

# **MOBILE TV: HALF A BILLION MOBILE TV SUBSCRIBERS BY 2010 - ARE BROADCASTING LICENSES REALLY NECESSARY?**

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## **Mobile TV - The Service**

Recent research indicates that Mobile TV services (television content broadcast to cellphones) will grow from its current 6.4 million to 500 million subscribers worldwide by the end of 2010. This translates to an estimated US\$42.8 billion in revenue generated by mobile entertainment. Maybe not surprising then that the first-ever World Cup global sponsor from Africa is a cellphone company. MTN have reportedly been tight-lipped about whether their R468m sponsorship pledge to SA's 2010 World Cup, will pay for itself through their right to deliver video footage of matches to cellphones in Africa and the Middle East.

Despite president Thabo Mbeki's announcement in Berlin, that SA's 2010 event will be a world first in terms of the role that Mobile TV will play, cellphone companies may be faced with some licensing challenges before they can line up to get their chunk of the pie.

The way Mobile TV services work is that a specialist Mobile TV service provider converts television content into a format, which can be viewed on a Mobile TV-compatible cellphone screen. Each digitally encoded television content stream then travels from the specialist service provider to the cellphone company via the Internet, is routed onto its wireless network and finally, to the subscriber's cellphone.

## **Regulating Mobile TV - The Problem**

South Africa has no legislation or regulations, which are specific to Mobile TV. Current legislation will therefore impact on the two constituent components of Mobile TV provision: telecommunications and broadcasting. Both components are regulated by the Independent Communications Authority of South Africa (ICASA) under the Telecommunications Act, 1996 ("the Telecoms Act"), the Broadcasting Act, 1999 and, once it is passed into law, the Electronic Communications Act, 2005 ("the EC Act").[1]

On the telecommunications component, once the EC Act is passed into law, cellphone companies, which were licensed under the Telecoms Act, will be issued with electronic communications network service licences. This type of licence will permit them to carry an encoded television content stream on their wireless networks. This aspect of the licensing process is quite straightforward, as the mobile cellular telecommunication service licenses (which cellphone companies currently have) will simply be converted to electronic communications network service licences.

However, providing Mobile TV will also constitute broadcasting and cellphone companies will therefore be providing a broadcasting service. The EC Act requires those who provide a broadcasting service to apply for a broadcasting service licence. Cellphone companies who intend apply for a broadcasting licence before the EC Act is passed, will have to apply under the Broadcasting Act. The Broadcasting Act then requires prospective broadcasters to apply for licences under another section of legislation called the Independent Broadcasting Authority Act ("the IBA Act").

The IBA Act states that prospective broadcasters may only apply for licences after ICASA has invited applications for a broadcasting licence.

This means that any cell phone company intending to provide Mobile TV in the near future, has to keep its fingers crossed that ICASA issues an invitation to apply for broadcasting licences very soon. If no invitation is issued, the regulatory bottleneck will see a large part of South Africa's portion of that US\$42.8 billion disappearing into the sunset.

## Mobile TV - The Good News!

There are a number of reasons why countries regulate broadcasting and South Africa's reasons are no different. One important reason is that broadcasting frequency spectrum (or colloquially – the radio waves) is a limited resource and its use must be carefully managed and controlled. This is a strong justification for the requirement that those who provide traditional broadcasting services be licensed. But does this really make sense for new media services, which are broadcast in the way that Mobile TV services are? Mobile TV and other new media services[2] can be, and most are, broadcast over the Internet, eliminating the need for the broadcasting frequency spectrum and therefore broadcasting licences.

ICASA has been known to be robust when it comes to promoting the use of new media. In one of its most significant rulings, ICASA exempted commercial services providing wireless Internet access through “hotspots”, from requiring licenses. Nothing is stopping ICASA from taking a similar approach with regard to Mobile TV. There is precedent for this in other parts of the world. The Canadian Radio-television and Telecommunications Commission took a progressive approach way back in 1999. After a consultation process, which took about eight months, the Commission issued an order exempting all new media broadcasting from regulation (meaning no licences required).[3]

So, instead of going through a licensing process that could take two years[4], ICASA could hold an enquiry similar to the “hotspot” enquiry, and quickly establish, whether new media such as Mobile TV can be exempted from the licensing provisions of broadcasting and other legislation. Disposing of the regulatory uncertainty long before 2010 is one way of ensuring that a large portion of those dollars head south of the equator.

The next conundrum: Will Mobile TV subscribers need a TV licence...?

It is important to note that by 2010 a host of other platforms will exist which will not only allow cell phone subscribers to access television content, but also customers of Wi-Fi enabled Internet Service Providers (ISP's). Laptop toting executives will also be able to watch Bloomberg or BBC as they sit in airport hotspots. The Mobile TV licensing issues discussed in this article are therefore equally pertinent to ISP's.

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[1] Because the EC Act will repeal the Telecoms Act, the regulatory aspects of Mobile TV are considered with the Broadcasting and EC Acts in mind.

[2] The Canadian Radio-television and Telecommunications Commission defines new media as “encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving along with other, more traditional means of distribution, digital delivery over networks interconnected on a local or global scale.”

[3] This exemption was valid for a period of 5 years and thereafter, the Commission intended reviewing the exemption.

[4] The licensing process for the first batch of Under-serviced Area Licenses issued in terms of section 40A of the Telecommunications Act started in 2002 and was completed in 2004.