beyond 31 March 2025 and that the analogue transmitters infrastructure is obsolete and it has become expensive to operate, and it is no longer supported by the original equipment manufacturers. This being the case, it carries a very high risk of failure.
- 17.33 In the premises, the government was fully aware of the applicants' concerns with the DTT broadcasting platform. Those households which have been provided with DTT boxes will no doubt be accommodated by the government if and when the need to do so arises. The mere fact that DTT "*is no viable broadcasting platform*" as alleged in paragraph 173.5 does not necessarily mean that it is not available. DTT remains available and the government will take the necessary steps to address such problems as may arise in future. For now, DTT broadcasting platform is still available and there is no evidence to demonstrate that DTT boxes are not working.
- 17.34 It is inevitable that digital migration will have an impact on the operating costs of broadcasters as they must now fit into digital broadcasting. This is inevitable and the government cannot prevent it. In addition, this inevitability does not constitute a basis to postpone the completion of digital migration at the cost of the whole of the Republic in circumstances where the government has already taken a policy decision not to finance dual illumination. It is not

legally competent for this court to grant an order the effect of which is to reverse government's policy decision not to continue to finance dual illumination beyond 31 March 2025.

- 17.35 The contents of paragraph 174 are not applicable in this case. In this case, the applicants have always been aware of the deadline of 31 December 2024. The applicant themselves made a long list of written submissions to the government to postpone that date. The government considered their written submissions and indeed postponed that date.
- 17.36 The applicants were not necessarily entitled to another round of consultation to fix a new postponement date considering that they had, in a long list of written representations, expressed their views about their preference, which the government considered before arriving at the 31 March 2025 deadline.
- 17.37 The contents of paragraph 175 are denied. I deny that the applicants were entitled to another round of consultation considering the fact that they had already made a long list of written representations to the government motivating for a postponement of the 31 December 2024 deadline.
- 17.38 I persist that the applicants were not entitled to another round of consultation when the government decided on the analogue switch-off date of 31 March 2025 due to the fact that the government carefully considered their written submissions relevant to the postponement of the 31 December 2024

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deadline. In any event, what happened is a postponement of the date of 31 December 2024 date pursuant to the applicants' request.

17.39 At the time of deciding on 31 March 2025, the government was satisfied that:

17.39.1 Sentech will appoint additional installers to increase the number of installation of STBs to qualifying beneficiaries.

17.39.2 Sentech will procure additional STBs to meet the demands.

17.39.3 The number of outstanding qualifying beneficiaries would be substantially reduced by 31 March 2025. This reduction has already happened considering the remaining number beneficiaries as on 21 February 2025.

17.40 It is, therefore, sufficient that the government considered all of the above, including the written submissions made by the applicants and other relevant stakeholders before deciding on the date of 31 March 2025. The fact that careful consideration was given to these issues is evidenced by the fact that the cabinet did not simply agree to the postponement of the 31 December 2024 deadline. As stated in paragraph 175.1 of the applicants' founding affidavit, the applicants were informed on 28 November 2024 that cabinet had not agreed to postpone the 31 December 2024 deadline. The deadline was only subsequently extended at another meeting of the cabinet held on 4 December 2025.

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- 17.41 The contents of paragraph 176 are denied.
- 17.42 The contents of paragraph 177 are denied.
- 17.43 The contents of paragraph 178 do not take into account the fact that the government could only provide state sponsored STBs to people who registered for them on time. In this case, the government and the whole country as well as the digital migration process cannot be held to a ransom by latecomers. This is more so when regard is had to the fact that the government will continue to provide state sponsored STBs to qualifying beneficiaries even after 31 March 2025. For this reason, the promise not to leave anyone behind is not broken.
- 17.44 I deny that the decision to extend the annual switch off date to 31 March 2025 is unlawful because the government will not be able to honour its promise. I have already stated above that the government will continue to honour its promise even after 31 March 2025.
- 17.45 The contents of paragraph 180 are not entirely correct. There is no evidence placed before the court to prove that the qualifying beneficiaries which the applicants are concerned about registered on or before 30 September 2022. In addition, the contents of paragraph 180 do not take into account the simple fact that government will continue to provide government sponsored STBs to qualifying beneficiaries even after 31 March 2025. I accordingly deny that

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there is a breach of the negative component of the right to freedom of expression as alleged in paragraph 180.

17.46 The contents of paragraph 181 are denied.

17.47 Paragraph 3.3.1 of the broadcasting digital migration policy provides as follows:

“3.3 *Digital switch-on and analogue switch-off*

3.3.1 *Government is committed to ensure a successful migration in South Africa. Taking into account the different processes, that need to be completed before digital switch-on, Government has decided that the digital signal should be switched on, a date to be determined by the Minister in consultation with Cabinet. The date for the final switch-off of the analogue signal will similarly be announced by the Minister in consultation with Cabinet.”*

17.48 It is clear from the above quoted that paragraph 3.3 of the Broadcasting Digital Migration Policy deals with two issues: (a) The digital switch-on with which this application is not concerned; and (b) the analogue switch-off, with which this application is concerned. The determination of the digital switch-on date must “*be determined by the Minister in consultation with Cabinet.*” Paragraph 3.3.1 does not, however, say that the date for the final switch-off

of the analogue signal must be “*determined by the Minister in consultation with Cabinet*” as suggested by the applicants.

17.49 Paragraph 3.3.1 of the broadcasting digital migration policy simply says that the date for the final switch-off of the analogue signal “*will similarly be announced by the Minister in consultation with Cabinet.*” This is completely different from making a determination on the date of analogue switch-off.

17.50 In the premises, it is wrong for the applicants to suggest, as they do in paragraph 181.4 that “*ASO should occur ‘on a date to be determined by the Minister in consultation with Cabinet.’*” This is not what clause 3.3.1 of the broadcasting digital migration policy says.

17.51 In the light of what is provided for in paragraph 3.3.1 of the Broadcasting Digital Migration Policy and what the applicants themselves say in paragraph 181.4 of their founding affidavit, there does not appear to be any basis for the applicants to contend that the decision to determine the analogue switch-off date is that of the Minister and the Minister alone to the exclusion of cabinet.

17.52 The applicants’ contention of the applicants is not supported by the decision of the Constitutional Court in e.tv and clause 3.3.1 of the broadcasting digital migration policy. In the premises, there is nothing unlawful about the cabinet of the Republic having taken the decision that the final analogue switch-off

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date shall be 31 March 2025 as it was empowered to do so in terms of section 85 of the Constitution.

17.53 The contents of paragraph 181.5 do not take the matter any further. Elsewhere in their founding affidavit, the applicants say that “*it is clear that Cabinet took the decision.*” Furthermore, the applicants say that the Minister said that the “*Cabinet ‘approved’ his request for an extension from 31 December 2024 to 31 March 2025, and that ‘Cabinet has made the decision’.*” Having said that, it is not clear why the applicants say in paragraph 181.2 that the Minister “*postponed the ASO to that date only because Cabinet vetoed any postponement*” and that “*In his words, he was ‘vetoed’ by Cabinet.*”

17.54 In addition to the above, having said what the applicants said in paragraphs 181.1 to 181.5, it is not clear why the applicants now say, in paragraph 181.5 that “*the Minister and Cabinet took the decision to postpone the ASO date under a material error of law*” and that the Minister “*acted on the unlawful dictates of Cabinet*” in circumstances where they say that the decision was taken by cabinet and that cabinet approved the Minister’s request for a postponement.

17.55 The applicants must make a choice, which they have obviously failed to make in circumstances where they ought to have made it, as to exactly who they say took the decision under the unlawful dictates of the other. If it is the Minister who took the decision under the dictates of the cabinet, the

applicants must say so and if the decision was taken by both “*the Minister and Cabinet*” as suggested in paragraph 181.5, the applicants must similarly say so to enable the Minister and, cabinet if so advised, to meaningfully engage therewith.

17.56 In the premises, the applicants have not made out a case to prove that the decision to postpone the analogue switch-off date from 31 December 2024 to 31 March 2025 was taken under the unlawful dictates of any organ of the state.

17.57 The contents of paragraph 182 are denied. In any event, the contents of paragraph 182 are clearly inconsistent with the case made out in paragraph 181.

17.58 The contents of paragraph 183 are denied.

## **18 AD PARAGRAPHS 184 TO 202**

18.1 I deny that the applicants have a right to which irreparable harm would ensure if the interim interdict which they seek is not granted. It is clear from paragraph 184 that the applicants seek to contend that they have *prima facie* rights for the purposes of interim relief.

18.2 I do not deny that the applicants have a right to freedom of expression, right to equality and right to access to the courts. I, however, deny that irreparable

harm would ensue to the applicants' aforesaid rights if an interim interdict is not granted.

18.3 I deny that "*millions of people*" are not going to receive information if the interim interdict which the applicants seek is not granted. It cannot be correct for the applicants to seek to suggest, as they do, that "*millions of people*" referred to in paragraph 185.1 only receive information from e.tv.

18.4 The contents of paragraph 185.3 are denied.

18.5 I deny that irreparable harm will ensue to the applicants' right to equality, dignity and political rights. e.tv is not the only source of information for the alleged "*millions of people*" referred to in paragraph 185.1. The applicants' case is also complicated by the fact that they have not identified the "*millions of people*" upon which they rely as against the not more than 400 000 qualifying beneficiaries who registered for state sponsored STBs and who are the only registered beneficiaries still to receive their government sponsored STBs.

18.6 The contents of paragraph 186.1 are denied. The contents of paragraph 186.1 are based on the applicants' belief that the government is of the incorrect view that e.tv does not have active analogue television broadcast transmitters in the nine provinces. This, however, is not the government's position.

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- 18.7 The applicants cannot rationally and reasonably contend for a violation of the right to equality in circumstances where they have not produced any evidence to demonstrate that the so-called “*millions of people*” registered to be provided with state sponsored STBs within the registration period the deadline of which was 30 September 2022.
- 18.8 Whilst it is correct that the government made the same promise to everybody else in the Republic, there was an obligation upon every citizen to register for state sponsored STBs as the government called everybody else to do so since 2015 and specifically on 8 July 2022. Those who did not register to receive state sponsored STBs cannot then allege that they are being discriminated against if they do not receive their state sponsored STBs within the time frame within which they think they should receive them.
- 18.9 The contents of paragraph 187 are denied. The applicants do not have “*strong prospects of success in obtaining their final relief.*” The applicants have not made out a case to demonstrate that they have *prima facie* rights to which irreparable harm would ensue if the interim interdict which they seek is not granted. The government is not going to infringe any of the applicants’ rights during the litigation of Part B of this application. The applicants’ right to seek their review relief is not in any way going to be violated by the government.
- 18.10 I do not deny that the applicants have a right promised in section 34 of the Constitution to access to the courts. The right of the applicants to access to

the courts will not in any way be violated during the litigation of Part B of this application. The mere fact that the applicants have instituted this application is a clear indication that their right to access to the courts is not under any imminent threat to justify the interim interdict which they seek in this application.

- 18.11 In the circumstances, the applicants have not established the most important requirement for an interim interdict, a right to which irreparable harm would ensue if an interim interdict is not granted.
- 18.12 The contents of paragraph 189 are denied. I deny that there is going to be a total television blackout "*for millions of the most vulnerable in South Africa.*" The Court should not be scared that millions of people will not have access to television if the relief sought is not granted. That is not going to happen.
- 18.13 The applicants have already indicated elsewhere in their founding affidavit that it is wrong for the government to rely on outdated statistics published in 2018 by Statistics South Africa. This being the case, I accordingly call upon the applicants to produce evidence with the relevant identification details of "*millions of the most vulnerable in South Africa*" referred to in paragraph 189. Without such evidence, the contents of paragraph 189 and other contents in their founding affidavit must be rejected insofar as they are based on the 2018 statistics published by Statistics South Africa which the applicants tell the court are outdated and cannot be relied upon.

18.14 The contents of paragraph 190 are denied. It is not correct that if the relief which is sought is not granted, members of the public will have to wait for years “*while government leisurely rolls out STBs.*” The correct position is that with the additional installation capacity procured by Sentech, the registered qualifying beneficiaries should have their state sponsored STBs by no later than 31 December 2025. Accordingly, whatever rights are alleged by the applicants insofar as they relate to registered qualifying beneficiaries not having STBs on 31 March 2025, that would be remedied by no later than 31 December 2025. In the premises, it is not correct to suggest that there is irreparable harm which would ensue to the applicants if the interim interdict sought is not granted.

18.15 I deny that millions of South Africans “*will lose existing access to television*” as alleged in paragraph 191. Once again, I call upon the applicants to identify the “*millions*” of South Africans who are going to lose existing access to television as alleged in paragraph 191. I say this because there are now less than 400 000 registered beneficiaries who are yet to receive their state sponsored STBs. That does not translate to “*millions*” of South Africans as suggested by the applicants in paragraph 191 of their founding affidavit. The remainder of the contents of paragraph 191 are denied.

18.16 The contents of paragraph 192 are denied.

18.17 The contents of paragraph 193 are denied. Community television stations are cited as respondents in this application and they have not produced any

evidence to demonstrate that they stand to suffer irreparable harm if the interim interdict which is sought in this application is not granted.

18.18 Insofar as the contents of paragraphs 194 to 200 are concerned, e.tv and MMA and SOS cannot speak for the SABC because they do not represent the SABC in this application. The SABC is cited as the fifth respondent in this application and there is no reason why it did not file an affidavit to make out a case in support of the relief which the applicants seek if irreparable harm is going to ensue to it if the relief sought in this application is not granted.

18.19 I admit that advertisers are only going to place advertisements with a broadcaster *“if the broadcaster is able to offer them a substantial audience.”* This is exactly what this application is about – it is about ensuring that e.tv is considered to have *“a substantial audience”* by advertisers for as long as possible. This, however, cannot be done at the expense of the whole of the Republic insofar as any delay or postponement of digital migration would require the government to continue to provide dual illumination at a substantial cost to the fiscus. This ought to be stopped. The time to stop it is now.

18.20 The contents of paragraph 195 are not in dispute. The difficulty which e.tv has is simply that only 1.8 million qualifying beneficiaries registered for government sponsored STBs and the government is only left with less than 400 000 of such beneficiaries who must still receive government sponsored

STBs. No amount of spin will change these numbers. These numbers will only change if e.tv were to produce a long list of 3.75 million qualifying beneficiaries who were not able to register for state sponsored STBs from 2015 to 30 September 2022 as a result of conduct attributable to the government. If there was such evidence, the applicants would have attached it to their founding affidavit. There is no such evidence. Without such evidence, the applicants cannot persist with their argument that “*millions*” of South Africans are going to suffer irreparable harm if the interim interdict which they seek is not granted. In the premises, the contents of paragraph 195 do not take the matter any further.

18.21 The contents of paragraph 196 do not assist e.tv. The 13.9 million number relied upon by the applicants is derived from the 2018 statistics published by Statistics South Africa which the applicants themselves tell the court are outdated and should not be relied upon. In any event, e.tv has not placed any evidence before the court to demonstrate that it took the necessary steps, as it was obliged to do, to encourage its indigent viewers to register to receive state sponsored STBs.

18.22 As I have demonstrated elsewhere above in this answering affidavit, e.tv called upon its viewers to purchase its Openview decoders as opposed to registering to be provided with state sponsored STBs. This is a clear indication that e.tv considers that its viewers are those who can afford its Openview decoders and do not require state sponsored STBs to migrate.

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- 18.23 I accordingly deny that the Minister's process and outcome "*will thus be contrary to the BDM Policy and the Regulations*" as alleged in paragraph 196. Had that been the position, e.tv would no doubt have taken the necessary steps to ensure that its viewers took the necessary steps to register for state sponsored STBs.
- 18.24 The contents of paragraph 197 are denied. The correct position is simply that the government is left with less than 400 000 qualifying beneficiaries who must still receive state sponsored STBs. The government is taking all the steps to ensure that this number is cleared or substantially reduced on or before 31 March 2025.
- 18.25 The contents of paragraph 198 are denied. It has always been incumbent upon broadcasters to take the necessary steps to ensure that their viewers register to be provided with government sponsored STBs. There is no evidence placed before the court to demonstrate that e.tv took such steps. Without having taken such steps, having focused its efforts in promoting its own Openview decoders or STBs, e.tv cannot complain that some of its viewers are not going to have state sponsored STBs on or before 31 March 2025.
- 18.26 It is also indeed so that e.tv refused to conclude the service level agreements referred to above in this answering affidavit in terms of which the SABC and some of the community television broadcasters agreed to take the necessary

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steps to run public awareness campaigns and to encourage qualifying beneficiaries to register to be provided with state sponsored STBs.

- 18.27 The contents of paragraph 199 are denied. There is no direct evidence placed before this court by the SABC itself to substantiate that which is alleged in paragraph 199. In the premises, the contents of paragraph 199 ought to be rejected. The SABC is not going to collapse if the relief which the applicants seek in this application is not granted.
- 18.28 The contents of paragraph 200 do not take the matter further in the light of what I have stated above.
- 18.29 I deny that the balance of convenience favours the granting of the relief which the applicants seek in this application.
- 18.30 If the relief which the applicants seek is granted, it would require the government to change its decision not to continue to finance dual illumination beyond 31 March 2025 in circumstances where there is no direct challenge to that decision. This would be wrong in law and would contravene the doctrine of separation of powers. A court must be very slow in granting orders which would have such kind of an effect.
- 18.31 The decision to determine 31 March 2025 as the date of final analogue switch-off is a date which the government must in law take because the government is obliged to do so in terms of the international obligations which

it has assumed. This necessarily means that the Constitution requires the government to take the decision which is now sought to be reviewed and set aside in this application. The correct legal position is simply that a court must be very slow to grant an order interdicting the government from performing obligations which it is in law required to perform unless there is evidence of *mala fide*, fraud or some other malfeasance, of which there is none in this case.

18.32 Whilst a court is in law entitled to grant whatever relief is competent, it cannot grant the relief which the applicants seek in the context of this case unless it is demonstrated that the government has acted *mala fide* or that its decision sought to be reviewed and set aside was influenced by malfeasance. There is no such evidence in this case.

18.33 In addition, if the relief which the applicants seek is granted, it would require the government to rearrange its financing priorities and then change its decisions, which are not challenged in this application, to prioritise other government needs and priorities. This is so because dual illumination which would then have to continue beyond 31 March 2025 would then have to continue at a cost to the whole of the Republic in circumstances where the government has decided, in its wisdom, that it does not want to finance going forward.

18.34 I attach hereto as AA12, a document entitled Impact of Delayed ASO On the Analogue TV Network prepared by Sentech. I believe that the contents of

this document are true and correct considering that it was prepared and provided by Sentech and that its contents are consistent with what Sentech has always which has already been conveyed to e.tv and others. In this document, Sentech demonstrates, amongst others, the following:

- 18.34.1 It has rolled out a DTT network in accordance with the Broadcasting Digital Migration Policy “*to ensure that 84% of the population have access to the television services post ASO.*”
- 18.34.2 The Analogue Television Network is ageing and it is difficult to support.
- 18.34.3 The postponement of the analogue switch-off date will require more funding.
- 18.34.4 The analogue transmitters have reached their end of life and end of service. There is also a high risk of failure.
- 18.34.5 The NEC 10KW Valve based TV Transmitter operates “*at a huge risk of catastrophic failure.*”
- 18.35 In the light of what Sentech says, the balance of convenience cannot favour the granting of the relief which the applicants seek. It also cannot be in the interests of justice to grant an order the effect of which is that Sentech must continue to operate transmitters which have reached their end of life, end of

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service term and are operating “*at a huge risk of catastrophic failure*” and high risk of failure.

18.36 The contents of paragraph 201.1 are denied. e.tv will be able to continue to broadcast to its viewers. In circumstances where e.tv’s viewers are qualifying beneficiaries, e.tv will have itself to blame for not using its own platforms to actively encourage them to register for state sponsored STBs before the registration deadline of 30 September 2022. In addition, e.tv will have itself to blame for promoting its own Openview decoder instead of encouraging what it says are “*millions of South Africans to register to be provided with state sponsored STBs so that they could continue to access e.tv’s television broadcasts.*”

18.37 The contents of paragraph 201.2 are denied. Sentech has already made it clear that it does not have the necessary funding to continue to provide dual illumination beyond 31 March 2025. In addition, Sentech has already indicated that the analogue transmitters infrastructure is obsolete, and it is no longer supported by the original equipment manufacturer. The consequence of this is simply that it is now very expensive to continue with dual illumination and that it is risky not only for Sentech but for the whole of the Republic because the analogue infrastructure can collapse at any time. This would be prejudicial to the whole of the Republic and there is no basis to run the risk of continued dual illumination beyond 31 March 2025.

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- 18.38 When regard is had to the fact that the analogue infrastructure is obsolete, it is not unreasonable and irrational for the government of the Republic to take a decision not to continue to provide funding for it.
- 18.39 The Department is not prepared to continue to incur “*some financial costs in continuing with dual illumination.*” The correct position is that the government has decided not to continue to provide funding for dual illumination beyond 31 March 2025 and this is a policy decision which the government took considering other government priorities and needs which it must meet in the next financial years. As I have already stated above, this was also influenced by the fact that the current analogue infrastructure is obsolete, and it is no longer cost effective to continue funding it.
- 18.40 There are no “*millions of indigent South Africans*” as alleged in paragraph 201.2 to whom irreparable harm would ensue if the interim interdict sought by the applicants is not granted. I say this, again, because the applicants have not produced any evidence identifying the so-called “*millions*” of South Africans relied upon.
- 18.41 The contents of paragraph 201.3 confirm what I have stated above, that the applicants have made all the necessary representations or submissions which they needed to do to motivate or “*to urge a postponement of the ASO date*” and I repeat that the government considered that which the applicants said in their “*various letters to draw attention to the problems*” identified by the applicants. The government has considered all the issues raised by the

applicants in support of their contention that the analogue switch-off date of 31 December 2024 must be postponed. The government considered this and agreed thereto. The mere fact that the applicants do not agree to the postponement to 31 March 2025 does not necessarily mean that the government's decision is unlawful, irrational and unconstitutional as alleged by the applicants.

18.42 The contents of paragraph 202 are denied.

18.43 In the premises, the application ought to be dismissed with costs.

## 19 CONDONATION

19.1 I appreciate that this answering affidavit is being filed late. I seek condonation for this late filing.

19.2 The applicants had agreed that this answering be filed by not later than 14 February 2025. This, however, was also not possible. I explain the reasons for this below.

### **Explanation for the delay**

19.3 As it is apparent from the founding papers, the matter has a very long history and the documents relevant to it are voluminous.

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19.4 I have had to be briefed by the Department's officials on events which occurred before my appointment, and this was complicated by my availability and the availability of the Department's senior officials which was negatively impacted by major government events which happen in February such as the State of the Nation Address and the budget which was postponed in which events we all play a role.

19.5 The legal team prepared advisory memorandum listing all the issue to which I must respond in this answering affidavit. Due to the long history of this matter, the Department's team was not able to provide all the answers within a short period of time for this answering affidavit to be filed on 14 February 2025. In addition, some of the requested information had to be sourced from Sentech.

19.6 It was only on Friday, 21 February 2025 that most of the requested information was made available to the Minister's legal team. This late delivery was not occasioned by a reckless disregard of the timetable prescribed by the applicants for the filing of answering papers. It was occasioned by the long history of this matter, the availability of the Department's senior officials and my own availability due to the role that we play in the major events to which I have referred above.

19.7 When the decision to postpone the analogue switch-off date from 31 December 2024 to 31 March 2025 was taken, consideration was given to amongst others, Sentech increasing installation capacity and procuring more



STBs to meet the demand. For this reason, it was necessary for the Department to have regard to the steps which Sentech was taking to achieve this. This resulted in the finalisation of this answering affidavit being delayed because the accelerated plan to install the remaining STBs depended on Sentech concluding its procurement process. This was concluded during the week ending 21 February 2025 after which the Department and my office were briefed on an accelerated plan in terms of which the remaining STBs are to be installed by no later than 31 December 2025 based on the increased capacity which Sentech has procured. I have referred to this date several times elsewhere in this answering affidavit.

#### **Prospects of success**

- 19.8 Based on what I have stated above, the Minister has reasonable prospects of success in opposing this application.
- 19.9 This application is not being opposed to frustrate the applicants or to buy time. This answering affidavit raises bona fide defences to the relief which the applicants seek. It also raises an important question which will no doubt arise in future: whether the applicants were entitled to another round of consultation when the government decided to postpone the analogue switch-off date from 31 December 2024 to 31 March 2025 considering that the postponement itself (and not the date of 31 March 2025) was also at the applicants' request.

*SM*

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19.10 The matter is important to both parties and the whole country and it is necessary that the Minister's version be considered particularly, the question whether it is competent to grant the relief which the applicants seek when its effect is that the government must continue to finance dual illumination when it has decided to finance it only up to 31 March 2025. In any event, in matters such as the present, the views of the government must be considered – this, however, does not licence the government to be late – but it is an important consideration.

### **Prejudice**

19.11 The government will suffer prejudice if this answering affidavit is not allowed because the matter will then proceed on an unopposed basis in circumstances where the government has *bona fide* defences.

19.12 The matter is scheduled to be heard on 5 and 6 March 2025. The filing of this answering affidavit will not result in a postponement.

19.13 The filing of this answering affidavit will inconvenience the applicants' legal teams who must now reply to it within a short period of time. This Court will also be inconvenienced by the late filing of this answering affidavit because of the increased volume of the papers which the Court must now consider

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within a short period of time close to the hearing. I regret this and tender an apology for this inconvenience.

- 19.14 The above inconvenience does not outweigh the prejudice which would be suffered by the government if this answering affidavit is not allowed for the reason stated above.

### **Interests of justice**

- 19.15 It is in the interests of justice to allow the late filing of this answering affidavit because:

19.15.1 I have explained the delay. The explanation is reasonable.

19.15.2 The delay is not excessive and will not cause a postponement.

19.15.3 The Minister has reasonable prospects of success on the basis of the defences raised in this answering affidavit.

19.15.4 There is no prejudice to the applicants if the late filing of this answering affidavit is allowed.

19.16 In the premises, I pray that it may please the Court to condone the late filing of this answering affidavit.

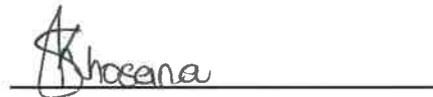
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WHEREFORE, I pray that it may please the Court to dismiss the application with costs of two counsel where two counsel were employed.



SOLLY MALATSI

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Centurion on the 27 February 2025, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

OFFICE:

KANABO SKHOSANA  
EX OFFICIO COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
2ND FLOOR, 16 FRICKER ROAD  
ILLOVO, 2196

27/02/2025



# Government Gazette Staatskoerant

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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**

NO. 2250

8 July 2022

**BROADCASTING DIGITAL MIGRATION POLICY (AS AMENDED):****FINAL NOTIFICATION OF THE DEADLINE FOR REGISTRATIONS OF SET TOP BOXES**

Noting the Constitutional Court judgment in the matter between e.tv (Pty) Limited v the Minister of Communications and Digital Technologies, Case: CCT 89/22 delivered on 28 June 2022, I, **Khumbudzo Ntshavheni**, Minister of Communications and Digital Technologies, hereby, in accordance with section 85(2)(c) of the Constitution, 1996 read with the Broadcasting Digital Migration Policy hereby notify members of public that 30 September 2022 is the final deadline for application of Government subsidized Set Top Boxes (STBs).

After the Constitutional Court has accepted that subsidized Set-Top-Boxes can only be provided to those who apply and qualify for such assistance, this announcement is made to augment previous calls for applications of Government subsidized Set-Top-Boxes. The calls for applications for Government subsidized Set-Top-Boxes commenced in October 2015 and I previously set a provisional deadline of 31<sup>st</sup> October 2021. This Notice also serve to clarify that whereas the 31<sup>st</sup> October 2021 deadline was provisional as qualifying households could still apply for STBs after the analogue switch-off date, the date of the 30 September 2022 is the final date for applications and no new applications will be accepted after this date.

This is the last opportunity to further afford qualifying members of the public a chance to apply for Government subsidized Set-Top-Box. The 30<sup>th</sup> September 2022 as final date for applications gives members of the public sufficient time to register and have their Set-Top-Boxes installed before the analogue switch off date. I will determine the Analogue Switch Off date based on, amongst others, the number of applications received and the Department's capacity to install a Set-Top-Box for everyone who would have applied by the closing date except as an outcome of force majeure.

I therefore urge members of the public (indigent households) earning a monthly income of R3500 or less, to register for Set Top Boxes on or before 30 September 2022. Members of the public are encouraged to visit their nearest Post Office to register or utilise the online registration process at [www.stbregistration.gov.za](http://www.stbregistration.gov.za). Should any other additional registration places be required, same will be

communicated with the public before the closing date. Should a member of the public experience difficulties with registration, the numbers listed below can be contacted for assistance:

Telephone number: 0860 736 832

WhatsApp number: 0600 625 458

Any inquiries pertaining to this matter can be addressed to:

The Director-General

Department of Communication and Digital Technologies

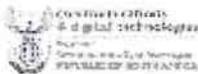
Attention: Mr T Ngobeni, DDG: ICT Infrastructure

[tmpete@dcdt.gov.za](mailto:tmpete@dcdt.gov.za) 083 881 0951; or [tkarabiana@dcdt.gov.za](mailto:tkarabiana@dcdt.gov.za) 073 815 1178



**KHUMBUDZO NTSHAVHENI, MP**

**MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**





**communications  
& digital technologies**

Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA



## SERVICE LEVEL AGREEMENT

**ON AWARENESS CAMPAIGNS ON IMPLEMENTATION OF HOUSEHOLD  
MIGRATION TO DIGITAL PLATFORMS TOWARDS THE CONCLUSION OF  
BROADCASTING DIGITAL MIGRATION ("BDM")**

**BETWEEN**

**THE DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**

(Hereinafter referred to as the "DEPARTMENT" "DCDT")

Represented herein by

**Ms. Nonkubela Jordan-Dyani**

In her capacity as the Director-General and duly authorized thereto

**AND**

**UNIVERSAL SERVICES AND ACCESS AGENCY OF SOUTH AFRICA**

(Hereinafter referred to as the "USAASA")

Represented herein by

**Ms Chwayita Madikizela**

In his/her capacity as the Acting Chief Executive Officer and duly authorized thereto

**AND**

**SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD (SABC)**

(Hereinafter referred to as the "SABC")

Represented herein by

**Mr Lungile Binza**

In his/her capacity as the Acting Group Chief Executive Officer and duly authorized  
thereto

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**PREAMBLE**

**WHEREAS** the Department of Communications and Digital Technologies (DCDT) is a national Department of the Government of the Republic of South Africa mandated to create a vibrant ICT sector that ensures that all South Africans have access to robust, reliable, affordable and secure ICT services;

**AND WHEREAS** the Universal Service and Access Agency of South Africa (“USAASA”) a statutory body established in terms of Section 80 (1) of the Electronic Communications Act (No. 36 of 2005), with its mandate being to, inter alia, facilitate universal services and access especially in underserved areas in the Republic of South Africa;

**AND WHEREAS** the South African Broadcasting Corporation SOC Ltd (SABC) is the State-Owned national broadcaster registered in terms of the company laws of the Republic of South Africa, under registration number 2003/023915/30 and established in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999), as amended. The main object of the Corporation is to supply broadcasting and information services and services that are ancillary thereto, to the general public in the Republic of South Africa and beyond its borders and to achieve the objectives as set out in the Broadcasting Act of 1999;

**AND WHEREAS** DCDT is mandated to exercise oversight over USAASA and SABC as the Minister of Communications and Digital Technologies exercises executive oversight over the entities and serve as shareholder representative, being assigned the responsibility to administer the Electronic Communications Act (No. 36 of 2005) ECA and Broadcasting Act, 1999 (Act No. 4 of 1999).

**RECOGNISING** that the SABC ensures access of its services to all citizens throughout the country; inform, educate and entertain; makes services available in all official languages; reflects both the unity and diversity of the cultural and multilingual nature of South Africa, its regions and audiences; provides programming for children, women, youth and people with disabilities; broadcasts national, developmental and minority

sports; develops talent and showcases South African content; and provides independent news of a high quality.

**AND WHEREAS** the Executive Authority directed that an accelerated implementation plan must be developed to ensure completion of digital migration before the end of December 2024 in line with the Minister's media statement dated 21 June 2023.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

1.1.1 **"Agreement"** means this Master Service Level Agreement, together with all its schedules (SLAs), as amended from time to time;

1.1.2 **"Annexure"** means any schedule or annexure that may be attached to this agreement, which is signed by, or on behalf of, the Parties to it;

1.1.3 **"Applicable law"** means all prevailing prescripts applicable to the public sector, as amended from time to time, to the extent it applies to a party (including the subcontractors of a party), or the services (including the performance, delivery, receipt or use of the services, as applicable and wherever occurring), including:

1.1.3.1 any statute, regulation, notice, policy, directive, ruling or subordinate legislation (including treaties, multinational conventions and the like having the force of law);

1.1.3.2 the common law;

1.1.3.3 any binding court order, judgement or ruling;

1.1.3.4 any applicable industry code, policy or standard enforceable by law; or

1.1.3.5 any applicable direction, policy or order that is given by any regulator, relevant authority or organ of state or industry body;

1.1.4 **"BDM"** means Broadcasting Digital Migration;

1.1.5 **"Business day"** means any day, other than a Saturday, Sunday or proclaimed official public holiday in the Republic of South Africa and unless specifically otherwise provided, any number of business days prescribed

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shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;

- 1.1.6 **“Confidential Information”** means all information relating to the implementation of the Broadcasting Digital Migration, which a Party becomes aware of in its capacity as a Party, or for the purpose of becoming a Party from:
- 1.1.6.1 the DCDT or any of its affiliates or advisors; or
  - 1.1.6.2 the USAASA, SABC, or any of its affiliates or advisors;
  - 1.1.6.3 in whatever form and includes information given orally and any documents, electronic files or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:
    - 1.1.6.3.1 is or becomes public information other than as a direct or indirect result of any breach by any Party;
    - 1.1.6.3.2 is identified in writing at the time of delivery as non-confidential by any Party or its advisors;
    - 1.1.6.3.3 is known by a Party before the date the information is disclosed to it or is lawfully obtained by that Party after that date, from a source which is as far as that Party is aware, unconnected with the Parties and which, in either case as far as that Party is aware, has not been obtained in breach of, and is not otherwise subject to any obligation of confidentiality; or
    - 1.1.6.3.4 is independently developed;
- 1.1.7 **“Department”** means the Department of Communications and Digital Technologies;
- 1.1.8 **“Disclosing Party”** means the Party providing Confidential Information to another Party;
- 1.1.9 **“Effective Date”** means the date on which this Agreement shall become of force and effect which for the avoidance of doubt is 1 January 2024;
- 1.1.10 **“Force Majeure Event”** means an event or circumstance beyond the reasonable control of the Party affected by the event which makes it impossible, dangerous or illegal to perform, or prevents or delays compliance with or the performance of, a Party’s obligations under this

Agreement, including:

- 1.1.10.1 fire, floods, storms, tempest, earthquakes, pandemic or other acts of God;
- 1.1.10.2 any act of a public enemy, war, riot, act of civil or military authority;
- 1.1.10.3 any public protest or political unrest
- 1.1.10.4 nuclear, chemical or biological contamination; and
- 1.1.11 any act of a third party (not being personnel of that Party) engaged in subversive or terrorist activity or sabotage;
- 1.1.12 **"IGRFA"** means Intergovernmental Relations Framework Act, Act 13 of ~~2025~~, 2005;
- 1.1.13 **"Parties"** means the DCDT, USAASA and SABC and each entity individually shall be referred to as "the party" as the context indicates;
- 1.1.14 **"PFMA"** means the Public Finance Management Act, 1999 (Act 1 of 1999) as amended from time to time;
- 1.1.15 **"Project Committee"** means a committee of persons appointed as representatives of the Parties to manage the implementation this Agreement.
- 1.1.16 **"SABC"** means the South African Broadcasting Corporation SOC Ltd;
- 1.1.17 **"Services"** means services as set out in clause 6;
- 1.1.18 **"Service Fee"** means the agreed upon fees USAASA will pay SABC for services rendered;
- 1.1.19 **"Signature Date"** means the date of signature of this Agreement by the Party last signing;
- 1.1.20 **"Steercom Implementation Committee"** means the committee referred to in clause 7 of this Agreement and it shall be accountable to the principals;
- 1.1.21 **"Term"** means the period during which this Agreement shall remain effective and binding on the Parties, which for the avoidance of doubt means the contractual period commencing on the Effective Date and enduring for a period of 12 (twelve) months until the Termination Date;
- 1.1.22 **"Termination Date"** means the date upon which this Agreement shall terminate, being 1 January 2025;
- 1.1.23 **"USAASA"** means the Universal Services and Access Agency of South Africa;

## 2 OBJECTIVES

- 2.1 The objective of this Agreement is to manage the relationship between the Parties and set out terms and conditions for the expedient completion of the Broadcasting Digital Migration by 31 December 2024 in line with the Minister's analogue switch off proclamation.
- 2.2 To this end, the Parties shall endeavour to:
- 2.2.1 Enhance transparency and accountability on the part of all Parties in the performance of their commitments;
  - 2.2.2 Promote forward-planning on projects to reduce costs and improve efficiency;
  - 2.2.3 Ensure coherence in the communication of the BDM campaigns and the realisation of government priorities;
  - 2.2.4 Maximise economies of scale brought about by the centralisation of the communication functions;
  - 2.2.5 Ensure the effective implementation of projects; and
  - 2.2.6 Further, establish a framework within which the delivery of services can be monitored, and appropriate action taken where problems arise.

## 3 DURATION OF THIS AGREEMENT

Notwithstanding the Signature Date, this Agreement is deemed to have commenced on the Effective Date and shall be valid from 1 January 2024 till 1 January 2025.

## 4 RESPONSIBILITIES OF THE DEPARTMENT

- 4.1 The Department agrees to:
- 4.1.1 Jointly with the SABC, develop a comprehensive BDM Awareness Communication Plan detailing its communication needs and the tasks that the SABC should undertake;
  - 4.1.2 Work together with the SABC and USAASA in respect of the implementation of BDM projects highlighted in the approved BDM Awareness Communications Plan, **Annexure "A,"** by providing within

- reasonable time, the requisite authorisations, resources and support;
- 4.1.3 Together with the SABC and USAASA agree on the project definition, the project deliverables, the roles and responsibilities of the Parties, the funding, and sign off schedules to this Agreement in that respect;
- 4.1.4 Ensure availability as ambassador to communicate on various platform; and
- 4.1.5 Ensure senior managers and communications workstreams from all Parties communicate on various platforms.

## 5 RESPONSIBILITIES OF USAASA

- 5.1 USAASA is responsible for the administration of the Universal Services Fund as contemplated in the Electronic Communications Act, Act 36 of 2005 subject to the control and direction of the executive authority.
- 5.2 USAASA shall pay the SABC as set out in the BDM Awareness Communications Plan, excluding any costs associated with the employment of Community Broadcasters and Radio as well as eMedia as an awareness platform. All invoices submitted by the SABC for payment will be supported by the portfolio of evidence as agreed upon by the Parties.
- 5.3 Payments will be effected within 30 (thirty) days of receipt of a valid invoice provided that all relevant portfolio of evidence as required be submitted together with the valid invoice.
- 5.4 The amount transferred to the SABC in terms of this Agreement must be utilised exclusively to fulfil the objectives of the BDM.
- 5.5 Accept unspent funds that remain un-cleared from the SABC suspense account which funds shall be transferred to USAASA at the end of the project.

## 6 RESPONSIBILITIES OF THE SABC

- 6.1 The SABC will be responsible for the management of the awareness campaign driven through the following medium: TV, Radio and social media platforms; organise the work to meet the objectives of the BDM project, including:
- 6.1.1.1 Manage the Awareness Campaign Programme, coordination;

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- 6.1.1.2 TV Commercial that will be aired across all SABC channels and streaming platforms;
- 6.1.1.3 Wall Murals, Taxi Exterior branding, Billboards in major exits and entries;
- 6.1.1.4 Dedicated resources and extensive social media campaigns including paid campaigns;
- 6.1.1.5 On location Go Digital activations in all 9 (nine) Provinces;
- 6.1.1.6 TV and Radio interviews (This is a free value add by the SABC);
- 6.1.2 Provide and build the relevant human capital resources and technical expertise that is required to execute the mandate of the BDM Project;
- 6.2 The SABC hereby gives assurance in terms of Section 38 (1)(i) and Section 51 (1)(i) of the PFMA that it implements effective, efficient and transparent financial management and internal control systems.
- 6.3 Insofar as may be applicable to this Agreement and the execution of its obligations hereunder, the SABC shall fully comply with all applicable legislation, including, without limitation, the PFMA;
- 6.4 The SABC shall in general perform the following responsibilities in respect of communication projects and programmes implemented on behalf of the Department in terms of the BDM Awareness Communications Plan, **Annexure "A"**:
  - 6.4.1 Ensure that it maintains a system of sound and legislatively compliant financial management;
  - 6.4.2 Reconcile the projected funds against the expected expenditure determined by the SABC based on market experience and resource allocation and submit the revised budget for sign-off by the DCDT and USAASA;
  - 6.4.3 Embark on media campaigns in marketing the programmes, policies and the awareness on BDM and call for indigent household to register;
  - 6.4.4 Seek the approval of the Department on communication plans in respect of campaigns;
  - 6.4.5 Submit invoices to be approved by USAASA and the DCDT for the payment of service rendered together with the portfolio of evidence agreed upon;
  - 6.4.6 The SABC will monitor and evaluate the effective implementation of the communication plan in meeting its set objectives by providing monthly

reports to the Department.

## **7 STEERING IMPLEMENTATION COMMITTEE**

- 7.1 The Parties to this Agreement shall appoint authorised 2 (two) representatives of a Head of Communications/Chief Director level to form part of a steering Implementation committee to be tasked with the following functions:
- 7.1.1 Oversee the implementation of this Agreement;
  - 7.1.2 Consider reports submitted by all Parties in terms of this Agreement; and
  - 7.1.3 Hold regular meetings as and when required to resolve any disputes and take decisions on the implementation of projects.
  - 7.1.4 On completion of the project, SABC will provide a detailed report on the execution of the project and the benefits derived such as client reach as per the objective, the discounts derived as a result and the full financial reconciliation report expenditure against the funds transferred.

## **8 CONFIDENTIALITY**

- 8.1 Notwithstanding the cancellation or termination of this Agreement, neither party shall at any time after the conclusion of this Agreement disclose to any person and/or use in any manner whatsoever the other party's Confidential Information or the existence or contents of this Agreement provided that:
- 8.1.1 Consent of the other party for such disclosure has been obtained, which consent shall not be unreasonably withheld or delayed;
  - 8.1.2 The Parties disclose the existence or contents of this Agreement to the extent required by any government policies or to the extent required by legislation;
  - 8.1.3 The Parties may disclose the Confidential Information to and permit the use thereof by its personnel and professional advisers, to the extent strictly necessary for the purposes of implementing or enforcing this Agreement, or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure for any other purpose shall constitute a breach; and
  - 8.1.4 The Parties shall not under any circumstances use and/or commercially exploit (or allow any third party to use or commercially exploit) any of the disclosing party's Confidential Information anywhere in the world, whether

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for its own benefit or for the benefit of any third party.

- 8.2 The provisions of this clause shall cease to apply to any Confidential Information of a party which:
- 8.2.1.1 Becomes generally available to the public other than as a result of a breach by either party; and
- 8.2.1.2 Is also received by either party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the disclosing party.

## 9 **GOOD FAITH AND CO-OPERATION**

- 9.1 In recognition of the principles of co-operative government embedded in Chapter 3 of the Constitution of the Republic of South Africa and the provisions of the IGRFA in respect of promoting good government interrelations, the Parties hereby undertake to exercise good faith in all dealings with one another arising out of the negotiation, conclusion and implementation of this Agreement and undertake to take such steps as may be reasonably necessary in order to ensure the successful implementation and fulfilment of its objectives.
- 9.2 The Parties undertake to fulfil their obligations promptly, diligently and in such a manner so as not to materially interfere with or delay the performance by the other of their obligations under this Agreement.
- 9.3 The Parties further agree that the implementation of this Agreement shall be a concerted effort, and that they shall work together in the fulfilment of the provisions of this Agreement.

## 10 **GENERAL WARRANTIES**

- 10.1 The Parties warrant that:
- 10.1.1 they hold and will obtain and maintain any and all such licenses, permits, approvals, authorisation, rights clearances, consents, exemptions, and registrations from any person, organisation, or authority as may be necessary to fulfil their obligations and warranties under this Agreement for the Term;

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- 10.1.2 in the exercise of their rights and obligations under this Agreement, they shall ensure that all relevant laws, regulations, license authorisation, and permits are complied with;
- 10.1.3 all representations and warranties by them shall remain true and in force during the Term;
- 10.1.4 they are duly authorised to enter into this Agreement and they are not bound by the provisions of any other Agreement, which could adversely affect compliance with the terms and conditions of this Agreement;
- 10.1.5 they shall not do anything that will be defamatory, injurious or in any way bring the reputation of the other Party, or any third party into disrepute or expose the Parties to any action, claim or demand by any third party arising out of any intentional or negligent act or omission on the part of any of the Parties or its employees, or any other person(s) acting under its authority with regard to the provisions of this Agreement; and
- 10.1.6 the signatories to this Agreement on behalf of the Parties are duly authorised to represent the Parties herein and to bind them hereto

## 11 INDEMNITY

The Parties hereby indemnify and hold each other harmless against any direct loss, claim, action, direct damage or expenses suffered or sustained by the other, or from any claim by any third party, pursuant to or arising out of the breach by either party of its obligations, representations or warranties contained in this Agreement.

## 12 COPYRIGHT

- 12.1 Ownership of all copyright and moral rights in and to all materials and documentation, provided by the Department for use in the advertisements shall remain vested in the Department notwithstanding any authorisation by the Department to the SABC to use the material or documentation, and under no circumstances shall any party given the right to use materials or

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documents in which the other party has copyright, acquire any right in and to that material or document;

12.2 Each Party, in favour of the other, acknowledges that:

12.2.1 the other party's intellectual property and the goodwill associated therewith are the sole and exclusive property of the party and therefore agrees that any use thereof shall, as between the Parties, be used for the benefit of the other party, and that it shall not in any manner represent that it has any rights of ownership in and to the party's intellectual property;

12.2.2 it shall not put in issue the validity of the other party's intellectual property or itself claim any rights in the intellectual property of the other party;

12.2.3 it may not do anything, which, in the reasonable opinion of the other party might tend to disregard the other party's intellectual property or injure the other party's rights therein.

### 13 USE OF LOGO AND NAME

13.1 The SABC may not make use of the Department's logos or name in the broadcasts or any other publications unless the consent, in writing, has been given by the Department.

13.2 Where consent is given to use the logo or name of the Department, only the official corporate identity guidelines shall be applicable.

### 14 BREACH AND TERMINATION

14.1 The Parties agree that they shall endeavour to perform the obligations spelt out in this Agreement in the spirit of good governance and cooperative government. The non-performance of any obligation/s by either party shall be dealt with in accordance with the Intergovernmental Relations Framework Act (Act No. 13 of 2005) and the dispute resolution clause.

### 15 DISPUTE RESOLUTION

15.1 The Parties recognise that as entities of national government they do not possess a separate and distinct legal identity and that they therefore may not institute legal action against each other. Thus, it is agreed that if a dispute

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arises out of or in connection with this Agreement, the following dispute resolution mechanism shall be applied:

- 15.1.1 The Parties shall attempt to resolve the dispute through discussions of a joint committee which shall comprise duly authorised representatives of the SABC, USAASA and the Department, who are responsible for the day-to-day operations of the particular project in relation to which the dispute has arisen;
- 15.1.2 Should the joint committee fail to reach agreement, the Parties shall declare the dispute as a formal intragovernmental dispute, which shall be referred to the Chief Executive Officers of the respective entities and the relevant Chief Director of the Department to resolve the dispute;
- 15.1.3 Should the dispute remain unresolved, it shall be referred to either the Deputy Directors-General/ or the Director General ("DG"), Chief Executive Officer of the SABC and the Department, depending on the magnitude of the issues in question. The decision to refer the matter to Deputy Directors-General or the DG shall be made by the Chief Executive Officer of the SABC and the Chief Director of the Department, as mentioned in clause 15.1.2 above;
- 15.1.4 Should the dispute come to the DG's, the DG's may:
  - 15.1.4.1 Reach an agreement with each other; or
  - 15.1.4.2 Refer the dispute to a facilitator any other pre-determined person or body considered appropriate to resolve the dispute; or
  - 15.1.4.3 Attempt to resolve the dispute with the input of the respective Director General of the Department, USAASA and the SABC.
- 15.2 Should the dispute remain unresolved, the DG may consider referring the matter to the respective Ministers to make a final decision.

## 16 ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements, arrangements and understandings relating to the subject matter of this Agreement.

- 16.2 The Parties will have the right to propose amendments, variations or additions to this Agreement, should same become necessary during the course of implementation.
- 16.3 Any amendments, variations or additions referred to in clause 16.2 will be subject to a bona fide negotiation process between the Parties.
- 16.4 No amendment variation or addition will be valid unless such amendment, variation or addition has been reduced to writing and signed by the Parties.

**17 CONTACT DETAILS**

- 17.1 Notices, correspondence, other documents or communications of whatever nature in relation to this Agreement shall be made by the Parties to the following addresses:

**17.1.1 DCDT**

Physical address: iParioli Office Park, 1166 Park Street, Hatfield  
Telephone: (012) 427  
Postal address: P. O. Box X860; PRETORIA, 0001

**17.1.2 USAASA**

Physical address: Building 1, Thornhill Office Park; Vorna Valley;  
Midrand,  
Telephone: 011-5641600  
Postal address: P. O. Box 12601; Vorna Valley, MIDRAND, 1686

**17.1.3 SABC**

Physical address: Cnr. of Artillery & Henley Rd, Auckland Park,  
Johannesburg  
Telephone: (011) 714 3057  
Postal address: Private Bag X1 Auckland Park 2006

- 17.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by telefax and by e-mail.

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17.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, in the event that it was not sent to or delivered at the address set out above.

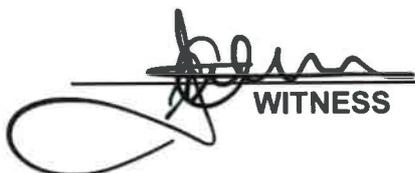
SIGNED AT Midrand ON 29 February 2024

  
DD  
DCDT  
Ms. NONKQUBELA JORDAN-DYANI  
DIRECTOR-GENERAL

\_\_\_\_\_  
WITNESS

SIGNED AT MIDRAND ON 29 JANUARY 2024

  
USAASA  
Ms Chwayita Madikizela  
Acting CEO

  
WITNESS

SIGNED AT Auckland PARK ON 22 January 2024



**SABC**  
**Mr Lungile Binza**  
**Acting GCEO**

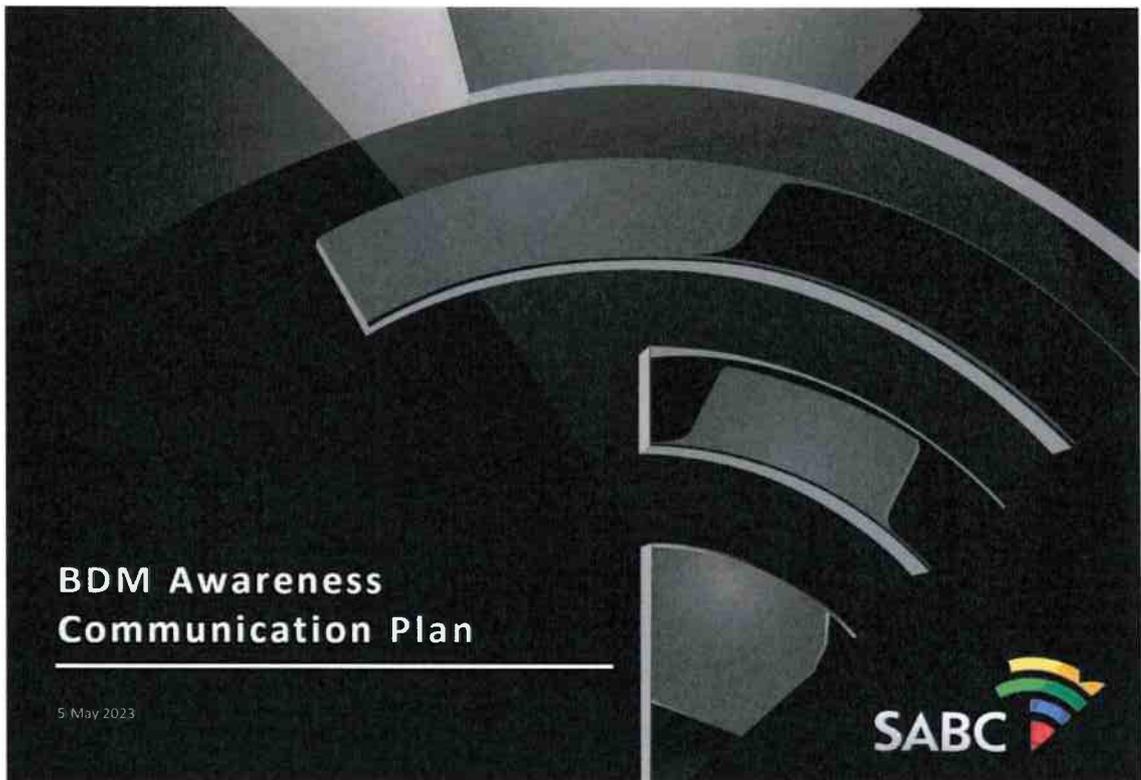


**WITNESS**

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## ANNEXURE "A"



## Project Background

**South Africa has started the process of migrating broadcasting signals from analogue to digital**

- Analogue has been switched off in 5 out of 9 province
- But 4 big provinces (Gtg, KZN, ECP & WCP) still need to be done

**Communication task:**

- Drive public awareness and understanding of the digital migration process
- Inform and educate as to the need for a digital decoder / streaming platforms
- Inform and educate as to Government's provision for low income households / free decoder installations
- Inform and inspire regards the benefits of digital migration and its significance for the country
- Create a call to action for all to "Go Digital"

*The process is not new...*

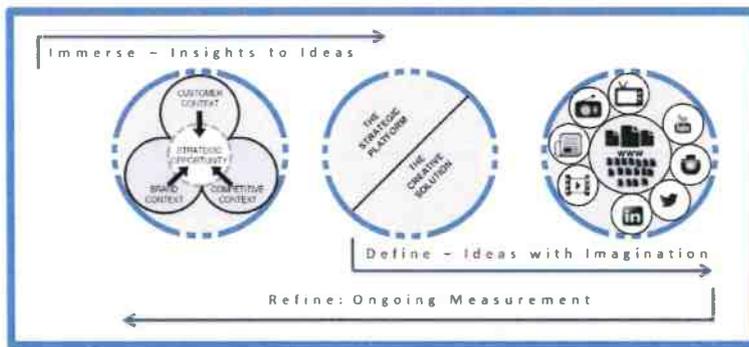
*We can leverage existing elements, but we must Inform, Inspire and Involve key stakeholders*



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## Our Approach

'Immerse' to 'Define' – Strategic Inputs into Creative Solutions



*"Logic will get you from A to B. Imagination will take you everywhere."* Albert Einstein



## Immersion



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# Immersion

Insights and opportunities to help 'Define' the way forward



# Customer Context

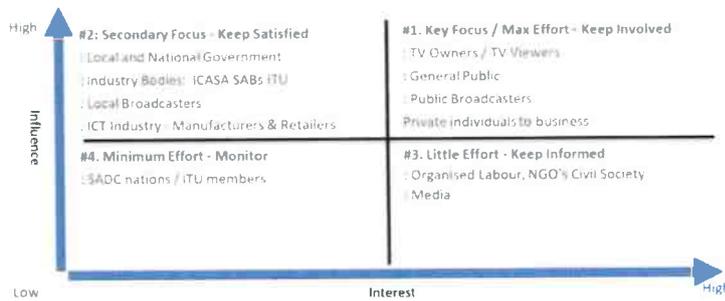
Who are our key stakeholders: What are their needs, beliefs and behaviours?



# Our Key Stakeholders

Segmenting our target audience – Most important to least important

- At both regional and national levels

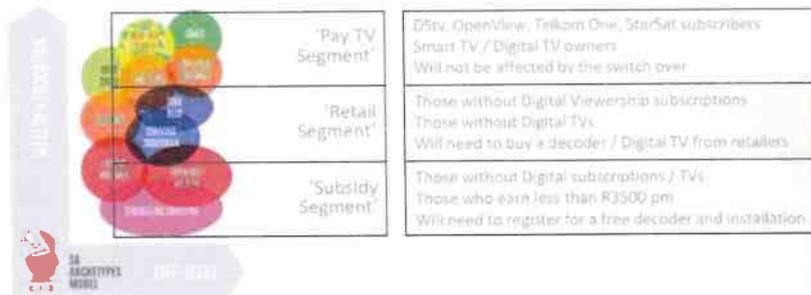


Our primary focus is on the TV Owners / Viewers / General Public (of GTG KZN ECP WCP)



# Our Key Stakeholders

Key focus. Maximum effort. TV Owners / Viewers / General Public: 3 Segments



Primary focus: Subsidy and Retail Segments. But all require generic and specific messaging  
 And each segment requires different media and medium weightings and approaches



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*[Handwritten signatures and initials]*

# Our Key Stakeholders

## Current mindsets

### 'Subsidy Segment'

- What is digital migration?
- Why change?
- Will it cost me money?
- The government must pay
- I feel suspicious about the change
- Government does not care about us
- I don't have a job / I can't afford this

### 'Retail Segment'

- What is digital migration?
- Why change?
- Will it cost me money?
- The government must pay
- I feel suspicious about the change
- Government does not care about us
- I don't want this

### 'Pay TV Segment'

- What is digital migration?
- Oh – that migration thing
- I am already digital
- I don't watch SABC

**All need to be informed – but most important are the Subsidy and Retail Segments**  
**Those who could end up with no ability to view TV following the switchover**

Source: National Broadband Network – roll-out survey conducted for the project



# Our Key Stakeholders

## Realities of the Subsidy and Retail Segments

The elderly are the laggards who stand to be left behind – we can't allow this

- Challenged by and fearful of change
- Challenged by and fearful of technology
- But all have younger family and friends
- All have those who are digitally savvy



**Learning from the roll-out of the Vaccination campaign – target the younger sectors**  
**Get the 'youth' and 'digitally savvy' to assist the elderly and/or laggards**  
**Need reasons to believe and a relevant call to action**  
**Don't create 'fear' – build positive affirmation**



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## Category Context

What are the category dynamics and influences at play?



## Category Context

### Broadcasting Digital Migration (BDM) in South Africa

- The last set date for the Analogue Switch Off (ASO) was March 2023
- The BDM intent is not new / has long been delayed

#### The big picture benefits

- The migration is part of the Department of Communications and Digital Technologies (DCDT) vision to realize universal access and build a people-centred and inclusive information society, improving the lives of our people

#### The viewing benefits

- Improved picture and sound quality
- More channels
- Interactive services
- Ability to rewind or pause live TV

***An upgrade, enhancing the diversity of our content and improving the delivery of content to all***



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## Category Context

### Key stakeholder advantages

- Greater variety of programming. Greater access and more choice. Better picture quality
- Access to value-added services and multimedia content
- Easier access to regional broadcasts with stronger local content
- New services e.g. messaging, teleconferences, programmable VCR, advertising, web surfing etc
- Content enhancements for people with disabilities
- Simple installation and operation. No dish or antenna required
- Shifting audiences to an information society
- Aligning universal broadcasting catering to all South Africans
- Presents huge social gains for especially when used for distance education
- Cost effective delivery of multiple information services



## Category Context

### Key stakeholder disadvantages

- Cost of receiver sets and equipment
- No perceived benefits for cost
- Poor audience take-up might affect broadcasting
- Time delay in freeing up spectrum
- Delay in optimizing frequency allocations
- Delay in auctioning off spare capacity



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# Category Context

Digital migration – International marketing case studies:



All 'show and tell'. Most countries show a TV + STB in a digital form. All talk up Digital. Most have a call to action and benefit led messaging. Some have a mascot.



# Category Context

Digital migration – International marketing case study - UK:



Multi-media campaign. National & regional campaign. Strong call to action. Mascot led.



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## Category Context

Digital migration – International marketing case study - UK:



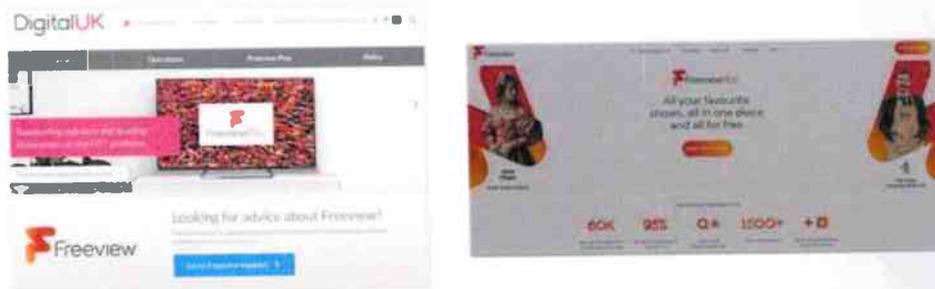
Digital UK and their mascot then 'handed over' to Freeview – the actual access platform....



## Category Context

Digital migration – International marketing case study – UK: Freeview; the access platform

Whole new brand, new look and feel, same promises



Campaign with multiple messages, focusing on viewer benefits/positive affirmation....



# Category Context

## Digital migration – International marketing case study – UK: Freeview messaging

- Simply put, it's live TV and on demand, all in one place. Watch catch up through your TV guide and access last week's shows, on demand without lifting a finger.
- Freeview gives you more choice of the best TV absolutely free. Catch up on your favourite shows in the comfort of your lounge room with Freeview.
- All your favourite programs in digital, star quality
- Fantastic stuff, all FREE to watch LIVE, ON DEMAND
- Sadly, we can't pause life. But now can pause and rewind TV
- Favourite shows and films all on at the same time? No Problem – you can now record them
- All for free

*Digital UK still exists – but the public and the industry interact through Freeview*



# Brand Context

Where we are now: vs. where could we go and what should we be doing?



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## Brand Context

Recommendation: Leverage the existing platform of Go Digital for the migration/switch-over

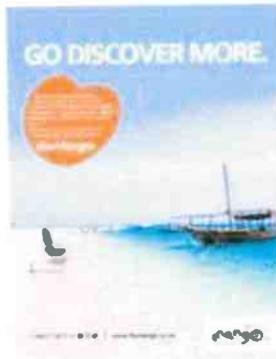


While the logo and lock-up is strong, a mascot that looks like an old TV rather than a digital platform or bot fails to help – it is recommended not using the mascot or changing him.



## Brand Context

Recommendation: 'Sweat the asset' – Opportunity to leverage the Go Digital element  
E.g. Put 'Go' to work –



E.g. Go Discover More. Go Dezemba. Go here, there, everywhere.



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## Brand Context

However, once the migration/switch-over is done, 'Go Digital' becomes redundant....  
The 'new' digital platform needs a brand name and identity (ala Freeview in the UK)



*We need to build a new brand for the new digital platform (NewCo). One platform that all customers can connect into. One platform that broadcasters' brands can live on*



## Insights and Opportunities in Summary

### Customer Context

- Very **diverse** - From TV Owners / General Public to Broadcasters to Government to Industry bodies
- Primary focus: Subsidy & Retail Segments. Target youth and digitally savvy to help the laggards make the change
- All need to be informed regards the switch-over. Need reasons to believe, relevance and a strong call to action

### Category Context

- Many examples of Digital migration marketing case studies – all branding and comms straight forward 'show and tell'
- All focus on the migration / switch-over. Most have a call to action and benefit led messaging
- Digital UK was no different – focused on Migration. A new brand (Freeview) then became the digital platform customers engage with

### Brand Context

- We have the established Go Digital logo – a strong call to action
- No need to create a new idea – opportunity is to leverage to existing platform – and create relevance for tech savvy Subsidy & Retail Segments
- The 'new' digital platform needs a brand name and identity (ala Freeview in the UK)

**Focus on TV owners most likely to be affected by the migration – promote positively**



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## Marketing & Communication Strategy



## Marketing and Communications Strategy

### Key Objectives

- Drive awareness of the migration and promote uptake of decoders
  - Ensure that all who may be affected are adequately informed, well before the switch-over
  - Sell. Sell. Sell. Set up digital (versus analogue) as Different, Better, Special.
    - Promote the need for digital decoders and/or digital TVs to those still on analogue sets



# Marketing and Communications Strategy

Key Objectives: Drive awareness of the migration and promote uptake of decoders

- Need to win the Minds, Hearts and Actions of key stakeholders
  - Need to Inform, Inspire and Involve



Create relevance for different customer segments through targeted media and messaging



# Marketing and Communications Strategy

Inform Inspire & Involve different customer segments through targeted media and messaging

Generic Go Digital Messaging Approach		
The digital switchover is happening Go with a sharper picture. Go with more channels. Go rewind or pause live TV. Go digital.		
<p><b>Subsidy Segment</b></p> <p><b>Inform</b> The old analogue signal will be switched off. Give will provide decoders to the needy (RR income &lt; R3000 / Social grant recipients)</p> <p><b>Inspire</b> Better pic, Better Sound More Channels, Pause and Record, Interactive TV</p> <p><b>Involve</b> Visit your nearest post office to register for a free decoder and installation</p>	<p><b>Retail Segment</b></p> <p><b>Inform</b> The old analogue signal will be switched off. If you have an old TV with built-in sets you need a digital decoder and/or digital TV.</p> <p><b>Inspire</b> Better pic, Better Sound More Channels, Pause and Record, Interactive TV</p> <p><b>Involve</b> Visit your local retailer to enquire about digital TVs and/or decoders.</p>	<p><b>Pay TV Segment</b></p> <p><b>Inform</b> The old analogue signal will be switched off. As you already have a (DStv, Opticom, StarSat) decoder you won't be affected</p> <p><b>Inspire</b> Better pic, Better Sound More Channels, Pause and Record, Interactive TV</p> <p><b>Involve</b> If you want the channels that are only on DTT then you need to get a decoder</p>

Messaging needs Vernacular translations and/or an English/Vernac blend for specific regions



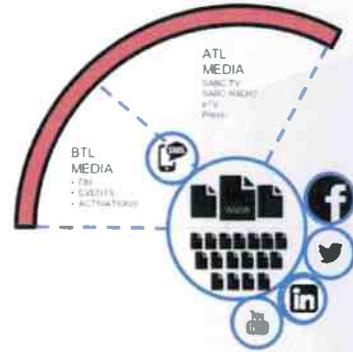
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# Marketing and Communications Strategy

**Key Touchpoints – Lead with the affected platform: Broadcast TV**

- **Above The Line**
  - TV Primarily SABC 1. TV adverts and crawlers
  - SABC Radio, PCS & PBS. Ads and live reads across all languages
  - Press – Regional and localized community papers
- **Below the line**
  - Events and Activation, with leaflets/flyers
  - Gig-Rigs at Community Centers, Influencers/Celebrity Hosts
- **Digital**
  - Leverage affected brand platforms – SABC
  - Websites, Facebook, Twitter, Instagram – Leverage influencers
- **Direct Marketing**
  - SMS / direct messaging to all TV owners through TV licences



*Budgets will determine final media elements and weightings*



# Marketing and Communications Strategy

	Mass Reach	Awareness	REACH	REACH	Engagement
Platform	VOUCHER Media  Nationwide Vouchers	OOH Media  OOH Media	TRANSIT Media  Buses	OOH Media  Street Poles, Billboards, Signage	Digital Media  Social & Mobile, Influencers
Audience	SEM 2-5 Nationwide	SEM 2-6 Key Townships	SEM 3-8 Nationwide	SEM 5-9 GP/KZN/MP/WC	SEM 3-8 Nationwide
Common Touch	<b>Attention</b> To create calls to action, inform and reach the mass audience	<b>Localized</b> Target Area specific and township focus medium	<b>Regional</b> Ads displayed at key nodes travel terminals/routes	<b>Attention</b> Awareness seeking mediums strategically placed to capture high traveler visibility	<b>Interactive</b> Engaging content focused on interaction and responsiveness (A two-way channel)
	Highly targeted & personal	High Brand Impact	Highly relevant	High brand reinforcement	Viral, Shareability & talkability // high



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# Marketing and Communications Strategy

## Summary

- Leverage the established platform of 'Go Digital'
- But make it more relevant to the Subsidy and Retail Segments.
- Target youth and the digitally savvy to help the laggards make the change
  - Promote the benefits of Digital
  - Promote the benefits of the change
  - Build positive affirmation and appreciation
  - Talk in the language of the people
  - And talk digital



# Marketing and Communications Strategy

## Strategic Direction

- The focus is on 'migration' - leverage the established platform of 'Go Digital'
  - Drive the benefits of Digital
  - Promote the benefits of the change
  - Build positive affirmation and appreciation
  - Talk in the language of the people
    - And talk digital

**Danko Digital!**

**#DankoDigital**



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## Creative Solutions



## Creative Approach

### Summary

- We will put our logo's brand colors to work and create a bold fresh look and feel that is clean eye catching, trendy and appealing.
- We will introduce more big & bold text with a short call-to-action or catch phrase so as to captivate the audience.
- The brand tone will be more conversational, approachable & relatable and will focus more on the benefits of switching to digital and encourage others to do so.
- We are going to liven-up the brand tone through the use of influencers, musicians and relatable faces. Macro and Nano influencers will be used to amplify the messaging on digital platforms.
- We will use digital channels to drive the campaign further and use the power of pop-culture and social media trends to amplify the messaging. Through social media challenges and interactive games and competitions we will solicit user generated content that will keep the public interested and excited about the campaign.



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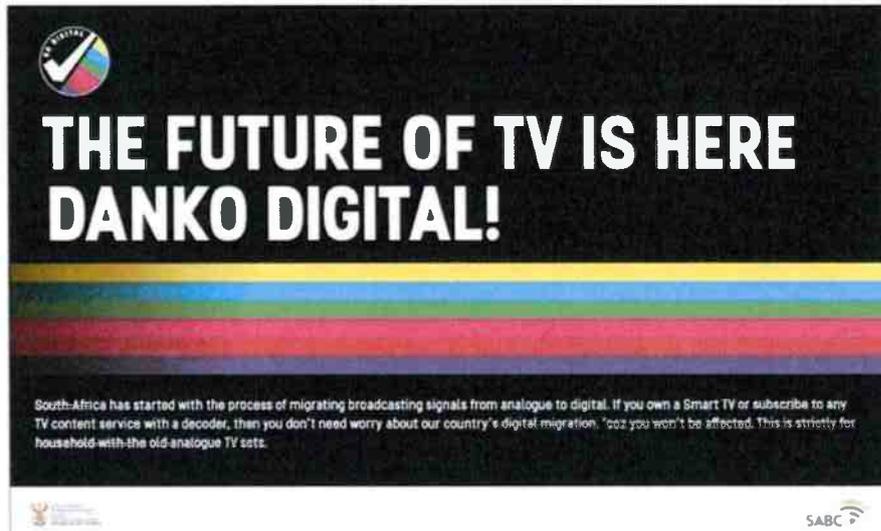
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## Creative Approach



## SCROLLING BANNER



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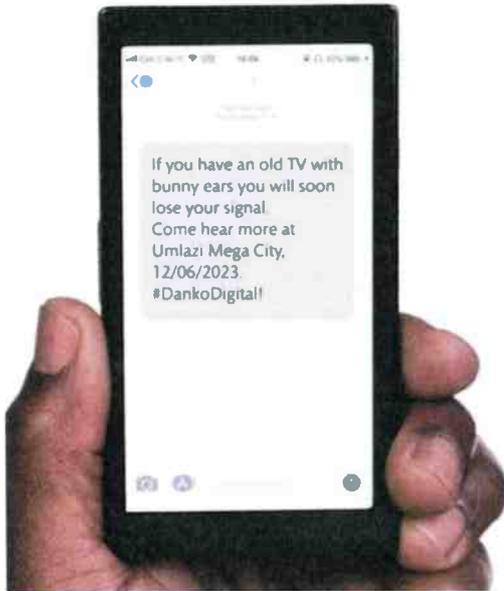
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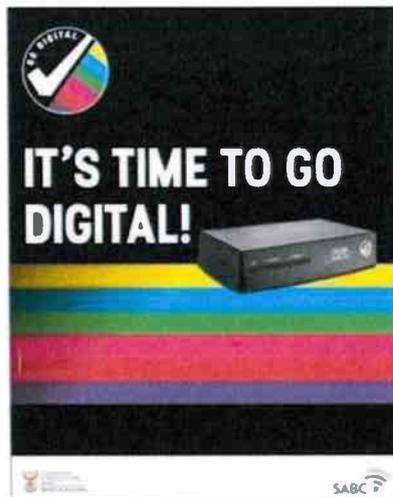
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SMS MESSAGE



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PRESS - LOWER MARKET

**THE FUTURE OF TV IS HERE  
DANKO DIGITAL!**

South Africa has started with the process of migrating broadcasting signals from analogue to digital. If you own a Smart TV or subscribe to any TV content service with a decoder, then you don't need worry about our country's digital migration, 'coz you won't be affected. This is strictly for household with the old analogue TV sets.

SABC

PRESS - MIDDLE MARKET

**CHEERS ANALOGUE,  
DANKO DIGITAL!**

you've probably heard that South Africa is moving from analogue to digital broadcasting. This means you need to upgrade from your old TV to a smart TV that can connect to digital broadcasts. You can do this via a decoder (from DSTV, Openview, Telkom One, Starsat or other streaming platforms) or get the state-of-the-art Go Digital decoder that opens up a whole new world of content and interactivity. Once you go digital, you'll never go back. Get your decoder from your favourite retailer today!

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PRESS - DSTV DECODER/SMART TV OWNERS

**THE FUTURE OF TELEVISION IS HERE!**

South Africa has started with the process of migrating broadcasting signals from analogue-to-digital. If you own a Smart TV or subscribe to any TV content service with a decoder, then you don't need worry about our country's digital migration, 'coz you won't be affected. This is strictly for household with the old analogue TV sets.

SABC

**TO DIGITAL**

Kamo, I heard Digital Migration is here. Is it like abo-Tik Tok?

WTH, my granidea is up on Tik Tok???

Yey, kugaga ofhandayo. I warma know.

It's true. Mzansi is going digital. Which means your old TV is out. You need a decoder to help you get digital content.

Boom, 10 past 4 indlu iyawa. I'm confused.

Ska wara, I'm here to help you go digital!

Working together we can make sure everyone understands Mzansi's digital migration.

**#DankoDigital**

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RADIO 1

ANNCR: Uwuzwile umgosi, iSouthah is moving from analogue to digital broadcasting. Shem, this means wena udinga i-upgrade from your old TV le yamzukwana, yama-aerial to a smart TV that can connect to digital broadcasts.

Uyang'thola? Danko!

You can do this via a decoder from DSTV, Openview, Telkom One, Starsat or other streaming platforms or ubambe the new Go Digital decoder that opens up a whole new world of content and interactivity. Ya, push i-passion nge-digital.

Sihamba nabahambayo! Ungasali babah!

Thenga i-digital decoder vandaag.

Sithi danko digital!

For more info, click on [www.oooo.co.za](http://www.oooo.co.za)

RADIO 2

ANNCR: To truly move with the times in life, you need to step outside your comfort zones and take on new challenges...

Change, adapt, innovate, and go push yourself to the limits.

Go with a sharper picture. Go with more channels.

Go rewind or pause live TV.

Get your digital decoder and go digital.

If you already have a smart TV or a decoder, then no worries, you're already in the new world. Go wild!

Sithi danko digital!

For more info, click on [www.oooo.co.za](http://www.oooo.co.za)

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RADIO 3

ANNCR: Change.

Change is good. In fact it's not just good, it's downright exhilarating!

Now, with South Africa changing from analogue to digital TV broadcast signal, it's time to step outside of your comfort zone and get going to the new world.

Go with a sharper picture. Go with more channels.

Go rewind or pause live TV.

Thenga i-digital decoder vandaag.

Sithi Danko digital!

For more info, click on [www.oooo.co.za](http://www.oooo.co.za)

FLAT BANNER  
COMPETITION



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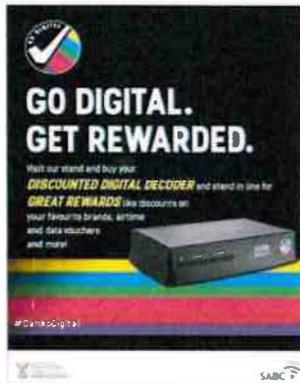
FLAT BANNER COMPETITION



AIRTIME VOUCHERS



Inside left



Inside right



Back



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Handwritten mark resembling a stylized 'A' or 'B'.

010-191

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## Social Media Campaign Strategy



## Creative Approach

Digital communication will be done in a style that is best suitable for social media. We will use carrousels and rotating banners instead of text heavy posters.

Some content will be boosted to increase the social media reach and also ensure that the messaging reaches a targeted audience.

We will use digital channels to drive the campaign further and use the power of pop-culture and social media trends to amplify the messaging.

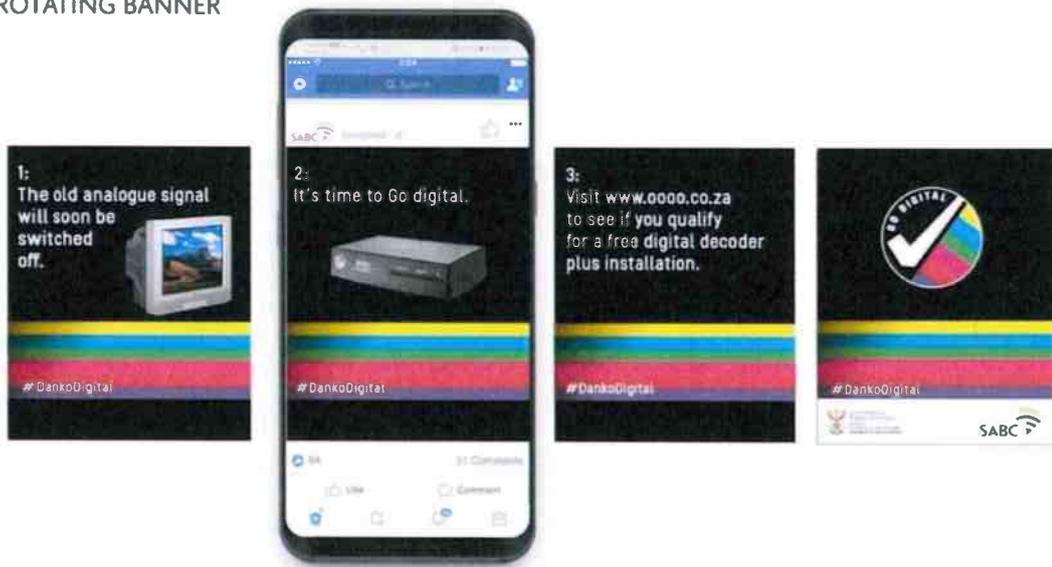
Through social media challenges and interactive games and competitions we will solicit user generated content that will keep the public interested and excited about the campaign.

We are going to liven-up the brand tone through the use of influencers, musicians and relatable faces.

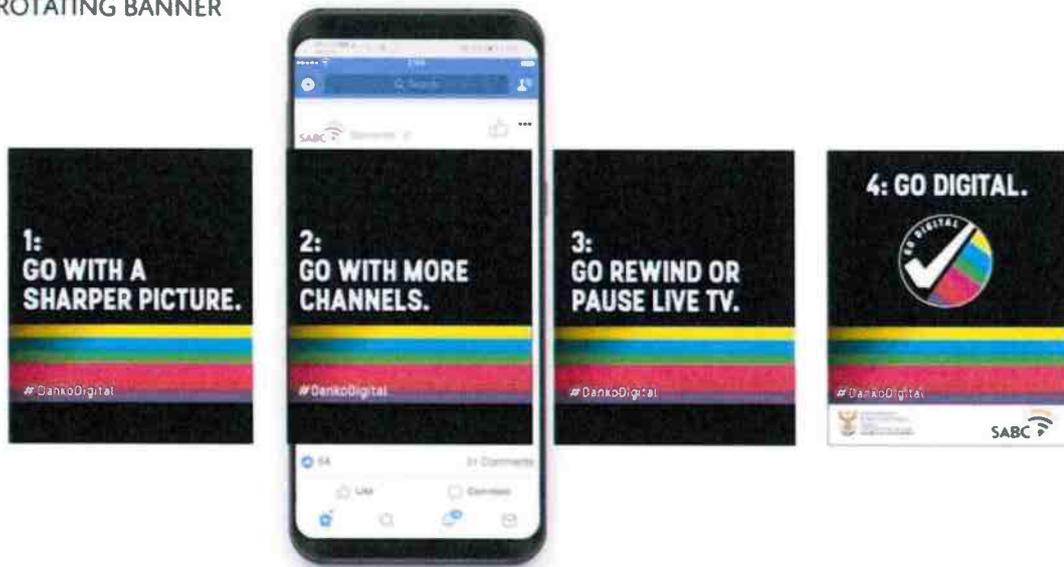
Macro and Nano influencers will be used to amplify the messaging on digital platforms.



ROTATING BANNER



ROTATING BANNER

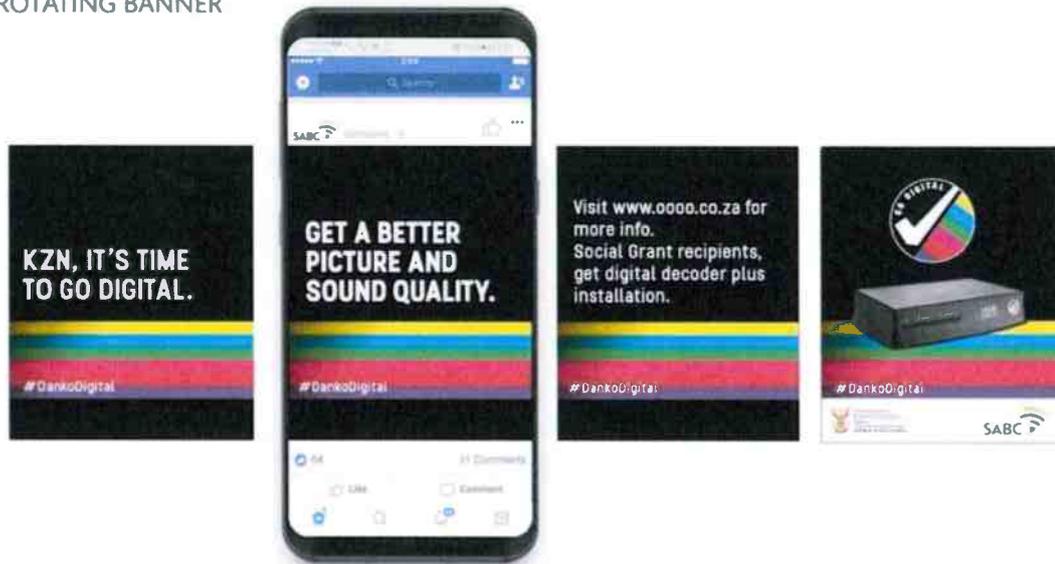


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## ROTATING BANNER



## Social Media Viral Challenges

The benefit here is that all entrants automatically become micro influencers when they take part in these challenges.

1. **#DankoDigital Lip-Sync Challenge/ Competition** – The audience will be invited to re-create our TVC and post it on social media. (We recommend a funny, catching TVC that is also informative and educational)

2. **#DankoDigital – Rap Competition - Amapiano vs Gqom vs Hip-Hop**

**Phase 1:** We invite the public to make 1 song out of any of the 3 beats we post on our social media pages using the REMIX & DUET features of social media. Their brief will be to highlight the benefits of going digital in their song.

3. **#DankoDigital – Dance Competition - Amapiano vs Gqom vs Hip-Hop**

**Phase 2:** We invite the public to dance to the 3 winning songs from phase 1.

We will get a dance influencer to teach the public the dance that they should imitate.

Using the REMIX & DUET features of social media users will be able to use our winning songs from phase 1 to create their dance challenge entries.

The positive is that every dance video that gets posted now has the educational message on “Why To and How To” go digital!



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**Thought Starters - Social Media Viral Challenges:  
Composers & Lip-Syncing**

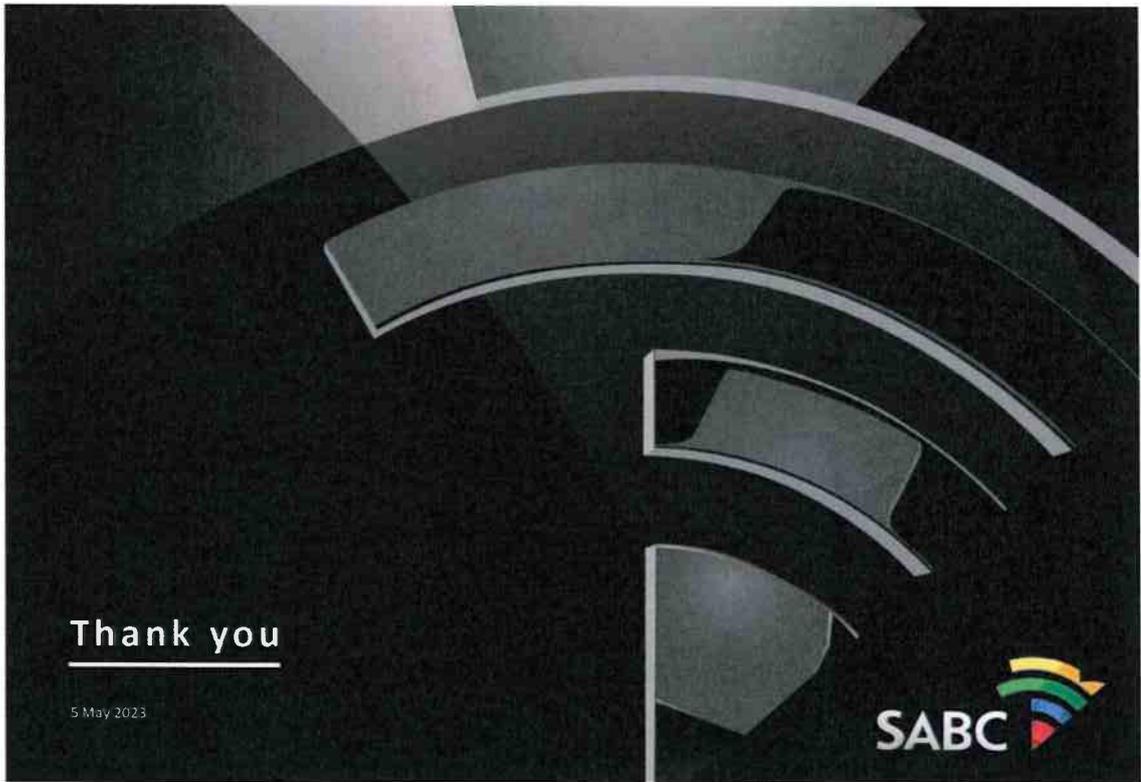


**Thought Starters - Social Media Viral Challenges:  
Dance Challenges**



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e.tv (Pty) Ltd  
Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
Reg. No: 1997/012816/07

03 February 2022

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

#### **etv ANALOGUE TRANSMITTER TO BE SWITCHED OFF AS PHASE 1**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 1, we have identified the following etv analogue transmitters to be switched off on 14 March 2022, as part of our plan presented to the BDM Technical Committee, to clear above 694 MHz.

- Bethlehem
- Kroonstad
- Ladybrand

This letter is the formal notification of this planned first phase analogue switch off. etv will provide Sentech with the text that must be displayed on this transmitter as a



scrolling banner, informing the citizens served by these analogue transmitters of the planned switch off that will take place on 14 March 2022, ahead of the switch off. This banner should be displayed on each of these transmitters for a period of 30 days. We request Sentech to adjust the April 2022 etv invoice accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 3 DTT transmitters.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2022-02-03 13:17:57 +02:00  
Reason: I approve this document

**ANTONIO LEE**

Group Chief Operating Officer



010-199

e.tv (Pty) Ltd

Telephone landline: +27 11 537 9300 • Fax: +27 11 537 9310

Physical address: 4 Albury Road • Dunkeid West • 2196 • Johannesburg

Postal address: Private Bag X994 • Sandton • 2146 • Johannesburg

Reg. No: 1997/012816/07

13 May 2022

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

### **etv ANALOGUE TRANSMITTER TO BE SWITCHED OFF AS PHASE 2**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 2, we have identified the following etv analogue transmitters to be switched off on 13 June 2022, as part of our plan presented to the BDM Technical Committee, to clear above 694 MHz.

- Christiana
- Standerton
- Sabie

*SM*

**Directors:** MKI Sherrief, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

010-199

K

This letter is the formal notification of this planned second phase analogue switch off. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the planned switch off that will take place on 13 June 2022, ahead of the switch off. This banner should be displayed on each of these transmitters for a period of 30 days. We request Sentech to adjust the July 2022 etv invoice accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 3 DTT transmitters.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2022-05-13 13:34:09 +02:00  
Reason: I approve this document



**ANTONIO LEE**

Group Chief Operating Officer

SM



010-201

e.tv (Pty) Ltd

Telephone landline: +27 11 537 9300 • Fax: +27 11 537 9310

Physical address: 4 Albury Road • Dunkeid West • 2196 • Johannesburg

Postal address: Private Bag X994 • Sandton • 2146 • Johannesburg

Reg. No: 1997/012816/07

25 August 2022

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

### **etv ANALOGUE TRANSMITTER TO BE SWITCHED OFF AS PHASE 3**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 3, we have identified the following etv analogue transmitters to be switched off on 26 September 2022, as part of our plan presented to the BDM Technical Committee, to clear above 694 MHz.

- Aurora
- Suurberg
- Matatiele

*SM*

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

010-201

K

- Kokstad
- Mooi River
- Nongoma
- Mulbarton

This letter is the formal notification of this planned third phase analogue switch off. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the planned switch off that will take place on 26 September 2022, ahead of the switch off. This banner should be displayed on each of these transmitters for a period of 30 days. We request Sentech to adjust the October 2022 etv invoice accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 7 DTT transmitters.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2022-08-26 11:02:03 +02:00  
Reason: I approve this document



**ANTONIO LEE**

Group Chief Operating Officer

*SM*

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

010-202

*T*

*SM*

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

010-203

*K*



e.tv (Pty) Ltd  
Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
Reg. No: 1997/012816/07

29 September 2022

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

#### **e.tv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PHASE 4**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy, as well as the ICASA Digital migration regulations, to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 4, we have identified the following e.tv analogue transmitters to be switched off on 17 October 2022, as part of our plan presented to the BDM Technical Committee, to clear the spectrum above 694 MHz:

- Amanda Glen
- Fishhoek
- Franschhoek
- Grabouw
- Sea Point
- Simonstown
- Table Mountain



This letter serves as the formal notification of this planned fourth phase analogue switch off. In order to facilitate a smooth migration, e.tv will provide Sentech with the text that must be displayed on each analogue transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the planned switch-off that will take place on 17 October 2022. The banner as per annexure 1 should be displayed on each of the above transmitters for a minimum period of 7 days prior to the switch-off date.

Following the switch-off, we also require a written report from Sentech in respect of each of the identified transmitters mentioned above setting out the following information:

- a screenshot of the e.tv analogue channel for each transmitter including the banner advertising the switch-off date;
- confirmation that the site has been switched off and the date and time of such switch-off.

Please note that since e.tv has not yet reached an agreement with Sentech on the DTT MTA, we will not incur the cost of the DTT transmitters at these transmitter sites, and accordingly all e.tv channels should be removed from these 7 DTT transmitters.

We request Sentech to adjust the e.tv invoice for November 2022 accordingly.

We trust you find the above in order.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2022-09-30 08:45:04 +02:00  
Reason: I approve this document

**ANTONIO LEE**

Group Chief Operating Officer



**ANNEXURE 1**

ATTENTION ALL etv VIEWERS:

DEADLINE: 17 OCTOBER 2022

After this deadline, e.tv analogue service will not be available in your area.

To continue enjoying your favourite TV shows and get many more entertaining channels, get an Openview decoder from a retailer near you **BEFORE 17 October 2022**.

For any enquiries contact the e.tv Call Centre on **0861 696 843**

K



010-207

e.tv (Pty) Ltd

Telephone landline: +27 11 537 9300 • Fax: +27 11 537 9310

Physical address: 4 Albury Road • Dunkeld West • 2196 • Johannesburg

Postal address: Private Bag X994 • Sandton • 2146 • Johannesburg

Reg. No: 1997/012816/07

07 October 2022

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

#### **e.tv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PHASE 5**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy, as well as the ICASA Digital migration regulations, to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 5, we have identified the following e.tv analogue transmitters to be switched off on 7 November 2022, as part of our plan presented to the BDM Technical Committee, to clear the spectrum above 694 MHz:

- **VILLIERSDORP**
- **DONNYBROOK**
- **GREYTOWN**
- **KURUMAN HILLS**

This letter serves as the formal notification of this planned fourth phase analogue switch off. In order to facilitate a smooth migration, e.tv will provide Sentech with the text that must be displayed on each analogue transmitter as a scrolling banner,

*SM*

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

010-207

*K*

informing the citizens served by these analogue transmitters of the planned switch-off that will take place on 7 November 2022. The banner as per annexure 1 should be displayed on each of the above transmitters for a minimum period of 30 days prior to the switch-off date.

Following the switch-off, we also require a written report from Sentech in respect of each of the identified transmitters mentioned above setting out the following information:

- a screenshot of the e.tv analogue channel for each transmitter including the banner advertising the switch-off date;
- confirmation that the site has been switched off and the date and time of such switch-off.

Please note that since e.tv has not yet reached an agreement with Sentech on the DTT MTA, we will not incur the cost of the DTT transmitters at these transmitter sites, and accordingly all e.tv channels should be removed from these 7 DTT transmitters.

We request Sentech to adjust the e.tv invoice for November/December 2022 accordingly.

We trust you find the above in order.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2022-10-07 14:02:25 +02:00  
Reason: I approve this document



**ANTONIO LEE**

Group Chief Operating Officer

SM

**ANNEXURE 1**

ATTENTION ALL etv VIEWERS:

DEADLINE: 17 OCTOBER 2022

After this deadline, e.tv analogue service will not be available in your area.

To continue enjoying your favourite TV shows and get many more entertaining channels, get an Openview decoder from a retailer near you **BEFORE 7 November 2022**.

For any enquiries contact the e.tv Call Centre on **0861 696 843**

*SM*



e.tv (Pty) Ltd  
Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
Reg. No: 1997/012816/07

15 June 2023

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

**etv ANALOGUE TRANSMITTER TO BE SWITCHED OFF AS PHASE 4**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of phase 4, we have identified the following etv analogue transmitters to be switched off on 28 July 2023, as part of our plan presented to the BDM Technical Committee, to clear above 694 MHz.

- Rustenburg
- George

This letter is the formal notification of this planned forth phase analogue switch off. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, informing the citizens served by these analogue transmitters of the

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planned switch off that will take place on 28 July 2023, ahead of the switch off. This banner should be displayed on each of these transmitters for a minimum period of 30 days. We request Sentech to adjust the August 2023 etv invoice accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 2 DTT transmitters.

Yours sincerely

**ANTONIO LEE**

Group Chief Operating Officer



e.tv (Pty) Ltd  
Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
Reg. No: 1997/012816/07

05 September 2023

Sentech SOC  
Private Bag X06  
Honeydew  
2040

Attention: Kopano Thage  
Head of Sales and Business Development  
thagek@sentech.co.za

**NEXT BATCH OF etv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PART OF ASO PHASE BELOW 694 MHz**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of ASO below 694 MHz, we have identified the following etv analogue transmitters to be switched off on 22 September 2023, to commence clearing below 694 MHz, as per the Government Gazette published by the Minister of Communications and Digital Technologies.

- Pretoria North
- Sunnyside
- Helderkruijn
- Clifton
- Hout Bay

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This letter is the formal notification of this planned ASO below 694 MHz. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, 14 days ahead of 22 September 2023, informing the citizens served by these analogue transmitters of the planned switch off that will take place on 22 September 2023. This banner should be displayed on each of these transmitters for a period of 14 days. We request Sentech to adjust the October 2023 etv invoice accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 5 DTT transmitter sites.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2023-09-08 10:58:30 +02:00  
Reason: Witnessing Antonio Lee

**ANTONIO LEE**

Group Chief Operating Officer



e.tv (Pty) Ltd  
 Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
 Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
 Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
 Reg. No: 1997/012816/07

28 FEBRUARY 2024

Sentech SOC  
 Private Bag X06  
 Honeydew  
 2040

Attention: Kopano Thage  
 Head of Sales and Business Development  
 thagek@sentech.co.za

**NEXT BATCH OF etv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PART OF ASO PHASE BELOW 694 MHz**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of ASO below 694 MHz, we have identified the following etv analogue transmitters to be switched off on Sunday 31 March and Tuesday 30 April 2024, respectively, to commence clearing below 694 MHz, as per the Government Gazette published by the Minister of Communications and Digital Technologies.

TRANSMITTER	PROVINCE	HH'S (BEST SERVER)	Switch off date
MENLOPARK	GP	1497	Sunday, 31 March 2024
MONDEOR	GP	1760	Sunday, 31 March 2024
PLETTENBERGBAY	WC	2170	Sunday, 31 March 2024
PORT ST. JOHNS	EC	2962	Sunday, 31 March 2024
PORT ELIZABETH CITY	EC	2988	Sunday, 31 March 2024
MOUNT AYLIFF	KZN	5178	Sunday, 31 March 2024
VERULAM	KZN	3338	Tuesday, 30 April 2024
DESPATCH	EC	168	Tuesday, 30 April 2024
PONGOLA	KZN	1278	Tuesday, 30 April 2024
HEIDELBERG	GP	2622	Tuesday, 30 April 2024
NGANGELISWE	EC	2812	Tuesday, 30 April 2024



This letter is the formal notification of this planned ASO below 694 MHz. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, 14 days ahead of the switch off dates, informing the citizens served by these analogue transmitters of the planned switch off that will take place on stated dates. This banner should be displayed on each of these transmitters for a period of 14 days. We request Sentech to adjust the April and May 2024 etv invoices accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 11 DTT transmitter sites.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2024-02-29 08:32:59 +02:00  
Reason: Witnessing Antonio Lee

**ANTONIO LEE**

Group Chief Operating Officer

R



e.tv (Pty) Ltd  
 Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
 Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
 Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
 Reg. No: 1997/012816/07

10 June 2024

Sentech SOC  
 Private Bag X06  
 Honeydew  
 2040

Attention: Kopano Thage  
 Head of Sales and Business Development  
 thagek@sentech.co.za

**NEXT BATCH OF e.tv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PART OF ASO PHASE BELOW 694 MHz**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of ASO below 694 MHz, we have identified the following etv analogue transmitters to be switched off on Wednesday 31 July 2024, to commence clearing below 694 MHz, as per the analogue switch off plan which e.tv deems uneconomical.

TRANSMITTER	PROVINCE	HH'S (BEST SERVER)	Switch off date
Hermanus	WC	12 582	31 July 2024
Knysna	WC	122 499	31 July 2024
Carolina	MP	17 961	31 July 2024
Piet Plessis	NW	28 140	31 July 2024
Vryheid	NKZN	50 115	31 July 2024

This letter is the formal notification of this planned ASO below 694 MHz. Attached hereto is the text that must be displayed on this transmitter as a scrolling banner 14 days ahead of the switch off dates, informing the citizens served by these analogue transmitters of the planned switch off that will take place on stated dates. This banner should be displayed on each of these transmitters for a period of 14 days. We request Sentech to adjust the August 2024 etv invoices accordingly.



Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 5 DTT transmitter sites.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2024-06-12 08:42:49 +02:00  
Reason: Witnessing Antonio Lee

**ANTONIO LEE**

Group Chief Operating Officer



e.tv (Pty) Ltd  
 Telephone: +27 11 537 9300 • Fax: +27 11 537 9310  
 Physical address: 5 Summit Road • Dunkeld West • 2196 • Johannesburg  
 Postal address: Private Bag X9944 • Sandton • 2146 • Johannesburg  
 Reg. No: 1997/012816/07

18 July 2024

Sentech SOC  
 Private Bag X06  
 Honeydew  
 2040

Attention: Kopano Thage  
 Head of Sales and Business Development  
 thagek@sentech.co.za

**NEXT BATCH OF etv ANALOGUE TRANSMITTERS TO BE SWITCHED OFF AS PART OF ASO PHASE BELOW 694 MHz**

e.tv and other analogue terrestrial television broadcasters in South Africa are required under the Broadcasting Digital Migration Policy as well as the ICASA Digital migration regulations to switch off all the analogue television transmitters throughout the country. To this end e.tv notified ICASA in a letter dated 26 January 2017, listing all the analogue television frequencies licensed to e.tv that will be switched off as part of the digital migration process.

As part of ASO below 694 MHz, we have identified the following etv analogue transmitters to be switched off on Monday 19 August 2024, to commence clearing below 694 MHz, as per the Government Gazette published by the Minister of Communications and Digital Technologies.

TRANSMITTER	PROVINCE	HH'S (BEST SERVER)	Switch off date
Schweizer-Reneke	NW	129 803	19 August 2024

This letter is the formal notification of this planned ASO below 694 MHz. etv will provide Sentech with the text that must be displayed on this transmitter as a scrolling banner, 14 days ahead of the switch off dates, informing the citizens served by these analogue transmitters of the planned



switch off that will take place on stated dates. This banner should be displayed on each of these transmitters for a period of 14 days. We request Sentech to adjust the August 2024 etv invoices accordingly.

Please note that since etv have not yet reached an agreement on the DTT MTA with Sentech, we will not incur the cost of the DTT transmitters at these transmitter sites, and all etv channels should be removed from these 11 DTT transmitter sites.

Yours sincerely

Signed by: Antonio Lee  
Signed at: 2024-07-18 11:54:19 +02:00  
Reason: Witnessing Antonio Lee

**ANTONIO LEE**

Group Chief Operating Officer



communications  
& digital technologies  
Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

Private Bag X860, PRETORIA, 0001 – iParioli Office Park, 1166 Park, Hatfield, PRETORIA  
Tel: +27 12 427 8000- Fax +27 12 427 8016 – Email: [director-general@dcdt.gov.za](mailto:director-general@dcdt.gov.za). URL: [www.dcdt.gov.za](http://www.dcdt.gov.za)

Khalik Sherrif  
Chief Executive Officer  
E.tv (Pty) Ltd  
Private Bag X9944  
**SANDTON**  
2196

6 March 2023

By Email: [khaliks@etv.co.za](mailto:khaliks@etv.co.za); [Philippa.Rafferty@etv.co.za](mailto:Philippa.Rafferty@etv.co.za)

Dear Khalik Sherrif

**REPLY TO WRITTEN COMMENTS - CONSULTATION ON DATE FOR FINAL SWITCH-OFF OF THE ANALOGUE SIGNAL AND THE END OF DUAL ILLUMINATION**

1. The Minister and Department of Communications and Digital Technologies ("the Department") acknowledge, with thanks, receipt of your written comments on the Minister's intention to declare 31 March 2023 as the final date for analogue switch - off ("the ASO" ) and end of Dual Illumination, published in Government Gazette No. 47697 (ASO Notice) of 9 December 2022.
2. The ASO Notice was issued and /or published by the Department pursuant to the Constitutional Court's decision in the matter of *e.tv (Pty) Limited v Minister of Communications and Digital Technologies and Others; Media Monitoring Africa and Others*<sup>1</sup>, to the effect that the Minister must consult interested parties on the final date for the ASO. To this end, the Constitutional Court stated that "*Analogue switch-off is an urgent, and unfortunately much delayed, national priority. Therefore, once adequate*

<sup>1</sup> [ 2022] ZACC 22.



*notice is given to the public to make informed decisions on whether to register for an STB, digital migration should proceed without further delay<sup>2</sup>*

3. The Department maintains that adequate notice of the final deadline for registration to be furnished with set top boxes ("the STBs" ) was given to the public in Government Gazette No 46683 of 2022 on 8 July 2022 and 11 July 2022. This notice was in English and all other official languages, respectively. As you should by now be aware , the process to register for STBs started as far back as 2015 and the Constitutional Court in its Judgement stated the following: *"I must point out that when determining a time period for further registration of STBs, this process is not required to start from scratch, and the Minister may legitimately take into account the opportunities already afforded to qualifying and indigent persons to register"*.
4. Further, it should be noted that the Constitutional Court refused to prescribe, to the Minister, a procedure to be followed and stated that *"this would be tantamount to substitution, which would not only be inappropriate under the circumstances of this matter but would also go beyond the scope of justice and equity and would violate the principle of the separation of powers."*<sup>3</sup>
5. The Department embarked on an intensive awareness campaign to inform members of the public of the 30 September 2022 deadline for registrations. This was done through, amongst others, television, public and community radio stations, print media, community outreach, use of mobile network operators who sent messages to lower income customers encouraging them to register. Partnerships were entered into with provincial government, Traditional Leaders and SALGA to assist spreading the message of the deadline for registrations.
6. The Department affirms its position that the ASO Notice was comprehensive and clear. This is evident from the content of the written submissions received indicating that those who elected to comment understood what the ASO Notice sought to achieve, which enabled them, including e.tv to respond adequately thereto. It is further submitted that the ASO Notice complies with the Electronic Communications Act, 2005 read with the Promotion of Administrative Justice Act (PAJA), 2000 in that the Minister and the Department elected the notice and comment procedure to consult the public

<sup>2</sup> See para 103 of the Judgment.

<sup>3</sup> see para 89 & 94 of Judgment.



as the subject matter thereof affects the entire country. All interested parties were afforded a reasonable opportunity to submit written comments for consideration.

7. The proposed date of 31 March 2023 for ASO was informed by –
  - (i) the number of new applications received after the 30 September 2022 deadline, amounting to 178 300;
  - (ii) the number of outstanding installations which stood at 185 382 as at 9 December 2022, and
  - (iii) the increased capacity for installation resulting in projections being made that all registered households would be installed by 31 March 2023.
  
8. You are well versed with the historical background of the broadcasting digital migration project, the delays that occurred, the urgent need for ASO to be concluded, South Africa's international obligations in this regard and the impact of further delays towards concluding broadcasting digital migration, which include amongst others:
  - (i) the financial burden of dual illumination on the already constrained fiscus;
  - (ii) IMT operators' inability to enjoy full usage of the spectrum they paid for as a result of broadcasters occupancy in the 700 and 800 bands; and
  - (iv) interference experienced by IMT operators, and the lack of international protection afforded to South Africa by the International Telecommunications Union (ITU) as a result of South Africa's failure to migrate and switch over from analogue to Digital Terrestrial Television by 17 June 2015, the agreed deadline of the ITU.
  
9. In addition, consideration is made Resolution 232 of WRC-12, and national decision through the National Radio-Frequency Plan (NRFP) to relinquish spectrum in the 694-790 MHz to mobile broadband communications for implementation of IMT. Subsequently, frequencies between 470 MHz and 694 MHz have been planned for future broadcasting services post 2015, which should be purely on digital TV. In respect to your concerns as to why the switch-off will apparently include spectrum in the spectrum band 470MHz to 694MHz, kindly note that Sentech has to embark on frequency restacking process after the complete switch off in order to align with the national frequency plan. In addition, 17<sup>th</sup> June 2015 was the deadline set by the International Telecommunications Union for all the countries to migrate to switchover



from analogue to Digital Terrestrial Television (DTT). It further indicated that there will be no protection of frequency interference after the deadline.

10. With regards to your allegation that 15.7 million indigent South Africans (4.7 million indigent households) will be left without any access to public and free-to-air broadcasting, it is submitted that the Government of South Africa, committed to subsidise registered qualifying indigent households based on a system, namely that those in need of government assistance must raise their hands through a registration process. The registration process commenced as far back as September 2015 and closed on 30 September 2022. The total number of registrations received as at 30 September 2022 is less than 1.6 million. Government holds the view that it did all it could and cannot be held accountable for those households who, despite the calls to register, decided not to do so. Your attention is drawn to the Constitutional Courts judgment where it said that previous processes followed should not be discarded.
11. With regards to the call that government must conduct a study, we wish to reiterate that the Constitutional Court did not direct the department to conduct a study to ascertain the reason for the number of registrations or why people did not register. The fact that it noted the FGI research findings, cannot translate to acceptance thereof. The Department put a system in place, that of registrations, and considered verified data at its disposal, indicating the number of new qualifying registered households as 178 300, and not millions as was alleged, after 30 September 2022, demonstrating that there is a decline in registrations.
12. With regards to your comments on the SABC, it is our view that e.tv has not be mandated to speak on behalf of the SABC. Be that as it may, the switch - off of the SABC's analogue transmitters, were carried out with the approval of SABC as the agreed-on threshold between SABC and Sentech was met.
13. With regards to your comment that the Broadcasting Digital Migration Policy is outdated, please note that it is the national executive that is seized with policy making powers and not e.tv. Further your allegation that DTT is obsolete is denied.
14. Your attention is drawn to the fact that majority of the registered households who applied for STBs have been provided with STB, and we are providing the remaining households with STBs in preparation for Analogue switch-off.

15. Please note that we disagree with your assertion that any proclamation by the Minister of 31 March 2023 as the ASO date would be unconstitutional.
16. The Department wishes to ensure you that the Minister, as member of the national executive, is committed to uphold the Constitution, the rule of law and South Africa's international obligations and will ensure that those who failed to heed the call to register timeously, be taken care of after the ASO. It is submitted that citizens failure to respond to the call for registrations cannot hold government at ransom, not to proceed with the ASO.
17. e.tv is urged to look into the future of broadcasting, embrace digital transformation and support government to complete the broadcasting digital migration which hold benefits for all South Africans.
18. We trust you will find the above to be in order and please feel free to contact Sybil Lyons-Grootboom at [slyons-grootboom@dcdt.gov.za](mailto:slyons-grootboom@dcdt.gov.za) or 079 496 8347, should the need arise.

Yours sincerely,

  
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**Adv Sybil Lyons-Grootboom**  
**Chief Director: Legal Services**





communications  
& digital technologies  
Department:  
Communications & Digital Technologies  
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SOS Support Public Broadcasting  
Suit 3 Art Centre  
22 6th Street cnr 4th Avenue  
PARKHURST  
2193

6 March 2023

By Email: [info@soscoalition.org.za](mailto:info@soscoalition.org.za); [info@mma.org.za](mailto:info@mma.org.za); [natcoord@soscoalition.org.za](mailto:natcoord@soscoalition.org.za)

Dear Ms Uyanda Siyotula

**REPLY TO WRITTEN COMMENTS - CONSULTATION ON DATE FOR FINAL SWITCH-OFF OF THE ANALOGUE SIGNAL AND THE END OF DUAL ILLUMINATION**

1. The Minister and Department of Communications and Digital Technologies ("the Department") acknowledge, with thanks, receipt of your written comments on the Minister's intention to declare 31 March 2023 as the final date for the analogue switch-off ("the ASO") and end of Dual Illumination, published in Government Gazette No. 47697 ("the ASO Notice) of 9 December 2022.
2. The ASO Notice was issued by the Department owing to the Constitutional Court<sup>1</sup>, having held that the Minister must consult interested parties on the final date for the ASO. To this end, the Constitutional Court held that that "Analogue switch-off is an urgent, and unfortunately much delayed, national priority. Therefore, once adequate

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<sup>1</sup> (*e.tv (Pty) Limited v Minister of Communications and Digital Technologies and Others*; *Media Monitoring Africa and Another v e.tv (Pty) Limited and Others* [2022] ZACC 22).



*notice is given to the public to make informed decisions on whether to register for an STB, digital migration should proceed without further delay.<sup>2</sup>*

3. It is submitted that adequate notice of the final deadline for registration to be furnished with set top boxes ("the STBs") was given to the public in Government Gazette No 46683 of 2022 on 8 July 2022 and 11 July 2022. The notice was in English and all other official languages, respectively. It must be borne in mind that the process to register for STBs started as far back as 2015 and the Constitutional Court stated the following: *"I must point out that when determining a time period for further registration of STBs, this process is not required to start from scratch, and the Minister may legitimately take into account the opportunities already afforded to qualifying and indigent persons to register"*.
4. In light of the above, the Department denies that the determination of 30 September 2022 as the deadline for registrations for STB assistance is unlawful, irrational and that it will not withstand judicial scrutiny.
5. Further the Constitutional Court refused to prescribe, to the Minister, a procedure to be followed and stated that *"this would be tantamount to substitution, which would not only be inappropriate under the circumstances of this matter but would also go beyond the scope of justice and equity and would violate the principle of the separation of powers."*<sup>3</sup>
6. The Department embarked on an intensive awareness campaign to inform members of the public about the 30<sup>th</sup> of September 2022 deadline for registrations. This exercise was done through, amongst others, television, public and community radio stations, print media, community outreach and partnerships which were entered into with provincial government, Traditional Leaders and SALGA to assist spreading the message of the deadline for registrations. The Department vehemently disagrees with your statement to the effect that the awareness campaign was *"wholly insufficient"* as it allegedly commenced 6 weeks before the deadline as the awareness campaign started in September 2015, and not in August 2022. The Constitutional Court held that

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<sup>2</sup> See para 103 of the Judgment.

<sup>3</sup> para 89 & 94 of Judgment.



the process need not to start from scratch and that the Department can build on previous processes followed. This is exactly what the Department has done.

7. The Department submits that the ASO Notice was comprehensive and clear. This is evident from the content of the written submissions received indicating that those who elected to comment understood what the ASO Notice sought to achieve, which enabled them, including SoS Coalition to respond adequately thereto. It is further submitted that the ASO Notice complies with the Electronic Communications Act, 2005 read with the provisions of Promotion of Administrative Justice Act (PAJA), 2000 in that the Minister and the Department elected the notice and comment procedure to consult the public as the subject matter thereof affects the entire country. All interested parties were afforded a reasonable opportunity to submit written comments for consideration.
8. The proposed date of 31 March 2023 for ASO was informed by amongst others –
  - (i) the number of new applications received after the 30 September 2022 deadline, amounting to 178 300;
  - (ii) the number of outstanding installations which stood at 185 382 as at 9 December 2022, and
  - (iii) the increased capacity for installation resulting in projections being made that all registered households would be installed by 31 March 2023.
8. You are well versed with the historical background of the broadcasting digital migration project, the delays that occurred, the urgent need for the ASO to be concluded, South Africa's international obligations in this regard and the impact of further delays towards concluding broadcasting digital migration, which include amongst others:
  - (i) the financial burden of dual illumination on the already constrained fiscus;
  - (ii) IMT operators' inability to enjoy full usage of the spectrum they paid for as a result of broadcasters occupancy in the 700 and 800 bands; and
  - (iv) interference experienced by IMT operators, and the lack of international protection afforded to South Africa by the International Telecommunications Union (ITU) as a result of South Africa's failure to migrate and switch over from analogue to Digital Terrestrial Television by 17 June 2015, the agreed deadline of the ITU.



9. With regards to your statement that approximately 2.5 million indigent households require to register for STBs and that a period of 12 weeks is insufficient to register them all, it is submitted that the Government of South Africa, committed to subsidise registered qualifying indigent households based on a system, namely that those in need of government assistance must raise their hands through a registration process. The number of new applications received after 30 September 2022 was 178 300 only. The total number of registrations received between September 2015 and 30 September 2022 is less than 1.6 million. Government holds the view that it did all it could and cannot be held accountable for those households who, despite the calls to register, decided not to do so. Your attention is drawn to the Constitutional Courts judgment where it said that previous processes followed should not be discarded.
10. With regards to the call that government must conduct a study, we wish to reiterate that the Constitutional Court did not direct the department to conduct a study to ascertain the reason for the number of registrations or why people did not register. The Department put a system in place, that of registrations, and considered verified data at its disposal, indicating the number of new qualifying registered households as 178 300, and not millions as was alleged, after 30 September 2022, demonstrating that there is a decline in registrations.
11. With regards to your comments on the SABC, it is our view that SoS Coalition has not been mandated to speak on behalf of the SABC. Be that as it may, swich-off of the SABC's analogue transmitters, were carried out with the approval of SABC as the agreed threshold between SABC and Sentech was met.
12. The Department holds a firm view that it complied with PAJA read with the relevant provisions of the ECA by calling for written submissions on the ASO and therefore your request for oral hearings is not acceded to.
13. We wish to ensure you that the Minister, as the member of the national executive, is committed to uphold the Constitution, the rule of law and South Africa's international obligations and will ensure that those who failed to heed the call to register timeously, be taken care of after the ASO. It is submitted that citizen's failure to respond to the call for registrations cannot hold government at ransom, not to proceed with the ASO.



14. We trust that you will find the above to be in order and please feel free to contact Sybil Lyons-Grootboom at [slyons-grootboom@dcdt.gov.za](mailto:slyons-grootboom@dcdt.gov.za) or 079 496 8347, should the need arise.

Yours sincerely,



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**Adv Sybil Lyons-Grootboom**  
**Chief Director: Legal Services**





communications  
& digital technologies

Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

# **BROADCAST DIGITAL MIGRATION**

## **CONSULTATIONS & WOKSHOP**

### **REPORT - JUNE 2023**

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## 1. PURPOSE OF THE WORKSHOPS

The Department of Communication and Digital Technologies (DCDT) convened workshops to engage key stakeholders on Analogue Switch-Off (ASO) date and to consolidate the Broadcasting industry inputs towards the final recommendations for the Minister's consideration.

## 2. BACKGROUND & INTRODUCTION

The Broadcasting Digital Migration process commenced in 2006 immediately after International Telecommunications Union (ITU) Regional Radiocommunication Conference, where South Africa and other countries agreed to shift broadcasting services to a more efficient digital technology by June 2015. Beyond June 2015, analogue broadcasting services are not protected from, and may not cause radio interference to other radiocommunication services. South Africa adopted a second generation of Digital Video Broadcasting (DVB-T2) to migrate broadcasting and services from analogue to digital in the frequency band 470 to 862 MHz.

The digital broadcasting technology yields spectrum efficiency and will therefore release the scarce spectrum resource for other ICT development needs. Following Policy development, establishment of digital migration Regulations and National Radio Frequency Plan frequency band 694MHz to 862MHz was allocated as the digital dividend spectrum for mobile services, and this spectrum was successfully auctioned to Telecommunication operators in 2022.

The spectrum band 470MHz to 694MHz has been assigned to broadcasting services. However, the digital migration process suffered litigations and delays where some broadcasting services are still on spectrum above 694MHz. South Africa has been on the journey of Migrating Analogue services to Digital and configuring of spectrum.

The rollout of STBs and termination of analogue across the country is underway and to-date, Mnet has terminated all their sites, SABC as terminated analogue in 5 provinces, and eTV has switched-off 30 of their 64 sites across the country. The 4 provinces of Gauteng, KwaZulu Natal, Eastern Cape and Western Cape are still operating analogue services.

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The Constitutional Court ruling highlights that there are constraints that the Minister must consider when exercising his/her Authority on ASO. For the Minister to set the analogue switch-off date, He/she must consult affected parties and consider the representations received regarding the analogue switch-off date.

The Department is implementing the Constitutional Court requirement with regards to consultation of key stakeholders on the ASO date. To this effect, the approach towards gazetting the ASO is on a consultative basis targeting to achieve the highest alignment on the ASO date.

### **3. MEETINGS AND WORKSHOP DISCUSSIONS**

The Minister convened the Broadcasting Digital Migration Steering Committee on 02 June 2023 to assess progress and determine the way forward. The Steering Committee adopted the Hybrid approach of clearing up analogue and digital broadcasting transmissions above 694MHz band and retain some analogue services below 694 MHz. The period for retaining analogue below 694MHz should be agreed upon for the purpose of Gazeting ASO. It was agreed that workshops and meetings should be convened to determine the viability of the hybrid approach and the time to retain analogue services.

The Department of Communications and Digital Technologies (DCDT) coordinated workshops and meetings with Broadcasters (SABC, eTV and Community Media), the Signal distributor (SENTECH) and the Regulator (ICASA) to solicit views and further align on Broadcast Digital Migration objectives and the analogue switch-off plan. The extended consultation process is undertaken to harmonize stakeholder views, and to resolve some of the issues that led to previous litigation actions

During these engagements, the Department's position was for immediate analogue switch-off. Broadcasters highlighted that the number of households that have subscribed to digital platforms and the DTT are not satisfactory to sustain the Free-to-Air broadcasting businesses. National Broadcasters are prospecting that households that are relying on Terrestrial reception are above 4 million, and only 1,5 million of their targeted audience have registered for Government Subsidized STBs. Community Broadcasters have varying household expectations, where

most of their household coverage is below a million households on terrestrial platform.

Community Broadcasters also raised a concern about the expanded coverage by DTT regulations. This will increase their operating costs and is simply not affordable, the regulator should be engaged to review the regulations and keep broadcasters within affordable coverage areas.

There were arguments about how long the registrations period has been open for application and the Broadcaster's aspirations of having everyone registering and converted being too optimistic. The public broadcasters highlighted at a minimum, migration of 2.5 million households could be satisfactory for their business sustainability and the arguments remained that the stakeholders do not have control over factors affecting subscription to platforms which included compelling content and economic condition of affording television and associated devices.

The second key submission from the broadcasters related to the impact of COVID, economic decline and impact of loadshedding on their businesses. Broadcasters felt that they need a breather period to recover from these conditions before a full ASO can be implemented.

They are therefore requesting a bit more time to increase registrations and installations before the final national ASO is announced.

The signal distributor highlighted that the analogue technology is obsolete, has reached End-of-Life and does not have manufacture support. The risk of technology failure is very high and prolonging reliance on analogue is not sustainable. Secondly, there is no financial provision for dual illumination and this situation is continuing to affect the signal distributors financial position.

The regulator highlighted the Broadcasting above 694MHz is not protected. There is an immediate need to clear all broadcasting assignments above 694MHz by re-arranging all the analogue television assignments to below 694MHz. The Authority may consider the application for the amendment and assignments to below 694MHz for a prescribed period during the finalization of BDM process.

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#### 4. THE WAY-FORWARD AND PLAN

Having considered various stakeholder inputs, the workshops considered and worked on a two-step approach to analogue switch-off (ASO) and further analyzed its technical viability as follows;

**Step 1:** Switch-off analogue above 694MHz band immediately to release spectrum for other Telecommunications use. This process should allow for the Digital to Digital and some high impact analogue site to be accommodated below 694MHz. The agreed ASO date for clearing above 694MHz band is 31 July 2023.

#### **TECHNICAL AND REGULATORY IMPLICATIONS:**

- eTV has switched off 22 sites/services above 694MHz and will switch off two more sites and retune 4 sites to below 694MHz.
- The SABC have switched off 5 provinces and will switch-off 67 services above 694MHz and migrate 18 services to below 694MHz.
- All community broadcasters and digital services that are above 694MHz will be accommodated below 694MHz band.
- A frequency assessment and assignment exercise was conducted during the workshop to ascertain the viability of this plan.
- The Regulator will process the revised frequency assignment to allow for the implementation of this plan.

**Step 2:** Grow the number of STB registrations, Subscription to alternative platforms and installations to required levels and terminate analogue services below 694MHz. The agreed ASO date for terminating analogue services below 694MHz band will be progressive within 12 to 16 months until 31 December 2024.

#### **TECHNICAL AND REGULATORY IMPLICATIONS:**

- There will be co-existence of analogue and digital services below 694MHz for 12-16 months, whereafter only digital services will remain.

- The SABC will retain some high impact analogue service sites for Gauteng, Eastern Cape, KwaZulu Natal and Western Cape below 694MHz.
- eTV and community broadcasters will retain some analogue sites across the country below the 694MHz band.
- The regulator will process the revised assignment to allow for the implementation of this plan.
- Registrations and installations of Governments STB will continue for this additional period.
- The regulator should be engaged to consider reducing coverage area of community media to initial analogue coverage where required.

#### **5. COMMITMENTS MADE BY BROADCASTERS**

- The Broadcaster have committed that there will be no further variation to the proposed plan, even if the registration and subscription do not reach their aspiration levels.
- Broadcasters accepts the risk of technology failure and will work with SENTECH to manage the risk.
- Broadcasters will contribute towards the dual-illumination costs and have undertaken to continue for paying analogue rates even where they have switched-off. This is done to lower the financial burden on the state and Sentech.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Considering the technical confirmation of the viability of the hybrid approach adopted by the BDM Steering Committee, compromises, and commitments by all the stakeholders, it is recommended that the Minister approve:

- the Hybrid approach of clearing up analogue and digital broadcasting services above 694MHz band by 31 July 2023 and retain some analogue services below 694 MHz beyond 31 July 2023;
- that the Analogue Switch-off date for terminating analogue services below 694MHz band be progressive within 12 to 16 months; and
- that 31 December 2024 is the ultimate date for analogue switch-off, even if the registration and subscriptions do not reach the 2.5 million cumulative household migration level notwithstanding all efforts by all stakeholders.

## 7. WORKSHOP ATTENDEES

### Workshop 1

Chairperson - Tebogo Leshope

DCDT - Tinyiko Ngobeni, Fhatuwani Mutuvhi

SABC – Lungile Binza, David Mathe, Frank Awuah, ..

eTV - Khalik sherriff, Lynn Mansfield

Sentech - Flenk Mnisi, Marlon Finnis, Serame Motlhake & Qaqamba Jikela

ICASA - Phil Molefe & Kgomotso?? Motsepe

SAPO - Anand Hemrajh

USAASA - Angelique Matsimela

**Workshop 2**

Chairperson - Tebogo Leshope

DCDT - Tinyiko Ngobeni, Fhatuwani Mutuvhi, Pari Pillay

Cape Community TV – Karen, Mike Aldridge

KZN Community TV – Elize

Soweto Community TV – Mandla

Faith Community TV – Gavin & Bande

Sentech - Flenk Mnisi, Marlon Finnis and Kopano Thage



8. THE MACRO IMPLEMENTATION PLAN FOR SERVICES ABOVE 694 MHz

ACTIVITY	Jun-23					Jul-23		
	W1	W2	W3	W4	W5	W6	W7	W8
Broadcasters submit amendments applications to ICASA	09-Jun-23							
JSAG meets, review and recommend to Council		14-Jun-23						
ICASA Council grants Approval			24-Jun-23					
Insertion of notification messages for households			25-Jun-23					
Batch one ASO termination				30-Jun-23				
Relocate Analogue services to below 694MHz								
Final ASO for services above 694MHz								31-Jul-23

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**9. THE MACRO IMPLEMENTATION PLAN FOR SERVICES BELOW 694 MHz**

Activity	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	
Awareness Campaign																		
Procurement of STBs			24-Jun-23															
STB Registrations																		
Installation of STBs																		
Amend Community Broadcaster Coverage					15-Dec-23													
Switch of 1st batch of Provinces														30-Sep-24				
Final ASO for remainin provinces below 694Mhz																		31-Dec-24



**ANNEXURE A: SCHEDULE OF RECOMMENDED FREQUENCY AMENDMENTS**

	STATION NAME	SERVICE	NEW FREQ AND (CH)	COMMENTS
<b>KZN</b>	NONGOMA	SABC 1 (767.25 CH58)	535.25 MHz (CH29)	Ex Verulam that will be switched off
	NEWCASTLE	SABC 1 (783.25 CH60)	471.25 MHz (CH24)	
	STRAALHOEK	SABC1 (727.25 CH53), and SABC2 (759.25 CH57)	495.25 (CH24), 599.25 (CH37)	
	GREYTOWN	SABC 1(791.25 CH61) and SABC2 (727.25 CH53)		STB installations to be ramped up - ASO
	ESHOWE	1KZN (847.25 CH68)	623.25 (CH40)	
<b>EC</b>	<b>STATION NAME</b>	<b>SERVICE</b>	<b>NEW FREQ AND (CH)</b>	<b>COMMENTS</b>
	ALIWAL NORTH	SABC2 (759.25 CH57)	647.25 (CH43)	Will affect Sterkspruit
	PORT ST JOHNS	SABC 1 (791.25 CH61), TBN (823.25 CH65)	687.25 (CH48), 495.25 (24)	
	KING WILLIAMS TOWN	SABC1 (783.25 CH60), SABC2 (751.25 CH56), SABC3 (847.25 CH68)	SABC 1 (535.25 CH29), SABC2 (567.25 CH33)	Ex Butterworth frequencies, swop SABC1 with CH29 at Butterworth
	NGANGELIZWE	TBN (711.25 CH51)	471.25 (CH21)	
	UMTATA	SABC 1 (807.25 CH63), SABC2 (775.25 CH59), TBN (839.25 CH67)	SABC1 (559.25 CH32) TBN (503.25 CH25)	SABC3 CH37 to be reused for SABC2
	EAST LONDON	ETV (735.25 CH54)	679.25 (47)	
SUURBERG	SABC 1 (807.25 CH63), SABC2 (775.25 CH59), SABC3 (839.25 CH67)	487.25 (CH23), 519.25 (CH27), 599.25 (CH37)	Ex Bedford frequencies	
<b>GP</b>	<b>STATION NAME</b>	<b>SERVICE</b>	<b>NEW FREQ AND (CH)</b>	<b>COMMENTS</b>
	SOWETO TV	SOWETO TV (711.25 CH50)	479.25 (22)	
<b>WC</b>	<b>STATION NAME</b>	<b>SERVICE</b>	<b>NEW FREQ AND (CH)</b>	<b>COMMENTS</b>
	CAPE TOWN	ETV (767.25 CH58), SABC3 (759.25 CH62, DTT2 (706 CH50)	639.25 (42), 599.25 (37), 623.25 (40)	
	GEORGE	SABC3 (751.25 CH56), DTT1 (818 CH64), DTT2 (850 CH68)	599.25 (37), 634 (41), 530 (CH28)	No adjacent channel interference if Grootbrakrivier CH27 is off
	STELLENBOSCH	SABC2 (751.25 CH56), SABC3 (847.25 CH68), DTT2 (706 CH50)	495.25 (28), 559.25 (32), 623.25 (40)	
<b>LIM</b>	<b>STATION NAME</b>	<b>SERVICE</b>	<b>NEW FREQ AND (CH)</b>	<b>COMMENTS</b>
	TZANEEN	ETV (847.25 CH68)	575.25 (CH28)	
<b>MP</b>	<b>STATION NAME</b>	<b>SERVICE</b>	<b>NEW FREQ AND (CH)</b>	<b>COMMENTS</b>
	HOEDSPRUIT	ETV (711.25 CH51)	639.25 (CH39)	

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communications  
& digital technologies  
Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

Private Bag X860, PRETORIA, 0001 – iParioli Office Park, 1166 Park, Hatfield, PRETORIA  
Tel: +27 12 427 8000- Fax +27 12 427 8016 – Email: [director-general@dcdt.gov.za](mailto:director-general@dcdt.gov.za). URL: [www.dcdt.gov.za](http://www.dcdt.gov.za)

**Mr. Khalik Sherrif**  
Chief Executive Officer  
eMedia Holdings  
5 Summit Rd,  
Dunkeld West,  
Sandton, 2196

By Email: [KhalikS@etv.co.za](mailto:KhalikS@etv.co.za)

Dear CEO

**RE: BROADCAST DIGITAL MIGRATION**

1. As a country we have been involved with the process of migrating Television services from analogue to Digital for the past fifteen (15) years. The digital migration is necessary to ensure we move South Africa forward and release the spectrum for ICT development. As the industry, it is incumbent on us to conclude the BDM process, we must lead the sector into the future and set a development base for future generations.
2. Having noted your feedback and considered your inputs from various meetings and workshops regarding the Analogue switch-off approach. The Department of Communications and Digital Technologies has resolved to adopt a two-phase approach towards analogue switch-off as follows:
  - 2.1. Phase 1: Switch-off analogue services above 694MHz by 31 July 2023 and retune all digital broadcasting services above 694 MHz to frequencies below 694 MHz.
  - 2.2. Phase 2: Temporary accommodate analogue services below 694MHz for a period not exceeding 31 December 2024. This will afford Broadcasters the opportunity to increase take-up of broadcasting through digital platforms.

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3. To minimise the impact of the extended analogue switch-off period, the Signal Distributor committed to support the analogue network within the financial and technical constraints, whilst Broadcasters committed to accept the risk posed by the continued use of obsolete analogue technology below 694MHz and to compensate Sentech for dual illumination.
4. In light of the positive outcome from the engagements, the Minister will announce the analogue switch-off date during this week and thus invite you to the media briefing.
5. Kindly confirm in writing your commitment in relation to the above approach towards analogue switch-off including timelines, technical and financial implications. Please do so by no later than Wednesday 14 June 2023.
6. Please direct your confirmation to the office of the Acting Director-General, [director-general@dcdt.gov.za](mailto:director-general@dcdt.gov.za)

Yours in service



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**MS NONKUBELA JORDAN-DYANI**  
**ACTING DIRECTOR GENERAL**  
**DATE: 13-06-2023**

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Private Bag X06  
Honeydew  
2040  
Enquiries  
Tel: (011) 471 4727  
ceo@sentech.co.za

Ms Nonkqubela Jordan Dyani  
Acting Director General  
iParioli Office Park,  
Hatfield,  
PRETORIA  
Email: director-general@dcdt.gov.za. URL: www.dcdt.gov.za

Date: 14 June 2023

**RE: BROADCAST DIGITAL MIGRATION**

1. Sentech has been in the forefront of the Broadcast Digital Migration (BDM) process targeting to transition its media services to modern technology platforms. This was critical for SENTECH to monetize the digital technology investment and avert premature leapfrogging of other competing platforms.
2. Due to the digital migration delay we are experiencing a shift to satellite alternative by broadcasters and viewers resulting in less take-up for terrestrial television. Multichoice has confirmed that they will exit terrestrial broadcasting by March 2024, the SABC has only subscribed to 55% of the DTT network, and eTV has not signed up for terrestrial DTT transmission.
3. We welcome the development regarding a two-stage approach to ASO and dates set to conclude each stage. This will enable us to release spectrum and focus South Africa on next generation technologies.

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**Directors:** Sedzani Mudau (Chairperson), Veronica Motloutsi, Mapuleng Moropa, Tshavhuyo Sesane, Themba Phiri, Nkhumeleni Mudunungu, Mbasa Metuse, Luvuyo Keyise, Kiruben Pillay, (ED & CEO) Mlamli Boo, (ED & Acting CFO) Rudzani Rasikhinya CA(SA), & (ED & COO) Tebogo Leshope.

**Company Secretary:** Ephenia Motlhamme

SENTECH SOC Ltd Reg no: 1990/001791/30



4. We note the issue raised regarding Technology and Financial constraints and will like to respond as follows;
- I. Analogue technology failure will remain a risk for the dual illumination period leading to the 31 December 2024. We appreciate that the broadcasters have accepted the risk and will do our best to manage services continuity with the limited OEM support.
  - II. Sentech is not a position to fund the dual illumination costs and will rely on the broadcaster's contribution for dual illumination. In case of dual illumination shortfall, the Department should facilitate permission with National Treasury for Sentech to access the remaining portion of the Digital-to-Digital fund.
5. SENTECH supports the two-stage approach with above conditions on dual Illumination funding and technology failure risks. We will be available to support the Department and the Minister during the Analogue Switch-off announcement and media briefing.

Best Regards,

Sentech, Acting CEO

Signature ..... *A. Shope* .....

*SM*

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**Directors:** Sedzani Mudau (Chairperson), Veronica Motloutsi, Mapuleng Moropa, Tshavhuyo Sesane, Themba Phiri, Nkhumeleni Mudunungu, Mbasa Metuse, Luvuyo Keyise, Kiruben Pillay, (ED & CEO) Mlamli Booi, (ED & Acting CFO) Rudzani Rasikhinya CA(SA), & (ED & COO) Tebogo Leshope.

**Company Secretary:** Ephenia Motihamme

**SENTECH SOC Ltd Reg no: 1990/001791/30**



**e.tv (Pty) Ltd**  
**Telephone landline:** +27 11 537 9300 • **Fax:** +27 11 537 9310  
**Physical address:** 4 Albury Road • Dunkeld West • 2196 • Johannesburg  
**Postal address:** Private Bag X994 • Sandton • 2146 • Johannesburg  
**Reg. No:** 1997/012816/07

**TO: THE DIRECTOR GENERAL OF COMMUNICATIONS AND DIGITAL TECHNOLOGY**

**DATE : 14 June 2023**

**IN RE: THE PROCESS FOR SWITCHING OFF ANALOGUE TRANSMITTERS**

1. We refer to the recent constructive engagements with the Minister's team in relation to the process for switching off analogue transmitters and digital migration.
2. e.tv welcomes the constructive and collaborative approach that has recently been adopted by the Department in engaging with broadcasters in order to find a potential solution to the challenges that are posed by the switching off of analogue transmitters, given the fact that millions of South Africans remain dependent on analogue signal to access television.
3. e.tv understands from your letter of 13 June 2023 that the proposal is that the Minister wishes to announce a two-stage process to arrive at digital migration and that this process is largely along the lines of the proposal that has been discussed by the members of the JSAG committee (that had been constituted to assist with the digital migration process). e.tv also understands that there is a commitment from the Department and the relevant role players to continue engaging with each other and supporting each other in the drive to ensure the migration of South Africans from analogue to digital platforms for accessing television. e.tv commits to continuing engaging with the Department in seeking to advance this critical objective and it is understood from the recent engagements that the national broadcaster, the SABC, is similarly committed to engaging in this process.
4. From your letter, we understand that stage I of the process would involve the clearing of spectrum above 694 MHz, which we understand the Minister would like to have completed by the end of July 2023, while stage II will involve clearing the remaining spectrum below 694 MHz, which will take longer to achieve with 31 December 2024 being the targeted date. As you will recall the JSAG report has to date been focused on

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

the clearing of the above 694MHz spectrum and it will be necessary for urgent and further engagement to devise constitutionally compliant plans to secure the clearance of the sub-694MHz spectrum before the end of 2024.

5. As regards Stage I, e.tv is aware of the need to “clear” the spectrum above 694MHz that is currently being used for broadcasting purposes to allow this spectrum to be more fully utilised by the telecommunication companies (that have been awarded use of this spectrum pursuant to the IMT auction) and accordingly supports the proposed two-stage process; subject to the qualifications set out below.
6. With respect to stage I, e.tv understands the current proposal to be that in order to clear the spectrum above 694 MHz, while at the same time preserving access to television for analogue viewers that as a prerequisite to stage I: (a) ICASA needs to approve the application for the retuning of a limited number of analogue transmitters in the spectrum between 694MHz and 800MHz to below 694MHz (in e.tv’s case, these applications have already been filed some time ago), and Sentech needs to ensure that these transmitters are re-tuned before the above 694MHz analogue spectrum is switched off, and (b) there should be a concerted targeted marketing and distribution of decoders to viewers accessing analogue signal from other analogue transmitters in specific areas which service smaller numbers of viewers before these transmitters are switched off. This would allow the spectrum above 694MHz to be cleared in a constitutionally appropriate manner, by protecting indigent viewers and public broadcasters in the band below 694MHz, while at the same time allowing telecommunications companies use of the spectrum above that band.
7. In regard to the envisaged stage II of the process, e.tv remains of the view that as the spectrum band below 694MHz is allocated for use by broadcasters, it can and should continue to be used to allow millions of South Africans to access television via analogue signal until appropriate plans can be devised to migrate South Africans watching television using analogue spectrum below 694MHz to digital means of accessing television. e.tv supports the proposal (subject to the fact that urgent and continued steps need to be taken to ensure that this vast number of South Africans are migrated from analogue to digital platforms for accessing television) that all parties should

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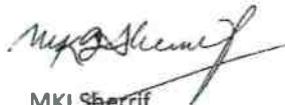
**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services

collaborate to achieve this migration process with a view of seeking to achieve this objective by the end of December 2024. It should be noted, however, that e.tv's approach in this regard is predicated on the basis that sufficient numbers of South Africans accessing television through analogue spectrum will have been migrated to other platforms by 31 December 2024.

8. e.tv commits to continuing the collaborative process of engagement through the BDM, JSAG and with the Minister's team to develop urgent plans to attempt to meet the stage II deadline of 31 December 2024.
9. In summary, e.tv is broadly supportive of the Minister's proposed two-stage process and will use its very best endeavours to assist in meeting the proposed deadlines outlined by the Minister.
10. However, it must be borne in mind that the successful outcome of stage I, in particular, is contingent on ICASA timeously approving the applications for retuning of the relevant transmitters and Sentech timeously performing the retuning of the transmitters. e.tv is committed to achieving the relevant deadline of 31 July for stage I, subject to ICASA and Sentech being in a position to adhere to the deadlines set by the Minister.
11. As regards stage II, e.tv is committed to seeking to assist the Minister to achieve an ASO date of 31 December 2024, but that is subject to a constitutionally-appropriate plan being devised to allow the millions of South Africans to properly migrate watching television using analogue spectrum below 694MHz. In other words, while e.tv will cooperate fully and use its very best endeavours to assist in achieving the deadline of 31 December 2024, this will require comprehensive and appropriate planning, as well as the necessary implementation of such a properly devised plan to achieve this objective.

Yours faithfully



MKI Sherrif  
CEO eMedia

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**Directors:** MKI Sherrif, AS Lee, MV Davids, JB Dayaljee

**Company Secretary:** HCI Managerial Services



communications  
& digital technologies  
Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

**MINUTES OF THE MINISTER'S MEETING WITH eMEDIA HELD ON MONDAY, 12 AUGUST 2024,  
MINISTER'S BOARDROOM, PRETORIA**

Chairperson: Minister Solly Malatsi

**Department of Communications and Digital Technologies and eMedia**

Mr Solly Malatsi	: Minister
Ms Nonkqubela Jordan-Dyani	: Director-General
Khalik Sherrif	: CEO eMedia

**1. PROCEDURAL MATTERS**

**1.1 Opening and welcome**

The meeting commenced at 15h00.

**1.2 Adoption of the Agenda.**

The agenda was adopted as presented.

**2. Opening remarks**

2.1.1 The Minister, in his opening remarks, thanked members for making themselves available.

2.1.2 The minister stated that this is a step towards having more discussion on the Free To Air broadcasting instead of litigation.

**3. MATTERS FOR DISCUSSION**

**3.1 Analogue Switch Off ("ASO")**

E-Media provided Minister with a background and events leading to the request for the meeting:

3.1.1 EMedia alluded to the President's 2021 SONA and the strategy to free up spectrum above 694MHz for the usage of telcos.

3.1.2 E-Media conducted research and provided the department with the findings and insights.

3.1.3 The ASO by the SABC in 5 provinces costed the SABC millions of rands in lost advertising.

3.1.4 In 2023 broadcasters vacating the spectrum above 694 MHz, which they jointly agreed to do by 31 July 2023.

- 3.1.5 EMedia indicated that they voiced their reluctance of ASO that was planned for 31 December 2024.
- 3.1.6 EMedia indicated that the BDM project team did not have a proper plan to implement ASO.
- 3.1.7 The ASO for 31 December 2024 was not feasible and that the date for ASO must be renegotiated.

## DECISIONS

- 3.1.8 The meeting agreed that there is a need for a switch-off as the system is too old and that this was not the first time EMedia was informed of the switch-off.
- 3.1.9 EMedia was advised to ensure that they plan for the continuation of the switch-off.
- 3.1.10 EMedia was further informed that the Minister wish to engage with all the various stakeholders as well on the matter.
- 3.1.11 EMedia, requested Ministry to consider a reasonable date beyond 31 December 2024 as this was going to affect their business taking into consideration that much still needs to be done with the transition.

## 4. CLOSURE

The meeting adjourned at 16h00.

**IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA. PRETORIA**

In the matter between:

Case No.: 2025-008928

**E.TV (PTY) LTD**

**FIRST APPLICANT**

**MEDIA MONITORING AFRICA**

**SECOND APPLICANT**

**SOS SUPPORT PUBLIC BROADCASTING**

**THIRD APPLICANT**

And

**MINISTER OF COMMUNICATIONS**

**FIRST RESPONDENT**

**PRESIDENT OF THE REPUBLIC OF SA**

**SECOND RESPONDENT**

**SENTECH SOC LTD**

**THIRD RESPONDENT**

**ICASA**

**FOURTH RESPONDENT**

**SABC SOC LTD**

**FIFTH RESPONDENT**

**CAPE TOWN TV**

**SIXTH RESPONDENT**

**TSHWANE TV**

**SEVENTH RESPONDENT**

**SOWETO TV**

**EIGHTH RESPONDENT**

**1KZN TV**

**NINTH RESPONDENT**

**FAITH TV**

**TENTH RESPONDENT**

**MEDIA DEVELOPMENT AGENCY**

**ELEVENTH RESPONDENT**

**CHAIRPERSON PORTFOLIO COMMITTEE**

**TWELFTH RESPONDENT**

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**CONFIRMATORY AFFIDAVIT**

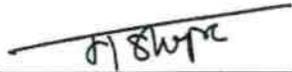
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I, the undersigned,

**TEBOGO LESHOPE**

declare and state as follows:

1. I am an adult male and the Acting Chief Executive Officer at SENTECH Soc Ltd (“Sentech”) with principal place of business at Sender Technology Park, Octave Street, Honeydew.
2. Sentech is a state-owned company as prescribed under section 4 of the Sentech Act 63 of 1996 and cited as the third respondent in this matter. Sentech is entrusted with the function of providing electronic communications services and electronic communications network services in South Africa.
3. The facts contained herein are within my knowledge and are to the best of my belief both true and correct, save where the contrary appears from the context thereof.
4. I have read the founding affidavit of Minister Solomon Malatsi together with the relevant annexures thereto and confirm the correctness of the facts contained therein insofar as they relate to Sentech.

  
\_\_\_\_\_  
**TEBOGO LESHOPE**

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit and that to the best of his knowledge and belief it is the truth, which was signed and sworn to before me at Centurion on this 27 day of

February 2025. and that the provisions of the Regulations contained in the Government Notice number 1258 of 21 July 1972 have been complied with.

Skhosana

COMMISSIONER OF OATHS

NAME:

ADDRESS:

KANABO SKHOSANA  
EX OFFICIO COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
2ND FLOOR, 16 FRICKER ROAD  
ILLOVO, 2196

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## **Impact of delayed ASO on the Analogue TV network**

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### **1. Introduction and Contexts**

Sentech rolled out a DTT network in accordance with the BDM policy prescripts to ensure that 84% of the population have access to the television services post ASO. ASO is intended to take place on the 31<sup>st</sup> of December 2024.

The ATV network is an ageing network and Sentech had to continue to support and maintain this network way past the initial date of July 2015. Unfortunately, the ATV network is high risk and continued support is becoming increasingly difficult. Any extension of the ASO deadline will pose a huge risk to Sentech.

Sentech is also burdened with the responsibility to operate and maintain the DTT network. This consists of contribution and distribution network and includes satellite distribution, maintenance, energy, etc. As a result Sentech has received dual illumination funding from the DCDT as this network is mostly not commercial and Sentech is not realizing any revenue. An extension of the ASO deadline would require that this funding be extended.

### **2. ATV Network considerations**

Although a number of ATV transmitters have been terminated since 2016, the remaining 175 transmitters consists of equipment that have been in operation since the 1980's. Below is an analysis of the various transmitter types and the risk facing each.



- **NEC 10KW/20KW Solid State TV Transmitter**

This is a transmitter operating with “Solid State Technology” at 10KW or 20KW. It consists of banks of solid-state amplifiers with dual exciters. These transmitters have been in operation since the late 1990's. Even though the transmitters are very reliable it does have the following concerns:

- The transmitters were procured to operate in the three UHF Bands. The amplifiers are frequency sensitive and they are not interchangeable with transmitters in different frequency bands.. Which makes it very difficult to utilize a switched off transmitter for spares
- The amplifier bank combiners and sound vision combiners are also frequency range specific and not interchangeable with transmitters in different frequency bands.
- Support from the OEM is no longer available as these transmitters reached EOL and EOS.

- **NEC 10KW Valve based TV Transmitter**

These transmitters have been in operation since the 1980's. They operate in the VHF and UHF frequency bands. Even though they have proven to be extremely reliable over the years they operate at a huge risk of catastrophic failure.

- The transmitter is at EOL and EOS with no OEM support
- Spares supply from OEM are non-existent and only what Sentech has available as spares is left to support the equipment, which is extremely limited.
- The rubidium standard is obsolete



- **R&S NH7000 Solid State Water cooled 10KW/20KW Transmitter:**

This is a solid-state transmitter operating in the UHF and VHF Bands were installed in the early 2000's. It has dual exciters feeding a bank of vision and sound amplifiers. The amplifiers are relatively wideband in their frequency ranges. Even though they have proven to be extremely reliable over the years they operate at a huge risk as there are absolutely no spares available from the OEM. It has reached EOL and EOS.
- **ITELCO 1KW Transmitter:**

The ITELCO 1KW Transmitters operate in the VHF and UHF bands. They have been in operation since the 1990's. The transmitters are at huge risk and continued operation at SLA levels cannot be guaranteed. The equipment has reached EOL and EOS.
- **EUROTEL ETL 0290 1KW Transmitter:**

This transmitter operates in the VHF and UHF frequency bands. These units were installed over many years with the last units installed in the late 2000's. Unfortunately, the transmitter also suffers from the same obsolescence and support concerns as it has reached EOL and EOS.
- **Satellite distribution**

The satellite distribution network for ATV has Satellite Receive and content distribution equipment that is based on the analogue technology. This equipment is critical in ensuring that content is routed to the ATV transmitters. Its failure will cause a loss of service.



### 3. Continued operations and maintenance of the ATV network

The majority of the Sentech ATV network comprises of the transmitters mentioned above. The termination of ATV services in the 5 provinces has resulted in certain spare modules and components to become available for use in the remaining 4 provinces, where there is compatibility. The condition and useability of the ATV parts cannot be guaranteed and it is therefore not a given that such replacements can restore a failed transmitter to 100% operation. Sentech technical staff does have the competence to repair certain ATV modules down to component level on the printed circuit boards, but the condition of the circuit boards makes continuous repair very risky.

### 4. Impact on Operations

- High cost of energy – ATV transmitters are not as energy efficient as newer transmitters
- High number of manhours required to restore services or repair modules
- Costs to move parts across the country
- SLA's non compliance and the risk of paying penalties
- Reputational damage - failures can last for a very long period of time and does damage Sentech's reputation as a very reliable service provider
- Increased preventative maintenance costs as transmitters requires more care and time as they age
- High Power ATV transmitters makes use of forced air cooling and Automatic Voltage Regulators. These systems require additional maintenance and adds to the overall operational costs.