

TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS ALERT

FACELIFT TO DIGITAL MIGRATION POLICY

In 2008, the Department of Communications (DoC) published its Digital Migration Policy (Policy) setting out a three year plan for South Africa to transition from analogue television to digital television. Some five years later, South Africa is yet to actually commence the transition, having experienced various delays in publishing and retracting the Digital Terrestrial Television Regulations, including selecting the applicable digital standard and also delays encountered with choosing an appropriate strategy to provide set top boxes to the wider populace.

On 7 and 17 February 2012, the DoC published its amendments to the Policy. Interestingly only a few additional amendments were introduced in the later version, including a definition for 'regional television', deleting the reference to unique identifiers for set top boxes and the reference to a set top box system that will preserve government's investment.

The revised policy indicates that digital terrestrial television will now only be switched on in the last quarter of 2012 and the Minister of Communications (Minister) has recently indicated that analogue signals will only be switched off at the end of 2014, with completion of the digital terrestrial project scheduled for June 2015.

On the dual illumination period during which both digital and analogue signals will be broadcast, the policy provides that two national multiplexes will be prioritised for public, commercial and community broadcasting services. The policy does, however, also state that even though the digital migration process revolves around incumbent and particularly free-to-air broadcasters, there is a commitment from government to "...increasing diversity of ownership and content of the broadcasting sector and facilitating the development of a dynamic, competitive environment."

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After the debacle on possibly changing the digital standard in 2010, the policy now categorically states that South Africa will adopt the DVB-T2 digital standard that has been the preferred global standard. In areas that are not covered by the digital signal because they are difficult to reach, it is intended that a 'direct to home' satellite will be provided using DVB-S2 "or any other technology".

Notably, the revised policy also provides for more ambitious deadlines in terms of which the national broadcasting digital signal is to be extended in a phased manner with a view to covering 74% of the population by early 2012 and 95% of the population by the end of 2013. From a practical perspective, the Minister has said in an interview that Sentech is making progress in the roll-out of DVB-T2 transmitters and the DoC anticipates that digital signal will cover more than 60% of the population by March 2012.

Importantly, after having gone through numerous iterations of Digital Terrestrial Television Regulations published by Independent Communications Authority of South Africa (ICASA), the DoC has committed to ensure that ICASA publishes revised regulations in the near future with the hearings on the current draft regulations having been held in mid March 2012. It is intended the final regulations will ultimately be aligned with the revised policy.

As it stands, the revised policy seeks to capture the current status on the digital migration process and will hopefully assist the broadcasting industry, the DoC and ICASA with garnering some momentum to ensure that South Africa is able to successfully transition to digital television before the June 2015 International Telecommunications Union deadline, when analogue signals will no longer be protected.

Tayyibah Suliman

CYBER THUNDER IN THE CLOUDS

The recent spate of hackings and electronic security breaches serves to highlight the endemic threat and associated cost of cyber crime. Globally, organisations are forced to reconsider their cyber security measures as cyber criminals become more audacious and technologically innovative.

Crimes can take place in both the physical and the electronic medium, with the possibility of technology infrastructure being used as both a "subject" and an "object" of a crime.

The criminal justice system faces a number of challenges in the successful prosecution of cyber crimes. While the Electronic Communications and Transactions Act of 2002 does create a framework for criminalising cyber crimes, including hacking, it does not provide any concrete preventative measures to combat cyber crime. The technical and often remote nature of cyber crimes, including multi-jurisdictional issues where cyber criminals are operating abroad, often prevents prosecutors from being able to present viable cases and bring cyber criminals to book.

Fortunately, government has acknowledged that more proactive measures are required to address the scourge of cyber crime. Cabinet has recently approved a National Cyber Security Policy published by the DoC. The policy creates, among other things, a platform for the creation of a number of structures that would be responsible for analysing and responding to the threat of cyber crime with the ultimate objective of mitigating the effects of cyber crime in South Africa. The State Security Agency has been tasked with responsibility and accountability for the implementation of cyber security measures. It is hoped that this policy and the measures it intends to implement results in the prevalence of cyber crime in South Africa being effectively addressed and countered. Organisations should, in addition to any measures being taken by government, continue to carefully assess their cyber security measures proactively, including by implementing robust systems, particularly in instances where personal data is processed (which includes the collection, recording, transferring or storing of such personal information). The Protection of Personal Information Bill requires the implementation of "appropriate" security safeguards where an individual's personal information is processed. What will be considered appropriate will need to be determined on a case by case basis and with reference to steps taken in foreign jurisdictions, which may provide guidance in interpreting this requirement.

On account of the fact that there is no way to precisely document the far reaching effects of cyber crime, individuals, organisations and government must ensure that a more cautious and prudent approach is adopted to manage security in any electronic environment.

Simone Gill and Tayyibah Suliman

CONTACT US

For more information about our Technology, Media and Telecommunications practice and services, please contact:



Preeta Bhagattjee
Director
National Practice Head
T + 27 (0)11 562 1038
E preeta.bhagattjee@dcladh.com



Tayyibah Suliman
Senior Associate
T + 27 (0)11 562 1248
E tayyibah.suliman@dcladh.com



Ridwaan Boda
Director
T + 27 (0)11 562 1037
E ridwaan.boda@dcladh.com



Leishen Pillay
Senior Associate
T + 27 (0)11 562 1265
E leishen.pillay@dcladh.com



Clem Daniel
Director
T + 27 (0)11 562 1073
E clem.daniel@dcladh.com



Victor Omoighe
Associate
T + 27 (0)11 562 1209
E victor.omoighe@dcladh.com



Simone Gill
Director
T + 27 (0)11 562 1249
E simone.gill@dcladh.com



Mariska van Zweel
Associate
T + 27 (0)11 562 1180
E mariska.vanzweel@dcladh.com



Kathleen Rice
Director
T + 27 (0)11 562 1036
E kathleen.rice@dcladh.com

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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa
Dx 154 Randburg and Dx 42 Johannesburg
T + 27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dcladh.com

CAPETOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa
Dx 5 Cape Town
T + 27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dcladh.com

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