

## ST HELENA



### TELECOMMUNICATIONS ORDINANCE, CAP 106

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#### LICENCE TO OPERATE BROADCASTING STATIONS AND TO BROADCAST SERVICES (TELEVISION BROADCASTING LICENCE)

1. I, the Governor, acting in accordance with section 6(2) of the Telecommunications Ordinance, Cap. 106, after receiving the advice of the Executive Council, license Cable and Wireless South Atlantic Limited ("the Licensee") to operate broadcasting stations upon the terms and conditions set out in the schedule to this licence, with effect from 1 January 2013.
2. This licence is granted to the Licensee conditional upon payment of [REDACTED] to the Government of St Helena to be received within 30 days of grant.
3. This licence shall have a term ending 31 December 2022 but will be subject to review during 2019 to ensure the continued future provision of a TV broadcasting service in St Helena after the expiration of this Licence.

Dated this 20<sup>th</sup> day of July, 2012

A handwritten signature in black ink, appearing to read 'Mark Capes'.

Mark Capes  
Governor

## SCHEDULE

### TERMS AND CONDITIONS OF TELEVISION BROADCASTING LICENCE

#### Part 1 – Preliminary

##### 1. Interpretation

(1) Words and expressions used in this licence and defined in the Telecommunications Ordinance, Cap. 106, have the same meaning in this licence as they have in that Ordinance except as amended in sub-clause (2) below.

(2) In this licence—

**“broadcast”** means the transmission by wireless telegraphy or by other means of scheduled aural or visual material available for reception by a subscriber or by the public;

**“broadcasting station”** means a station equipped with apparatus used for broadcasting;

**“programming service”** means the name or names of the television station or television stations broadcast by the broadcasting station;

**“programme schedule”** means a plan indicating the general types of programmes proposed to be broadcast, including the channel names;

**“subscriber”** means a person or entity authorised by the Licensee to receive subscription television services provided by the Licensee;

**“subscription television”** means a facility that in whole or in part broadcasts, directly or indirectly, programming services which are intended by the Licensee to be available only to subscribers who, in return for a fee, are provided with special equipment to enable them to receive the programming services;

“**television station**” means a type of broadcasting station that broadcasts video and audio to television receivers in St Helena.

**2. Licensed service**

- (1) The Licensee may operate on an exclusive basis as a re-broadcaster of broadcasts for the transmission of subscription television within St Helena.
- (2) The Licensee must, to the extent that it is reasonably practicable to do so,—
  - (a) provide a programme schedule as available from the content provider at least five working days in advance of the relevant calendar month with the details of the channels it intends to offer as subscription television; and
  - (b) notify subscribers of any changes to the channels it intends to rebroadcast five working days in advance.
- (3) The Licensee must not transmit any channels to subscribers pursuant to this licence without first obtaining any necessary consent of the content provider to the transmission.

**3. Supply of Digital Television re-broadcasting service**

- (1) The Licensee shall provide a digital TV service with the following features:
  - (a) at least 15 simultaneous channels plus capacity for two local content channels;
  - (b) no interruption by switching.
- (2) The channel content shall initially include, but shall not be limited to, the following:

| <b>Sports</b> | <b>Entertainment/Documentaries</b> | <b>Children’s</b> | <b>Local Content</b>                         |
|---------------|------------------------------------|-------------------|--|
| SuperSport 1  | MNET                               | Disney            | 2 x Local TV                                 |
| SuperSport 2  | M Net Movies 1                     | Cartoon Network   | 2 x Audio (Radio)                            |
| SuperSport 3  | M Net Movies 2                     |                   | Channel to be used as required to include on |
| SuperSport 5  | M Net Action                       |                   |  |
| Supersport 6  | BBC World                          |                   |  |

|              |                   |  |                  |
|--------------|-------------------|--|------------------|
| SuperSport 7 | BBC Entertainment |  | screen messaging |
|              | Discovery Channel |  |                  |

(3) The initial channel content may change in the event that the content provider makes changes to its channel schedules, or if the Licensee changes content provider.

## **Part 2 - Terms and Conditions**

### **4. Operation of broadcasting stations**

(1) The Licensee must—

- (a) operate and maintain its broadcasting stations and all equipment associated with the stations in accordance with any generally accepted international standards from time to time applicable in the electronic communications industry; and
- (b) whenever practicable implement any relevant technological improvements.

(2) The Licensee must ensure that the transmission output of its broadcasting stations provides clear images and sounds throughout St Helena unless this is not reasonably possible during exceptionally inclement or unusual weather conditions:

Provided that where any interference to the service is due in any instance(s) to physical obstructions or electrical or radio systems or devices, the Licensee shall remedy the same unless it would be unreasonable or impracticable to do so having regard to any significant costs or outlays which may be required to effect a remedy in any such instances(s).

(3) The Licensee must—

- (a) comply with electrical, fire and safety codes as set out in the law on health and safety in England and Wales; and
- (b) obtain all necessary permissions, consents and authorities to erect, construct, operate and maintain its broadcasting stations and all equipment associated with the stations.

(4) Where wireless systems are used to broadcast, the Licensee must—

- (a) only use radio frequency channels or frequencies approved by the Governor in Council; and
- (b) provide to the Governor in Council upon written request information about the use of radio frequencies.

(5) The Licensee has a right to submit to the Governor in Council written requests for use of additional radio frequency channels or additional specified frequencies bands—

- (a) indicating what use shall be made of the requested radio frequency channels or specified frequencies bands; and
- (b) the Governor in Council shall not unreasonably refuse a request and shall make public all decisions.

## **5. Broadcasting hours**

The Licensee must broadcast 24 hours of subscription television each day unless prevented from doing so by force majeure.

## **6. Subscription service fees**

(1) The Licensee shall not unduly discriminate between subscribers and shall make public, a national tariff for subscription television services and related services for each category of subscriber that may be defined by the Licensee.

(2) The fees in each national tariff set by the Licensee for subscription television services—

- (a) shall not rise by more than the annual rate of inflation in St Helena or six per cent, whichever is the lowest, during the first five years of the Licence term, unless the external input costs, including but not limited to content costs, increase beyond the annual rate of inflation or six per cent, when the Licensee will have the right to increase prices in proportion to those increases;
- (b) will be subject to a review on the fifth anniversary of the Licence commencement date, namely January 2018, and the nature and scope of the review will be discussed and agreed no sooner than 12 months' prior

to the fifth anniversary of the Licence but will ensure that the Licensee recovers its costs and earns a reasonable return.

(3) When considering the price review as provided for under sub-clause (2), the Governor in Council shall consider fees as fair and reasonable where—

- (a) these are shown by the Licensee in writing to allow for the recovery of all expected recoverable costs associated with the broadcasting service;
- (b) the Licensee provides an explanation in sufficient detail showing that over the remaining term of the licence it expects to enjoy a reasonable return taking into account the expected cost of capital;
- (c) the expected cost of capital shall be evaluated by the Licensee taking account of the remaining term of this Licence and any assumptions used in the computation of the expected cost of capital should be made clear and substantiated in writing,

and in the event of there being disagreement between the Governor in Council and the Licensee, the fair and reasonable fees' calculations will be subject to an independent assessment.

(4) The Licensee must—

- (a) notify in writing the Governor in Council and make public at least 28 days in advance of the proposed fees in each national tariff and any proposed changes to those fees; and
- (b) take into account any representations made by Governor in Council before the proposed fees are implemented.

## **7. Terms and conditions**

(1) The Licensee shall meet all reasonable requests for the supply of subscription television service.

(2) Where the installation of a new subscription television service to a subscriber involves costs that would not be recovered through the application of a national tariff scheme specified in clause 6(1), the Licensee is entitled to apply in writing to the Governor in Council for permission to vary tariffs for the subscriber concerned.

(3) The Governor in Council may refuse to accept a request to vary a tariff and propose an alternative tariff. In such circumstances, the Governor in Council may choose only those alternative tariffs that will enable the Licensee to recover the associated costs.

(4) The Licensee must provide each subscriber in each subscriber category with a statement (in a form approved by the Governor in Council) specifying the terms and conditions on which it provides subscription television services.

(5) The terms and conditions must make clear a process for resolving disputes between a subscriber or prospective subscriber and the Licensee.

(6) Any change to the terms and conditions should be notified in writing to subscribers within seven working days.

## **8. Social Obligations**

(1) The Government of St Helena may apply social obligations on the Licensee only after the conclusion of a public consultation.

(2) A public consultation on social obligations shall last for at least 28 days and comprise of one or more documents made public by the Government of St Helena.

(3) In the public consultation the Government of St Helena shall specify the terms and conditions it proposes to vary for the purposes of meeting social obligations.

(4) The Licensee shall, subject to the provisions of this Licence, be entitled to vary the terms and conditions of services not subject to a direct social obligation.

(5) If the Government of St Helena applies a social obligation upon the Licensee following consultation as elaborated in sub-clauses (1) and (2), and a variation in terms and conditions arises as specified in sub-clauses (3) and (4), the Licensee may seek to recover the directly attributable incremental costs of the social obligation from the recipient/beneficiary of the service.

## **9. Call Centre**

- (1) The Licensee must operate a call centre, subject to not being able to operate a call centre due to force majeure or planned outages.
- (2) The call centre must operate during the working hours 8am to 4pm on Mondays to Fridays, excluding statutory holidays.
- (3) Outside of the hours stated in sub-clause (2) it must be possible for a subscriber and a prospective subscriber to leave messages with the call centre.
- (4) Where a subscriber or prospective subscriber makes contact with the call centre in the working hours specified in sub-clause (2) the Licensee must attempt to provide an initial response within the next eight working hours containing a unique tracking identity.

## **10. Broadcast content**

- (1) Subject to sub-clauses (2), (3), (4) and (5), broadcast content is at the discretion of the Licensee.
- (2) The Licensee must use reasonable endeavours not to rebroadcast material that—
  - (a) is seditious, defamatory, blasphemous, obscene or otherwise unlawful; or
  - (b) in the reasonable opinion of the Governor in Council, taking account of the standards generally maintained by the people of St Helena, tends to endanger the security of St Helena or undermine public morals.
- (3) The Licensee shall provide a parental control facility, where this is available from the content provider, to all subscribers whose responsibility it shall be to control the viewing of unsuitable material by persons under the age of 16 years.
- (4) The Licensee must, if required to do so by the Governor in Council or such person authorised by the Governor in Council, broadcast at a time approved by the Governor in Council up to one half hour each day of programming produced on or in



relation to St Helena. The material for such broadcast shall be provided to the Licensee by or on behalf of the Governor in Council, in a format compatible with the Licensee's broadcast format as may be agreed by both parties.

(5) The Licensee must, if required to do so by the Governor at any time, make at such times as the Governor may require, such announcements as are in the opinion of the Governor necessary in the public interest or are necessary for public safety or for the security of St Helena. The material for such announcements shall be in a format compatible with the Licensee's broadcast format as may be agreed by both parties.

## **11. Electronic Communications Consultative Committee**

(1) A committee known as the 'Electronic Communications Consultative Committee' (ECCC) shall meet twice a year to review broadcasting services as provided under the terms of this Licence. The duty of the ECCC will be to report on compliance by the Licensee with the terms of this Licence and the Telecommunications Licence, and to advise Government on matters of policy, including pricing, in broadcasting.

(2) The ECCC shall comprise five members: a chairperson, secretary and three other members. The Chairperson cannot be an employee of the Licensee. The Licensee is entitled to appoint up to two members of the ECCC. Members of the ECCC who are not employees of the Licensee shall be appointed by the Governor in Council.

(3) The ECCC members will receive remuneration from the Government as determined by the Governor in Council and will be eligible to claim for expenses incurred as a result of participating in the ECCC.

(4) The Secretary of the ECCC shall make accessible to the public reports of ECCC meetings and produce an annual report detailing activities in the preceding calendar year within 120 days of the end of the relevant calendar year. A draft of the annual report shall be submitted to the Licensee and the Governor in Council for

comment. The annual report of the ECCC shall be published on Government's website and made available in the Public Library.

(5) The costs of the ECCC shall be made public in its annual report and shall be recovered via the prices set in the national tariff. The Government shall invoice the Licensee twice a year in arrears for costs incurred as set out in sub-clause (3).

(6) The Licensee is entitled to dispute an invoice submitted under sub-clause (5) where it can provide objective reasons in writing to the Governor in Council. Any such appeal must be made within 28 days of receipt of an invoice. The Governor in Council shall adjudicate an appeal within 28 days and write to the Licensee setting out his reasons.

## **12. Financial accounts and disclosure**

(1) The Licensee must keep complete and accurate financial accounts in respect of all broadcasting activities undertaken by it in St Helena, such accounts to be kept in accordance with the UK generally accepted accounting principles.

(2) The Licensee must make the accounts referred to in sub-clause (1) available at all reasonable times for inspection, review and audit by or on behalf of the Governor in Council, provided that the Governor in Council provides at least 28 days' notice of an inspection, review or audit.

(3) The Licensee must provide to the Governor in Council at least once in each period of 12 months, or within any extension of any such period the Governor may allow, a consolidated statement, audited by independent auditors, of its accounts in respect of its broadcasting activities in St Helena.

(4) The Licensee shall include in its accounts referred to in sub-clause (1) details of—

- (a) the wholesale costs of programme services on the understanding that these are disclosed on a confidential basis subject to the consent of the Licensee's programme service provider, which consent the Licensee will use its best endeavours to obtain;

- (b) revenues for the broadcasting services offered in the national tariff, or where impractical, such aggregate data as deemed reasonable;
- (c) any other information it considers may be helpful to enable the Governor in Council to conduct the fair and reasonable test referred to in clause 6.

**13. Office to be maintained**

The Licensee must maintain an office in St Helena open during all business hours as described in clause 9(2) with a listed telephone number so that correspondence, complaints and requests for repairs or service may be received and promptly dealt with. The office may be co-located with the call centre.

**14. Restriction on assignment, etc.**

(1) The Licensee must not—

- (a) assign, transfer, grant any sub-licence or otherwise dispose of this licence or any part of it; or
- (b) agree to do so,

without the prior written approval of the Governor in Council which may be given subject to conditions.

(2) In the case of a proposed assignment of this licence to a company within the Cable and Wireless Communications group of companies, approval to the assignment will not be unreasonably withheld.

**15. Copyright not to be breached**

The Licensee must not broadcast material in breach of copyright. The Licensee shall not be in breach of this condition if it has undertaken reasonable steps to ensure that its content providers comply with copyright laws.

**16. Licensee not to impede others**

The Licensee will not impede the ability of any person resident in St Helena that currently has a Direct to Home service to continue to receive that service. The

Governor will not grant a broadcasting licence to (nor in any other way authorise) any natural person to rebroadcast or generate revenue from a Direct to Home service.

**17. Licensee to comply with International Conventions, etc.**

The Licensee must observe and comply with any International Agreement or Convention relating to telecommunications in general or broadcasting in particular which may from time to time apply to St Helena.

**18. Indemnity**

(1) Subject to the provisions of sub-clause (2) the Licensee agrees to indemnify, and keep indemnified, the St Helena Government from and against any third party claim finally determined by a competent court of law or by settlement agreed with the prior consent of the Licensee, and reasonable legal fees and costs incurred in respect of such third party claim, to the extent the claim arises directly in respect of the services provided or operations undertaken by the Licensee under the provisions of this Licence, except to the extent the same is due to the negligence of, or breach of licence terms or breach of applicable law or regulation by the St Helena Government.

(2) In the event the St Helena Government wishes to invoke the indemnity set out in sub-clause (1) it must—

- (a) provide prompt written notice to the Licensee upon becoming aware of the relevant claim;
- (b) at the request of the Licensee, allow the Licensee to take sole control of such actions as the Licensee may deem appropriate in connection with such claim;
- (c) provide or cause to be given to the Licensee all such assistance and information as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim;
- (d) instruct such solicitors or other advisers as the Licensee may nominate, acting reasonably, to act on behalf of the Government or any relevant instrumentality of the Government, but acting solely in accordance with the Licensee's instructions;

- (e) make no admission of liability, agreement, settlement or compromise with any third party in relation to any such claim or adjudication without the prior written consent of the Licensee, such consent not to be unreasonably withheld or delayed; and
- (f) take all reasonable action to mitigate any loss suffered by the Licensee, including, without limitation, enforcing against any person other than the Licensee any rights of the Government or any instrumentality of the Government may have in respect of the fact, matter or circumstance giving rise to the claim.