

C-6897E
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EXTRAORDINARY GAZETTE



THE MALAWI GOVERNMENT GAZETTE

(Published by Authority)

3,328: Vol. LIII No. 16]

Zomba, 1st April, 2016

Registered at the G.P.O. as a Newspaper

Price: K1,500.00

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MACRA—Notice of Digital Broadcasting Network Licence awarded
to Malawi Digital Broadcasting Network Limited

61-71

GENERAL NOTICE No. 29

Reference: B-DBN-DDT 03



Licence No. 00003

(This licence number must be quoted on all
correspondence and at interviews)

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

DIGITAL BROADCAST NETWORK LICENCE

This is to certify that

MALAWI DIGITAL BROADCAST NETWORK LIMITED

of: Private Bag B393

Capital City, Lilongwe 3.

The Malawi Communications Regulatory Authority hereby issues this Licence upon and subject to the terms and conditions set forth herein below, and in accordance with section 17 of the Malawi Communications Act, Cap 68:01 of the Laws of Malawi.

Notice issued at Blantyre, this 12th day of February, 2016.

GODFREY ITAYE
Director General

MERVIS MANGULENJE
Chairperson

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto. Failure to comply with any terms and conditions may lead to suspension or revocation of this Licence

Issued without alteration or erasure, and void if altered or erased

Broadcasting Licence for Malawi Digital Broadcast Network Limited

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TERMS AND CONDITIONS OF THE LICENCE

1. Interpretation and Definitions**1.1 Interpretation In this Licence:**

Unless otherwise expressly defined herein, any term or expression used herein that has been defined in the Act or the Regulations shall have the meaning ascribed to such term or expression in the Act or the Regulations. Unless otherwise expressly defined herein or in the Act or the Regulations, any technical term or expression used herein that has been defined by the ITU in its integrated database of terms and definitions shall have the meaning ascribed to such term or expression by the ITU.

1.2 Definitions

"Act" means the Communications Act, Cap 68:01 of the Laws of Malawi, as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time.

"Authority" means the Malawi Communications Regulatory Authority, as established under section 3(1) of the Act.

"Domestic Transmission Infrastructure" means all infrastructure required to operate a broadcasting network and for the avoidance of doubt and without limiting the generality of the preceding words it also includes fibre optic wired and wireless transmission facilities.

"Effective Date" means the date when this Licence comes into effect that is

"ITU" means the International Telecommunication Union.

"Licence" means the licence issued to the Licensee upon and subject to these terms and conditions.

"Licensee" means Malawi Digital Broadcast Network Limited, a company duly registered and incorporated under the company laws of the Republic with Company Registration No. 13483.

"Licensed services" means television broadcasting services provided by a broadcaster pursuant to a broadcasting licence issued under the Act

"Regulations" means any and all regulations, rules, procedures, guidelines, directives, orders, decisions, rulings, determinations and other administrative acts of the Authority, as the same may be in force from time to time.

"Republic" means the Republic of Malawi.

2. Commencement and period of Licence**2.1 Period of License**

(a) The commencement date of the License shall be from the effective date as published in the Gazette.

(b) The License shall be valid for a period of three (3) months from the Effective Date.

3. Scope of Licence**3.1 The Licensee is authorized under this licence to –**

(a) set up, own and operate a public digital broadcasting network for commercial purposes;

(b) to deploy voice and data traffic through its network for the transmission and distribution of the Licensed Services.

3.2 The Licensee shall not be authorized by or under the Licence to broadcast or procure the broadcasting of anything other than the Licensed Service.**3.3 The Licensee shall set up and operate its digital broadcasting Network in the Republic of Malawi**

(a) The Licensee shall remain responsible to the Authority for the performance of its obligations under the Licence irrespective of any act or omission of any other party

(b) The Licensee shall submit to the Authority a master service level agreement containing the standard terms and conditions for the provision of services within fifteen (15) days from the effective date

(c) The Licensee shall ensure that any equipment it sells for broadcasting services are capable of applying a mechanism that enables parents or guardians to control access to broadcast content or channels that are accessible on the broadcasting services but may be appropriate for certain viewers, including children.

- (d) The Licencee shall maintain a Customer Experience Centre which shall operate no later than 08h 00 and not earlier than 19h00 during weekdays. The Licencee shall maintain a Customer Experience Centre which shall operate between 08h00 and 15h00 during weekends and Public Holiday
- 3.4 The Licencee shall ensure that the signals carrying the Licensed Service attain high standards in terms of technical quality and reliability throughout. Without prejudice to the generality of the foregoing the Licencee shall ensure that the provision of programmes in the licensed services comply with such standards relating to digital terrestrial television broadcasting as the Authority may prescribe from time to time.
- 3.5 The Licencee shall not connect its network to any other licensed digital broadcasting infrastructure network operator without the prior written approval of the Authority.

4. Resale of excess capacity

- 12.10 The Authority shall revoke a radio licence assigned to the Licencee for any of the following reasons:
- (a) frequency hoarding;
 - (b) failure to pay frequency fees;
 - (c) use of frequencies contrary to terms and conditions of a radio licence;
 - (d) use of unassigned frequencies; or
 - (e) any other ground specified by the Authority.

13. Coverage

- 13.1 The Licencee shall provide coverage for the services in the areas and by the dates specified in Schedule 2.

14. Quality of Service

- 14.1 The Licencee shall ensure that it abides by the Quality of Service Standards provided in Schedule 2.
- 14.2 Where the Quality of Service Standards have been compromised due to reasons beyond the Licencees control, the Licencee shall immediately inform the Authority specifying the time it may take for it to remedy the situation.

15. Consumer Protection

- 15.1 The Licencee shall ensure that consumer rights applicable to network services, consumers are respected in the provision of services under this Licence.
- 15.2 The Licencee shall comply with any consumer protection regulations made under the Act.
- 15.3 The Licencee shall provide clear and understandable information to customers or potential customers
- 15.4 The Licencee shall notify customers about the availability of consumer complaint procedures and have in place systems for registering and handling complaints.
- 15.5 The Licencee shall within fifteen (15) days from the effective date submit to the Authority for approval Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
- 15.6 Where applicable, the Master Customer Contract stipulated in clause 15.5 shall include:
- (a) the customer /consumer rights
 - (b) the supply time for initial connection;
 - (c) the services offered and covered by the terms of the agreement;
 - (d) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;
 - (e) the compensation or refund arrangements for the customers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;
 - (f) information on service quality levels offered;
 - (g) procedure for settling disputes with customers as approved by the Authority; and
 - (h) any other reasonable condition deemed necessary by the Authority;

- (a) filing a copy with the Authority;
 - (b) making copies available during regular business hours at its principal offices and any branch offices open to the public;
 - (c) by posting a copy on its website; or
 - (d) any other mode specified by the Authority.
- 15.11 Where applicable, the Licencee shall establish and maintain a call centre at all times and Customer Care Centre during working hours.
- 15.13 The Licencee shall submit to the Authority, every 1 month or as directed by the Authority a report summarizing the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licencee to address those complaints. The report shall be in a manner and format as specified by the Authority.
- 15.14 Where technically practicable, the Licencee shall provide services under this Licence to the public generally without discrimination.
- 15.15 Where applicable, the Licencee shall ensure that it offers affordable basic packages for its services to the average local Malawian.

16. Health and Environmental Concerns

- 16.1 The Licencee shall ensure the use of energy efficient, environmental friendly, network equipment and also ensure proper safety and health hazard issues in the installation and location of their network equipment including transceivers and other locations of installations.
- 16.2 The Licencee shall ensure that deployment of its network equipment including transceivers conform to any applicable Electro Magnetic Field (EMF) radiation Guidelines issued by the Authority from time to time as well as other relevant guidelines or rules by recognized international bodies.

17. Confidentiality

- 17.1 The Licencee shall not disclose the content of any signal or communication transmitted or intended to be transmitted over its network, unless required to do so by a court order or under any law of the Republic.

18. Amendment

- 18.1 The Authority may amend any term or condition of this Licence whenever it deems necessary and/or in the public interest.
- 18.2 No amendment, alteration, addition, variation or consensual cancellation of this Licence shall be of any force or effect unless reduced to writing and signed by the Authority.
- 18.3 Before amending this Licence, the Authority shall:
- (a) publish a notice stating the reasons for the intended modification and giving any person with an interest in the matter the opportunity to make representations, including, without limitation, the Licencee; and
 - (b) give due consideration to any representation regarding the proposed modification made to it by any person having an interest or holding an individual licence, including, without limitation, the Licencee.

19. Revocation of Licence

- 19.1 The Authority may revoke the Licence on any of the following grounds:
- (a) if the Licencee is in substantial or continuing breach of any of the terms and conditions of this Licence including:
 - (i) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
 - (ii) failure to pay outstanding Licence fees for over a period of one (1) month from the Effective Date; or
 - (iii) any other substantial breach of the licence.
 - (b) if the Licencee has been declared insolvent; or
 - (c) if the Licencee agrees in writing to cancel the Licence.

- 19.2 Before taking any action to impose a punishment on the Licencee under this Licence, the Authority shall follow the procedure set out below:
- (a) the Authority shall notify the Licencee of the alleged breach in writing;
 - (b) the Authority shall allow the Licencee not less than fifteen (15) days from the date of notification in accordance with sub clause (a) above to remedy the breach or to show cause why it should not be punished: Provided however, that the Licencee may request additional time, not exceeding fifteen (15) days, to remedy the breach and such request shall not be unreasonably denied by the Authority;
 - (c) having taken into account the Licencee's representations, the nature, gravity and consequences of the breach, the Authority may take any action that it considers appropriate including revoking the Licence.
- 19.3 The revocation of the Licence for any reason shall not prejudice any other legal rights or remedies of the Authority conferred by the Act or any other law for the time being in force or by this Licence.
- 19.4 The revocation of the Licence shall not relieve the Licencee from any obligations accrued and due under any law or this Licence.

20. Regulatory sanctions

- 20.1 Notwithstanding any criminal sanctions under the Act, the Authority reserves the right to impose regulatory sanctions for breaches of Licence conditions including:—
- (a) issuing of warnings;
 - (b) directing the Licencee to take appropriate remedial steps by issuing a compliance order;
 - (c) directing the Licencee to desist from non-compliance by issuing a cease and desist order;
 - (d) imposing a fine proportional to the effects of the non-compliance;
 - (e) revocation of the Licence; or
 - (f) other penalties deemed necessary by the Authority.

21. Force Majeure

- 21.1 The Licencee shall not be liable for any default or delay in the performance of its obligations under the Licence if and to the extent that:
- (a) such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions or any force majeure event beyond the reasonable control of the Licencee; and
 - (b) the Licencee is without any fault in causing such default or delay.
- 21.2 If any force majeure event described in clause 18.1 occurs, as a condition to being excused from any default or delay hereunder, the Licencee shall promptly notify the Authority in writing of such event, its impact on the Licencee's ability to perform, and the steps the Licencee has taken, is taking and intends to take to rectify and remove the event.
- 21.3 The Licencee shall continue to provide periodic updates to the Authority regarding the force majeure event, at such intervals and in such detail as the Authority may request, until the force majeure event has ended or its impact on the Licencee has been overcome.

22. Notices

- 22.1 All communication between the parties made pursuant to this Licence shall be in writing, and shall be sent or transmitted to the following addresses:

In case of the Authority, to:

MACRA House Salmin Amour Road

Malawi Communications Regulatory Authority (MACRA) Private Bag 261, Blantyre Malawi

Telephone number : (+265) 883 611

Facsimile number : (+265) 883 890

E-mail address : dg-macra@macra.org.mw

In case of the Licencee; to

The Chief Executive Officer

Malawi Digital Broadcast Network Limited Private Bag B393, Capital City, Lilongwe 3

- 22.2 Should any of these particulars change, the changing party shall inform the other party not later than seven (7) days prior to the change.

23. Liability

- 23.1 The Licencee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licencee, its service providers, servants, or agents in connection with the provision of the networks service.

24. Renewal of Licence

- 24.1 This Licence may be renewed for such number of months as may be determined by the Authority at the expiry of its term provided the Licencee is in compliance in all material respects with its Licence provisions.
- 24.2 In deciding whether to renew the Licence, the Authority shall take into account the following:
- (a) the satisfactory performance by the Licencee of its obligations under the Licence;
 - (b) customers' satisfaction with the performance of the Licencee during the term of the Licence; and
 - (c) any other factors deemed necessary by the Authority.
- 22.3 Where the Licencee intends to renew this Licence, it shall apply in writing to the Authority not later than one (1) calendar month before the expiration of the term of its Licence.

25. Dispute Resolution

- 25.1 Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act and the seat of arbitration shall be Blantyre, Malawi.
- 25.2 This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

26. Miscellaneous

- 26.1 The Licencee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 26.2 The Licencee shall observe the requirements of any applicable international conventions on telecommunications to the extent that such a convention imposes obligations on Malawi unless otherwise expressly exempted by the Authority.
- 26.3 The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licencee, its employees, agents, or authorized representatives.
- 26.4 Unless otherwise agreed by the parties, all correspondences from the Authority shall be in writing and shall be sent to the Licencee's principal place of business.
- 26.5 Any correspondence issued by the Authority marked as private and confidential, shall remain private and confidential and the Licencee shall not disclose the same without prior consent of the Authority.
- 26.6 Nothing in the provisions of this Licence shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 26.7 A waiver of any provision of this Licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

Issued at Blantyre, this 12th day of February, 2016.

GODFREY ITAYE
Director General

MERVIS MANGULENJE
Chairperson

SCHEDULE 1 LICENCE FEES

The Licencee shall pay a Licence fee of the Malawian Kwacha equivalent of USD2.500 which shall be due and payable in advance on or before the effective date.

SCHEDULE 2
COVERAGE AND QUALITY OF SERVICE

NO	PARAMETER	BENCHMARKS	ASSESSMENT PERIOD	PENALTIES AS A RESULT OF NOT MEETING
1	Call Centre	>99% The Licencee should ensure that its call centre remains operational between 08h00 and 19h00 during weekdays. Licencee should ensure that its call centre is also operational between 08h00 and 15h00 during weekends and public holidays	Every three (3) months	US\$ 5,000
3	Customer Complaints	< 2% The Licencee should ensure that there are appropriate complaints handling procedures in place to ensure speedy and efficient resolution of complaints by customers	Every three (3) months	US\$ 2,500

Broadcasting Licence for Malawi Digital Broadcast Network Limited
