

FACTS ABOUT DIGITAL MIGRATION

1. WHAT IS DIGITAL BROADCASTING?

History of Digital broadcasting

The digital migration process began in early 2000 when a number of countries from the International Telecommunication Union (ITU) Regions 1 & 3 including Europe, Africa, Middle East expressed interest to introduce digital broadcasting.

Consequently, the ITU held the Regional Radiocommunications Conference in Geneva in June 2006 for planning of Digital Terrestrial Broadcasting Service in the frequency bands 174-230 MHz and 470-862 MHz, and drew up the Agreement and associated plans. The Agreement, known as the Geneva 06 (GE06), covered the use of Terrestrial Digital Video Broadcasting (DVB-T) standard for Digital Terrestrial Television Broadcasting Service and Terrestrial Digital Audio Broadcasting (T-DAB) standard for Digital Terrestrial Sound Broadcasting Service. Kenya is party to this Agreement.

The GE06 Agreement came into force on 17th June 2007 while the Transition period is from 17th June 2006 to 17th June 2015, during which the existing analogue assignments shall be protected. Thereafter, the analogue frequencies will be cancelled by the ITU and cease to be used in the countries party to agreement.

2. WHY DIGITAL MIGRATION?

The broadcasting industry has evolved overtime. In analogue broadcasting, each TV broadcaster has to produce content and roll out its own transmission infrastructure which is very expensive. In analogue transmission system, broadcasters are assigned a TV broadcasting frequency which can accommodate only one TV programme channel. Therefore, a large number of potential TV broadcasters are denied the opportunity to invest in TV broadcasting due to scarcity and non-availability of TV broadcast frequencies and/or the prohibitive cost of having to put up transmission infrastructure. This, in effect, and to a great extent, hinders competition in the sector.

The new digital technologies have presented an opportunity to expand broadcasting capabilities as many more TV programs can be accommodated on less spectrum bandwidth. However, the GE06 Agreement did not allocate new spectrum to these new technologies. Therefore, for countries to enjoy the benefits of these new developments, they have to have a phased implementation of digital broadcasting over the frequency bands currently in use for analogue broadcasting, hence the need for analogue to digital migration.

Benefits of Digital Migration

Digital broadcasting comes with a number of opportunities and benefits to the Government, Consumers and the ICT industry. These gains ultimately contribute to the socio-economic development of the country.

- i. **Gains to the Consumer;** Higher video and sound quality, mobile TV, a wider choice of enhanced broadcasting applications, multimedia data and entertainment services on the same platform. Consumers can also access diversity of content according to their viewing preferences including, programmes on sports, health, education, agriculture, culture, entertainment, business and religion, among others.
- ii. **Socio-Economic Development;** Job opportunities in the creative industry through increased content production, business opportunities for vendors/suppliers of digital receivers (set top boxes, integrated digital TVs), Infrastructure sharing among broadcasters hence saving on capital expenditure by broadcasters and enhanced competition through capacity to accommodate more players.
- iii. **The resultant digital dividend;** Freed frequencies will further support new services in mobile and broadband thus reducing the digital divide and accruing revenue to the Government in form of direct and/or indirect taxes.
- iv. **Environmental Sustainability;** Digital broadcasting employs the usage of fewer transmitters, less power consumption, less radiation thereby enhancing environmental conservation.
- v. **Efficient Utilization of Resources;** Due to rapid advancement in digital technologies and trends in computing, it is now possible to broadcast using new spectrum efficient digital technologies such that an analogue TV Channel which previously occupied an 8MHz bandwidth for one analogue TV program is now able carry over 20 TV programs on the same bandwidth.

3. HOW INTERNATIONAL AGREEMENT (GE06) ON DIGITAL MIGRATION WAS IMPLEMENTED IN KENYA

a. Digital Television Committee set up

Arising from the GE06 Agreement, Kenya set up a multi-stakeholder national migration task force constituted in March, 2007, comprising of the then Communication Commission of Kenya ;CCK(now CA), representatives from the then of Ministry of Information and Communications (now Ministry of ICT)-, Media owners Association (MoA) and the Kenya Broadcasting Corporation (KBC) to advise the government on a framework for migration so as to meet the international deadline of **17th June, 2015** deadline.

Thus the Digital Television Committee (DTC) was constituted in February, 2008, comprising of; Media Owners Association (MOA), MoICT, CCK, National Communications Secretariat (NCS), KBC, signal distributors, Digital Decoders Dealers Association, Consumer Groups, Digital Broadcasters Association, and Pay TV service providers to implement the recommendation of the National Migration Taskforce. As at January 2014, the DTC had held a total of 74 meetings since its inception, in addition to several other meetings held by its constituent subcommittees namely: the technical, regulatory, and consumer awareness.

b. What has the Government done to support Migration?

The Government has taken steps to ensure affordability of STBs by zero rating import duty and;

- Waived vendor registration fee and reduced type approval fee for set top boxes (STBs) from Kshs 20,000 to Kshs 4,000.

- Revised the minimum specifications for STBs making the Conditional Access feature optional for STBs intended for free to air (FTA) use.
- Liberalized the supply of Set Top Boxes to allow more players into the market.

These initiatives were aimed at lowering entry barriers, creating competition, driving the STB retail prices down, and greatly enhancing affordability of the gadgets to consumers.

c. What is the current coverage of Digital TV?

Currently, the coverage of the digital TV has matched the areas previously covered by the analogue signal and stands at over 58% of the population coverage. The Digital Terrestrial Transmission (DTT) infrastructure rollout by the two licensed Signal Distributors i.e Signet and Pan Africa Network Group (PANG), is still ongoing until the entire country is covered. Both signal distributors are in different stages of rolling out more DTT transmitters with a view to increasing coverage and improving the signal coverage to ensure good quality signal reception by the consumers.

4. WHO IS A BROADCAST SIGNAL DISTRIBUTOR (BSD)?

A Broadcast Signal Distributor is an entity that is authorized to set up infrastructure for the distribution of broadcast content. In digital television transmission, each broadcasting frequency can be used to broadcast several programme channels, hence allowing broadcast content from several broadcasters to be aggregated and broadcasted using fewer transmitters.

This therefore ensures that broadcasters concentrate on content development while the signal distributors roll-out transmission and distribution infrastructure throughout the country and ensure the broadcaster's content is transmitted to the broadcasters target areas. In this case, Digital TV frequencies are assigned to the Broadcast Signal Distributor (BSD) and not individual broadcasters as was the case in analogue broadcasting.

The Broadcast Signal Distributor is bound by licence conditions to provide open access to the digital platform for all interested licensed broadcasters on a fair, non-discriminatory basis.

5. HOW WERE BSD LICENSES ISSUED IN KENYA?

Chronology of the Licensing of Broadcast Signal Distributors.

- 2007: Government adopts the recommendations of the Digital Migration Taskforce in 2007 which included among others the Licensing of a subsidiary of KBC as the only signal distributor during the simulcast period and National early analogue switch-off deadline of 2012
- February 2008: KBC granted a permit by MoICT to establish a subsidiary company for signal distribution (Signet Ltd)
- 2009 CCK licenses Signet Ltd as the first Broadcast Signal Distributor
- 2011: DTC recommends the licensing of two BSDs through a competitive procurement process to be undertaken by CCK
- February 2011: CCK floats tender inviting Expression of Interest from local and international firms for the two BSD licences. A total of nine firms expressed interest, out of which six firms were pre-qualified for the tendering stage.
- April 2011 CCK invites the qualified firms to tender for the BSD licence
- May 2011: Tender closes with four (4) firms having responded i.e National Signal Networks – (Consortium of Nation Media Group Ltd & Royal Media Services Ltd); Pan-Africa Network Group (Kenya) Co. Ltd, African Link Agencies Ltd, Mayfox Company Ltd,

Ms. Globecast Africa and Signal Distributors Ltd (Consortium of local broadcasters) failed to submit bids even though they had been prequalified.

- 2011: CCK Evaluates received bids in accordance with the tender requirement stages namely: mandatory, technical and financial evaluation.
- On mandatory evaluation, one of the four (4) bidders i.e M/s National Signal Networks, fails to meet the criteria on the bid security validity period, having submitted a bid security with a validity period of 53 days instead of 120 days, hence National Signal Networks is disqualified.
- The three remaining firms; Pan- Africa Network Group (Kenya) Co. Ltd, African Link Agencies Ltd, and Mayfox Company Ltd were subjected to the Technical Evaluation Stage. Only one bidder, M/S Pan- Africa Network Group (Kenya) Co. Ltd, qualified to proceed to the Financial Evaluation stage.
- CCK officially communicates to the bidders informing them of the outcome of the technical stage as well as the date and time of the opening of financial bid of the entity that qualified for financial evaluation.
- M/s National Signal Networks (NSN), writes a letter of objection to CCK demanding the exercise be stopped on the basis of several grounds. CCK responded to the objection on 21st June 2011, indicating that the decision to disqualify NSN was arrived at fairly and in accordance with the conditions stipulated in the tender.
- June 2011: CCK approves the award of a license to M/S Pan- Africa Network Group (Kenya) Co. Ltd to roll out a national broadcasting signal distribution network in Kenya, at an initial license fee of USD Four Hundred Fifty Thousand (USD 450,000.00).

b). Appeal To Public Procurement Administrative Review Board (PPARB) by National Signal Networks

- June 2011: M/s National Signal Networks lodges an appeal against the award of the license to PANG with the PPARB.
- July 2011: M/s Mayfox Company Ltd lodges an appeal against the award of the license to PANG with the PPARB.
- July 2011: The PPARB delivers its decision on the matter dismissing both appeals and directs CCK to proceed with the procurement process.
- October 2011: CCK issues a BSD license to Pan Africa Network Group (PANG)

c) Tariffs charged on the digital platform

The Communications Authority of Kenya (CA) regulates the tariffs charged by signal distributors for accommodating the broadcasters/content service providers on the digital platform. In December 2013, the Authority issued a determination on these tariffs for implementation by signal distributors ahead of the Analogue Switch Off deadline for Nairobi and its environs.

In its determination, the Authority set the approved tariffs at cost base and much lower than those that had been proposed by both signal distributors. Thus the Authority ensures a reasonable rate of return on investments by the signal distributors while at the same time

protecting the broadcasters accommodated on the platform from unreasonable tariffs. Details of the charging methodology are available on the Authority's website www.ca.go.ke.

d). Why is it Important to license Broadcast Signal Distributors (BSDs)?

- Reduction of broadcasters operating costs, since they will no longer be required to operate TV transmitters and associated infrastructure. Broadcasters will concentrate on the studio side of the value chain (gathering, developing and assembling content). This translates to lower operational costs such as power, staff, fuel and maintenance.
- Efficient utilization of Radio Spectrum, since each broadcaster will no longer require individual frequencies to broadcast. The resources will be concentrated on the Distributors, who require fewer frequencies to distribute the various broadcasters' content.
- Elimination of barriers of entry to the broadcasting sub-sector which was previously constrained by lack of Spectrum and initial heavy investment in infrastructure.
- Enhanced competition due to the increased capacity on the digital platform to accommodate more players.
- More job opportunities as a result of increased demand for content and licensing of more TV stations

6. WHY ARE THERE ONLY TWO BSD LICENSEES?

The number of broadcasting signal distribution (BSD) licenses that can be issued mainly depends on the available spectrum and the business case. Where there is availability of spectrum, there is no justifiable reason to limit the number of licensees as long as the applicant sees a viable business opportunity. Currently, there are two licensed BSDs who have been assigned two to three frequencies per broadcast site and are expected to provide countrywide services to broadcasters.

The GE06 Agreement did not allocate new spectrum to Digital Television technologies. The phased implementation approach to the introduction of digital broadcasting means that there would be fewer Signal Distributors at the onset in order to balance the concurrent requirements of the existing analogue broadcasting and introduction of digital broadcasting during the transition period.

In Kenya, due to the prevailing circumstances where the frequency resource is greatly constrained, the number of signal distribution licenses need to be limited. Therefore, a new BSD operator requires at least two to three frequencies per site countrywide, in order to have a level playing field with the other two existing BSDs. This may not be possible at the moment as sites such as Kisumu, Webuye and Machakos have only one frequency unless the analogue TV broadcasting is first switched off.

a). Can CA issue another BSD licence at this point

Since both analogue and digital TV broadcasting are currently using the same frequency band during this transition period, there is a constraint on the number of frequencies which are available for Digital Terrestrial TV (DTT) especially in Nairobi and other major towns.

Moreover, the 2012 World Radiocommunication Conference (WRC-12) held in Geneva, Switzerland reduced spectrum allocation for broadcasting to between 470–694 MHz

(corresponding to TV channels 21–48). Therefore, it is not possible to assign any more TV broadcasting frequencies in such areas unless the analogue TV broadcasting is first switched off.

What obligations are imposed on BSDs to protect local interests?

The ICT policy guidelines stipulate that all service providers such as BSD providers must have a minimum of 20% local shareholding. Signet, a subsidiary of KBC is 100% owned by the Kenyan government. PANG is required to ensure that the minimum local shareholding is met.

7. WHAT IS A SELF-PROVISIONING LICENSE?

A Self-Provisioning Broadcasting Signal Distribution (SPBSD) license is a license that allows an entity to roll out its own network or utilize its existing infrastructure network to carry its own content. However the entity will in addition be required to have a broadcast content license.

8. HOW IS THE DISTRIBUTION OF DIGITAL TV FREQUENCIES?

The two BSDs i.e Signet and PANG have been assigned the same number of requisite frequencies countrywide with at least two frequencies in every broadcast area. However, the utilization of the assigned frequencies is dependent on the rate at which the respective BSD implements its roll-out plan. Currently, PANG has activated more transmitters compared to Signet.

In the case of SPBSD license, ADN was assigned Digital TV frequencies in 21 areas where the members of ADN already had analogue TV coverage either singularly or jointly. In other areas, digital TV frequencies were to be made available after analogue switch-off.

9. WHAT HAS DELAYED THE MIGRATION PROCESS IN KENYA?

The major cause of the delay in the migration process is attributed to Litigation

The High Court

On 22nd November 2013, Royal Media Services Ltd (RMS), Nation Media Group and Standard Group Ltd, filed Petition No.557 of 2013 in the High Court, seeking among others, an order compelling the then Communications Commission of Kenya (CCK) to issue them with Broadcasting Signal Distribution (BSD) licenses and frequencies; and an order restraining the Commission, as it then was, from switching off their broadcasting services and repossessing broadcasting frequencies previously assigned to them. The trial Judge delivered judgment on the 23rd December, 2013 dismissing the petition by the media houses.

The Court of Appeal

The Royal Media Services Ltd (RMS), Nation Media Group and Standard Group Ltd filed Civil Appeal No.4 of 2014 at the Court of Appeal. The Court of Appeal Judges delivered separate, but largely concurring judgments on the 28th March 2014, setting aside the judgment of the High Court. The Court of Appeal, among other orders, directed the CCK to issue BSD licence(s) to the three media houses, cancelled the BSD licence issued to PANG and postponed the analogue switch off to no later than 30th September 2014.

The Supreme Court

The decision of the Court of Appeal prompted the CCK and other parties to the suit, to lodge an appeal at the Supreme Court. The Supreme Court heard the submissions by the various parties and delivered its judgement on 29th September 2014, giving the following orders:

That the Communications Authority of Kenya (CA):

- i. In the exercise of its powers to consider the merits of applications for a BSD license by the three media houses and any other local private sector actors in the broadcast industry whether jointly or separately;
- ii. In exercise of its statutory powers, to ensure that the BSD license issued to PANG is duly aligned to constitutional and statutory requirements;
- iii. In exercise of its statutory powers, the Authority and in consultation with all the parties to the suit, set the time-line for digital migration pending the international analogue switch off date of 17th June 2015;
- iv. To upon conclusion of orders (i) & (ii) to notify the court through the registry; and the registrar shall schedule the matter for mention before a full bench.

10. HOW DID THE AUTHORITY IMPLEMENT THE SUPREME COURT ORDERS?

In compliance with the first order the Authority received, among other applications, a joint application by the three media houses under an umbrella company called Africa Digital Network (ADN) Limited for provision of their services on the digital platform.

The Authority considered the application vis a vis the available resources and found the application by the three media houses meritorious for a Self-Provisioning Broadcasting Signal Distribution (SPBSD) License. This license enables a licensee to set up a broadcasting infrastructure network to carry their own content.

The Authority commenced the process of granting the SPBSD license and issued a gazette notice to that effect. In the meantime, the Authority issued the consortium with temporary authorization on 25th November 2014 to enable them to start preparations for self-provisioning of signal distribution services prior to conclusion of the due process for licensing. The authorization stipulated the terms and conditions as well as the 21 TV frequencies to be assigned.

In compliance with the second order, the Authority in exercise of its statutory powers directed PANG to comply with the sector policy guidelines on 20% local shareholding.

11. WHY DID THE AUTHORITY WITHDRAW THE TEMPORARY AUTHORIZATION FOR SELF-PROVISIONING LICENCES FOR THE THREE MEDIA HOUSES?

The Authority withdrew the temporary authorization due to a misleading advertisement that had jointly been running on Television and Radio since Friday 16th January 2015 by the three media houses that was misleading to the public, offensive to the extent of causing disaffection and gross violation of the legal and regulatory framework governing the sector.

The said advertisement purported that StarTimes and GOtv were illegally carrying the content of the three media houses thereby infringing on their copyright and neighbouring rights. The advertisement went further to instruct consumers not to purchase StarTimes and GOtv pay-tv set-top boxes to watch CITIZEN Television, NTV, KTN and QTV. In addition, the advertisement alleged that the three media houses are the exclusive vendors of Free-To-Air set-top-boxes that can enable the public to view their channels. The tone of the advertisement, its content and timing was intended to cause confusion and disrupt the digital migration programme.

It is on that basis that the Authority decided to withdraw the temporary authorization granted to ADN and subsequently held in abeyance the process of issuance of self-provisioning license,

pursuant to Gazette Notice Number 9088 dated 19th December 2014. The Authority will soon make a final decision on this action.

12. WHAT IS FREE TO AIR (FTA) BROADCASTING

Free to air (FTA) broadcasting refers to television and radio services broadcast in clear (unencrypted) form, allowing any person with the appropriate receiving equipment (eg Set Top Box) to receive the programs (channels) and view or listen to the content without the need to pay (subscribe) any other cost other than the initial cost of acquisition of the receiver

13. WHAT IS PAY (SUBSCRIPTION) BROADCASTING

Pay TV Broadcasting refers to television and radio services broadcast in encrypted form requiring any person with the appropriate receiving equipment (eg Set Top Box) and to (pay) subscribe to receive the programs (channels) in addition to the initial cost of acquisition of the receiver.

14. WHAT IS “MUST CARRY” PRINCIPLE?

The “Must Carry” principle is a concept that originated in North America, with the advent of cable television. The rationale for this rule is to preserve the free circulation of information of public interest through access to television channels, such as national public television channels, as well as the private television channels. A distinct feature of “must-carry” rules is that the obligation can only be imposed if the respective networks are the principal means of receiving radio and television channels for a significant number of end-users of these networks. In the case of Digital Terrestrial TV broadcasting in Kenya, BSDs are the principal means receiving television channels for a significant number of consumers.

Does “must carry” principle amount to copyright infringement?

The law on copyright is not set in absolute terms, but is subject to exceptions and limitations catering for certain interests. These exceptions are conventionally referred to as “fair dealing” in Kenya and in the United Kingdom. “Fair dealing” is a defence to copyright claims and is part of the broader limitations and exceptions integrated into the copyright system, to safeguard public interests. The concept operates as a limitation to exclusive rights and support the principle of *must carry* on matters of public interest.

In this context, the BSD aggregates content from various broadcasters and avails the content to the viewers without any alteration. Therefore “must carry” principle does not amount to copyright infringement.

15. HOW WERE THE DIGITAL MIGRATION DATES ARRIVED AT?

In line with the Supreme Court Orders that directed the Authority to set Analogue Switch Off dates in consultation with all the 12 parties in the suit, the Authority undertook the exercise by holding a total of 4 consultation meetings with the 12 parties prior to setting the ASO dates.

a. November 4, 2014: The first consultative meeting on the Analogue Switch Off - CA Centre.

The meeting was attended by twenty seven persons, representing the twelve parties to the suit with the exception of representation from the three media houses (Standard Group, Nation Media Group & Royal Media Services) who were invited but did not attend. During the meeting,

the three media houses called to indicate that there was some communication breakdown but they were willing to attend the next meeting.

During the meeting, various consumer issues tabled by a representative from the Consumers Federation of Kenya (COFEK) were addressed. CA also made a presentation on the background of digital migration in Kenya, the extent of current coverage, the advantage of using phases in the ASO and the need to implement the ASO datelines to be set at least 2 months in advance of the ITU June 17 2015 deadline in order to have sufficient time to address any emerging challenges. The meeting agreed to postpone decision on the ASO date till the next meeting in order to accommodate views from the three media houses.

b. November 13, 2014: The Second consultative meeting on the Analogue Switch Off - Sarova Stanley Hotel, Nairobi

The second consultative meeting attracted a total of thirty participants from the twelve parties to the suit, including a participant from The Standard Group representing the three media houses.

The meeting appreciated that COFEK concerns had been addressed. The meeting in principle agreed with the proposal to have a phased switch-off and not a one-time countrywide switch-off.

The three media houses requested for time to further consult amongst themselves and with the CA on the matter. This was agreed after lengthy discussion. CA was required to organize the last consultative forum to deliberate and announce the ASO date.

c. November 20, 2014: The Third consultative meeting on the Analogue Switch Off- CA Centre.

The meeting was attended by thirty-one participants from the twelve parties to the suit, including representatives from the three media houses.

The meeting again received a request for more time for the three media houses to consult with the CA on the ASO date. This was not well received by other parties who raised concerns that the three media houses were trying to dictate issues on the ASO dates. However, after lengthy deliberations, the meeting agreed that CA consults with the media houses and calls for a final meeting to announce the ASO date after seven days.

d. November 28,2014: The Fourth consultative meeting on the Analogue Switch Off- CA Centre.

The breakfast meeting held at CA was attended by twenty one participants drawn from the twelve parties to the suit.

Despite the differing views on the ASO, the three phased switch-off was adopted as follows:-

- Phase 1 : December 31,2014: Analogue TV transmitters in Nairobi and its environs shall be switched off .
- Phase 2 :February 2,2015: Switch off of analogue TV transmitters in Mombasa, Malindi, Nyeri, Meru, Kisumu, Webuye, Kakamega, Kisii, Nakuru, Eldoret, Nyahururu (Nyadundo), Machakos, Narok and Loldiani (Rongai)

- Phase 3 : March 30,2015: Switch off of analogue TV transmitters in Garissa, Kitui, Lodwar, Lokichogio, Kapenguria, Kabarnet, Migori, Voi (Vuria), Mbwinzau/Kibwezi, Namanga and any other remaining sites

On the same day, the CA held a Press Conference and officially announced the above-mentioned ASO dates.

Following the announcement, the three media houses continued to run negative publicity regarding the ASO dates.

The Authority in exercise of its mandate has taken various steps to ensure that the Digital Migration Process is implemented in a reasonable way bearing in mind the interests of all stakeholders in the industry and the interests of the people of Kenya.

16. DO YOU REQUIRE A SPECIFIC SET TOP BOXES (STB) TO RECEIVE FTA CHANNELS

NO. Consumers do not need a specific Set Top Box to receive and watch Free-to-Air (FTA) channels. Any Type approved FTA set Top Box should be able to receive all Free to air channels.

The Authority Type Approves set top boxes and Integrated Digital TVs for use in Kenya, details are available on the Digital Kenya website: www.digitalkenya.go.ke

17. STRATEGY BY THE AUTHORITY TO ACHIEVE ASO BY JUNE 17, 2015 AT 0001 HOURS UTC

The Authority has embarked on massive Consumer Awareness campaigns across the country to empower the Consumers using various platforms including; Agricultural Society of Kenya (ASK) Shows and Exhibition, County ICT Consumer Forums, Road Shows, Interviews in Electronic & Print media, Advertisements on Electronic & Print including Bill Boards, SMSs, on-line platforms among others

The Authority has licensed over 60 Set Top Box Vendors to stimulate competition in the market. This has resulted into making the STBs more accessible and affordable.