

e.tv challenges minister's decision on encryption in court

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e.tv filed an application in the High Court, Gauteng Division, on Tuesday, 14 April 2015, to review aspects of the Broadcasting Digital Migration policy finalised by the minister of communications.

At issue is:

- A provision of the policy which states that government subsidised Set-Top Boxes (STB) shall not have the capability to encrypt broadcast signals, and-
- A provision which states the STB Control system shall be non-mandatory

e.tv has asked that the first provision be set aside and the second provision be amended.

e.tv argues in its papers that the effect of the previous judgment of 2012 (where e.tv successfully challenged then Minister of Communications Dina Pule's appointment of Sentech to operate the STB Control system) is that it is unlawful for the Minister to make decisions on certain key critical technical issues that affect free-to-air broadcasters.

In addition, e.tv's Chief Operating Officer Mark Rosin says, "The minister and cabinet have repeatedly stated that they wished to respect the right of individual broadcasters to decide for themselves whether to encrypt their signals. However, the effect of the policy is precisely the opposite. What e.tv seeks to ensure is that the BDM Policy does not prevent us making our own decision regarding encryption of our broadcast signal."

e.tv considers it essential that it be able to encrypt its broadcast signal primarily because this would prevent non-compliant STBs from receiving digital broadcast signals, thereby ensuring a uniform and reliable viewer experience. Without a fully conformant platform, broadcasters such as e.tv would in the future likely be unable to provide broadcasts in high definition.

Rosin adds, "In one provision, the minister purports to allow broadcasters the right to make their own decisions on the question of encryption. But in another adjacent provision, the minister renders this right entirely nugatory and meaningless by stating that the five million government subsidised STBs shall not have the capability to encrypt".

e.tv also accepts that it is important that the digital migration process begin and conclude as soon as possible so that the benefits of the digital migration process can be realised. For that reason, e.tv contends that it is important that finality be obtained as soon as possible on the lawfulness of certain provisions and that its application must therefore be dealt with as one of urgency.

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