



SABC'S SUBMISSION ON THE PROPOSED AMENDMENT OF  
THE BROADCASTING DIGITAL MIGRATION POLICY

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## 1. INTRODUCTION

The SABC would like to thank the Minister and the Department of Communications ("the Department") for the opportunity to make a written submission on the Proposed Amendment of the Broadcasting Digital Migration Policy (as amended), as published on 6 December 2013, Government Gazette No. 37120 ("The draft amendments").

The SABC is divided into two operational divisions: a public service and a commercial service division (also has a public mandate service). The public service division is comprised of fifteen radio stations and two full spectrum multilingual television channels (SABC 1 and SABC 2). The commercial service division, which division also fulfils a public service mandate, is comprised of three radio stations and one television channel, SABC 3, which provides entertainment and information for viewers predominantly in English. Each of these television broadcasting services holds a public service broadcasting licence and will be required to migrate to Digital Terrestrial Television (DTT). The SABC is, thus, directly impacted by the draft amendments to the Broadcasting Digital Migration Policy ("the BDM Policy").

The SABC welcomes and appreciates draft policy amendment to make the use of a control system non-mandatory. However, the mandatory inclusion of a control system in the set-top box decoder (STB) needs to be revisited so as to address technical challenges that may be faced by affected broadcasters. All these technical challenges will be discussed later in this document.

## 2. COMMENTS ON THE DRAFT AMENDMENTS

### 2.1 Legal Issues

The Promotion of Administrative Justice Act No. 3 of 2000 ("PAJA") makes it obligatory for Administrators to promote reasonable, lawful and procedurally fair administrative actions (our emphasis). The draft amendments deal in detail with the capabilities of the STBs and go beyond directions of a general nature, if gazetted as policy by the Minister in terms of s3(1) they would constitute "administrative action", as they do not fall within the exclusions in paragraph (b)(aa) of that definition. In our opinion the draft amendments as currently drafted would not be lawful as they go beyond general directions and are not aligned with the decision made by the South Gauteng High Court, Johannesburg (Case No. 34694/12).

In December 2012, the High Court (Pretorius AJ) set aside the decision by the previous Minister to appoint Sentech to manage the control system, and it also declared "that the Minister has no legal power to prescribe or make binding decisions relating to set top box control" and that "the Minister does not have the power to prescribe to FTA broadcasters how they should manage set top boxes".<sup>1</sup> This decision is not limited to

<sup>1</sup> Paras 37 and 38 of the South Gauteng High Court judgment



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use of the control system, it also includes whether or not the STBs have any control system, including network verification. Accordingly, the BDM Policy should be amended to make the control system non-mandatory and leave it up to individual broadcasters to determine if they want to fund the inclusion of the control system in their STBs.

## 2.2 The Public Interest

The object of the Broadcasting Act as set out in section 2, is *"to establish and develop a broadcasting policy in the Republic in the public interest"*. It was with the "public interest" in mind that in October 2013 the SABC took the decision not to support conditional access (CA) in STBs. This decision was informed by the following reasons:

- the SABC's services on both television and radio have always been on a free-to-air basis and going forward this should be the case for DTT as well;
- having STBs with CA will put an extra burden on consumers, drive up the costs of the device and unnecessarily complicate the management, manufacture and roll-out of STBs; and
- globally other public broadcasters have not encrypted their services, instead CA is predominantly used by Pay-TV broadcasters.

The SABC has a mandate to make its services available to all South African citizens, in line with universal access. It is in the public interest for the SABC to broadcast its services unencrypted so that all South Africans can continue to access its services. This means that any subscription DTT STB will also be capable of receiving the SABC free-to-air channels and that subscribers to those subscription services will not have to purchase an additional STB to receive the SABC DTT channels.

If there is no requirement for CA in the FTA STB, then the SABC is ready to launch its DTT service, as the infrastructure, content and all other necessary resources are already in place. As we indicated earlier in this submission, the High Court has already indicated that there is no basis in law upon which a requirement of a control system in the FTA STBs may be mandated by the Minister. In the public interest and to avoid further litigation and delays the Minister should delete the mandatory inclusion of CA in the FTA STB and leave this decision to be made by individual broadcasters based on their commercial interests.

## 2.3 Technical Challenges

### 2.3.1 Switch-on of DTT signal

The draft amendments contemplate a DTT signal switch-on by 1 April 2014. This is not a problem as demonstrated by the proof of concept DTT launch in Motswedimosa, Kimberly on 3 October 2012, where the digital signal was made available. The key is to have enough FTA STBs commercially available to meet demand at digital switch-on and this will not be possible if the FTA STBs have to include a control system.



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Mandating a control system makes the STB more complex and requires a complicated vetting process of manufacturers by the appointed CA service provider resulting in manufacturing period of between 6 to 10 months. There is no doubt that this manufacturing period will be shorter for established players who have long standing relationships with all the CA providers, but it will be longer and detrimental to new BFE entrants. If there is no CA in the FTA STB broadcasters will be ready and so will manufacturers by 1 April 2014. If there is CA in the FTA STB there will be a shortfall in compliant FTA STBs that can receive the signal until much later in 2014

### 2.3.2 Amendments that broaden scope of STB Control in the BDM Policy

In the current BDM Policy the STB control system is referenced in paragraphs 5.1.2.2, 5.1.2.6, 5.1.2.7, 5.1.2.8 and 5.1.4 when dealing with technical specifications. However, the proposed amendments appear to extend the ambit of a STB control system to paragraphs 5.1.1, which deals with government information and services, and 5.1.2.4, which deals with the secure on screen or over the air software download feature

Interactive services and information do not require a conditional access system or encryption in the FTA STB, they require interactive middleware in devices such as STBs and digital TV sets. In South Africa, MHEG 5 has been adopted as the interactive middleware with a South African profile to cater for all official languages. MHEG 5 with the SA profile will allow for interactive content by the broadcasters and e-government applications. The SABC has already tested MHEG 5 applications that provide games and information as part of the free-to-air DTT trial. It should be noted that this is information pushed to the STB and interactivity is on the STB only as the basic FTA STB does not have a return path.

Similarly, the secure on screen and software download feature is not part of the STB control system. The South African Standard for the FTA STB published by the South African Bureau of Standards already specifies the use of the DVB-SSU specification for software/code downloads.

MHEG 5 and DVB-SSU will be in the FTA STBs whether or not there is a conditional access system. Therefore, there is no need to amend paragraphs

5.1.1 and 5.1.2.4 in the BDM Policy. The existing BDM policy also makes a similar error when it indicates in paragraph 5.1.2.6 that the STB "have a STB control system to enable mass messaging", as the FTA STB would be capable of "mass messaging" whether there was a STB control system in the STB or not. It is recommended that the reference to "STB control system" be deleted from this paragraph.



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2.3.3 Draft Amendments lack clarity and operational cost allocation

The draft amendments state in the Executive Summary and in paragraph 9.3 that "To avoid challenges in implementing the Digital Migration programme, caused mainly by differences between broadcasters and also between some manufacturers the use of a control system is not mandatory. However the STBs will have a control system to protect Government's investment in the subsidized STB market and the local electronics industry and, with rapid technological changes, for future use by broadcasters who might not want to use it on implementation." Whilst it is clear that the use of the control system is not mandatory by broadcasters, it is not clear in this paragraph whether government is contemplating that a "sleeping" CA or an active CA be included in the FTA STB.

However, when read together with the objective of paragraph 5.1.2.2 that STBs be prevented from being used outside the borders of South Africa and disable the use of stolen STBs, our assumption is that the CA in the FTA STB would be an active CA. This has a number of practical and financial considerations.

Firstly, the FTA STB in every TV household will either need to be activated or delivered from the manufacturer pre-activated. Irrespective of which method is used, there will need to be a permanent business system in place to manage active STB control and a database of individuals using the FTA STBs, together with a call centre system and staff to manage activations and reactivations. This has a huge cost of over R500 million per annum and the policy does not indicate who will bear this cost. If the SABC is not using the control system it cannot be expected to fund and set up the control system, the business system and the activation/re-activation call centre. In any event the SABC simply does not have the funds in its budget allocations from National Treasury to fund such a control system.

Secondly, if the FTA STB will not work if it is not activated or re-activated in cases where it loses the entitlement messages required to keep it activated, this means that even if the SABC is broadcasting free-to-air with no encryption those FTA STBs will not be able to access the services of the SABC. This does not seem to be in line with the public interest or universal access mandate of the SABC. In particular the members of the public would have to have both access to a telephone and the necessary financial means to wait for operators to deal with their activation while calling the activation/re-activation call centre to access the services of the SABC.



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#### 2.3.4 Secure Downloader

A South African National Standard cannot require the mandatory use of a proprietary mechanism, thus it provided for the minimum hardware and software requirements to be specified by the FTA broadcasters. However, the standard did specify elements of a control system that are not of a proprietary

nature such as the menu operation, the unique SA DTT identification number and secure downloads and updates.

SABC is of the view that one should distinguish between cryptographic features such as the secure downloader which is a hardware enforced bootloader code embedded in the read only memory (ROM) to ensure that only authorized software can be downloaded and operate on the STB and the inclusion of a full CA system whose only purpose is the encryption of content on the broadcast signal for the purposes of pay TV. The secure downloader is not an optional feature as suggested by the draft amendment to paragraph 5.1.2.8 and is required for the FTA STB whether or not it includes a full CA system. The SABC and etv are developing the process for access to the engineering channel and downloads to the FTA STB by manufacturers and this will be managed by a FTA broadcasters association.

This failure to distinguish at a technical level between cryptographic features necessary for downloads and a CA system highlights why the BDM Policy should not go to this level of detail on technical specifications and should rather leave them to be dealt with by the broadcasters and South African standards bodies. It is recommended that technical paragraphs such as paragraph 5.1.2.8 be deleted as the minimum technical specification for FTA STBs is already dealt with in far more detail in the South African National Standard for FTA STBs.


### 3. CONCLUSION AND RECOMMENDATION

The SABC would like to thank the Minister and the Department for the opportunity to make this submission on the draft amendments to the BDM Policy. The SABC appreciates the Department's intention to revise the BDM Policy and urges the Department to further reconsider the amendments it has proposed, particularly the mandatory inclusion of a control system in the FTA STB. The SABC would recommend that the BDM Policy draft amendments comply with the judgment of the South Gauteng High Court, which is in line with the provisions of the PFMA and simply confine themselves to making the control system in the FTA STB non-mandatory. The Department should subsidise the standard box, which has no conditional access, which box the SABC supports and will be using. There is no basis for the Department to pay for conditional access because by so doing, it will be paying for commercial broadcasters, which would be in contravention of the PFMA.



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in the event that the Department decides to conduct oral hearings, the SABC would also like to make oral submissions. The SABC wishes the Minister and the Department well in their deliberations and would avail itself for further engagements should the Minister and the Department seek clarity on any matter that it has raised.

  
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Mr. Mlauli Motsoeneng  
Acting Chief Operations Officer  
Date 05-01-2014



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