



ETV ANNUAL COMPLIANCE REPORT

MARCH 2017

2015/2016 ANNUAL COMPLIANCE REPORT

E-TV

LICENCE PERIOD: 17 DECEMBER 2008 TO 16 DECEMBER 2023

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution¹, the ICASA Act² and the Electronic Communications Act³ ("ECA") to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority is to ensure compliance by broadcasters with the terms and conditions of their licence, the ECA, the ICASA Act, any relevant legislation and regulations.

The purpose of this report is to give account of e.tv's compliance with the terms and conditions as set out in its licence for the 2015/2016 financial year in line with its licence year. Aspects of compliance that are measured comprise of geographic coverage, ownership and control structures, languages, format, local content obligations, general programming obligations, information programming, news and current affairs programming, programming targeted at children, employment equity obligations, skills and development obligations, finances, limitations on advertising and Regulations on South African Content Television, Regulations Regarding Standard Terms and Conditions and Universal Service, General Licence Fees Regulations and Access Fund (USAF) Regulations.

2. BACKGROUND

In December 2008, a converted licence was issued to e.tv in terms of the Licence Conversion process, as enunciated in Chapter 3, read with Chapter 15 of the ECA. According to the converted licence, e.tv's licence is valid for fifteen (15) years and is due to expire in 2023.

¹ The Constitution of the Republic of South Africa, No 108 of 1996

² ICASA Act No 13 of 2000, as amended

³ Electronic Communications Act No 36 of 2005

The holding company is Sabido Investments, a subsidiary of Hosken Consolidated Investments (HCI), a black economic empowerment and duly registered public company⁴.

4. COMPLIANCE ASSESSMENT

4.1. Geographic Coverage Area

According to clause 2 of Schedule 1 of the licence, the licensee is required to broadcast nationally and the minimum population coverage must be 77%.

Over the years, the licensee has maintained that it covers 80.5% of the country's population through terrestrial means and 100% coverage of the population via satellite. Based on the authority's perusal of e.tv network coverage issued by Sentech to the licensee, dated 10 November 2015, the Licensee exceeds the minimum 77% contemplated in clause 2 of its licence.

The Licensee was found to be compliant with clause 2 of Schedule 1 of its licence.

4.2. Target Audience

Clause 3 of Schedule 1 of the licence provides the target audience of the licensee is the public. The Licensee provides a service to the public. This is evidenced through its programming profile which caters for a wide spectrum of citizens through provision of news and information programming in line with its licence terms and conditions.

The Licensee was found to be compliant with clause 3 of Schedule 2 its licence.

⁴ E.tv's licence conditions

4.3 Language(s)

Clause 2 (1) of Schedule 2 of the licence provides that:

"Subject to the specific language requirements set out below, the Licensee shall ensure in respect of the licensed service, its programme material is provided primarily in English."

e.tv provides its programme material primarily in English and **therefore in compliance with clause 2(1) of Schedule 2 above.**

e.tv is further required, in terms of clause 2(2) of Schedule 2 of the licence to ensure that it *"broadcasts two (2) hours of news and information programming per week during the performance period in a wide range of official languages other than English and shall make provision for sign language translation on screen during the prime-time news bulletin. In complying with its obligations in respect of the use of official language other than English, the Licensee shall not make excessive use of a single language, other than English, to the exclusion of other official languages"*.

The Licensee has exceeded the requirement by broadcasting an average of 4.2 hours per week of news and information programming. This is an increase by 1.2 hours from the previous financial year where the licensee broadcast 3 hours per week of news and information programming. In the 2009/10 and 2010/11 financial years, the output was significantly higher in that for the 2009/10 financial year, the output was 7 hours and 6.7 hours for the 2010/11 fiscal year. Other languages in its news and information programming, comprise a mixture of isiZulu, isi-Xhosa, Sesotho, Setswana and Afrikaans.

The Licensee makes provision for sign language during its daily prime time (18h30) news bulletin. In addition, during the period under review, the Licensee made use of sign language during the broadcast of the "Opening of Parliament", the "State of the Nation address" and the "Budget Speech"⁵.

⁵ E.tv's Annual Compliance Report for the 2015/2016 annual Year

The above confirms that the Licensee has, to date (in its 7 year of licence since conversion process), consistently complied with clause 2 (2) of Schedule 2 of its licence.

In terms of clause 2 (3) of Schedule 2 the licence, e.tv is required to *"broadcast four (4) hours of programming other than news and information per week in official languages other than English. Compliance with this sub-clause shall be measured accordingly over the licence year. In complying with the above obligations, the licensee shall not make excessive use of a single language, other than English, to the exclusion of other languages"*.

The Licensee's has during the period under review exceeded the requirement by broadcasting 5.4 hours of programming other than news and information per week in official languages other than English, which is a slight increase from the 5.6 hours output for the 2014/15 financial year.

The Licensee was found to be in compliance with clause 2 (3) of Schedule 2 its licence.

Clause 2 (4) (a) of Schedule 2 of the licence provides that:

"At least 10% of the aggregate broadcasting time of its South African drama productions transmitted by the Licensee in a wide range of official languages other than English".

e.tv has, during the period under review, broadcast 41.2% of its South African drama productions transmitted, in official languages other than English. In complying with the above, e.tv provided drama programming in isiZulu, Setswana, Sesotho, isiXhosa as well as Afrikaans. Below is a summary of drama programmes provided in this regard:

- "Rhythm City", broadcast primarily in isiZulu, Sesotho and SeTswana;
- "Backstage", broadcast in isiZulu, SeTswana and isiXhosa with occasional Afrikaans;
- "Scandal", broadcast in isiZulu, SeSotho, SeTswana and Afrikaans;

- “Traffic”, broadcast primarily in isiZulu and isiXhosa; and
- “The Alliance” and Heist, broadcast in vernacular languages

e.tv was found to be in compliance with clause 2 (4) (a) of Schedule 2 of its licence.

Clause 2(4) (a) (ii) of Schedule 2 of the licence provides that:

“The Licensee shall not make excessive use of a single official language other than English to the exclusion of other official languages”.

In addition, clause 2. 4 (b) read with clause 2. 4 (b) (i) of Schedule 2 of the licence provides that:

“At least 20% of the aggregate broadcasting time of South African children’s programming transmitted by the licensee is in a wide range of official languages other than English”.

During the period under review, e.tv broadcast at 20.1% of children’s programming in a range of official languages. Programming was provided in isiXhosa, isiZulu, SePedi, SeTswana and SeSotho.

The above is an improvement from the 18. 3% output in the previous year.

The Licensee was found to be in compliance with clause 2.4 of Schedule 2 above.

Clause 2.5 of Schedule 2 of the licence enjoins e.tv to *“endeavor to dub some of the children’s programming acquired from abroad and broadcast by the Licensee into official language other than English”.*

The Licensee does not dub programmes acquired from abroad into official languages. However, the children’s programmes broadcast by e.tv such as Cool Catz are locally produced and therefore in official languages, other than English.

On this basis, the Licensee was found to be in compliance with clause 2.5 of Schedule 2 of the licence.

4.4 Employment Equity Obligations.

Clause 6.1 of Schedule 1 of the licence provides that:

"At least forty percent (40%) of the Licensee's employees (being staff and management) are African, that is, Black people excluding Coloureds and Indians.

Further, clause 6.2 read with clause 6.3 of Schedule 1 of the licence provides as follows:

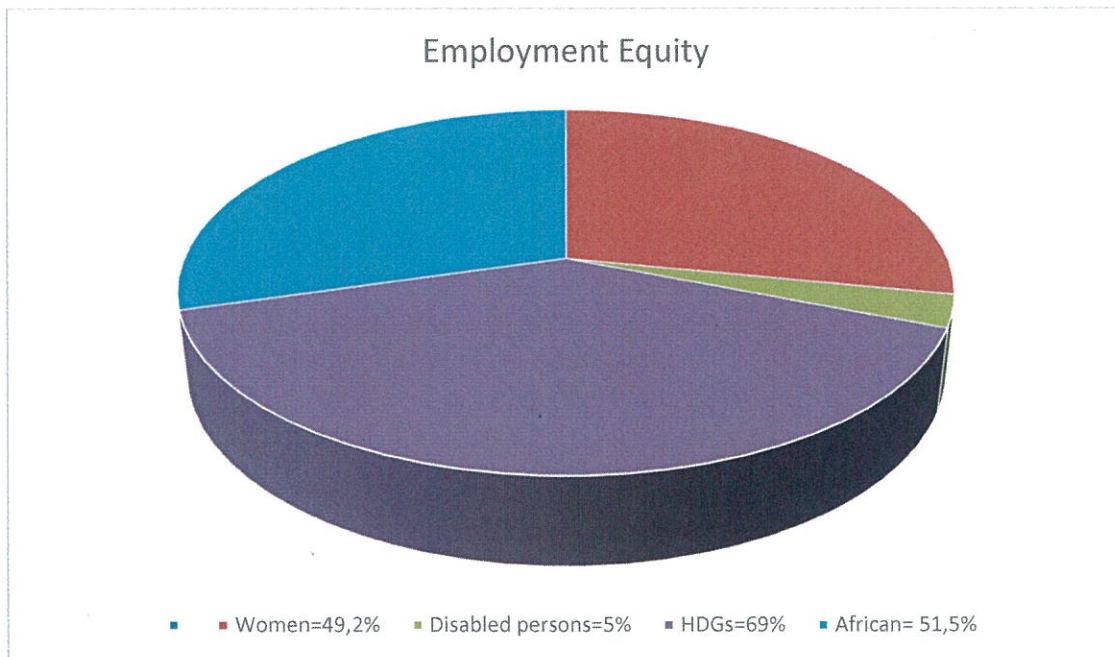
"At least thirty-five percent (35%) of the Licensee's employees (being staff and management) shall be women; and

At least five percent (5%) of the employees shall be disabled people".

Furthermore, clause 6.4 of Schedule 1 of the licence provides that:

"The Licensee's management shall consist predominantly of South Africans from historically disadvantaged groups (i.e. black (African, Coloured and Indian) South Africans, women and disabled people".

For the year in review, the licensee had a total staff compliment of 522 people. Of this number 269 were black employees (51,5%) excluding Coloureds and Indians. The Licensee employed 26 persons with disabilities constituting 5%. Further, e.tv management consisted predominantly of people from historically disadvantaged groups at 69%. Percentage breakdown of the foregoing is represented in Graph 1 below.



e.tv was found to be in compliance with clause 6 of Schedule 1 of its licence and its sub-clauses.

4.5 Skills and Development Obligations

Clause 7.1 of Schedule 1 of the licence provides that:

"The Licensee must ensure to participate in the development of the broadcasting industry by, amongst other things:

- a) supporting independent contractors from historically disadvantaged groups;*
- b) supporting industry development; and*
- c) promoting the development of independent producers".*

The Licensee submits that all local programming other than news and current affairs is commissioned out to the independent production sector. All production agreements entered into between e.tv and independent production companies include a provision which requires the production company to provide for training for historically disadvantaged persons.

Based on the information received from the Licensee, it can be concluded that e.tv has complied with clause 7.1 of Schedule 1 of its licence.

Clause 7.3 of the Schedule 1 of the licence provides that:

"The Licensee must recruit, train and develop individuals from historically disadvantaged groups and equip such people with appropriate managerial and technical skills relevant to the management and operation of a television station".

Further, clause 10 of Schedule 2 of the licence provides that *"The Licensee must invest 5.5% of its total annual salary costs, escalating annually at the rate of inflation, in staff training"*.

For the year in review, the Licensee spent 6.14% of its total salary costs on training. This is an improvement from the previous financial year where the Licensee underspent by spending 4.4% on training of its employees

The Licensee was found to be in compliance with clause 7.3 of Schedule 1 and clause 10 of Schedule 2 of its licence.

4.6 Provision of Audited Financial Statements to the Authority.

Clause 8 of Schedule 2 of the licence provides that:

"The Licensee shall provide the Authority with Annual audited financial statements within three (3) months of the end of its financial year".

e.tv submitted its Audited Financial Statements to the Authority within the stipulated time frame. The Authority is unable to analyse the financial statements in detail as the Licensee applied for confidentiality in this regard. The Authority can confirm that the AFS reflect a healthy financial status.

Licensee was found to be in compliance with clause 8 of Schedule 2 of the licence.

4.7 Local Content Obligations

Clause 3 (1) of Schedule 2 of the licence requires the licensee to ensure that in procuring programming produced in South Africa, it commissions programming from the different provinces and to ensure that such programming is reflective of provincial diversity, cultures and characters.

The Licensee procures programming content from different production companies which represent a variety of cultures and characters around the country. During the period under review, the Licensee commissioned programming from more than 20 companies. Below are some of the production companies commissioned:

- Greenwall Productions,
- African Media Productions;
- Endemol;
- Ochre Media,
- Red Pepper;
- Dawn Lindburg;
- Thabo Mphelo Films,
- Paw Paw Films,
- Okuhle Media,
- Urban Brew
- Vision Media;
- Fireworks Media; and
- Thabani Madlala

The Licensee was found to be in compliance with clause 3(1) of Schedule 2 above.

Clause 3 (2) of Schedule 2 of the licence provides that:

"The Licensee must ensure that forty-five (45%) of broadcast time consists of local television content" and further that "a maximum of fifteen percent (15%) of which shall be re-broadcast, measured over a year".

During the period in review, the Licensee broadcast at least 51% local content programming during the period under review. At least fifteen percent (15%) of which comprised re-broadcasts.

e.tv was found to be in compliance with clause 3 (2) of Schedule 2 above.

Clause 3 (3) of Schedule 2 of the licence provides that:

"The Licensee shall broadcast animations which reflect African and South African culture and lifestyles".

The animations broadcast by e.tv reflect the South African culture and lifestyles.

e.tv was found to be in compliance with clause 3 (3) of Schedule 2 of its licence

Clause 3 (4) of Schedule 2 of the licence provides that:

"The Licensee must provide programming which develops and promotes South African culture and talent, especially in the area of music, through locally produced programmes which may be broadcast during the time that falls outside the South African television performance period".

In terms of the current South Television Content Regulations, published in gazette number 28454 of 2006 ("the Regulations"), the measurement of compliance is done during the performance period from 05h00 to 23h00.

During the period under review, e.tv programmes were broadcast and recorded from 05h00- 23h00 in line with the South African performance period.

"Club 808" is locally produced and developed and promotes South African culture and talent in the area of music.

e.tv was found to be in compliance with clause 3(4) of Schedule 2 above.

Clause 3(5) of Schedule 2 of the licence requires e.tv to submit, on a quarterly basis, a log of local television content broadcast by the Licensee during the preceding quarter.

The Licensee made its submissions to the Authority as contemplated in its licence and was **accordingly found to be compliant with clause 3(5) of Schedule 2 of the licence**

4.8. General Programming Obligations

Clause 4.1 of Schedule 2 of the licence provides that:

"The Licensee must broadcast two (2) hours thirty (30) minutes of South African drama per week of which at least two (2) hours twenty (20) minutes must be broadcast during prime time".

Further, clause 4.2 of Schedule 2 of the licence provides that:

"The Licensee shall ensure that fifty percent (50%) of the South African drama referred to in sub -clause (2) above consists of re-broadcasts"

During the period under review, the Licensee broadcast 9.9 hours of South African drama per week during prime time of which two (2) hours thirty (30) minutes was allocated to youth drama, as is evidenced by the broadcast of drama programmes such as "Scandal", "Gold Diggers", "Our Stories" "Ashes to Ashes", "eKasie"- Our Stories" and "Rhythm City". In addition, to comply with clause 4.2, the Licensee ensured that re-broadcast of its drama programming was less than 50%.

e.tv was found to be in compliance with clause 4.1 and 4.2 of Schedule 2 its licence.

Clause 4.3 of Schedule 2 of the licence provides that:

"The Licensee must ensure that at least ten percent (10%) of South African drama productions broadcast by it comprise a broad range of official languages other than

English. In meeting this requirement, the Licensee shall not make excessive use of a single official language other than English, to the exclusion of other official languages”.

During the current period 41.2% of e.tv’s South African drama programming consisted of official languages other than English. This is an increase by 11.4% from the previous year where the output was 29.8% of South African drama programming in official languages other than English.

e.tv was found to be in compliance with clause 4.3 of Schedule 2 of its licence.

4.9 Information Programming

Clause 5 of Schedule 2 the licence provides that:

“The Licensee shall broadcast at least nineteen (19) hours of information programming per week, at least two (2) hours of which shall be broadcast during prime time”.

e.tv exceeded the minimum requirement by broadcasting 20.4 hours of Information Programming weekly. Nevertheless, the licensee delivered slightly under of which two (2) hours prime time requirement by broadcasting 1.6 hours during prime time. The Licensee has conceded to this underperformance and has attributed this to unforeseen scheduling changes made by the Licensee under the year in review. The licensee has however made an undertaking to rectify this in the next financial year. Whereas the licensee has underperformed in respect of its prime-time obligations for the year in review, it must be noted that the licensee has exceeded this requirement in the previous financial years. For example, 2.7 hours in the 2009/10 fiscal year; 2.6 hours in 2010/11 fiscal year and 2.5 hours in 2014/15 fiscal year.

Following from the above, e.tv was found to be in compliance with the 19-hour requirement but failed to comply with the 2-hour requirement during prime time as stipulated in clause 5 of Schedule 2 of its licence.

4.10. News and Current Affairs

Clauses 6.1 read with clause 6.2 of Schedule 2 of the licence provide that:

'The Licensee must ensure that it broadcasts news and current affairs programming that reflect local, regional and provincial events and developments'. Further, that e.tv "broadcast at least two (2) hours of news during performance period, of which at least thirty (30) minutes, packaged as a single programme, shall be broadcast during prime time".

e.tv's programming profile confirmed that the Licensee broadcasts news bulletins on weekdays between 05h30 and 19h00 as follows: Morning Edition, Afrikaans , Sunrise, Newsday and Prime Time and weekends between 18h00- 19h30 as follows- early Edition and Prime time.

During the period under review, prime time news was broadcast, as indicated above, every evening at 18h30 and 19h00 totaling 60 minutes per day of prime-time news. Of the news programmes at least 30 minutes was packaged as a single programme.

The Licensee's news and current affairs offering is reflective of local, regional and provincial events and developments.

e.tv was found to be in compliance with clause 6.1 read with clause 6.2 of Schedule 2 of its licence.

Clause 6.3 of the licence provides that:

"The Licensee shall exercise full editorial control in respect of the content of its news programming".

There was no evidence that suggested that the Licensee is not exercising full editorial control in respect of the content of its news programming.

In the Authority's assessment, the Licensee complied with clause 6.3 of Schedule 2 of its licence.

4.11. Programming Targeted at Children

Clause 7.1 read with clause 7.3 of the licence provides that:

"The Licensee must broadcast sixteen (16) hours of children's programming per week, of which at least 20% shall comply with the local content requirements as set out in the applicable regulations..."; and

"The Licensee shall broadcast one (1) hour thirty (30) minutes of South Africa youth drama during prime time. This is to be included in the children's programming quota referred to in sub-clause (a) and shall be measured as a weekly average over the period of a licence year."

During the period under review, e.tv broadcast an average of 19.1 hours per week of children's programming including a weekly average of 2.5 hours of youth drama. In terms of the 20% local content requirement, e.tv exceeded the requirement by broadcasting 42.3% South African children's programming.

Regarding the broadcast of youth drama during prime time, the Licensee broadcast, consistently, 2.5 hours a of youth drama per week during the period under review, **thus complying with the provisions of clause 7.1 and 7.3 of Schedule 2 of its licence.**

4.12 Limitations on Advertising and Provision of advertising-related information

Clause 8.1 and 8.2 of Schedule 2 of the licence provides that:

"The Licensee may not broadcast more than an average of ten (10) minutes of advertisements per hour on the licensed service during any licence year; and advertisements in excess of twelve (12) minutes in any one hour".

The Licensee did not exceed the requirement of twelve (12) minutes advertising in any hour. **Accordingly, the Licensee was found to be in compliance with clause 8.1 and 8.2 of Schedule 2 of its licence.**

4.13 Events of National interest.

Clause 9.1, of Schedule 2 of the licence provides that:

“The Authority may, on written application by the licensee, grant the licensee exemption in writing, on such terms and conditions as the Authority deems necessary in the circumstances, from compliance with some or all of the on air programming obligations set out in this licence, for a specified period, in the event that the Licensee satisfies the Authority that it is unable to comply with such obligations as a result of the broadcast of any event of national interest”.

During the period under review, the Authority did not receive any application for exemption to broadcast events of national interest from the Licensee.

5. REGULATIONS

5.1 South African Television Content Regulation

Regulation 4.1 of the ICASA South African Television Content Regulation provides that:

“A commercial television Licensee must ensure that at the commencement of its broadcasting service a minimum weekly average of 35% of its programming, measured over a period of a year, during the South African television performance period consists of South African television content”.

In complying with the above; a Commercial television broadcasting licensee must ensure that a minimum of:

- i. 20% of its drama programming consists of South African drama;*
- ii. 50% of its current affairs programming consists of South African current affairs;*
- iii. 30% of its documentary programming consists of South African documentary programming;*
- iv. 30% of its informal knowledge building programming consists of South African informal knowledge building;*

- v. *25% of its children's programming consists of South African children's programming".*

For period under review, the Licensee complied with its obligations as follows:

- i. 41.2% of its drama programming consists of South African drama;
- ii. 100% of its current affairs programming consisted of South African current affairs;
- iii. 59.3% of its documentary programming consisted of South African documentary programming;
- iv. 65% of its informal knowledge building programming consisted of South African informal knowledge building; and
- v. 42.3% of its children's programming consisted of South African children's programming.

The Licensee was found to be in compliance with the South African Television Content Regulations.

5.2 Standard Terms and Conditions for individual broadcasting licensees

During the year under review, the Authority did not identify any non-compliance by e.tv with the Standard Terms and Conditions.

5.3 Universal Service and Access Fund

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF) as published in the Government Gazette, no 31499 of April 2009 provides that:

"Every holder of a Licence granted in terms of Chapter 3 or converted in terms of chapter 15 of the Act, must pay an annual contribution of 0.2% of the annual turnover, derived from the licensee's licence activity, to the Fund (the Fund)".

Further, Regulation 3 (3) provides that:

"A broadcasting service licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund."

The Licensee paid its annual contribution fee to the fund of R 2 728 288.94 which is an equivalent of 0.2% of the Licensee's annual turnover and submitted proof to the Authority on 30 January 2017.

The Licensee was found to be in compliance with the regulation in respect of Universal Service and Access Fund.

5.5 Licence Fees Regulations

General Licence Fees Regulations as published in the Government Gazette, no 32084, 01 April 2009, provides that:

"Individual Commercial Broadcasting Service Licensee's must pay annually to the Authority a licence fee of 1.5% of its gross profit".

Schedule 3 (4) (b) of the General Licence Fees Regulations provides that:

"Annual payments are due and payable within 6 months from the end of the licensee's financial year".

The Licensee paid its annual licence fee of R4 495 794. 36 to the Authority in September 2015.

The Licensee was found to be in compliance with the Licence Fees Regulations.

6. CONCLUSION

For the period under review e.tv has demonstrated compliance with relevant regulations in respect of free to air terrestrial broadcasting services. The Licensee has also complied with its licence terms and conditions, save for partial compliance with clause 5 of Schedule 2 of its licence in that it failed to comply with the 2-hour information programming requirement during prime time. The Licensee has conceded to this non-compliance which it has attributed to unforeseen scheduling. The Licensee has undertaken to rectify this in the next financial (2016/17) year.

7. TERMS OF REFERENCE

- 7.1 Appendix A: e.tv's licence terms and conditions
- 7.2 Appendix B: Employment Equity Obligations