

2010/2011 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 (“EC Act”) to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the terms and conditions of their license, the Electronic Communications Act (“EC Act”), the ICASA Act, any relevant legislation and regulations.

The following report is intended to give account of e.tv’s compliance with the terms and conditions as set out in its licence for the 2010/2011 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, Universal Service and Access Fund (USAF) Regulations and General Licence Fees Regulations.

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

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 together with Chapter 15 of the ECA. According to the converted licence, e.tv's licence is valid for fifteen (15) and is due to expire in 2023 (*See Appendix A- Licence Terms and Conditions*).

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

3. COMPLIANCE ASSESSMENT: SCHEDULE 1

3.1 Geographic Coverage Area

Clause 2 of the licence provides that:

"The Licensee shall provide national coverage of its broadcasting services provided that any given time the minimum population coverage shall be 77%".

e.tv maintains that it has grown exponentially and is now the largest English medium television broadcaster and the second most watched television channel in the country, with a broadcast footprint of 80.5% (*See Appendix B - e.tv's population coverage*).

Since the initial licence was granted, the Authority has approved 34 applications by e.tv for Self-Help stations. A Self-Help station is defined 'as a community owned and funded relay station, which transmits the signal of a broadcaster within the licence area of that broadcaster in cases where, for technical or other reasons, the broadcaster's signal cannot be received'. For e.tv to fulfill its mandate of universal service and access and as part of its expansion of coverage to various parts of the country, which does not fall within e.tv's geographic coverage area, it has set up these Self-Help stations. This has resulted in an increase in coverage to 80.5% of the population.

⁴ E.tv's licence conditions

e.tv complies with clause 2 of its licence.

3.2 Target Audience

Clause 3 of the licence provides that e.tv's target audience is:

"General Public".

e.tv maintains that provides a service to the general public. The Authority's monitoring exercise confirmed that e.tv's target audience is the general public. Their programming caters for all sectors of society, from children to youth, adults and people with disability.

e.tv complies with clause 3 of its licence.

3.3 Language(s)

Clause 4 of the licence provides that:

"The Licensee shall broadcast in languages indicated in the schedule for existing television channel and/or in the channel authorisation certificate/s".

e.tv broadcasts its programming principally in English as per its current licence.

3.4 Format

Clause 5 of the licence provides that:

"The Licensee shall provide a wide variety of programmes".

Monitoring exercise conducted by the Authority confirms that e.tv provides a wide variety of programmes. These include information programming, Documentary, current Affairs, children's programmes and drama programmes.

e.tv complies with clause 5 of its licence.

3.5 Employment Equity Obligations

Clause 6 of the licence provides that:

- (1) *"At least forty percent (40%) of the Licensee's employees (being staff and management) are African, that is, Black people excluding Coloureds and Indians.*
- (2) *At least thirty five percent (35%) of the Licensee's employees (being staff and management) shall be women.*
- (3) *At least five percent (5%) of the employees shall be disabled people.*
- (4) *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".*

The Licensee submits that 48.2% of its employees are African and 46.5% are women. Further, e.tv employs twenty-four (24) disabled employees which is 5% of the total staff. Furthermore, e.tv management consists predominantly of people from historically disadvantaged groups, South Africans, women and disabled people. *(See appendix C for further details)*

e.tv complies with clause 6 of its licence.

3.6 Skills and Development Obligations

Clause 7(2) 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. During the period under review, e.tv commissioned local programming from the following amongst others: Red pepper, Stimuli, Gayton Mackenzi, Javelin, Endemol and Sobabili; Seleke Productions.

Based on the information, it can be concluded that e.tv has complied with clause 7 (2) of its licence.

Clause 10 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".

The Licensee states that during the year under review, R 5,329,704.00, which is approximately 5.16% of its total annual salary costs, was spent on training its employees. The expenditure is below the threshold because budgeted training expenditure relating to the upgrade of the broadcast systems software was not incurred. This expenditure was deferred to 2012 owing to the delays by the supplier in providing the upgraded version.

The Licensee did not meet the 5.5 requirement as stipulated clause 10, however advanced reasons for the non-compliance and maintains that the shortfall amount will be deferred to 2012 financial year.

3.7 Provision of Audited Financial Statements to the Authority

Clause 8 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 Licensee complies with clause 8.

4. COMPLIANCE ASSESSMENT: SCHEDULE 2

4.1 Content Monitored

E-TV Programme Content per Genre

The following table reflects the actual content monitored in respect of e.tv for the three month period namely 04 July 2011 to 24 September 2011

CATEGORY	OBLIGATION	CONTENT MONITORED (HOURS PER WEEK)	LOCAL CONTENT OBLIGATION
News	Two (2) hours during performance period, thirty (30) minutes, packaged as a single programme during prime time.	935 minutes = 15.5 hours weekly Prime Time: 450 minutes= 7.5 hours Weekly.	#
Current Affairs	#	630 minutes= 10.5 hours	100%
Information programming	Nineteen (19) hours per week. Two (2) hours in prime time	1325 minutes = 22.8 hours per week Prime Time: 2 hours 30 minutes	69%
Documentary	#	187 minutes= 3 hours per week	60%
Drama	Two (2)hours thirty (30) minutes of S.A drama per week and two (2) hours twenty (20) minutes during prime time	1595 minutes= 26.5 hours per week SA Drama: 480 minutes= 8 hours	30%

Children's Programming	Sixteen (16) hours per week.	1135 minutes= 18 hours <hr/> S.A. Content: 400 minutes= 6 hours	35%
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No Obligations

4.2 Language(s)

Clause 2 (1) 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" (See Appendix A- Licence Terms and Conditions).

According to the information submitted and monitoring conducted, e.tv provides its programme material primarily in English.

e.tv complies with clause 2(1) of its licence.

Clause 2(2) of the licence provides that:

"The Licensee shall broadcast 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 maintains that it has exceeded the requirement by broadcasting an average of 6.7 hours of news and information programming in official languages other than English per week. Some of the languages used in its news and information programming, comprise a mixture of isiZulu, isi-Xhosa, seSotho, seTswana and Afrikaans. Further, e.tv has a sign language interpreter during each of its 18h00 bulletins. Furthermore e.tv has a sign language interpreter

during the broadcast of the opening of parliament, State of the Nation Address and budget speech.

The Authority's monitoring revealed that fifteen (15) hours of news per week is broadcast by the Licensee of which seven (7) hours was broadcast during prime time. Further, the Licensee provides for a sign language interpreter, particularly, during the 18h00 prime time news bulletin and 22h00 news bulletins on weekdays.

e.tv complies with clause 2 (2) of its licence.

Clause 2 (3) of the licence provides that:

"The Licensee shall 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".

According to the Licensee's submission, it has exceeded the requirement by broadcasting 5.2 hours of programming other than news and information per week in official languages other than English.

The monitoring exercise revealed that e.tv broadcasts approximately five (5) hours of programming other than news and information per week in official languages other than English. The following are examples of South African drama programmes broadcast by e.tv: "Rhythm City", "Backstage", "Scandal" and "eKasi Stories". The programmes are multilingual and the languages detected during monitoring are isiZulu, seTswana, seSotho, seTswana, isiXhosa as well as Afrikaans.

Although the above requirement is measured over the licence year, for the period under review, e.tv complies with clause 2 (3) of its licence.

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

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

According to the Licensee's submissions, e.tv has complied with this obligation by broadcasting at least 16.3% of its South African Drama productions transmitted, in official languages other than English.

The monitoring exercise revealed that on average 15% of the licensee's South African dramas are broadcast in a range of official languages other than English.

e.tv complies with clause 2 (4) (a) of its licence.

Clause 2 (4) (b) read with clause 2 (4) (b) (i) 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".

Further, clause 2(4) (b) (ii) provides that:

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

According to its submission, e.tv broadcast 23.8% of children's programming in a range of official languages, consisting of isiXhosa, isiZulu, sePedi, seTswana and seSotho.

The monitoring exercise revealed that programmes such as "Craze-e", broadcast between 14h30 and 16h30 on weekdays, 07h00 and 10h30 on Saturdays and 09h00 and 10h30 on Sundays and "Cool Catz", "Sistahood" and "Jozi Zoo", are broadcast in a range of official languages other than English.

The Licensee complies with clause 2(4) of its licence.

Clause 2(5) of the licence provides that:

"The Licensee shall 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 are locally produced and are in official languages, other than English.

The Licensee complies with clause 2(5) of its licence.

4.3 Local Content Obligations

Clause 3 (1) of the licence provides that:

"In procuring programming produced in South Africa, the Licensee must ensure commissioning of programming from the different provinces and to ensure that such programming is reflective of provincial diversity, cultures and characters".

The Licensee submits that, it has commissioned the following programmes in the current licence year:

- Scandal;
- Rhythm City;
- Club 808;
- Craze;
- Musangwe;
- Forgive and Forget;
- eKasi Dramas x 13
- Blame it on fame;
- Tropika Island of Treasure;
- Rolling with Zola;
- So What;
- Great Expectations;
- 4Play – sex tips for girl;
- Step up or Step out;
- Popstars;
- Born frees; and

- Showbiz Report.

Furthermore, the Licensee submits that all productions are predominantly from Gauteng and the Western Cape due to lack of fully fledged production companies in other provinces. e.tv always strives to source productions from as many provinces as possible. *(See Appendix D for further details)*

e.tv complies with clause 3.1 of its licence.

Clause 3 (2) of the licence provides that:

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

The Licensee has indicated that it broadcasts 47.7% of local content programming between 5am -11pm each day. In addition, at least fourteen percent (14%) of the aforementioned comprised of re-broadcasts.

The monitoring exercise confirmed that at least 47% of the Licensee's broadcast time consists of local content during the South African performance periods.

e.tv complies with clause 3 (2) above *(refer to 4.1 above for further information regarding local content programming)*.

Clause 3 (3) of the licence provides that:

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

The submissions by e.tv and monitoring conducted by the Authority indicate that the animations particularly in children's programming broadcast by e.tv are reflective of South African culture and lifestyles.

e.tv has complied with clause 3 (3) of its licence

Clause 3 (4) 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 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.

e.tv confirmed that their programmes are recorded from 05h00- 23h00 in line with the South African performance period.

Monitoring conducted confirmed that programmes such as “Club 808”, “Popstars” and “Unplugged Joy of Jazz” are locally produced and develop and promote South African culture and talent in the area of music.

e.tv complies with clause 3(4) of its licence.

4.4 General Programming Obligations

Drama

Clause 4.1 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”.

The Licensee submits that for the period under review, it broadcast an average of 5.1 hours of drama per week during prime time of which 2.5 hours were allocated to youth drama.

The Authority’s monitoring exercise confirmed that on average, the Licensee broadcasts five (5) hours of South African drama per week, of which four (4) hours is broadcast during prime time, as is evidenced by the broadcast of dramas such as “Scandal”, “Ekasi: Our Stories”, and “Rhythm City”

e.tv complies with clause 4.1 of its licence.

Clause 4.2 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".

e.tv has indicated that during the period under review, it broadcast 16.3% of South African drama programming in official languages other than English.

The Authority's monitoring exercise confirmed that 18% of drama programming was broadcast in official languages other than English.

e.tv complies with clause 4.2 of its licence.

4.5 Information Programming

Clause 5 of 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 has indicated that it has complied with this provision by broadcasting 21.7 hours of information programming per week and 2.6 hours of information programming during prime time.

Monitoring confirmed that e.tv broadcasts approximately twenty two (22) hours of Information Programming weekly of which two (2) hours thirty (30) minutes is broadcast during prime time.

e.tv complies with clause 5 of its licence.

4.6 News and Current Affairs

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

'The Licensee must ensure that it broadcast 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".

In its submission e.tv maintains that news and current affairs programming reflect local, regional and provincial events and developments. e.tv further maintains that in its broadcasts, it complies with the two (2) hours requirement of news broadcast during performance period as well as the 30 minutes packaged as a single programme during prime time.

The monitoring of e.tv's programming profile confirmed that the Licensee broadcasts news bulletins between 05h30 and 8h30 in the morning during the programme called "Sunrise". Further, news bulletins were broadcast at 13h00, 18h00, 19h00 and 22h00.

News during prime time is broadcast every evening at 18h00 and 19h00 totaling sixty (60) minutes per day of prime time news. Of the news programmes at least thirty (30) minutes is packaged as a single programme.

e.tv complies with clause 6.1 and 6.2 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".

From the Authority's monitoring exercise, there was no evidence to suggest that the Licensee is not exercising full editorial control in respect of the content of its news programming.

e.tv complies with clause 6.3 of its licence

4.7 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."

The information submitted by e.tv indicate that it broadcast 18.6 hours per week of children's' programming including a weekly average of 4.5 hours of youth drama all of which amounted to 23.1 hours. In terms of the 20% local content requirement, e.tv indicated that it broadcast 42.3% South African children's programming.

Monitoring conducted, for the period under review, confirmed that e.tv broadcast eighteen (18) hours of children's programmes per week. Programmes such as Backstage and Rhythm City are categorised as youth drama. In terms of youth drama, e.tv broadcasts at least 2.5 hours of youth related drama programming during prime time. Thus, e.tv broadcasts at least 20.5 hours of programming targeted at children, which is inclusive of youth programming.

Compliance with local content requirement is measured as a weekly average over the period of a year. The monitoring conducted revealed that at least 35% of children's programming contains local content.

e.tv complies with clause 7.1 of its licence.

4.8 Limitations on Advertising and Provision of advertising-related information

Clause 8 (a) and (b) 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 confirmed that during the period under review it did not exceed the requirement of twelve (12) minutes advertising in any hour.

According to the monitoring conducted, e.tv's advertisements did not exceed the maximum twelve (12) minutes. Advertisements ranged between eight (8) and twelve (12) minutes per hour.

e.tv complies with clause 8 (a) and (b) of its licence.

4.9 Events of National interest

Clause 9 (1) 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 from licence terms and conditions in order to broadcast events of national interest by 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". (see Appendix E- for further details)

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

- (1) 20% of its drama programming consists of South African drama;
- (2) 50% of its current affairs programming consists of South African current affairs;
- (3) 30% of its documentary programming consists of South African documentary programming;
- (4) 30% of its informal knowledge building programming consists of South African informal *knowledge building*;
- (5) *25% of its children's programming consists of South African children's programming".*

The Licensee submits that, for the period under review, their compliance was measured as follows:

- (1) 32.4% of its drama programming consists of South African drama;
- (2) *97.4% of its current affairs programming consisted of South African current affairs;*
- (3) 64.3% of its documentary programming consisted of South African documentary programming;
- (4) 45.3% of its informal knowledge building programming consisted of South African informal knowledge building;
- (5) 42.3% of its children's programming consisted of South African children's programming.

The Authority's findings, for the period under review, were measured as follows:

- (1) 30% of its drama programming consists of South African drama;
- (2) 100% of its current affairs programming consisted of South African current affairs;
- (3) 60% of its documentary programming consisted of South African documentary programming;
- (6) 69% of its informal knowledge building programming consisted of South African informal knowledge building;

(7) 35% of its children's programming consisted of South African children's programming.

The Authority's monitoring was only conducted over a period of three (3) months, and not over one (1) year as per the obligation. The period monitored indicated that e.tv complies 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 (*See Appendix F- Regulations for further details*).

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" (see USAF Regulations attached as Appendix G).

e.tv paid its annual USAF fee to the fund and submitted proof of payment to the Authority in November 2011.

e.tv complies with the regulation in respect of Universal Service and Access Fund.

5.4 Licence Fees Regulations

Schedule 2 of the General Licence Fees Regulations as published in the Government Gazette, no 32084, 01 April 2009, provides that:

"Individual Commercial Broadcasting Service Licensee's to pay annually to the Authority a licence fee of 1.5% of its gross profit" (See Licence Fees Regulations attached as Appendix H).

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".

e.tv paid its annual licence fee to the Authority in November 2011.

e.tv complies with the Licence Fees Regulations.

6. CONCLUSION

For the period under review e.tv has generally complied with the licence terms and conditions and relevant regulations on free to air terrestrial broadcasting services. However, e.tv conceded to the non-compliance of clause 10 of its licence, the Licensee alluded that the reason for the non-compliance was beyond its control and this will be remedied in the next financial period.

7. APPENDICES

Appendix A: e.tv's licence terms and conditions

Appendix B: e.tv's coverage

Appendix C: Employment Equity Obligations

Appendix D: Programmes Commissioned

Appendix E: South African Television Content Regulations

Appendix F: Standard Terms and Conditions for Individual Licensees

Appendix G: Regulations in respect of Prescribed Annual Contributions
of Licensees to the Universal Service and Access Fund (USAF)

Appendix H: General Licence Fees Regulations