

**REPRESENTATIONS BY M-NET AND
ORBICOM ON ICASA'S INFORMATION
MEMORANDUM FOR PROSPECTIVE
SPECTRUM LICENCES FOR THE
PURPOSES OF PROVIDING NATIONAL
BROADBAND WIRELESS ACCESS
SERVICES**

16 OCTOBER 2015

Introduction

- 1 Electronic Media Network (Pty) Ltd ("M-Net") and Orbicom (Pty) Ltd ("Orbicom") wish to thank the Authority for the opportunity to comment on its Information Memorandum for Prospective Spectrum Licences in the 700 MHz 800 MHz and 2.6 GHz for the Purposes of Providing National Broadband Wireless Access Services ("Information Memorandum").
- 2 We recognise the importance of releasing the digital dividend that will flow from the migration from analogue to digital terrestrial television, so as to enable the licencing and use of that spectrum for the provision of various additional services.
- 3 However, the release of the digital dividend and the licensing of that spectrum must be thoroughly planned and transparent, must be orderly, and must ensure that the interests of the existing terrestrial television broadcasting service licensees ("the existing broadcasters") which currently use spectrum in the 700 MHz and 800 MHz bands, and will continue to do so in the dual illumination period, are properly protected.
- 4 M-Net and Orbicom are concerned that the Authority's initial Invitation to Apply for Spectrum to Provide National Broadband Wireless Access Services (dated 15 December 2011), read with the Authority's Information Memorandum and various other Authority documents referred to the Information Memorandum do not adequately address the imperatives outlined in the preceding paragraph.

Concerns about transitional arrangements

- 5 As the Authority is well aware, all the existing broadcasters are currently broadcasting on an analogue basis using spectrum in the 700 MHz and 800 MHz bands. The Minister of Communications has still to announce the switch on date, namely the date on which these broadcasters must commence the broadcasting of their services on an analogue and a digital basis (i.e. must dual illuminate). Nor do we have any clear indication of how long the dual illumination period will be and the date of switch off, namely the date on which these broadcasters must cease the broadcasting of their services on an

analogue basis. Until that switch off date, these broadcasters must be assured of being able to continue to broadcast their services using the frequencies currently assigned to them, and to do so without any interference. There is thus huge uncertainty about the timeframes, which creates significant financial uncertainty for the existing broadcasters.

- 6 One of the numerous processes which the Authority must still embark upon is the amendment of the spectrum licences of these existing broadcasters to address their migration to new spectrum and the release of their existing spectrum.
- 7 Furthermore, the Authority, in assigning spectrum which is currently being used by the existing broadcasters for the purposes of providing national broadband wireless access services, these spectrum licences will need to specifically state that the licensee may not commence using the spectrum until, at the very least, the switch off date referred to above.
- 8 Numerous additional transitional arrangements also still need to be attended to. For example, we refer to paragraph 9 of the Authority's Final Radio Frequency Spectrum Assignment Plan ("RFSAP") in Notices 271, 272 and 273 gazetted in Government Gazette No. 38640 on 30 March 2015, which Notices dealt with the 700 MHz and 800 MHz bands. That paragraph is virtually identical in all three Notices and provides the following:

"9.1 The Authority resolved the following transitional arrangements for the right of use of spectrum in this frequency band:

9.1.1 That Broadcasting Spectrum Assignments in the band above 694 MHz, in the affected areas as stipulated in the Terrestrial Broadcasting Frequency Plan ... are to be used subject to meeting the conformance requirements in line with the GE06 Plan and are to be phased out during the performance period;

9.1.2 That broadcast transmissions and services ancillary to broadcasting in the band above 694 MHz are to be systematically switched off; and

9.2 That matters related to spectrum management geared at minimising and/or preventing harmful interference during the transitional arrangement period, are to be managed by the Authority which will develop a systematic implementation plan for the a seamless transition." (emphasis added)

9 All these processes still need to be conducted by the Authority. It is the responsibility of the Authority to ensure that in the migration to digital –

9.1 the coverage of the existing broadcasters is not adversely affected;

9.2 the broadcasting service of existing broadcasters is not disrupted, nor subject to interference;

9.3 the existing broadcasters have access to and are able to use spectrum to maximum effect, to evolve with new technologies and to innovate in order to meet the expectations of their audiences;

9.4 the existing broadcasters are subject to minimal inconveniences concerning the conduct of their businesses and the provision of their services;

9.5 the receipt by television viewers of television broadcasting services is not in any way disrupted nor the quality of these broadcasting services degraded; and

9.6 television viewers are also subject to minimal inconveniences in relation to the receipt of the broadcasting services of the existing broadcasters.

- 10 As regards the question of interference in particular, the Authority has a statutory duty to ensure that harmful interference is eliminated or reduced to the extent reasonably possible (see s30(2)(b) and (3) of the EC Act). Reference is made in the three Notices referred to in paragraph 8 above to the fact that "Technical analysis may be conducted by the Authority before an assignment is issued ..." (see paragraph 7.3 in each of those Notices). In our submission, it would in fact be imperative for the Authority to conduct such technical analysis to as to ensure that interference is eliminated or reduced to acceptable levels.
- 11 Additional important issues which the Authority will need to take into account in the migration process include –
 - 11.1 the current frequency that transmit the analogue service, and the band it occupies;
 - 11.2 the designated frequency for migration from analogue to digital;
 - 11.3 the earmarked from frequency to a frequency below 694 MHz;
 - 11.4 the transmitting site antenna specification;
 - 11.5 the combiners specification and flexibility to retune to a different frequency;
 - 11.6 the receive antennas used by the viewing public and their ability to receive transmission below 694 MHz;
 - 11.7 the off-air period to retune transmitters and combiners to frequency below 694 MHz;
 - 11.8 the prior marketing required to educate and inform the public of the pending frequency changes in the area;
 - 11.9 the number of households that would require a new antenna to be installed in order to receive transmissions from frequencies below 694 MHz; and

- 11.10 the number of installers that would be required to assist households with installing new antennas, and the amount of time it will take to do the installation for the affected households.
- 12 Furthermore, the Notices referred to in paragraph 8 above provide that any studio transmission links ("STLs") in the bands in question must be migrated out to point to point fixed assignments (see paragraph 10.1.1 in each of those Notices). The planning in this regard still has to be addressed by the Authority.

Compensation

- 13 Existing broadcasters are being forced to migrate from one technology platform to another, are being compelled to relinquish their rights to spectrum on completion of a process not requested by them and to implement it according to timeframes not determined by them, and are being asked to actively support the migration process.
- 14 However, the migration to DTT has huge cost implications to the existing broadcasters and their signal distributors. Not only is the process costly, but it is also disruptive and will yield no additional revenue until DTT take-up reaches a critical mass. Accordingly, there is little commercial incentive for broadcasters to fast-track migration.
- 15 In all these circumstances, and if the Authority and Government wish the migration to DTT to be as fast as possible, the Authority and Government ought to consider the proper compensation and incentivisation of these existing broadcasters in this process.

16 Reference ought to be made to the approach in other jurisdictions. For example, in the European Union, the European Commission stated that migration "necessitates addressing the need and scope of compensation for the broadcasting sector in order to avoid putting it at a disadvantage".¹ In that Report, the European Commission stated the following:

"A related aspect is the cost compensation for the broadcasting sector upon vacating the 700 MHz band as it would carry the burden of ensuring continuation of its services through costly network re-configuration within a certain deadline and within a reduced amount of spectrum. The cost impact on consumers also needs careful planning and mitigation."²

17 In the UK, OFCOM has adopted a similar approach. It has recognised that migration imposes costs on the existing broadcasters and television viewers, and is discussing longer term funding arrangements with the UK Government.³

18 In our view the Authority ought to request Government to consider making a portion of the revenue that is derived from the licence fees paid by the licensees to whom the digital dividend is to be assigned being paid to the existing broadcasters to assist in the funding of migration.

¹ Report to the European Commission, Results of the Work of the High level Group on the Future Use of the UHF Band (470 – 790 MHz), 1 September 2014 ("the EU Report"), pg 5

² EU Report, pg 6

³ OFCOM decision to make the 700MHz band available for mobile data – statement, 19 November 2014, paras 1.29 and 1.30

Authority's suggestion that new spectrum licensees be required to provide STBs, and that this cost be set off against the auction price

19 In paragraph 6.3 of the Information Memorandum, the Authority states the following:

"6.3.1. In order to fast track the DTT migration project and utilisation of 700/800 MHz, applicants awarded this spectrum are obliged to provide set-top-boxes free of charge to households for Free To Air Terrestrial Television Service, to who may not qualify for the subsidy scheme for ownership for poor television owning household in the affected areas

6.3.2. The cost to provide set top boxes free of charge will be offset against the auction price."

20 Whilst M-Net and Orbicom appreciate that this proposal by the Authority is with a view to accelerating the migration process, we submit that the Authority does not have jurisdiction to offset the cost of providing such STBs against the auction price. In this regard we refer to s15(3) of the ICASA Act, which states:

"All revenue received by the Authority ... must be paid into the National Revenue Fund within 30 days after receipt of such revenue."

The Authority will thus be required to pay the full amount (i.e. the full auction price) paid by the successful applicants for spectrum in these bands to the National Revenue Fund.

21 The question of whether or not the free-to-air STBs are to be subsidised is a question for the Government, and has in fact been dealt with in the Minister of Communications' Broadcasting Digital Migration Policy. We respectfully submit that this is not something which the Authority has the jurisdiction to deal with.

Conclusion

- 22 M-Net and Orbicom wish to thank the Authority once again for providing us with this opportunity to comment on the Information Memorandum.
- 23 In overseeing the migration to DTT and the release and licensing of the digital dividend, the Authority has a responsibility to consider the interests of all affected parties.