

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

CASE NO: 2025-008928

In the matter between:

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



**CHAIRPERSON: NATIONAL ASSEMBLY PORTFOLIO
COMMITTEE ON COMMUNICATIONS AND DIGITAL
TECHNOLOGIES**

Twelfth Respondent

SECOND AND THIRD APPLICANTS' SUPPORTING AFFIDAVIT IN REPLY

I, the undersigned,

WILLIAM ROBERT BIRD

hereby state under oath:

1. I am the director of **MEDIA MONITORING AFRICA (MMA)** and a member of the Working Group of the **SOS SUPPORT PUBLIC BROADCASTING COALITION (SOS)**, and am duly authorised to depose to this affidavit on behalf of both MMA and SOS. I deposed to MMA and SOS's supporting affidavit filed with e.tv's founding affidavit.
2. The contents of this affidavit are, unless indicated otherwise, within my personal knowledge, and are, to the best of my belief, true and correct.
3. We note that the Minister has not replied directly to our supporting affidavit, the contents of which are distinct from the founding affidavit of e.tv. This is consistent with the Minister's (and his predecessors') repeated erasure of MMA and SOS from any meaningful participation in the digital migration process.
4. MMA and SOS agree with the contents of the replying affidavit of Mr Lee for e.tv, and persist in seeking the relief set out in the notice of motion.



5. To the extent that the Minister has indirectly disputed anything in our supporting affidavit, we stand by that affidavit and deny the Minister's version. The failure to address each paragraph of his (somewhat repetitive) answering affidavit is not an admission.
6. We wish to add the following responses to pertinent paragraphs in the Minister's affidavit.

Ad paragraph 2.1

7. The Minister simply asserts a number, without providing any evidence as to:
 - 7.1 The source of the Minister's estimate of a total cost of R1.3 billion, or any objective substantiation for the estimate;
 - 7.2 Any explanation as to the period of time that the estimated cost of R1.3 billion related to;
 - 7.3 Any explanation of what dual illumination costs are at present, per year or per month;
 - 7.4 Any evidence that government took a policy decision that this amount was too much to pay to secure the expression rights of millions of people;
or
 - 7.5 Any evidence that this cost featured in the consultations conducted by the Department.
8. The bare assertion of a number by the Minister cannot suffice to justify plunging millions of the poorest South Africans into television darkness.



Ad paragraph 3

9. We referred in our supporting affidavit¹ to the daily research (Television Audience Measurement Survey) that is produced by the Broadcast Research Council of South Africa (**BRC**), which shows that more than a quarter of all television households (28% of the population) have access only to free to air analogue terrestrial television, i.e. have no access to DTH subscription (DStv) or free to air DTH (Openview HD) or digital terrestrial television (DTT).
10. The effect of this is that, if ASO goes ahead on 31 March 2025, 28% of the population will be without access to television because they are unable to access DTH or DTT television services.

Ad paragraph 3.2

11. The Minister says that MMA and SOS have not produced any evidence to prove that the millions of people who stand to be deprived of television access, are people who registered to be supplied with the state-sponsored STBs before the closing date.
12. This misses the point. Our point is simpler: it is **irrational** for the Minister to proceed with ASO when 28% of the population will be without television as a result. This is the **poorest** 28% of the population, as wealthier households have access to DTH (either through DStv or OpenView) or DTT.

¹ Paragraph 54, 003-20

Ad paragraphs 3.3.5 and 3.3.6

13. On the Minister's own version, the Department has only been able to install 1 353 000 STBs since 2015, when there was a general notice published to register for STBs². However, the Minister states in paragraph 3.3.6 of his affidavit that "There are currently 447 000 households which remain to be supplied with government sponsored STBs'. . This is a significant percentage: nearly 25% of all those indigent persons who registered for STBs **do not have them**.
14. This number was confirmed by Sentech in their presentation to the Portfolio Committee on Communications and Digital Technologies on 27 February 2025. This presentation has been dealt with more fully in e.tv's replying affidavit.
15. Worse, as MMA and SOS pointed out in our supporting affidavit, only 1 800 000 households of the more than 3 000 000 qualifying indigent households registered for an STB.
16. MMA and SOS note that e.tv, in its reply, has referenced a presentation made by Sentech to the Parliamentary Portfolio Committee. It relies on this presentation to negate many of the assertions made by the Minister regarding both installations that have happened, and the installations to come. MMA and SOS supports and makes common cause with e.tv's allegations based on the Sentech report.
17. However, MMA and SOS wish to expand on one aspect in the Sentech presentation. Dealing with risks and mitigations, Sentech points out that STBs are not readily available, that it will take time to procure them, and that they may

² Para 4.2 of the Minister's Affidavit, 010-14



not be available in the required time frame. Sentech goes on to state that they are exploring access to readily available stock globally.

18. On 22 January 2025, MMA and SOS's appointed attorneys, Rosengarten and Feinberg (**RF**) addressed correspondence (attached as **WB8** to the first supporting affidavit) to the Minister's attorneys of record, HM Chaane Attorneys (**HM Chaane**). RF requested the Minister to provide an update on how many STBs had been installed, and how many STBs were currently available for installation. As of 30 January 2025 there had been no meaningful response to this letter (despite requests for an urgent response), RF again wrote to HM Chaane on 30 January 2025 (attached marked "**WB12**"). RF recorded that despite HM Chaane stating that they would be consulting with the Minister in the week commencing 27 January 2025, HM Chaane had not replied to the letter. As they had not replied to the letter dated 22 January 2025, RF requested, *inter alia*, the following information:
 - 18.1 The current status of the implementation of the plan presented by the Minister at a meeting held on 20 December 2024;
 - 18.2 An indication as to precisely how many STBs had been installed up to the date of the letter (specifying installations per province);
 - 18.3 How many STBs were currently available for installation; and
19. Once again, and despite further reminders that no substantive and meaningful responses had been received to RF's correspondence, to date no substantive reply has been forthcoming.
20. The Minister has simply ignored these important requests.

21. To avoid prolixity, the follow up emails and correspondence to HM Chaane have not been attached. These will be made available to the Honourable Court should it so require.

Ad para 3.5.2

22. According to the Minister, an agreement was made with broadcasters that an analogue transmitter would only be switched off **if 90% of households who rely on it had migrated**. Even on the Minister's own version, he is well short of the 90% threshold. MMA and SOS note that e.tv denies that any such agreement was reached.

Ad para 3.5.3

23. What matters is not the *number* of transmitters to be switched off. What matters is that the poorest 28% of the population will be deprived of their constitutional rights to information when they lose all access to television on 31 March 2025.

Ad para 3.5.4

24. The Minister implies that the government is required to and can only mitigate the impact of ASO "until every household is migrated". We agree.
25. The Minister repeatedly talks about "the remaining few households" as justification for pressing ahead with ASO.
26. It is **not** a few.
27. 28% of **all** television households, a substantial number of people by any calculation do not have access to television services other than those provided

by way of free to air, analogue terrestrial television services. Accordingly, 28% of all television households stand to lose access to television on 31 March 2025.

28. This is far below the 90% population coverage migration figure promised by the Minister and restated in his affidavit.

29. The Minister states that the applicants (therefore including MMA and SOS) are motivated by commercial interests. In our case this is entirely untrue.

29.1 MMA and SOS stand to gain nothing financially from the relief being sought.

29.2 MMA and SOS have **no commercial broadcasting interests** and are involved in this case to plead the interests of the poor and marginalised. These are people who stand to lose all access to television and who do not have a voice in these proceedings save for MMA and SOS's involvement. MMA and SOS are also here to plead on behalf of the SABC, which is largely dependent on advertising and which stands to lose significant revenue if its free to air analogue services are to disappear as a result of the ASO.³ Whilst the SABC have not actively participated in these proceedings, its CEO Nomsa Chabeli was interviewed on e.tv's documentary, *'The Switch Off'* which was aired on 2 March 2025, during which she admitted that the SABC was not prepared for ASO and has requested a postponement of the ASO date.

29.3 MMA and SOS were recognised as public interest organisations by the Constitutional Court in the previous ASO litigation.

³ MMA and SOS Supporting Affidavit, paragraph 62 onwards, 003-24

Ad para 4.2

30. The extract of the notice points to a fundamental flaw in the Minister's case, as indigent households have had to register online or else at the nearest Post Office.
31. It is known that very few (if any) indigent people have access to broadband internet of the quality necessary to fill in forms and upload digital copies of documents such as identity documents and proof of address. These are registration requirements for a subsidised STB.
32. Meanwhile, the Post Office is in business rescue and some 400 post office branches have closed in the past few years due to ongoing financial constraints. Many of these are in rural and other poor areas thereby further hampering the STB registration process for indigent households. A substantial number of those needing to register may therefore have to travel many kilometres to the nearest Post Office, at substantial cost. This is a barrier to the poorest of the poor.
33. The use of these mechanisms to register is not people-friendly, let alone poor-friendly, and so it is no wonder that there is a major "missing" group of indigent households that have still not registered for an STB.

Ad para 4.21

34. MMA and SOS are not in a position to advise the Court why 28% of television viewing households did not register for an STB or otherwise have not migrated to digital. This is, with respect, the job of the Minister. What MMA and SOS can point out is that indigent people are, largely, without access to the Internet (and in any event the registration portal was itself was delayed for months) or to

physical post offices (the means through which to register for a subsidised STB) and cannot afford non-subsidised STBs or DTH services.

35. Further, where people are financially able to purchase non-subsidised DTT STBs, DTT STBs are not generally available in the retail market, denying the missing middle the opportunity to purchase them.
36. One needs only visit any major retailer to know this to be true.
37. George Kalu, MMA's Head of HR and Skills Development, visited HiFi Corporation, Pep Home, Incredible Connection, and Game – all located in Johannesburg, the most populous city in South Africa and one of the cities to be affected by ASO.
38. **None** of the shops had any DTT STBs available, and neither could they indicate whether they had ever had stock, or would ever have stock. A shop attendant at Game suggested to Mr Kalu that he visit the Rosebank Post Office for a DTT STB, but the Rosebank Post Office is permanently closed. That aside, the Post Office does not offer STBs for retail purchase and deals only with indigent persons who qualify for a subsidised STB.
39. Whilst Mr Kalu's experience is anecdotal, it does explain why the missing millions (the balance of 28% of television households who do not qualify for a subsidised STB) have not migrated to digital.
40. Mr Kalu's confirmatory affidavit will be filed together with this affidavit.



Ad paras 5.1, 6.10, 6.11 and 6.13

41. The Minister claims that “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.”
42. This is simply not true.
43. It might be the case for e.tv and broadcasters but certainly not for MMA and SOS. Not once were MMA and SOS consulted about the ASO dates of 31 December 2024 or 31 March 2025.
44. The only time that MMA and SOS were “consulted” was in relation to the notice published on 9 December 2022 (quoted in paragraph 6.3 of the Minister’s answering affidavit). This was a public process to which MMA and SOS responded (a copy of the response is available on request of this Court). The response to their representations are contained in annexure **AA5** to the Minister’s affidavit. Importantly, this process related to the Minister’s “intention” to determine 31 March 2023 as the analogue switch off date.
45. Rather, MMA and SOS have been left to hear about meetings, consultations and workshops after the fact. The only time MMA and SOS were invited to meetings was in December 2024. However, these were not consultations. Rather, they were briefings where MMA and SOS were simply informed of decisions already taken. MMA and SOS are notably absent from the meetings highlighted by the Minister in paragraph 6.13 of his answering affidavit.

Ad para 6.32

46. The Minister speaks contemptuously of indigent people that “clearly failed to manage their television affairs timeously” by failing to register when the two mechanisms for registration, i.e. the Internet and the Post Office, were not readily available for poor people.

Ad para 7.12

47. It is clear that Cabinet recognised that there was a problem with the STB rollout process when it postponed the proposed ASO date from 31 December 2024 to 31 March 2025. However, as is evident from the Sentech presentation, little has changed since the extension of ASO to 31 March 2025, and the same problems persist.

Ad paras 8.17, 9.4 and 14.27

48. This is the crux of the matter: the Minister believes that all the government was required to do was to give the country adequate notice of ASO and the need to register for a subsidised STBs if they were eligible therefor.

49. The Minister steadfastly does not engage with the agreement he suggests was concluded with broadcasters (that e.tv denies) that a transmitter could be switched off when 90% of the people served by it had migrated. When 28% of the country’s television households are entirely reliant on analogue free-to-air television, it cannot be rational to press ahead with ASO when this would result in 28% (and not his agreed 10%) of households losing access to television because they have not migrated – even if they did not register to receive a

subsidised STB due, inter alia, to failures of internet rollout and access, and Post Office closures. Even the Minister's plan presented on 20 December 2024 does not deal with this problem.

50. The Minister provides no evidence as to how many STB registrations took place via the telephone number provided, and how many STBs that were installed remain operational.

Ad paras 13.4 and 14.24

51. Although the Minister stated elsewhere in his affidavit that 447 000 registered households still needed to receive STBs (a figure no doubt received from Sentech), this is contradicted in the Sentech presentation. In this and subsequent paragraphs, the Minister says that 391 513 qualifying beneficiaries will receive their STBs by 31 December 2025. Assuming this is correct, that is a rate of 39 151 a month for the remaining nearly 10 months of the year or nearly 2 000 installations per working day. Given the rate at which installations have taken place since the commencement of the digital migration process, this figure is clearly unrealistic and unobtainable. In its presentation, Sentech confirms that only 27 407 were installed for the months of December 2024 to 14 February 2025.
52. In the previous proceedings regarding ASO, the then Minister gave various undertakings concerning the installation rate for subsidised STBs which were similarly not achieved.



Ad paras 14.18 and 14.21

53. The BRC TAMS Data clearly shows that a third of television households can access television *only* on a free to air analogue terrestrial basis, so it is not correct to state that it is a “very small number of people” relying on e.tv’s analogue transmitters. The most populous provinces (KZN, Gauteng, Eastern Cape, and Western Cape) are scheduled to be switched off on 31 March 2025, and this will end access to television for 28% of the population.

Ad para 17.39

54. The Minister says that the choice of 31 March 2025 was based on Cabinet being satisfied that Sentech would appoint additional installers to increase the number of installations and would procure additional STBs to meet the demands. But, nowhere does he give any information as to whether Sentech did actually appoint additional installers and, if so, when they were appointed, how many were appointed, nor whether Sentech has procured additional STBs and how many it has in stock. Indeed, as is made clear in the Sentech presentation referred to in e.tv’s replying affidavit, Sentech is simply not currently capable of meeting the 31 March 2025 deadline.

Ad para 18.17

55. MMA and SOS have described the harm to be suffered by the community broadcasters in our supporting affidavit. This was supported by a confirmatory affidavit from Cape Town Community Television.

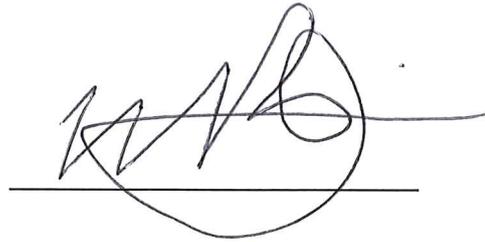


THE MINISTER SHOULD PAY PUNITIVE COSTS

56. Even if the applicants are unsuccessful, *Biowatch* prescribes that the applicants should not be mulct with costs. Irrespective of the outcome of these proceedings, MMA and SOS are of the view that the Minister ought to pay punitive costs. MMA and SOS say this due to the Minister's conduct in these proceedings in that he has been evasive, has not been forthright in his answering affidavit, has provided incorrect information regarding installations which was available from Sentech, and failed to respond to meaningful questions put to him by RF.
57. Further, what is evident from is set out above, despite his statements that he has consulted with the applicants, he has not consulted with MMA and SOS, notwithstanding the Minister being directed to do so by the Constitutional Court. This conduct is clearly contemptuous of that judgement, and has resulted in MMA and SOS having to engage this Court on the very same issues it did in 2021.

CONCLUSION

58. For the reasons set out above, MMA and SOS persist in praying for the relief set out in the notice of motion.

**WILLIAM ROBERT BIRD**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at JOHANNESBURG on this the 11th day of MARCH 2025, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.


COMMISSIONER OF OATHS

MICHAEL RICHARD HARTY
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
THE ART HOUSE, No. 4, 4th. AVENUE
PARKHURST, JOHANNESBURG

"WB12"

**ROSENGARTEN
& FEINBERG**

ATTORNEYS

To: Mr Hlengiwe Mahlangu
HM Chaane attorneys

Email: hlengiwe@hmchaane.co.za

30 January 2025

Our reference:
Dan Rosengarten
danr@rf-law.co.za

Daniel Basckin
danielb@rf-law.co.za

Contact

Tel. +27 (0)11 486 0242**Email** info@rf-law.co.za**Web** www.rf-law.co.za

Address

Le Val, Ground Floor
North Block, South Wing
45 Jan Smuts Avenue
Westcliff, Johannesburg, 2193
South Africa

Dear Mr Mahlangu

Re: Analogue Switch off : our clients : Media Monitoring Agency and SOS Support Public Broadcasting Coalition

1. We refer to our letter to you dated 20 January 2025. In your response, you stated that you would be consulting with the Minister this week in order to reply to our letter. We have received no reply.
2. Notwithstanding that proceedings have now been issued against, inter alia, the Minister we still require responses to the following:
 - 2.1. The current status of the implementation of the plan presented at the meeting dated 20 December 2024 indicating precisely how many STBs have been installed to date specifying not only the total, but the number of installations per province;
 - 2.2. How many STBs are currently available (whether at Sentech or otherwise) for installation; and
 - 2.3. Whether since the meeting of 20 December 2024, there have been any further meetings between the Minister, and/or representatives of the Department, and/or any other group established in order to deal with ASO and STB installations with any other part/parties whatsoever. If there have been such meetings, please will you advise us when each meeting occurred, who was invited to the meeting and the contents of the meeting – to include minutes as well as any documents presented at the meeting.
3. We look forward to your urgent response.

Yours sincerely

Dan Rosengarten
Rosengarten & Feinberg
[unsigned digital letter]

Partners Dan Rosengarten & David Feinberg Senior Associate Daniel Basckin

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