PETITION TO THE SENATE BY THE AFRICA DIGITAL NETWORK LIMITED CONCERNING THE MIGRATION OF TELEVISION BROADCASTING FROM ANALOGUE TO DIGITAL PLATFORMS

Honourable Senators,

1. Pursuant to Standing Orders 220 (1) (a), and 225(2) (b), I hereby report to the Senate that a petition has been submitted by the Africa Digital Network Limited, through the Clerk, requesting the Senate to review certain aspects of the digital migration process in Kenya, and to undertake certain interventions on the same, as will be explained below.

2. The Africa Digital Network Limited is a consortium of three media houses in Kenya, namely, (1) the Nation Media Group, the proprietors of NTV and QTV, (2) the Standard Group, the proprietors of KTN, and (3) Royal Media Services, the proprietors of Citizen TV.

3. As you are aware, under Article 119(1) of the Constitution, and I quote:- "Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."

4. Honourable Senators, I have reviewed the Petition, and wish to highlight the salient issues raised by the petitioners, which are as follows-

   a) **THAT**, only two companies, the Government owned Kenya Broadcasting Corporation (KBC) through its subsidiary Signet, and the Chinese, Pan African Network Group (PANG) are licensed Broadcast Signal Distributors (BSD) in Kenya. (The petitioners are also aggrieved with the process through which the said BSD Licenses were issued);

   b) **THAT**, the petitioners object to being forced to have their content carried by only either the Government controlled KBC or the Chinese company, PANG. This is for reasons that (1) it hands the Government of the day the opportunity to control what the petitioners broadcast, (2) the petitioners investment in infrastructure of over Kshs.40 billion will go down the drain, and (3) the arrangement runs counter to Articles 33 and

34 of the Constitution on freedom of expression and freedom of the media respectively.

c) **THAT**, following protracted litigation going all the way to the Supreme Court, the petitioners were issued with a Self-Provisioning Licence in November 2014, permitting them to carry their own contents. However, the Communications Authority of Kenya (CAK) allocated the petitioners too few frequencies to enable them transmit their broadcast throughout the country;

d) **THAT**, the petitioners require up to 30th May, 2015 to be able to commence broadcast under the Self - Provisioning Licence allocated to them. This timeline is to allow for the petitioners to have their transmitters, antennae and set top boxes manufactured, shipped, cleared, transported and installed to enable them migrate; and

e) **THAT**, the petitioners are not opposed to digital migration, but rather to having their contents, for which they pay a lot of money, being pirated by Pay TV channels who in turn charge their viewers. The petitioners state that they welcome competition, but on a level playing field.

5. The petitioners therefore pray that the Senate resolves-

a) **THAT,** the digital migration date be moved to 30th May, 2015, which is within the International Telecommunications Union analogue switch off date for Kenya, of 17th June, 2015;

b) **THAT**, the CAK immediately returns the petitioners' equipment which CAK dismantled and carted away on 14th February, 2015;

c) **THAT**, the petitioners be awarded the 3rd Broadcast Signal Distributor (BSD) Licence as recommended under the National ICT Policy Statement dated 31st March, 2006 and the National Digital Migration Task Force Report dated 4th October, 2007;

d) **THAT**, the contents of the petitioners shall not be carried by anyone without the petitioners prior consent; and

e) **THAT**, a Broadcasting Bill be enacted establishing a Broadcasting Authority independent of Government, and charged with the mandate of frequencies allocation and all other matters concerning television broadcasting.

6. The Petition is signed by Mr. Linus Gitahi, Mr. Sam Shollei, and Mr. Wachira Waruru, the Chief Executive Officers of Nation Media Group, the Standard Group, and Royal Media Services respectively.

7. **Honourable Senators**, I am aware that there is a pending case in court that has been filed by one, Mr. Okiya Omtatah, in which he is challenging the switch-off of analogue broadcasting from the perspective of consumer rights.

8. I have reviewed both processes against the law and our Standing Orders, and wish to advise that there is nothing preventing the Senate from considering this petition as received, pursuant to Articles 94 and 119 of the Constitution, and of the Senate Standing Orders.

9. **Honourable Senators**, pursuant to Standing Order 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than [thirty] minutes.

(after comments by Senators)

10. **Honourable Senators**, pursuant to standing order 227(1), the Petition stands committed to the relevant standing committee, in this case the Standing Committee on Information and Technology. In terms of standing order 227(2), the Committee will be required, in not more than sixty days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner and laid on the Table of the Senate.