

IN THE HIGH COURT OF ZIMBABWE:

HC 7999/17
CASE NO. HC /17

HELD AT HARARE

In the matter between:

DR DISH (PVT) LTD

APPLICANT

And

BROADCASTING AUTHORITY OF
ZIMBABWE



1ST RESPONDENT

OBERT MUGANYURA

2ND RESPONDENT

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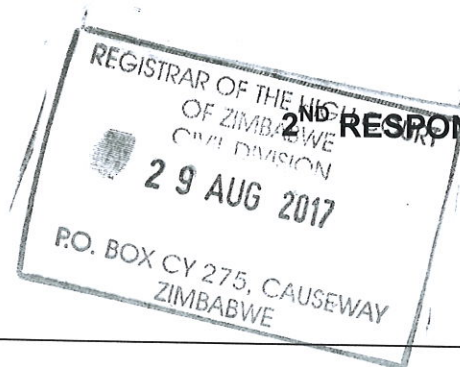
And

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OBERT MUGANYURA

2ND RESPONDENT



URGENT CHAMBER APPLICATION


An application is hereby made for an order in terms of the provisional order attached hereto on the grounds that:

1. 2nd Respondent has purported to terminate Applicant's content distribution service license without warning, thereby putting 1,635 jobs at risk, inconveniencing 24,145 customers, exposing Applicant to significant monetary loss, and violating the Applicant's freedom of expression and freedom of the media, and that of the public in general.
2. The decision is ultra vires, irrational, and a violation of Applicant's Constitutional freedom of expression and of the press, and the freedom of expression and of the press of the public in general.

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The attached affidavit and documents will be used in support of this application.

DATED at HARARE on this the 29th day of AUGUST 2017.


.....
MTETWA & NYAMBIRAI
Applicant's Legal Practitioners
2 Meredith Drive
Eastlea
HARARE (TN/km)

TO: THE REGISTRAR
High Court
HARARE

AND TO: BROADCASTING AUTHORITY OF ZIMBABWE
27 Boscobel West Drive
Highlands
HARARE

AND TO: OBERT MUGANYURA
27 Boscobel West Drive
Highlands
HARARE

IN THE HIGH COURT OF ZIMBABWE:

CASE NO. HC

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HELD AT HARARE

In the matter between:

DR DISH (PVT) LTD

APPLICANT

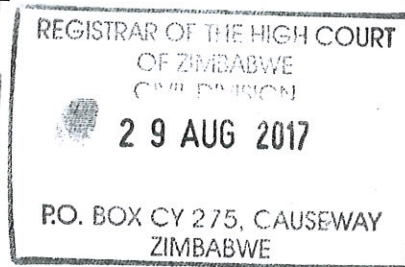
And

BROADCASTING AUTHORITY OF
ZIMBABWE

1ST RESPONDENT

OBERT MUGANYURA

2ND RESPONDENT



CERTIFICATE OF URGENCY

I, DOMINIC MUSENGI, a Legal Practitioner of this Honourable Court and Partner at Musengi and Sigauke Legal Practitioners, hereby certify that this matter is urgent for the following reasons:

1. Applicant is a holder of a Content Distribution Service License issued by the First Respondent whose expiry date is 17 October 2022.
2. Applicant was asked to show cause why its license should not be terminated through a letter from Second Respondent dated 12 October 2016, to which Applicant responded through a letter dated 16 October 2016.
3. Applicant gave notice dated 21 October 2016 to First Respondent that it was changing its content provider from MY TV Africa (Dubai) to Econet

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Media (Mauritius), which notice was received and accepted by First Respondent.

4. During the 10 Months of silence, Applicant, with the assistance of its new partners invested millions of dollars into the license, acquired 24,145 subscribers, employed 1,635 people, and cleared the license fee arrears and the current fees in the total amount of US\$434,400.00 on 18 August 2017.
5. On 19 and 20 August 2017, Applicant published media releases relating to its partnership with Econet Media as notified to First Respondent and accepted by First Respondent on 21 October 2016.
6. Without notice or warning, Applicant was served with a letter from the Respondents dated 22 August 2017 purporting to terminate Applicant's license. In the letter, the Respondents claimed to be responding to the Applicant's letter of 16 October 2016, after a delay of 10 months.
7. In a letter dated 25 August 2017, Applicant's Legal Practitioners gave the Respondents 24 hours to reverse their decision, which the Respondents declined to do in their letter of Monday 28 August 2017. The letter of Monday 28 August 2017 has prompted this Urgent Application.
8. In my opinion, this matter is urgent for the following reasons:
 - a. The Applicant had no notice or warning of the evil day, namely the day its license was cancelled without notice or warning.
 - b. If the matter is not heard urgently, 1,635 jobs will be put at risk, 24,145 subscribers who acquired Applicant's service in good faith will be inconvenienced, and Applicant will be faced with financial ruin.
 - c. Applicant acted reasonably and without delay in bringing this urgent Application.

In the circumstances, I apply that this Honorable Court hears and determines this Application on an urgent basis.

Dated at HARARE on this the 29th day of AUGUST 2017.


.....
DOMINIC MUSENGI

TO:

THE REGISTRAR
High Court
HARARE

HELD AT HARARE

In the matter between:

DR DISH (PVT) LTD

APPLICANT

And

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2ND RESPONDENT



APPLICANT'S FOUNDING AFFIDAVIT

I, Nyasha Muzavazi, do hereby make oath and say that:

1. I am the Executive Chairman of the Applicant, a registered company duly incorporated with limited liability according to the laws of Zimbabwe and whose business address is 750 Gaydon Road, Greystone Park Shopping Center, Borrowdale, Harare.
2. I confirm that the Applicant has authorized Mtetwa & Nyambirai, its Legal Practitioners of Record, to bring this Urgent Application in terms of its Board Resolution dated 24th August 2017, a copy of which is attached hereto marked "A". The same Resolution authorizes me to swear to this Affidavit on behalf of the Applicant. The facts to which I swear are within my personal knowledge, correct, and true.

3. The First Respondent is the Broadcasting Authority of Zimbabwe, a statutory body established in terms of Section 3 of the Broadcasting Services Act, [Chapter 12:06] (the Act), with capacity to sue and be sued in its own name, and with the powers and functions set out in that Act.
4. The second Respondent is Mr Obert Muganyura, the Chief Executive Officer of the First Respondent. He is sued in his personal capacity on the grounds that his impugned actions are ultra vires his powers.
5. **Urgency: This Application is urgent. I set out in greater detail below, the basis for my contention:**
 - 5.1. The Applicant is a holder of a License No. CD 0004 "to provide a content distribution service" issued by First Respondent on 18 October 2012, with an expiry date of 17 September 2022. The license was issued in terms of Section 10 of the Act. A copy of the license is attached hereto marked "B".
 - 5.2. On 12 October 2016, the Second Respondent signed a letter on the letterhead of the First Respondent purporting to act in terms of Section 16(2) of the Act, calling upon Applicant to show cause why its license should not be cancelled. A copy of the letter of 12 October 2016 is attached hereto marked "C".
 - 5.3. Applicant responded to Annexure "C" through its letter dated 16 October 2016, a copy of which is marked hereto marked "D".
 - 5.4. Applicant followed up its response by giving two notices to the First Respondent of the changes in the particulars to its license. The notices were given in terms of Section 17 of the Act. The first notice dated 21 October 2016 notified the First Respondent that the expiry date of its license was misstated as 17 September 2022 instead of 17 October 2022. A copy of that notice is attached hereto marked "E". This notice was received, and accepted by the First Respondent, which proceeded to issue a "confirmation of receipt and acceptance of notifications" date stamped 21 October 2016. A copy of this confirmation is attached hereto marked "F". I contend that by issuing the confirmation, First Respondent went beyond merely receiving the notifications. It accepted them, thereby signifying that it did

not object to the contents thereof. Indeed, we never received any objections to the contents of Annexure "E".

5.5. The second notice issued by Applicant was also dated 21 October 2016. This notice was much more significant. I attach a copy thereof hereto marked "G". The most significant part of this notice was contained in paragraph 2.1 thereof. It notified First Respondent that, pursuant to indications made in its response of 16 October 2016 wherein it advised the First Respondent that it had concluded a partnership agreement with Econet Media Limited Mauritius as its supplier of content for distribution under its license, Applicant had now substituted Econet Media Limited (Mauritius) for MYTV Africa (Dubai) as its supplier of external content. We provided the Technical Standards of the content that we were now going to distribute. This Notice was also "accepted" by First Respondent under its confirmation date stamped 21 October 2016. A copy of the confirmation is attached hereto marked "H". The significance that Applicant attached to this confirmation is the same as the significance Applicant attached to the earlier confirmation, Annexure "F". First Respondent never objected to the substitution of Econet Media Limited (Mauritius) for MY TV Africa (Dubai) as the content provider.

5.6. Because First Respondent did not object to our partnership with Econet Media Limited (Mauritius), and indeed there was no basis for any objections at all as the content we were now distributing is far superior, our partnership proceeded to invest heavily in the provision of service.

5.6.1. A total of 1,635 people, including technical staff and brand ambassadors have been engaged to date.

5.6.2. A total amount of US\$1,440,000.00 has so far been incurred on staff related costs, and these costs continue to be incurred at a daily rate of \$44,523.00, and a monthly rate of US\$979,500.00. These staff cost rates are inclusive of payments due to the

- technical team and brand ambassadors who are remunerated on performance.
- 5.6.3. A total of 196 shops have been secured as distribution centers for the partnership.
- 5.6.4. An investment towards the acquisition of launch quantity of set top boxes has been made at a total cost of US\$4,062,633.00 (inclusive of duty amounting to US\$782,716.00 and VAT amounting to US\$534,952.00 that has already been paid to Government). We have thus far incurred US\$119,700.00 in storage costs, and these continue to be incurred at a monthly rate of US\$13,000.00.
- 5.6.5. A total of 24,145 customers have already been connected, inclusive of those linked to the service through Mobile Applications.
- 5.6.6. 7,259 customers have already applied for the service.
- 5.7. On 18 August 2017, we proceeded to pay an amount of US\$434,400.00 to the First Respondent to clear all arrears on our license fee and to cover the fees due in respect of the current year. The payment was from an investment made by our partners, Econet Kwese TV Zimbabwe.
- 5.8. After the payments, we proceeded to announce our partnership to the public through a statement that was published by the media on 19th and 20th August. A copy of the press announcement is attached hereto marked "I".
- 5.9. On 22 August 2017, I was shocked to receive two letters from First Respondent. The First, a copy of which is attached hereto marked "J" was signed by T Rashama, the Acting Finance & Administration Manager of First Respondent. The letter stated that, of the amount we paid, First Respondent applied US\$284,400 to our license fees arrears as at 16 October 2016. 16 October 2016 was the date on which we responded to the Show Cause letter issued by Second Respondent on First

Respondent's letterhead. They stated that the amount of US\$150,000.00 would be refunded!

- 5.10. I attach a copy of the second letter dated 22 August 2017 marked "K". This letter purports to cancel our license effective 22 August 2017 in response to our letter sent 10 months back, dated 16 October 2016. This was totally unexpected and without prior warning.
- 5.11. This Application seeks to challenge the purported cancellation of Applicant's License by the Respondents on the grounds that the purported termination of the license is ultra vires the powers conferred on the Second Respondent by the Act, such powers being reserved for the Board, which is non-existent, that the decision is irrational on the grounds more fully explained hereunder, and that the decision shows bias against Applicant and violates the Applicant's freedom of expression and of the media and that of the public in general protected under Section 61 of the Constitution of Zimbabwe.
- 5.12. The evil day came upon us without warning. We now seek to stop its continuation. We acted immediately when the need to act arose. We never anticipated that the Respondents would purport to cancel our license 10 months after we had shown cause why our license should not be cancelled and notified them of our new partnership with Econet Media Limited, which notification they did not only receive 10 months ago, but also accepted.
- 5.13. Upon receipt of the purported cancellation of our license, we took the following steps:
 - 5.13.1. We stopped all media announcements of the official launch of the distribution of content from Econet Media Limited, which we have been distributing for some time now pending official launch.
 - 5.13.2. We stopped receiving customer applications.
 - 5.13.3. We removed product from the 196 outlets we had acquired.

- 5.13.4. We have been refunding customers who had already paid for service.
- 5.14. We consulted our lawyers, who, after reviewing the facts and the law, wrote a letter dated 25 August 2017 to the Respondents demanding the reversal of the purported termination of our license. I attach hereto-marked "L" a copy of the letter. The letter was detailed and made the factual averments on which Applicant's claim is based. The Applicant's lawyers gave the Respondents the opportunity to set out any facts to controvert the facts set out by Applicant's lawyers. Second Respondent replied through a letter dated 28 August 2017, a copy of which is attached hereto marked "M". The Respondents merely noted the contents of the letter and stated that Applicant was free to go to Court if aggrieved. Respondents' failure to contradict Applicant's version of the events at the first available opportunity shows that Respondent does not dispute the facts.
- 5.15. At this stage, all we seek is the suspension of the purported termination of the license pending the return day. We seek the restoration of the status quo pending the return day. Should it turn out on the return day that the purported termination of the license is invalid, the following irreparable harm will have been occasioned in the interim, which will be prevented if the interim order sought is granted:
- 5.15.1. Monetary loss exceeding US\$1,440,000.00 in respect of staff costs already incurred, and continuing staff costs at a rate of US\$979,500.00 per month not supported by any revenue.
- 5.15.2. Loss of potential revenue projected for the months of August and September 2017 amounting to US\$2,471,574.00 and thereafter at a projected rate of US\$88,000.00 per day. The Respondents do not have the capacity to compensate the Applicant for this loss of revenue.

- 5.15.3. The risk of loss of 1,635 jobs already secured, and many more potential jobs to be created through the growth in Applicant's business.
- 5.15.4. The risk of a write down of more than US\$4,182,333.00 already incurred in the purchase of set top boxes.
- 5.15.5. Great inconvenience to the 24,145 customers who have already paid for service and were enjoying the service, and the 7,259 who have applied for service.
- 5.16. In the circumstances, I apply that this Honorable Court hears and determines this Application on an urgent basis.

6. The purported termination of Applicant's license is ultra vires the powers conferred on Second Respondent by the Act, and is therefore null and void:

- 6.1. In terms of Section 4 of the Act, the control and management of the operations of the First Respondent is vested in a 12 member board that is required to include a chief, experts in broadcasting technology and broadcasting content, a legal practitioner of not less than 5 years' standing, a public accountant of not less than 5 years' standing, and a representative of religious organizations, among others. The diversity of the composition of the board shows that its powers and functions cannot be vested in only one individual. This fact is reinforced by Section 3 (5) as read with Section 4 (1) of the Act, which provides that the operations of First Respondent shall not be subject to the control of any person or authority other than its board.
- 6.2. The Chief Executive Officer is an appointee of the board. In terms of Section 9(5), responsibility to manage the operations and property of the Authority is subject "to the general control of the Board".
- 6.3. A matter as important as the granting and revocation of a license is one that requires the authority of the Board itself. For this reason, the decision to award a content distribution license to Applicant was made by the Board of First Respondent. The

communication of the award of the license came from the Chairman of the Board, Dr. T Mahoso. I attach hereto marked "N" a copy of the letter signed by Dr. T Mahoso dated 7 August 2012.

6.4. I contend that, without the authority of the Board, Second Respondent was not entitled to issue his show cause notice dated 12 October 2016, nor his letter purporting to terminate the license dated 22 August 2017.

6.5. First Respondent's Board was appointed in the month of September 2009. In terms of Section 1(1) as read with the proviso to Section 1(2) of the third Schedule to the Act, the maximum office tenure of a board member is five years, six months. Thus, the tenure in office of the longest serving Board member must have expired in March 2015. No new board members were ever appointed. For this reason, the letter purporting to cancel the license does not have a list of Board Members of First Respondent, unlike all the previous letters from First Respondent.

6.6. The authority to terminate a content distribution license can only be exercised by the Board of First Respondent, and not by the Chief Executive Officer or any other person. For the simple reason that the First Respondent does not, and has not had a board for some years now, the purported cancellation of our license is therefore ultra vires the powers conferred on Second Respondent, and thus is null and void, and should be so declared.

7. **The reason given by Second Respondent for the purported cancellation of Applicant's license is that Applicant had ceased to provide the licensed service. Through out the letter, Second Respondent describes the service Applicant was licensed to provide as, "the MY TV Africa service". I contend that the designation of the service Applicant was licensed to provide as "the My TV Africa Service" is false and misleading, and that the decision to cancel the license because we had substituted Econet Media Limited**

(Mauritius) for MY TV Africa (Dubai) as the foreign content supplier under our "Content Distribution License" must be set aside on the grounds that it is irrational. I set out my reasons in detail hereunder:

- 7.1.1. The face of the license clearly shows that the license is a "License to provide a content distribution service". The classes of broadcasting services are listed in Section 7(2) of the Act. Although the list of services in Section 7(2) does not include a content distribution service, this service was added by 12A (a) of the Broadcasting Services Act Licensing and Content Regulations, 2004, Statutory Instrument 185 Of 2004 which provides that, "In addition to the classes of broadcasting services that a licensee may be permitted to provide in terms of section 7 of the Act, a broadcasting license may authorize the licensee to provide a- (a) content distribution service". The power to add to the services listed under Section 7(2) was given to the board under Section 46(2)(f) of the Act.
- 7.1.2. The license had a schedule attached to it. I attach hereto-marked "O", a copy of the Schedule.
- 7.1.3. Section 1 of the Schedule under Part B lists as a condition of the license that Applicant shall offer MY TV AFRICA. The Board of First Respondent was empowered under Section 46(2)(h18) & (h31) to prescribe the terms and conditions under which licenses may be granted, provided that any notice under which such terms and conditions were prescribed "shall not have effect until ... approved by the Minister and published in the Gazette". The terms and conditions stipulated in the schedule to the license were never gazetted. That being the case, I contend that these terms and conditions never came into effect and thus could not be the basis on which Applicant's license could be terminated.

- 7.1.4. Even if the terms and conditions attached to the license were valid, I contend that MY TV AFRICA was merely a provider of content, and not the service Applicant was licensed to provide. The services a license holder could offer were specifically listed under Section 7 of the Act, and Section 12A (a) of the Regulations. MY TV AFRICA was not one of the listed services, is particulars having been sent to Respondents by Applicant as a content provider. Therefore, Applicant was entitled to replace the content provider, or to have more than one content provider, provided that the content providers were listed in the particulars or information furnished to First Respondent when Applicant applied for a license. Applicant was entitled to change these particulars as it did when it replaced MY TV AFRICA with Econet Media Limited (Mauritius), provided it notified First Respondent of the change in terms of Section 17 of the Act. Applicant gave this notice to First Respondent on 21 October 2016, and this notice was accepted, and that acceptance was never revoked.
- 7.1.5. Therefore, to decide, as Respondents did, 10 months out of time, that Applicant was not providing the licensed service on the simple ground that Applicant had replaced MY TV AFRICA (Dubai) with Econet Media Limited (Mauritius) is irrational. The fact that Respondents purported to terminate the license effective 22 August 2017 is an acknowledgment that the Applicant has been operating with a valid license distributing the Kwese TV content from 21 October 2016 when notice of the switch to Kwese was given to the Respondents.

8. The decision to terminate the license is made irrational by the surrounding circumstances, namely: the mere fact that the Respondents took 10 months to respond to Applicant's letter of 16 August 2016; the Respondents' acceptance of Applicant's notice to substitute Econet Media Limited (Mauritius) for MY TV AFRICA (Dubai), the fact that Respondents were aware, or ought to have been aware that Applicant's partnership with Econet Media would invest heavily in the license following the notice dated 21 October 2016 that was given to Respondents by Applicant, and the fact that Applicant's partnership has been operational and distributing the Econet Media content for some months now, and has 24,145 active subscribers.

8.1. After Applicant's response to the show cause notice, Applicant delivered to the Respondent notifications for the changes in the particulars submitted when it applied for its license. The Notifications were dated 21 October 2016. Such notifications included the notification of the substitution of Econet Media Mauritius as the content provider in the place of MY TV AFRICA, and the consequent changes in its shareholding structure and its Board composition. In the notifications, Applicant also stated that arrangements for the payment of fees arrears, and the fees for the ensuing year were being made.

8.2. At that stage Respondents were aware that the payment for the fees would come from arrangements made through Applicant's new partners, Econet Kwese TV Zimbabwe, and Econet Media Mauritius. With this knowledge, Respondents confirmed receipt and acceptance of the notifications in writing dated 21 October 2016. The written acceptance of the notification in a separate document was not a mere acknowledgment of receipt of the notifications. It signified that the notifications had been considered and approved; otherwise it would have been sufficient to date stamp the letters as a mere acknowledgement of receipt. Alternatively, the document should just have

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acknowledged receipt only, without stating that the notifications were accepted.

- 8.3. On the understanding that it had shown sufficient cause why its license should not be cancelled, Applicant proceeded to finalize its agreements with Econet Media Limited (Mauritius) and Econet Kweze TV, a Zimbabwean Company. Significant investments of the magnitude that I have already referred to were made. 24,145 subscribers were acquired and have been active and had to be disconnected due to the purported termination of the license.
- 8.4. I am advised by Mr Zachary Wazara of Econet Media, and I believe that Econet Kweze TV was engaged in separate discussions with Zimpapers and the Zimbabwe Broadcasting Cooperation at their request, both of which are entities related to the Government of Zimbabwe. In the circumstances, I am left with no option, but to speculate that the only reason Applicant's license has been terminated is to force Econet Media Mauritius and Econet Kweze TV to conclude agreements with either of the Government related entities, and to abandon the Applicant. If I am correct, this circumstance is enough to taint the decision to cancel our license as irrational.
- 8.5. Applicant procured the payment of all its arrears in license fees, including the license fees for the current year on 18 August 2017. I contend that it is that payment that triggered Respondents' letter of 22 August 2017 that was disguised as a response to a letter that Applicant had sent to Respondents in October 2016, 10 months ago.
- 8.6. The fact that Section 16 (2) of the Act requires a license holder to respond to the show cause notice in as short a period as 7 days is an indication that the First Respondent is required to conclude its enquiry with dispatch, or within a reasonable period of time. A delay of 10 months is certainly unreasonable. It makes the purported cancellation of the license irrational,

much more so after the investment made by Applicant's joint venture during the 10-month period.

9. **The decision to terminate Applicant's license is irrational because the content distributed by Applicant is much cheaper, is payable locally using bond notes and RTGS money, and thus much more favorable to the consumer than the content distributed by DSTV, a virtual monopoly in the sector.**

9.1. At the moment, DSTV has a monopoly over satellite television broadcasting in Zimbabwe. For as long as they have operated in Zimbabwe, DSTV has charged the Zimbabwean consumer a huge premium compared to what they charge in South Africa. The following is their historical pricing of the content that they offer:

DStv SA Packages	2015 Price	2016 Price	DSTV Zimbabwe
DStv Access	R99	R99	R176
DStv Compact	R319	R345	R512
DStv EasyView	R39	R29	Not Available
DStv Extra	R425	R459	R880
DStv Family	R199	R219	R336
DStv Indian	R319	R345	R560
DStv Premium	R699	R759	R1,296
DStv Select*	R199	R219	Not Available
M-Net Analogue/CSN*	R335	R369	Not Available
XtraView Access Fee	R80	R85	R176

- 9.2. Subscribers in this country are required to pay using hard currency or offshore money. Bond notes and electronic transfers that are not supported by nostro dollars are not

accepted. According to the 2017 monetary policy presented by the Reserve Bank of Zimbabwe Governor, DSTV subscriptions and card payments, at USD206.66million, were the second major driver of foreign currency drain in Zimbabwe. On 16 February 2017, FinX quoted the RBZ Governor as saying that between July and December 2016 alone, USD45million or 22% of the USD206.66 million was used to pay for DSTV's satellite TV service.

- 9.3. On the contrary, the Kwese content provided by Econet Media is much cheaper. It is pertinent to note that DSTV has made radical reductions in its price during 2017 once the possibility of Kwese coming into Zimbabwe was announced, clear evidence that they were deliberately charging monopolistic prices to consumers in this country. The following is the comparison of the pricing of the DSTV content to the pricing of the Kwese content:

DSTV CURRENT vs KWESE PRICING August 2017

DSTV			KWESE	COMMENTS
DSTV Package	DSTV Pricing ZW	South Africa pricing	Kwese does not discriminate. Its charges are the same across Africa	
Access	\$11	\$7.60		
Family	\$17	\$17		
Compact	\$28	\$26.50		
Compact Plus	\$47	\$35	\$25 ex VAT \$29 inc VAT	The only difference is that DSTV has exclusivity over some, but not all the English Premier League Games.
Premium	\$72	\$58		
Note that DSTV pricing does not include VAT. Therefore, the Kwese Charge has also been stripped of the VAT component for purposes of comparison. DSTV has been in Court with ZIMRA over its refusal to charge for, and remit VAT to ZIMRA.				

9.4. The family that is the beneficial owner of Econet Media Limited (Mauritius) is a Zimbabwean family. I am informed, and I believe that due to their understanding of the economic hardship that their homeland is experiencing, they have directed Econet Media to approach Exchange Control with proposals that will allow Zimbabwean subscribers of Kwese to pay using their bond notes and RTGS money, and to defer the remittance of payments outside Zimbabwe while more permanent solutions to cushion Zimbabweans against the currency shortages are being sought. I am further informed, and I believe that, in the interim period, Econet Media Limited (Mauritius) will itself meet the requirement for the payment of foreign currency to the owners of the content.

9.5. In the circumstances, the Kwese content is much more favorable to the interests of Zimbabwean consumers and is

thus much more aligned to the purpose and spirit of the Broadcasting Services Act than the DSTV monopoly that Respondents seek to protect. On the basis of this comparison alone, the decision to terminate Applicant's license is irrational, oppressive of the Zimbabwean consumers, against the spirit and purpose of the Broadcasting Services Act, and unpatriotic.

10. The termination of Applicant's license shows bias or discrimination against Applicant, and is a violation of Applicant's freedom of expression and of the media, and that of the public generally.

- 10.1. Apart from DSTV, which is a virtual monopoly on satellite television broadcasting, and is much more expensive, some over the top providers of content have now invaded the content distribution space with content that is accessed through the internet. The same content that one watches over satellite television is now available on the Internet, and some of it is available real time.
- 10.2. Some of the content is distributed by or through You Tube, WhatsApp, Twitter, Facebook, Apple Store, and Amazon. These channels have become very effective channels for the distribution of the content whose distribution is sought to be regulated by the Broadcasting Services Act. These global giants are distributors of content, yet they are not licensed and do not have to pay license fees as Applicant has had to do and did.
- 10.3. If one adopts a purposive approach to the interpretation of the Broadcasting Services Act in the context of the Bill of Rights, which one must do, the termination of Applicant's license discriminates or shows bias against Applicant while favoring DSTV, and the unlicensed global distributors of content. The termination of Applicant's license violates the freedom of expression and of the media of the Applicant and that of the members of the public generally. The termination of

Applicant's license in these circumstances is not reasonably justifiable in a democratic society, does not "foster and maintain a healthy plural democracy" and does not maintain or promote "effective competition between persons engaged in the provision of broadcasting services" as required by the Act.

11. In the circumstances, I pray for a provisional order that suspends the purported termination of Applicant's license in the interim, while calling upon Respondents to show cause why the decision to terminate Applicant's license should not be declared to be null and void on the return day.

Sworn to at Harare this ^{29th}..... day of August 2017



Nyasha Muzavazi



Commissioner of Oaths

Before me

B MATAMBA CA (Z)
COMMISSIONER OF OATHS
EX-OFFICIO



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**EXTRACT OF THE MEETING OF THE DIRECTORS OF DR DISH (PRIVATE)
LIMITED,**

**HELD IN THE BOARDROOM, HARARE ON FRIDAY 24 AUGUST 2017 AT
1000 HOURS**

AT THE MEETING OF THE DIRECTOR(S) of DR DISH (PRIVATE) LIMITED (the
"Company") held this 24th day of August, 2017 at Number 750 Gaydon Road, HARARE:

The following members of the board were present, namely:

Nyasha Muzavazi

Ignatius Mutahwarira

Takunda Emmanuel Gumbo


As every director of the Company was present, the meeting was declared to be
regularly called.

The Board resolved as follows,


RESOLVED, that following the unlawful conduct by the Broadcasting Authority of
Zimbabwe in cancelling the Company's licence CD0004 (Content Distribution Service)
contrary to the provisions of the Broadcasting Services Act,

Mr Nyasha Muzavazi be and is hereby empowered to execute all the necessary
documents to ensure the matter is prosecuted in the competent courts by Messrs
Mtetwa & Nyambirai Legal Practitioners as a matter of urgency.


IN WITNESS WHEREOF, this resolution is duly executed by,



Mr. Nyasha Muzavazi
Director



Mr. Ignatius Mutahwarira
Director



Takunda E. Gumbo



THE BROADCASTING AUTHORITY OF ZIMBABWE

LICENCE NO: CD 0004

LICENCE TO PROVIDE A CONTENT DISTRIBUTION SERVICE

The Broadcasting Authority of Zimbabwe, in the exercise of the powers conferred upon it in terms of Section 10 of the Broadcasting Services Act Chapter 12:06 hereby grants to

DR DISH (PRIVATE) LIMITED

this licence for the term of ten (10) years and subject to the terms and conditions set out in the schedule to provide a Content Distribution Service in Zimbabwe.

Effective Date... 18 OCTOBER 2012

Expiry Date... 17 SEPTMBER 2022

Signed at Harare on this 18 day of OCTOBER (Month) 2012 (Year).

Broadcasting Authority of Zimbabwe



12 October 2016

Dr Dish (Pvt) Ltd
750 Gaydon Road
Greystone Park Shopping Centre
Harare

Media Centre
Rainbow Towers Grounds
P.O. Box CY 496
Causeway
Harare
Tel: 263-4-797380/1/2/3 Fax: 263-4-797375
Email: info@baz.co.zw
Website: www.baz.co.zw

Att: Mr. Muzavazi

Dear Sir,

**RE: NOTICE OF INTENTION TO CANCEL LICENCE NO. CD 0004 -
CONTENT DISTRIBUTION SERVICE LICENCE**

We refer to your licence to provide a Content Distribution Service issued to yourselves on 18 October 2012. The Authority notes your continued failure to pay the annual licence fees for the past three (3) years, which will be at US\$284 000.00 on the 18th of October 2016. The Authority also notes that you have ceased to provide the service licenced.

In accordance with section 16 (2) of the Broadcasting Services Act [Chapter 12:06] and for the reasons cited above, please kindly show cause to the Authority, within seven (7) days of receiving this notice, why your licence for the provision of a Content Distribution Service should not be cancelled by the Authority in terms of section 16 (1d) and 16 (1e) of the Broadcasting Service Act.

Be guided accordingly

Yours faithfully

MR. O. MUGANYURA
CHIEF EXECUTIVE OFFICER

DR DISH

750 Gaydon Road, Greystone Park Shopping Center, Greystone Park, Borrowdale, Harare, Zimbabwe,
Cell: +263 78 444 7204, +263 71 844 7915, Email: nmuzavazi@bostelelevision.com, nyashanakas@gmail.com,

16th October 2016

The Chief Executive Officer
Broadcasting Authority of Zimbabwe
Media Centre
Rainbow Towers Grounds
P O BOX CY 496
Causeway
Harare

Attention: Mr O. Muganyura

Dear Sir

RE: SHOW CAUSE LETTER: NOTICE OF INTENTION TO CANCEL LICENCE NO. CD 0004

Reference is made to your notice of intention to cancel our Content Distribution Service Licence no CD 0004 issued on 18 October 2012 in terms of section 16(2) of the Broadcasting Services Act (Chapter 12:06) for ceasing to provide the service in the license and failure to pay our annual License fees now amounting to US\$284 400 in violation of section 16(1d) and 16(1e) of the Broadcasting Services Act (Chapter 12:06) respectively.

We wish to submit that there will be no need to cancel the said Licence no CD 0004 as our circumstances have changed substantially and we are now in a position to provide service on a continuous basis going into the future. The following are the reasons why the license should instead be allowed to carry-on:

1. Your letter comes at time when we have just finalised a partnership agreement with Econet Media, which will see the latter replacing MYTV Africa Dubai as the Service Provider. Under the agreement, Econet Media will purchase a stake in Dr. Dish, and part of the proceeds will be applied towards the license fees.
2. The transaction with Econet provides that upon submission and acceptance of the necessary notifications of changes to the Authority in terms of sections 17 and 23 of the Broadcasting Services Act (Chapter 12:06), outstanding fees will immediately be paid.
3. Whilst there is concern on the BAZ's part regarding the suspension of service, we wish to record that we did not deliberately cease to provide the service out of our own failure or volition but rather, after the Dubai based service provider we had an agreement with to provide content and satellite capacity had lost its content rights for the Zimbabwean territory and subsequently ceased transmitting its services from Intelsat 20 satellite which covers Zimbabwe and moved to transmit its services from Eutelsat 16A satellite whose footprint does

Directors: N. Muzavazi (Executive Chairman), E. Chawoneka, Dr M Mnaba, P. Janga (Company Secretary)

DR DISH

750 Gaydon Road, Greystone Park Shopping Center, Greystone Park, Borrowdale, Harare, Zimbabwe,
Cell: +263 78 444 7204, +263 71 844 7915, Email: nmuzavazi@bostelelevision.com, nyashanakas@gmail.com,

- not cover Zimbabwe. Please find evidence of the footprint coverage for Eutelsat 16 A wherein MY TV Africa Dubai is now transmitting from. Please refer to www.mytvafrika.tv/data.sapx. This then crippled our operations and thus rendered us to temporarily unable to provide our services and failing to pay our license fees.
4. Our new partner, Econet Media have already made a huge commitment in the media space in Africa and are operating in over 10 countries since the beginning of the year. Total viewership of their Kwese Free Sports is currently estimated at over 60million viewers in the territories they currently covering.
 5. In terms of readiness for reintroducing service, Dr. Dish now has a significant advantage as we will be able to ride on existing Econet infrastructure with respect to distribution, marketing sales, and logistics.
 6. Through the partnership, we have already secured content and satellite infrastructure for the next 5 years which are available immediately as shown in our regulatory notifications submitted together with this letter.
 7. We have a team of over 20 staff which we have to put together in the past two months, and we expect to be able to resume service by December 2016. Billing systems and other IT infrastructure is currently being configured.
 8. STBs and other CPEs are on order and will be shipped to the country upon confirmations of notifications we have submitted.

We have since taken the following measures to ensure that we have complied.

Yours Faithfully

Nyasha Muzavazi
EXECUTIVE CHAIRMAN



750 Gaydon Road, Greystone Park Shopping Center, Greystone Park, Borrowdale, Harare, Zimbabwe,
Cell: +263 78 444 7204, +263 71 844 7915, Email: nmuzavazi@bostelelevision.com, nyashanakas@gmail.com,

21 October 2016

The Chief Executive Officer
Broadcasting Authority of Zimbabwe
Media Centre
Rainbow Towers Grounds
Harare

Attention: Mr O. Muganyura


**RE: CORRECTION OF AN ERROR ON THE EXPIRY DATE FOR DR.
DISH (PTY) LTD, LICENCE NO. CD0004.**

We write to you in terms of Section 15(1)(a) of the Broadcasting Services Act, and wish to bring to the attention of the BAZ, the fact that the the expiry date on our License No. CD0004, was incorrectly entered.

Our License, No. CD0004 was issued on 18th October 2012 to be valid for 10 years. The expiry date should therefore read 17th October 2022 instead of 17th September 2022 in order to regularise its 10 year validity period as prescribed in Section 12 (2) of the Act .

We thank you for your usual support, and your cooperation and prompt action on this matter will be greatly appreciated.

Yours Faithfully


Nyasha Muzavazi
Chairman

F

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CONFIRMATION OF RECEIPT AND ACCEPTANCE OF NOTIFICATIONS

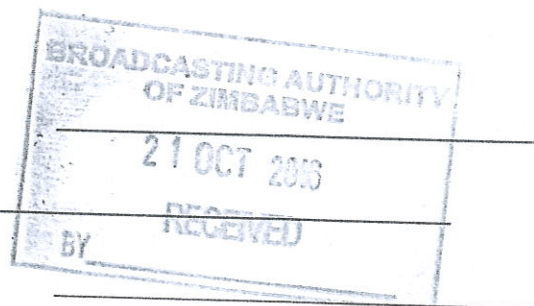
We, the Broadcasting Authority of Zimbabwe, hereby confirm receipt and our acceptance of this notification of update of information lodged by Dr. Dish (Pvt) Limited in terms of section 17 of the Broadcasting Services Act, Chapter 12:06.

Accepted at Harare this _____ day of October 2016.

AUTHORISED SIGNATORY:

NAME:

POSITION:





750 Gaydon Road, Greystone Park Shopping Center, Greystone Park, Borrowdale, Harare, Zimbabwe,
Cell: +263 78 444 7204, +263 71 844 7915, Email: nmuzavazi@bostelelevision.com, nyashanakas@gmail.com,

21 October 2016

The Chief Executive Officer
Broadcasting Authority of Zimbabwe
Media Centre
Rainbow Towers Grounds
HARARE

Dear Sir

**NOTIFICATION OF UPDATE OF INFORMATION IN TERMS OF SECTION 17 OF
THE BROADCASTING SERVICES ACT CHAPTER 12:06**

We write to notify the Authority of some update to the information on record with the BAZ in terms of section 17 of the Broadcasting Services Act Chapter 12:06

1. GENERAL INFORMATION

1.1.Licencee: Dr Dish

1.2.Licence number: CD0004

1.3.Validity Period of Licence: 18 October 2012- 17 September 2022

2. NEW NOTIFICATIONS IN TERMS OF SECTION 17.

2.1.Technical Standards –

The services and technical specifications originally submitted for MYTV Africa Dubai will now be provided by ECONET MEDIA MAURITIUS in terms of the agreements signed between the parties.

2.2.Channel Notifications.

We will be adding additional channels to our offering. Annexure 1 to this letter contains the updated list of channels to be provided under ECONET MEDIA ZIMBABWE

2.3.Notification of Satellite Specification.

We kindly request that you replace the satellite specification lodged with the Authority with the following new specification:

2.3.1. Eutelsat 7B Satellite at 7.0°E Degrees East from the following Transponder K01, Frequencies Downlink 10720.75 Mhz,

2.3.2. Eutelsat 7B to Transponder K03, Frequencies Downlink 10762.25 MHz,

2.3.3. Eutelsat 7B, and Transponder K07, Frequencies Downlink 10845.25 MHz

2.4.Notification of Set Top Boxes

The signal will be received through DVB S2 set top boxes supplied by KAON and encrypted via a Verimatrix encryption. The technical specifications are contained in Annexure 2 attached hereto. We will be lodging sample STBs with the Authority with this notification for type approval.

2.5.Notification of Re-Organization of Existing Shareholding Structure.

Following tax and audit opinions from our corporate and financial advisors, the shareholders have resolved to reorganize their current shareholding so that it is held through legal entities. Annexure 4 contains the details of the reorganization.

2.6.Notification of Change of Directors in Directors in Dr.Dish

We advise change of Directors in Dr. Dish as detailed in Annexure 3

3. OUTSTANDING LICENSE FEE

We have been working with our shareholders and financial advisors and are finalizing our consolidated plan for the re-launch of the service.

3.1.Kindly furnish us with the final invoice of outstanding fees so that we can present this to our bank.

3.2. Upon confirmation of receipt and acceptance of these notifications, a confirmation that the license remains valid to the end of its term, we will proceed to pay the outstanding fees.

3.3. Commence preparations for re-launch of operations.

4. FEES FOR THE NEXT FINANCIAL YEAR

The fees for the next financial year which are due in October 2016. Shall be paid after the acknowledgement of receipt and acceptance of notifications. We would appreciate if you could also furnish us with a separate invoice for the same, so that we can commence arrangements to pay this amount on time.

We take this opportunity to thank you for the incredible support you have given us since the issuance of our license.

We remain committed to fulfilling the vision of the BAZ in ensuring that broadcasting sector in Zimbabwe develops and grows for the benefit of the citizens of this nation.

Yours Sincerely



Nyasha Muzavazi
Executive Chairman

**CONFIRMATION OF RECEIPT AND ACCEPTANCE OF
NOTIFICATIONS**

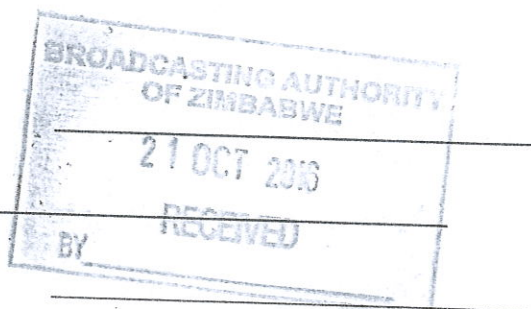
We, the Broadcasting Authority of Zimbabwe, hereby confirm receipt and our acceptance of this notification of update of information lodged by Dr. Dish (Pvt) Limited in terms of section 17 of the Broadcasting Services Act, Chapter 12:06.

Accepted at Harare this _____ day of October 2016.

AUTHORISED SIGNATORY:

NAME:

POSITION:



Dr Dish brings Kweze TV to Zimbabwe (Press Release)



A global leader
in skills development



Confident
Workforce.

[Learn More](#)

Posted 19 Aug 2017 by **Staff Writer** (@techzim)

Type keyword and hit enter...

Stuff to know



WhatsApp



Facebook



Facebook Messenger



Twitter

Dr Dish (Private) Limited wishes to announce that it has struck a ground breaking Content Distribution deal with Econet Media Limited, a Pan African Broadcasting Network, to bring Kweze TV into Zimbabwe.

Dr Dish is a duly Licensed Broadcasting Service provider with a valid Content Distribution Service License number CD0004 which was issued by the Broadcasting Authority of Zimbabwe on the 18th October 2012, in terms of Section 10 of the Broadcasting Services Act. The license is valid for 10 years, and will be expire on 17th September 2022.

Dr Dish had been distributing content on behalf of My TV Africa until the latter lost its content rights for the Zimbabwe Territory and consequently migrated it's Channels to Eutelsat 16A whose Satellite Footprint does not cover Zimbabwe.

This development, forced Dr Dish to suspend its services, and commence the arduous process of searching for an alternative service provider who would have content relevant to the rapidly evolving Zimbabwean consumer.

Talks with Econet Media Limited, a Mauritian based Pan African Television network have been going on for some time until a deal was finally concluded in October 2016. Announcing this development the Executive Chairman of Dr Dish, Mr Nyasha Muzavazi explained, "We were so excited about this development that we immediately notified the Broadcasting Authority of Zimbabwe, in terms of Section 17 of the Broadcasting Services Act Chapter 12:06 as part of the administrative and regulatory requirements. We notified our regulator that we were partnering with Kwese, and gave them the full details of the channels we were going to bring to the nation, together with a whole host of other technical information"

Dr Dish originally intended to bring the Kwese service to Zimbabwe in January of 2017, but had to wait for Zimbabwe to get its slot in the ongoing pan- African rollout which Kwese is currently involved with.

In terms of readiness and investment in preparing to launch Mr Muzavazi, explained "The parties have been working tirelessly since then and making all necessary preparations for the launch of Kwese in Zimbabwe. A lot of work has gone into building a powerful distribution infrastructure, recruitment, training and development of Kwese's installation teams, the high-tech Kwese Technites, customer service training, advertising and other work"

Dr Dish has also successfully secured the participation of Econet Kwese Television Zimbabwe (Private) Limited as part of its establishment, in compliance with the regulations.

Announcing the choice of Econet Media as a partner, Mr Muzavazi said "We are very excited about our partnership because Econet Media is a next generation African media player whose multiplatform offering includes direct to home satellite services (DTH), a mobile app – Kwese App which includes the popular sports all Kwese Free Sports (KFS) App, broadband television service Kwese Play, digital sports service KweseESPN amongst others. With a presence in 23 countries and over 75m eye balls across Africa we could not miss the opportunity to bring Kwese TV to Zimbabwe. The final piece in ensuring we achieve this was to make sure that our license fees were all up to date, and that was done this week. We are now ready to launch Kwese. The wait is now over!"

This development represents one of the biggest investments in the media space the country has witnessed for sometime now resulting in hundreds of direct jobs and downstream employment.

Kwese OFFICIALLY here and did not need a licence after all

MINING AND CONSTRUCTION

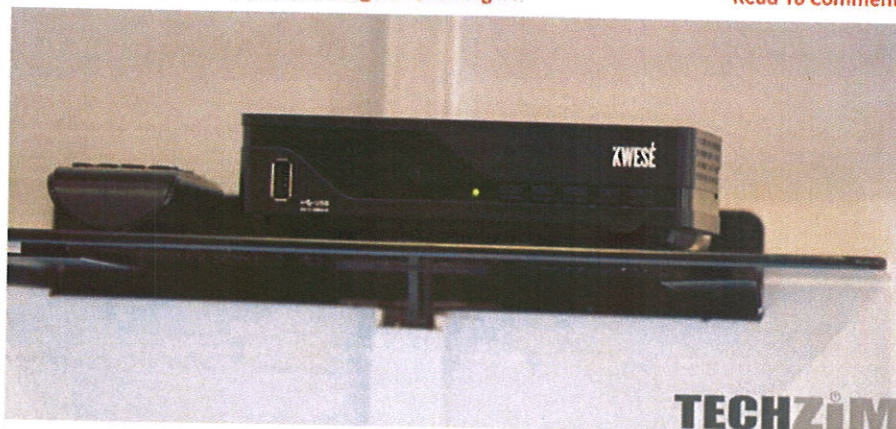
E-mail: info@zenithcrusher.com
www.zenithcrusher.com



Posted 19 Aug 2017 by **Leonard Sengere (@leosengere)**

Read 18 Comments

Type keyword and hit enter



Stuff to know

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[USSD for Buying Bundles on NetOne, Econet & Telecel](#)

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It's official. Kwese is now in Zimbabwe. The wait is over. Econet Media, the company behind Kwese partnered with a company which already had a licence. That company is Dr Dish. The talks have been ongoing for a while according to the executive chairman of Dr Dish, Mr Nyasha Muzavazi.

Kwese and Dr Dish finalised the deal in October 2016. The deal is for Dr Dish, which was duly licenced by the Broadcasting Authority of Zimbabwe (BAZ) back in 2012, to distribute content from Kwese. The licence that Dr Dish has is valid until September 2022 and we will see then if it will be renewed. By then Kwese could have their own licence or not, whatever the case we will have Kwese officially in Zimbabwe for at least 5 years.

Well, if the deal was struck in 2016 why are we only getting Kwese now? The rollout of Kwese in Africa was in stages and Zimbabwe's turn had not yet come. Mr Muzavazi also says the companies were building the infrastructure and training the installation teams among other preparations. There also was the small issue of making sure licence fees were up to date. That was done this week and the companies are finally ready to launch.

BAZ was notified as soon as the deal was struck back in 2016. They were given full details of the channels that were going to be offered. If Mr Muzavazi is to be believed, the delay in launch was only due to aforementioned reasons and not because of frustrating delaying tactics by BAZ. You decide if you believe that.

Dr Dish have had other content distribution deals before. Remember My TV Africa? That content was distributed by Dr Dish until My TV Africa lost it's content rights for the Zimbabwe territory. So this is not their first rodeo.

So there you have it. It is official now, no need for **workarounds**. Econet seems to have found a legal loophole and Kwese will be provided through a third party which I'm sure will become part of the Econet group at some point. Dr Dish made the announcement and so if you have any questions you should direct them there and we will reach out to them as well to give you full details of where you can buy the service. If you are interested in the service **please fill in this form and we will try to help you jump the queue.**

So we can say, welcome Kwese...



PRESSROOM

Kwese TV Kicks Off In Zimbabwe



By Guest

Published on August 20, 2017



Social Media Reacts To
Kwese Licence Saga



"Kwese Has No Licence To
Operate In Zimbabwe":
BAZ



Kwese TV Signs Deal With
TURNER Adding 3 Global
Brands To Its Line-up



Kwese TV Launches In
Zimbabwe

SHARE TWEET

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This development represents one of the biggest investments in the media space the country has witnessed for some time now resulting in hundreds of direct jobs and downstream employment.



27 Boscobel Drive West
Highlands
P.O. Box CY 496
Causeway
Harare
Tel: 263-4-443465-7
Email: info@baz.co.zw

22 August 2017

ATT: Mr. Muzawazi
The Chief Executive Officer
Dr Dish (Pvt) Ltd
750 Gaydon Road
Greystone Park
Harare

Dear Sir

Re: ACKNOWLEDGEMENT OF RECEIPT

We acknowledge receipt of your payment made on the 18th of August 2017 towards outstanding licence fees for the Content Distribution licence for My TV Africa which balance due was **US\$284 400.00** as at 16 October 2016.

Please kindly be advised that the Authority has deducted these long outstanding fees of **US\$284 400.00** from the received sum. The Authority will refund Dr Dish the remaining balance of **US\$150 000.00**. Please kindly provide banking details for the refund transaction to be processed.

We thank you for clearing your account outstanding balances.

Yours Faithfully

T. Rashama

Acting Finance & Administration Manager

For and On Behalf of Broadcasting Authority of Zimbabwe



27 Boscobel West Drive
Highlands
P.O. Box CY 496
Causeway
Harare
Tel: 263-4-443465-7 Fax: 263-4-443468
Email: info@baz.co.zw
Website: www.baz.co.zw

22 August 2017

Dr. Dish (Pvt) Ltd
750 Gaydon Road
Greystone Park Shopping Centre
Greystone Park
HARARE

Attention: Mr. Muzavazi

Dear Sir,

RE: CANCELLATION OF LICENCE No. CD/0004

We refer to your letter of 16 October 2016, in response to our notice of intention to cancel your Content Distribution licence for the MY TV AFRICA Service, dated 12 October 2016.

We have observed from your submissions, particularly in paragraph 3 of your response of 16 October 2016 that the MY TV Africa Service, can no longer be provided in Zimbabwe, due to loss of Content rights by your Partners for the Zimbabwe territory. As you are aware your licence issued on 18 October 2012, was in respect of the provision of the MY TV AFRICA Service (See Clause 1 of Part B of your licence conditions).

As such and for reasons you acknowledged in your letter mentioned above, the licence can no longer be upheld, as Dr Dish (Pvt) Ltd has ceased to provide the MY TV Africa Service specified in the licence. Therefore in accordance with section 16 (1d) of the Broadcasting Services Act [Chapter 12:06], the Authority hereby, effective date of this letter, cancels licence No. CD 0004 for the provision of a Content Distribution Service for the MY TV Africa Service.

Be guided accordingly

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Obert Muganyura', with a long horizontal flourish extending to the right.

OBERT MUGANYURA

CHIEF EXECUTIVE OFFICER



Mtetwa & Nyambirai

notaries, conveyancers
legal practitioners
estate administrators

2 Meredith Drive, Eastlea
P.O. Box 4112, Harare, Zimbabwe
Tel: 251118, 701743, 790598
Fax: 252079
Email: triciaz@mandn.co.zw

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25 August 2017

The Chief Executive Officer
Broadcasting Authority of Zimbabwe
27 Boscobel West Drive
Highlands
HARARE

BROADCASTING AUTHORITY
OF ZIMBABWE

25 AUG 2017

RECEIVED

BY Audrey

Dear Sir

Re: Invalid Notice of cancellation of License No. CD0004 held by Dr Dish (Pvt) Ltd

Introduction

We act for Dr Dish (Pvt) Ltd. We have been instructed to respond to your letter of 22 August 2017 in terms of which you purported to cancel our client's license number CD/0004 for the provision of a Content Distribution Service in terms of Section 16 (1)(d) of the Broadcasting Services Act [Chapter 12:06] ("the Act").

Your letter claims that our client had been licensed to provide the MY TV AFRICA Service only, thus implying that the license did not authorize our client to distribute the Kwese content. The reason you give for your decision is that our client had ceased to provide the service for which it was licensed.

Partners
Beatrice T Mtetwa LLB(UBS)
Tawanda Nyambirai LLBS(UZ)
Taona W Nyamakura LLBS(HONS) UZ

Consultant
Jill Zindi LLB(LOND)

Assisted by
Mzokuthula Mbuyisa LLB(RHODES)
Simbarashe Mubvuma LLBS(HONS)UZ
Mark T Rujuwa LLBS(HONS)UZ

We are instructed that the purported cancellation of our client's license is invalid. We set out the reasons for our client's contention below:

The Chief Executive Officer of the Authority acted ultra vires his powers.

The control and management of the operations of the Broadcasting Authority of Zimbabwe is vested in the Broadcasting Authority of Zimbabwe Board in terms of Section 4 (1) of the Act. The Chief Executive Officer's powers are subject to the control of the Board, and are limited to the specific provisions of the Fourth Schedule to the Act, and to such powers as are assigned to him by the Board.

The cancellation of a license in terms of Section 16 (1) (b) is not a matter that the Chief Executive Officer is authorized to deal with without the specific authority of the Board, or a specific empowering provision in the Act. The Broadcasting Authority of Zimbabwe does not have, and has not had a board for quite some time. Therefore, the decision to cancel our client's license, not being a decision of the Board, is ultra vires the powers conferred on the Chief Executive Officer of the Authority, and is thus invalid.

The decision to terminate the license is irrational in so far as it purports to restrict our client's license to content provided by MY TV AFRICA alone.

You issued a letter dated 12 October 2016 in terms of which you asked our client to show cause why its license should not be terminated on the grounds that our client had failed to pay annual license fees for the past three years, and that our client had ceased to provide the licensed service. In issuing the show cause letter, you purported to act under Section 16 (2) of the Act. On

the grounds that we have already advanced, the show cause letter was invalid as it was not issued by the Board, or under the authority of the Board.

In any event, our client showed sufficient cause why its license should not be cancelled. Our client explained that its former supplier of content, MY TV AFRICA had lost its content rights over Zimbabwe. However, our client had secured an alternative supplier of content, Econet Media. Econet Media was not only going to supply content, but was also going to provide the funds to clear the outstanding license fees.

Although clause 1 of Part B of the License states that our client shall offer MY TV AFRICA service, that statement must be read in the context of the whole License. The License itself, on its face, and in the preamble to Part B of its terms and conditions, classifies the nature of the License as a License to provide "a Content Distribution Service". Part A defines "Content Distribution Service" as "a service provided by a content distributor comprising content aggregated within or outside Zimbabwe that is made available in Zimbabwe.." The reference to content aggregated within the Country is important as it enables the Licensed service provider to meet the local content requirements set out in the Act. In the context, reference to MY TV AFRICA was not meant to be restrictive of the content providers our Client could have. The identity of the suppliers of content is a matter that can change, subject to notice being given to the Authority in terms of Section 17 of the Act. As we will demonstrate hereunder, notice of the change of the provider of content was not only given in terms of Section 17 of the Act, it was also considered and accepted by the Authority on 21 October 2016. Therefore, contrary to what is stated in your invalid cancellation letter dated 22 August 2017, the License did not prohibit our client from replacing MY TV AFRICA as the provider of

content. In any event, our client's competitor, DSTV, distributes content supplied by several content providers. Therefore, your interpretation of the License as prohibiting our client from changing its providers of content is not correct, is absurd and irrational.

Your conduct after the 16th October 2016 and your failure to act until 22 August 2017 is inconsistent with the decision to terminate the license and makes the decision to terminate the license irrational

Our client's response to the invalid Show Cause letter was dated 16 October 2016 and delivered to you the same week. On 21 October 2016, after you had had ample time to peruse our client's response to your invalid show cause letter, our client proceeded to lodge with you the notifications required by Section 17 of the Act. Such notifications included the notification of the substitution of Econet Media Mauritius as the content provider in the place of MY TV AFRICA. Our client also notified you of the consequent changes in its shareholding structure and its Board composition and stated that arrangements for the payment of fees arrears, and the fees for the ensuing year were being made. At that stage you were aware that the payment for the fees would come from arrangements made through our client's new partner. You confirmed receipt and acceptance of the notifications in writing that you date stamped 21 October 2016. The written acceptance of the notification in a separate document that you stamped was not a mere acknowledgment of receipt of the notifications. It signified that the notifications had been considered and approved, otherwise it would have

been sufficient to stamp the letters as a mere acknowledgement of receipt. The acceptance of the notifications in that manner was a clear indication that our client had shown adequate cause that its license should not be cancelled and that the matter of violation of the provisions of section 16 (1) (d) of the Act was now in the past.

On the understanding that it had shown sufficient cause why its license should not be cancelled, our client proceeded to finalize its agreements with Econet Media Mauritius and Econet Kweze TV, a Zimbabwean Company. Curiously, when speculative reports broke in the media that Kweze TV had been licensed in Zimbabwe, Zimpapers, one of the prospective partners that Econet Media was in negotiations with, but failed to agree with on commercial terms, renewed its interest in a partnership with Econet Media. Furthermore, the Zimbabwe Broadcasting Corporation has approached and is currently in discussions with Econet Media for the provision of some of its exclusive sports content. While Econet Media Mauritius is finalizing the formalities relating to its investment in Zimbabwe as a content provider, and its offering to cushion Zimbabwean Consumers from the foreign currency shortages, Econet Kweze TV proceeded to release the money needed for the payment of the arrear and current license fees. The payment was effected on 18 August 2017. Your letter of 22 August 2017 that was disguised as a response to a letter that our client sent to you in October 2016, almost a year ago, is certainly an ill-considered and mischievous response to the payment made by our client. Such conduct magnifies the level of bad faith with which you have conducted yourself in this matter. The delay; your acceptance of subsequent statutory notifications filed by our client; your failure to address subsequent developments that have taken place since October 2016, and the

fact that you knew, or ought to have known that the money paid to you came from our client's new partners, make the belated purported cancellation of our client's license irrational. Your conduct including your failure to speak against our client's finalization of agreements with Econet Media constitute your acceptance of our client's response to your invalid show cause notice. Alternatively, your actions, or your failure to act constitutes an estoppel against you relying on the pre- 12 October 2016 default by our client to terminate its license.

The decision to terminate our client's license is irrational because the content distributed by our client is much cheaper, is payable locally using bond notes and RTGS money, and thus much more favorable to the consumer.

At the moment, DSTV has a monopoly over satellite television broadcasting in Zimbabwe. For as long as they have operated in Zimbabwe, DSTV has exploited the Zimbabwean consumer by charging a huge premium to Zimbabwean customers compared to what they charge in South Africa. The following is their historical pricing of the content that they offer:

DStv SA Packages	2015 Price	2016 Price	DSTV Zimbabwe
DStv Access	R99	R99	R176
DStv Compact	R319	R345	R512
DStv EasyView	R39	R29	Not Available
DStv Extra	R425	R459	R880
DStv Family	R199	R219	R336
DStv Indian	R319	R345	R560
DStv Premium	R699	R759	R1,296
DStv Select*	R199	R219	Not Available
M-Net Analogue/CSN*	R335	R369	Not Available
XtraView Access Fee	R80	R85	R176

Over and above this exploitation of the Zimbabwean consumer, subscribers in this country are required to pay using hard currency or offshore money. Bond notes and electronic transfers that are not supported by nostro dollars are not accepted. According to the 2017 monetary policy presented by the Reserve Bank of Zimbabwe Governor, DSTV subscriptions and card payments, at USD206.66million, were the second major driver of foreign currency drain in Zimbabwe. On 16 February 2017, FinX quoted the RBZ Governor as saying that between July and December 2016 alone,

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USD45million or 22% of the USD206.66 million was used for payment for DSTV's satellite TV service .

On the contrary, the Kweze content provided by Econet Media is much cheaper. It is pertinent to note that DSTV has made radical reductions in its price during 2017 once the possibility of Kweze coming into Zimbabwe was announced, clear evidence that they were deliberately charging monopolistic prices to consumers in this country. The following is the comparison of the pricing of the DSTV content to the pricing of the Kweze content:

DSTV CURRENT vs KWESE PRICING August 2017

DSTV			KWESE	COMMENTS
DSTV Package	DSTV Pricing ZW	South Africa pricing	Kweze does not discriminate. Its charges are the same across Africa	
Access	\$11	\$7.60		
Family	\$17	\$17		
Compact	\$28	\$26.50		
Compact Plus	\$47	\$35	\$25 ex VAT \$29 inc VAT	The only difference is that DSTV has exclusivity over some, but not all the English Premier League Games.
Premium	\$72	\$58		

Note that DSTV pricing does not include VAT. Therefore, the Kweze Charge has also been stripped of the VAT component for purposes of comparison. DSTV has been in Court with ZIMRA over its refusal to charge for, and remit VAT to ZIMRA.

The Masiyiwa family that is the beneficial owner of Econet Media Mauritius is a Zimbabwean family. Due to their understanding of the economic hardship that the homeland is experiencing, they have directed Econet Media to approach Exchange Control with proposals that will allow Zimbabwean subscribers of Kwese to pay using their bond notes and RTGS money, and to defer the remittance of payments outside Zimbabwe while more permanent solutions to cushion Zimbabweans against the currency shortages are being sought. In the interim period, Econet Media Mauritius will itself absorb the requirement for the payment of foreign currency to the owners of the content. In the circumstances, the Kwese product is much more favorable to the interests of Zimbabwean consumers and is thus much more aligned to the purpose and spirit of the Broadcasting Services Act than the DSTV content that you seek to protect. On the basis of this comparison alone, the decision to terminate our client's license is irrational, oppressive of the Zimbabwean consumers, against the spirit and purpose of the Broadcasting Services Act and unpatriotic.

The termination of our client's license shows bias or discrimination against our client, and is a violation of our client's freedom of expression and of the media, and that of the public generally.

Apart from DSTV which is a virtual monopoly on satellite television broadcasting, and is much more expensive, some over the top providers of content have now invaded the content distribution space although their content is accessed through the internet. The same content that one watches over satellite television is now available on the internet, and some of it is available real time. Some of the providers of the content provide access to it through You Tube, WhatsApp, Twitter and Facebook. These channels of

providing the same content whose distribution is sought to be regulated by the Broadcasting Services Act are not licensed and do not have to pay license fees as our client did. If one adopts a purposive approach to the construction of the Broadcasting Services Act in the context of the Bill of Rights, which one must, the termination of our client's license would discriminate or show bias against our client while favoring DSTV, You Tube, WhatsApp, and Twitter. It would further violate not only our client's freedom of expression and of the media, but also the freedom of expression and of the media of members of the public. The termination of our client's license in these circumstances is not reasonably justifiable in a democratic society, does not "foster and maintain a healthy plural democracy" as required by the Act, and does not maintain or promote "effective competition between persons engaged in the provision of broadcasting services".

Demand

We are instructed to demand, as we hereby do, the retraction of your letter of 22 August 2017 within the next 24 hours, failing which, we have instructions to file an urgent application declaring the purported cancellation of our client's license to be unlawful and striking down any sections of the Broadcasting Services Act that purport to authorize the violation of our client's constitutional freedom of expression and of the media, and the freedom of expression and of the media of the general public. In that event, we would like to advise you that we have also received instructions to apply to the Constitutional Court separately under the access to information provisions of the Bill of Rights in the interest of protecting our client's rights and in the interests of public accountability, for the disclosure of information on the licensing and financial matters relating to Transmedia and Multichoice.

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The information we will require relates to who the shareholders of Transmedia are and the proof thereof, where the payments made to Multichoice go, including whether any of the payments go to the shareholders of Transmedia and the jurisdiction from which such payments come and the country in which such payments are received. We shall write to you separately regarding our client's demand for information relating to Multichoice and Transmedia.

We also take this opportunity to notify you that we have received instructions to issue summons against you in your personal capacity for any damages that our client is suffering as a result of your illegal actions. Our client is currently calculating the damages based on the loss of revenue per day from the day you communicated your illegal decision thereby forcing them to stop business, to the day when your illegal decision will be set aside by the Courts. The law is clear that employees who cause damages to others by purporting to exercise powers that they do not have are not shielded from personal liability for their actions. Therefore, the longer you defend your illegal actions, the higher the amount of damages our client shall claim from you.

Yours Faithfully



Tawanda Nyambirai

Partner

Mtetwa & Nyambirai Legal Practitioners



M

27 Boscobel West Drive
Highlands
P.O. Box CY 496
Causeway
Harare
Tel: 263-4-443465-7 Fax: 263-4-443468
Email: info@baz.co.zw
Website: www.baz.co.zw

SS

28 August 2017

Mtsetwa and Nyambirai Legal Practitioners

2 Meredith Drive

Eastlea

Harare

Dear Mr. Nyambirai

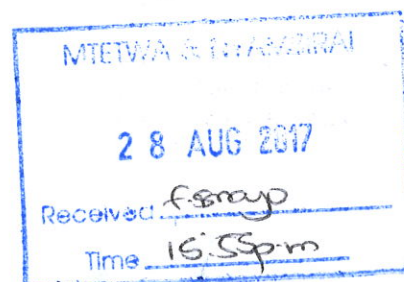
RE: CANCELLATION OF DR DISH LICENCE

We refer to your letter to us dated 25 August 2017 whose contents are noted. Your Client is free to approach the Courts if aggrieved by the decision taken by the Authority.

Yours faithfully

O. MUGANYURA

CHIEF EXECUTIVE OFFICER





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Rainbow Towers Grounds
P.O. Box CY 496
Causeway
Harare
Tel: 263-4-797380/1/2/3 Fax: 263-4-797375
Email: baz@comone.co.zw

07 August 2012

DR DISH (PVT) LTD

605 Rosshire Heights

Cnr Mazowe Street & Baines Avenue

HARARE

ATTENTION: DR. CHARLES TAKAVENGWA

Dear Sir,

**RE: APPLICATION FOR A CONTENT DISTRIBUTION BROADCASTING
SERVICE LICENCE**

Reference is made to your application for a content distribution broadcasting service licence submitted to the Authority by the due date of 29th of February 2012.

Your application for a licence to provide a content distribution broadcasting service licence was successful and the Authority is in a position to award you with a licence subject to payment of the requisite licence fees immediately or not later than thirty days from the date of this letter.

Failure to pay the licence fees within the stated period will result in the cancellation of the award.

We take this opportunity to wish you success in your new venture.

Yours Faithfully,

Broadcasting Authority of Zimbabwe

Dr. T. Mahoso
Board Chairman

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PART A

1. Definitions and Interpretations

- (a) In this licence, unless the subject matter or the context otherwise requires, the following terms shall have the following meanings:-

"Act" means the Broadcasting Services Act Chapter 12:06 as amended.

"Authority" means the Broadcasting Authority of Zimbabwe established in terms of Section 3 of the Act.

"Broadcasting Services Regulations" means the Broadcasting Services (Licensing and Content), Regulations Statutory Instrument 185 of 2004 as amended.

"Commencement date" means the date this Licence comes into effect.

"Content Distribution Service" means a service provided by a content distributor comprising content aggregated within or outside Zimbabwe that is made available in Zimbabwe with or without payment of a subscription fee and the reception is through satellite transmission.

"Content Distributor" means a person who provides a content distribution service.

"I.T.U" means International Telecommunication Union.

"International Telecommunication Union" means the specialised agency of the United Nations for the development of telecommunications services worldwide.

"Licence" means this Licence and any Schedules to the Licence.

"Licensee" means **DR DISH PRIVATE LIMITED**

"Licence Period" means the period of ten years from the commencement date.

"Programme" means the material or content broadcast and includes an advertisement.

"Public Broadcaster" means the Zimbabwe Broadcasting Corporation or any other broadcasting entity established by law which is wholly owned or controlled by the State.

PART B: Terms And Conditions of the Licence

The Licensee is hereby authorised to provide a Content Distribution Service within eighteen months from the commencement date, subject to the following terms and conditions: -

1. Technical Standard

The Licensee shall offer the following service:

MY TV AFRICA

2. Duration of Transmission

The Licensee shall provide a continuous service during the entire license period.

3. Fees

3.1 The Licensee shall pay to the Authority such fees as stated in the Second Schedule, Section 4 of the Broadcasting Services (Licensing and Content) Regulations, Statutory Instrument 185 of 2004 as amended, details of which are in clause 3.2 below, or as may be advised by notice published in the Gazette.

3.2 The fees payable by the Licensee shall be: -

❖ Basic Licence Fee :

- US\$100 000 per annum plus 3% of monthly subscription turnover or deemed turnover payable monthly in the currency the subscription is collected.

❖ Broadcasting Fund :

- A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually.

3.3. Payment of the fees referred to in 3.2 (above) or violation penalties shall be made as follows:

Basic Licence Fee :

- On the issuance of the licence.

IN THE HIGH COURT OF ZIMBABWE:

CASE NO. HC

/17

HELD AT HARARE

In the matter between:

DR DISH (PVT) LTD

APPLICANT

And

BROADCASTING AUTHORITY OF
ZIMBABWE

1ST RESPONDENT

O MUGANYURA

2ND RESPONDENT

PROVISIONAL ORDER

TO: BROADCASTING AUTHORITY OF ZIMBABWE
27 Boscobel West Drive
Highlands
HARARE

AND TO: OBERT MUGANYURA
27 Boscobel West Drive
Highlands
HARARE

TAKE NOTICE that on the
Mr/Mrs Justice
shown overleaf.

day of the Honourable
sitting at Harare issued a Provisional Order as

The annexed chamber application, affidavit/s and documents were used in support of the application for this Provisional Order. If you intend to oppose the confirmation of this Provisional Order, you will have to file a Notice of Opposition in Form No. 29B, together with one or more opposing affidavits with the Registrar of the High Court at Harare within (10) ten days after the date on which this Provisional Order were served upon you. You will have to serve the copy of the Notice of Opposition and Affidavit/s on the Applicant at the address for service specified in the application.

If you do not file an Opposing Affidavit within the period specified above, this matter will be set down in the High Court at Harare without further notice to you and will be dealt with as an unopposed application for confirmation of the Provisional Order.

If you wish to have the Provisional Order changed or set aside sooner than the rules of court normally allow and can show good cause for this, you should approach the Applicants or the Applicants' Legal Practitioners to agree, in consultation with the Registrar, on a suitable hearing date. If this cannot be agreed or there is a great urgency, you may make a Chamber Application to the Applicant, for direction from a Judge as to when the matter can be argued.

TERMS OF THE ORDER MADE

TERMS OF INTERIM RELIEF SOUGHT

PENDING THE FINAL DETERMINATION OF THIS MATTER IT IS ORDERED THAT:

1. The operation of the purported termination of Applicant's Content Distribution Service License Number CD0004 through a letter dated 22 August 2017 signed by Second Respondent on First Respondent's letterhead be and is hereby suspended.

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2. Applicant shall be entitled to enjoy the full rights and benefits of its license as if the said letter of 22 August 2017 does not exist.
 3. Applicant shall be entitled to distribute the Econet Media Limited (Mauritius) content based on the technical standards notified by the Applicant to the First Respondent and accepted by the First Respondent on 21 October 2016.

TERMS OF THE FINAL ORDER SOUGHT

1. IT IS DECLARED THAT:
 - 1.1 The purported termination of Applicant's Content Distribution Service License Number CD0004 by the Respondents through their letter dated 22 August 2017 be is hereby declared null and void, and of no force or effect.
 - 1.2 Applicant shall be entitled to distribute the Econet Media Limited (Mauritius) content based on the technical standards notified by the Applicant to the First Respondent and accepted by the First Respondent on 21 October 2016.
2. IT IS ORDERED THAT the Respondents shall bear the costs of this Application jointly and severally, the one paying, the other to be absolved.

SERVICE OF THE PROVISIONAL ORDER

Service of this Provisional Order will be made by the Applicant's Legal Practitioners by delivery of the order at **27 Boscobel West Drive, Highlands, Harare.**

THE JUDGE/REGISTRAR