

# BROADCASTING BILL, 2014

## MEMORANDUM

The purpose of the Bill is to provide comprehensive legislation on broadcasting services regulated by the National Media Commission and the National Communications Authority in a manner consistent with the Constitution.

Until the commencement of the 1992 Constitution, the media landscape was characterised by the domination of state-owned media, and broadcasting was a state monopoly.

The fundamental legal framework for broadcasting and for the mass media in general, has undergone radical transformation with the commencement of the Constitution. This new legal framework is premised on the guarantee of the right to freedom of speech and expression, which includes freedom of the press and other media in article 21 (1) (a) and the right to information in article 21 (1) (f). In addition and significantly, the Constitution devotes Chapter 12 to the independence of the media, the guarantee of the freedom of expression and the establishment of a National Media Commission to promote and ensure this freedom and supervise the mass media. Article 164 limits the rights and freedoms of the media to only laws that are reasonably required for public order, public morality and national security among others.

As a result of this new Constitutional dispensation, the broadcasting landscape has within the last two decades or so, undergone radical, if even imbalanced and haphazard, transformation. Today over three hundred and thirty broadcasting frequency authorisations have been granted for FM radio stations across the country. Of these, according to the list of the National Communications Authority, thirty-six are for the state-owned broadcasting service, two hundred and thirty two are for private commercial radio stations, fifty eight are for community radio stations and thirteen are for campus radio stations. There are also twenty authorisations for private free-to-air commercial television stations in addition to the state-owned television service and seven pay television services. This development has introduced a refreshing pluralism onto our mass media landscape and opened up access to new and diverse voices that have promoted democracy and participation in governance and development.

The paradox however, has been that legislation has lagged behind these new developments on the media landscape. Existing legislation do not fully give expression to the provisions in the Constitution on media freedom and independence. Thus, over twenty years after the commencement of the Constitution, it has become important to have a broadcasting law to provide the legal and regulatory framework for this sphere of our social, political, economic, educational, developmental and cultural life.

The only legislation that relate to broadcasting are the Ghana Broadcasting Corporation Act, 1968 (NLCD 226), National Media Commission Act, 1993 (Act 449) established in accordance with articles 166 and 167 of the Constitution, the National Communications Authority Act, 2008 (Act 769), the Electronic Communications Act 2008 (Act 775) and subsidiary legislation enacted under these laws.

The National Communication Authority Act and the Electronic Communications Act which relate to the establishment of broadcasting services are limited to authorisation of the use of the radio frequency spectrum for broadcasting. The international best practice of using programme content as a key criterion for the authorisation and regulation of broadcasting services in the public interest is absent from our legislation.

As a result, the country does not have clear, transparent and uniformly applied legal criteria for the grant of broadcasting authorisations. This lends the process to arbitrariness and patronage. At the same time, the regulatory overview of the content of programmes is virtually non-existent. This exposes the public and children in particular to non-edifying and sometimes harmful programmes. Furthermore, some sections of the media have on occasions carried inflammatory presentations with the potential to incite one section of the society against the other.

Over a decade of deregulation has made Ghanaians realise that broadcasting is at the nerve centre of our lives. We have experienced its liberating power for the public good, but have at times also felt its negative potential.

The broadcasting sector is in urgent need of a clear and comprehensive regulatory framework to promote its development and safeguard public order and public morality to enable the country to derive the full benefits of its potential.

Over the last ten years civil society groups and various local communities have expressed the need for a prescribed regulatory framework for broadcasting. This Bill is the result of a largely civil society driven and participatory process to formulate a regulatory framework for broadcasting. Most of the principles underlying the Bill are derived from views at fora and stakeholder meetings organised across the country from 2004 till date.

The Bill seeks to clarify and define the roles of the two regulatory bodies for the sector, the National Media Commission and the National Communications Authority. The Commission is the Constitutional body with the responsibility to safeguard the freedom and independence of the mass media as well as to ensure that the content of the media is of the highest standard. The Authority was established to regulate communications by wire, cable, radio, television, satellite and similar means of technology for the orderly development and operation of efficient communication services in the country.

Each of the two bodies has a critical but complementary role in the development and regulation of broadcasting services. This Bill defines their respective roles clearly to remove areas of potential conflict, while at the same time outlining their areas of collaboration to ensure a healthy, transparent and effective regulatory environment.

This Bill expressly articulates the fundamental values, principles and objectives of broadcasting. The Bill classifies the types of broadcasting systems and articulates their responsibilities and prerogatives. In addition, the Broadcasting Bill is intended to be fully alive to the world of rapidly changing communications technology and its import for broadcasting. It also seeks to promote the competitive growth of local broadcasting organisations.

The Bill makes adherence to the Copyright Act, 2005 (Act 690) an essential requirement for the operations of broadcasting services and a pre-requisite for the renewal of broadcasting services authorisation. Under section 5 (c) of the Copyright Act, public performance, broadcasting and communication of an author's work to the public without authorisation of the owner, is an actionable right infringement. Regulation 35 of the Copyright Regulations 2010 (L.I. 1962) makes it mandatory for broadcasters and other users to secure a performance licence prior to the performance in public of a copyright work.

The introduction of digital broadcasting will change the framework of broadcasting. The Bill makes provision for the migration from analogue television transmission to digital television broadcasting.

Broadcasters must be prevailed upon to devote a substantial part of their airtime to promoting and projecting Ghanaian content and culture. The invasion of foreign culture through the media, especially audio-visual, is widely acknowledged and the Bill emphasises the need to project Ghanaian content to instil a sense of patriotism.

The Bill introduces a local content requirement that a percentage of airtime be devoted to promoting Ghanaian culture and creative works. This is in order, as stated in *clause 4 (b)* of the Bill "to safeguard, strengthen and enrich the cultural, political, social and economic fabric of Ghanaian society" and *clause 4 (c) (i)* "to promote national identity and the national culture and languages of the country".

The Bill provides for the meaning, types and regulation of broadcasting. The types of broadcasting provided for, are public service broadcasting, commercial broadcasting, and community broadcasting. The Bill also provides for signal distribution and multi-channel distribution, broadcast authorisation, programming and broadcasting standards as well as funding.

*Clause 1* defines broadcasting as the transmission of images or sounds or images and sound, through electromagnetic emissions, light beams, wire, cable or other means for reception over a distance by the general public or sections of the public who have appropriate receiving facilities irrespective of the technology used.

*Clause 2* stipulates that the Minister shall be responsible for formulating policy on broadcasting and the National Media Commission and the National Communications Authority shall regulate the establishment and operations of broadcasting services in a manner consistent with the Constitution.

The object of the Act is stated in *clause 3*. It is to provide for the development and regulation of broadcasting services, plurality, diversity and high quality broadcasting services and universal access to public service broadcasting. The Bill is also to provide for the control and management of broadcasting by citizens and for equity and participation in broadcasting services. Universal coverage, non-discrimination and fair competition are also the object of the Broadcasting Bill.

*Clause 4* sets out the functions of broadcasting. These include the promotion and assurance of the right to freedom of expression. Broadcasting is to promote national identity and the various national cultures and languages. It is also to promote the building of a society that is democratic, self-reliant, well informed, open-minded, scientific, creative, tolerant and reflects national priorities, experiences and aspirations.

The Bill provides for two distinct but complimentary stages of approval for the establishment of a broadcasting service. Oversight of the two stages is performed by the National Media Commission and the National Communications Authority. The respective responsibilities of the two organisations take into account the Constitutional mandate of the National Media Commission to protect the media from governmental control and ensure high standards of media practice and the specialised regulatory functions of the National Communications Authority as regards the radio frequency spectrum.

The functions of the National Media Commission in relation to broadcasting services in *clause 5* include the power to grant broadcasting authorisation. The Commission is to consider the content and purpose of the broadcasting service in granting the authorisation. It is to ensure that broadcasting services safeguard, strengthen and enrich the cultural, political, social and economic fabric of the society and promote national development. It is also to ensure that broadcasting services are provided with maximum freedom and independence and that editorial independence and integrity are assured.

The Commission is to ensure that priority is given to national security and defence whenever there is the need. It is also to promote the use of new, up-to-date and appropriate information and communication technologies in broadcasting. Other functions are the promotion of human resource development through training and capacity building within the broadcasting sector and the growth of the broadcasting sector.

The function of the National Communications Authority as regards broadcasting services is provided in *clause 6*. The Authority is responsible for the management and

regulation of the radio frequency spectrum and is to assign frequencies and grant approvals for the use of multiplex channels and network operators to entities granted broadcasting authorisation by the National Media Commission.

The Authority is to license multiplex services and network operators for the provision of broadcasting services. A broadcasting authorisation holder cannot operate a broadcasting service without approval for the use of a multiplex channel or network operator by the National Communications Authority.

Three types of broadcasting services are classified in *clause 7*. These are public service broadcasting, commercial broadcasting and community broadcasting. *Clause 8 to 18* is on public service broadcasting. *Clause 8* defines public service broadcasting whilst *clause 9* states the objects of public service broadcasting.

Public broadcasting is the delivery of a broadcasting service through radio or television or radio and television provided by a public statutory body which is wholly or partially public funded. The objects of public service broadcasting are to provide quality broadcasting which reflects the diversity of society and to inform, educate and entertain the public. Provision is made for the operational and administrative independence of a public service broadcaster and its staff in *clause 10* and *Clause 11* makes a public service broadcaster accountable to the Commission and the general public.

The functions of a public broadcasting service are provided for in *clause 12*. These include the provision of a range of programming that informs, educates, entertains and serves the public and takes into account, gender, age, ethnic, cultural, ideological and religious diversity of society. It is to provide an innovative, creative and high quality service that encompasses divergent views and perspectives and satisfies the needs and interest of the general public. It is also to provide comprehensive news and current affairs programmes of the highest professional standard. The news and programmes should cover national and international events and matters of interest to the general public with fairness, impartiality, balance and objectivity. *Clause 12 (2)* provides for the creation of a public service broadcasting service for a specific purpose such as a service for Parliament or one solely for education.

*Clause 13* provides for the governance of public service broadcasting. A public service broadcaster is required to have a board of directors to be responsible for the management of the broadcaster. The members of the board should be individuals who have, among others, demonstrated a commitment to freedom of expression and expertise in broadcasting policy and regulation. The members of the Board are to be appointed by the Commission in consultation with the President in an open and transparent manner.

*Clause 14* provides the conditions for the appointment of the members of the board. The conditions include the requirements that the person should be a citizen of Ghana, be ordinarily resident in this country and should not be a politically exposed

person or have been convicted of a serious offence. There are provisions on the effective date of disqualification and dispensation in *clauses* 15 and 16. The First Schedule referred to in *clause* 15, lists the public office holders who are referred to as politically exposed persons. *Clause* 17 provides for the independence of a public service broadcaster. In *clause* 18, the office, terms and conditions for the chief executive of a public service broadcaster are provided for.

*Clause* 19 to 24 is on commercial broadcasting. *Clause* 19 defines commercial broadcasting as being privately owned and operated for profit controlled by an independent entity. *Clause* 20 states the public interest obligation of a commercial broadcasting service. The Commission is to ensure that the programmes of commercial broadcasting services in the aggregate, cover a diverse range of subjects, reflect and respond to the diversity of society, promote the public interest and are in a broad range of local languages and English. Provision is made for the programme content of free-to-air commercial broadcasting services in *clause* 21. The programmes are among others, required in the aggregate, to promote the culture and aspirations of the people of the area covered by the service and have significant amounts of local content.

*Clause* 22 requires a subscription broadcasting service to be in accordance with the terms and conditions of the authorisation for the broadcasting service and the performance contract of that service. The service is also required to include items of national drama, documentaries and subjects that relate to the youth among others, in its programmes.

In *clause* 23, it is obligatory for a commercial subscription broadcasting service to extend its services to comprehensively cover its authorised area of operation in accordance with its authorisation and performance contract. The sources of funding for commercial subscription broadcasting include subscription, advertising and sponsorship. However, advertising or sponsorship or advertising and sponsorship are not to be the major source of income, *clause* 24.

*Clause* 25 to 31 is on community broadcasting, defined in *clause* 25 as a broadcasting service provided for a marginalised community by a radio or television station where the ownership and management are representative of the community. The programmes of a community broadcasting service are required, among others, in *clause* 26, to reflect the needs and concerns of the community and deal specifically with community issues not normally dealt with by other broadcasting services covering the same area. Campus broadcasting has been included in this category. The Commission may make regulations to prescribe the minimum number of local programmes by a community broadcasting service, *clause* 27. The music that forms part of the community content of a community broadcasting service is required in *clause* 28 to be mainly Ghanaian. A community broadcasting service can run advertisements and announcements which are in keeping with the objectives and character of community radio, *clause* 29. A community broadcasting service has to

invest all of its revenue in the broadcasting service, *clause 30*. In *clause 31*, the Commission is given power to authorise the provision of community television service.

*Clause 32 to 47* is on broadcast authorisation. The provisions make it quite clear that broadcast authorisation is a two stage process that requires authorisation by the National Media Commission and frequency approval for the use of the radio spectrum or network operator services by the Authority. The Authority is to prepare a register of radio frequencies and multiplex channels available and provide a copy of it to the Commission.

Under *clause 35*, a Broadcasting Authorisation Committee of the National Media Commission is established to deal with broadcast authorisation. The requirements for authorisation are spelt out and there may be public hearings to assess the applications.

*Clause 41 to 45* deals with the grant of authorisation, validity period, amendment, renewal, suspension and revocation respectively. The authorisation is to include a promise of performance specified in *clause 46* and the process for the consideration of authorisations is stipulated in *clause 47*.

The restrictions on the holding of authorisations are in *clause 48*. The exemption for public service broadcasting from the provisions on the validity period of a broadcasting authorisation, consideration of application and the limits of an authorisation for regional and national broadcasting is in *clause 49*. The special provisions on the use of authorisations by a public service broadcaster are to be found in *clause 50*.

*Clause 51* stipulates that a person granted broadcasting authorisation by the Commission is to be assigned a frequency by the Authority. Other matters that relate to multiplex providers, broadcast network operators and multi-channel distributors can be found in *clauses 52 and 53*.

*Clause 54* identifies bodies that are not entitled to a grant of a broadcasting authorisation. These are political parties and district assemblies. A person controlled by a politically exposed person or a religious body is also not entitled to the grant of broadcasting authorisation.

The Commission has a responsibility to keep a register of broadcasting authorisation and frequency assignments in *clause 55*, whilst *clause 56* makes a frequency authorisation non-transferable. *Clause 57* provides for the control and directorship of broadcasting services and *clause 58* provides exemptions from the limitations imposed on ownership and the control of broadcasting services. The rights and duties of a holder of a frequency authorisation as well as the conditions for the variation of a frequency authorisation are stated in *clause 59*.

*Clause 60 to 69* is on programming and broadcasting standards. The Commission has an obligation in *clause 60* to prescribe by regulations, advertising,

programming and broadcast standards in consultation with stakeholders to, among others, promote high quality broadcasting services and a broad range and diversity of services. The contents of the regulations are specified in the Second Schedule.

A Broadcasting Standards and Complaints Committee is established in *clause 63* to promote and maintain broadcasting standards. The composition of the Committee is specified in *clause 64* and the qualifying criteria for membership of the Committee are specified in *clause 65*. The procedure for lodging complaints with the Committee as well as the procedure to determine a complaint once it has been lodged with the Committee is provided for in *clauses 66 and 67* respectively. *Clause 68* details the powers of the Committee to impose sanctions. The administrative sanctions cover a wide range of penalties from a warning to the withdrawal of the authorisation.

As the Commission has a Complaints Settlement Committee with limited powers to deal with broadcasting and print media, the overlapping provision in section 13 of the National Media Commission Act 1993 (Act 449) is amended in *clause 93* of the Bill to limit the Complaints Settlement Committee to the print medium only.

Syndication of programmes is provided for in *clause 69* whilst *clause 70* requires a broadcasting service provider to keep a record of programmes broadcast and produce the record of a programme on request by the Commission. Political broadcasts are to be kept for the entire duration of the authorisation.

A National Broadcasting Development Fund is established in *clause 71* to be administered by the Commission. The objects of the Fund in *clause 72* include promotion of the overall development of the broadcasting sector and supporting national public service broadcasting.

The sources of money for the Fund are in *clause 73* and the Fund is to be managed by a Board of Trustees. Funding of public service broadcasting, commercial broadcasting and community broadcasting services are provided for in *clauses 83, 84 and 85* respectively

*Clause 87* provides for television receiving set licence fees which are to be determined by the National Media Commission in consultation with the Minister. The licence fee, which is a widespread international best practice used to fund public service broadcasting, is to be paid into the National Broadcasting Development Fund

Provision is made in *clause 88* for the emergency powers of government that relate to the control of broadcasting services when a state of emergency is declared.

The regulations and interpretation provisions are in *clauses 89 and 90*. The concluding clauses deal with transitional matters such as new and amending regulations to be made, what should happen to existing authorisations and the transitional provisions on the switch-over to digital terrestrial television broadcasting, *clause 91 to 94*.

**HON. MAHAMA AYARIGA**  
Minister for Information and Media Relations

Date:

# BROADCASTING ACT, 2014

## Arrangement of Sections

### BROADCASTING

#### Section

#### *Meaning, types and regulation of broadcasting*

1. Meaning of broadcasting
2. Broadcasting policy and Regulation of broadcasting services
3. Object of this Act
4. Functions of broadcasting
5. Functions of the National Media Commission as regards broadcasting services
6. Functions of the National Communications Authority as regards broadcasting services
7. Classification of broadcasting services

#### *Public service broadcasting*

8. Meaning of public service broadcasting
9. Objects of public service broadcasting
10. Independence of a public service broadcaster
11. Accountability of public broadcasting service to the Commission
12. Functions of a public broadcasting service provider
13. Governance of public service broadcaster
14. Conditions for appointment to the Board of the public service broadcaster
15. Effective date of disqualification
16. Dispensation
17. Independence of the Board of a public service broadcaster
18. Chief executive of the public service broadcaster

#### *Commercial broadcasting*

19. Meaning of commercial broadcasting service
20. Public interest obligation of commercial broadcasting service
21. Broad programme content of free-to-air commercial broadcasting service
22. Commercial subscription and multi-channel broadcasting service

23. Commercial broadcasting service coverage
  24. Funding of commercial subscription broadcasting service
- Community broadcasting*
25. Meaning of community broadcasting
  26. Characteristics of community broadcasting
  27. Local productions and local languages in community broadcasting
  28. Local community music in community broadcasting
  29. Advertisement in community broadcasting service
  30. Profits from operation of community broadcasting service
  31. Provision of community television service

*Broadcast authorisation*

32. Register of national broadcasting frequencies and programme channels
33. Content and review of the register
34. Prohibition on grant of authorisation contrary to the register
35. Broadcast Authorisation Committee
36. Qualifying criteria for appointment to the Committee
37. Grant of authorisation for sound or television broadcasting
38. Authorisation as condition for provision of broadcasting service
39. Requirements for grant of broadcasting authorisation
40. Public hearing for authorisation
41. Grant of broadcasting authorisation
42. Validity period for broadcasting authorisation
43. Amendment of broadcasting authorisation
44. Renewal of broadcasting authorisation
45. Suspension and revocation of broadcasting authorisation
46. Promise of performance
47. Consideration of applications for authorisation by the Commission
48. Limits to broadcast authorisations for regional and national broadcasting
49. Exemption for public service broadcasting
50. Application by public service broadcaster
51. Grant of frequency for broadcasting

52. Multiplex service providers and broadcasting network operators
53. Authorisation for multi-channel distribution
54. Bodies not entitled to grant of authorisation
55. Register of broadcasting authorisations
56. Non-transferability of authorisation
57. Control and directorship of broadcasting services
58. Exemption from ownership limits for free to air broadcasting services
59. Control and directorship of subscription , multi-channel and satellite broadcasting
60. Rights and duties of holders of authorisation

#### *Programming and Broadcasting Standards*

61. Commission to establish standards
62. Content of the regulations
63. Broadcasting Standards and Complaints Committee
64. Composition of the Broadcasting Standards Committee
65. Qualifying criteria for appointment to the Broadcasting Standards Committee
66. Complaints to the Broadcasting Standards Committee
67. Procedure for the determination of complaints
68. Power of the Broadcasting Standards Committee to impose sanctions
69. Syndication of programmes
70. Record of programmes broadcast

#### *Funding*

71. National Broadcasting Development Fund
72. Objects of the Fund
73. Sources of money for the Fund
74. Bank account for the Fund
75. Establishment of Board of Trustees
76. Composition of the Board of Trustees
77. Functions of the Board of Trustees
78. Tenure of office of trustees
79. Meetings of the trustees

80. Disclosure of interest
81. Establishment of committees
82. Allowances
83. Appointment of the Administrator
84. Funding of public service broadcasting service
85. Funding of commercial broadcasting service
86. Funding of community broadcasting service
87. Television receiving set licence fee

*Miscellaneous provisions*

88. Emergency powers of Government
89. Regulations
90. Interpretation
91. Consequential transitional regulations
92. Transitional and savings provisions on authorisations
93. Transitional provisions on digital switch-over to terrestrial television  
broadcasting
94. Consequential amendment

*SCHEDULES*

**A  
BILL  
ENTITLED  
BROADCASTING ACT, 2014**

**AN ACT** to provide for broadcasting services and for related matters.

**PASSED** by Parliament and assented to by the President.

**BROADCASTING**

*Meaning, types and regulation of broadcasting*

**Meaning of broadcasting**

1. For the purpose of this Act, broadcasting means the transmission of images or sounds or both images and sounds through electromagnetic emissions, light beams wire, cable or other means for reception over a distance by the general public or sections of the public who have appropriate receiving facilities irrespective of the technology used.

**Broadcasting policy and Regulation of broadcasting services**

2. (1). The Minister responsible for broadcasting shall be responsible for formulating policy on broadcasting services in a manner consistent with the Constitution and in the interest of the people of Ghana.  
  
(2). The establishment and operations of Broadcasting services shall be regulated by the National Media Commission and the National Communications Authority in a manner consistent with the Constitution and in accordance with this Act and any other law on the provision of broadcasting services.

**Object of this Act**

3. The object of this Act is to provide for
  - (a) the development and regulation of broadcasting services
  - (b) the protection and promotion of universal access to broadcasting services;
  - (c) plurality, diversity and quality in broadcasting service;
  - (d) the control and management of broadcasting by citizens;
  - (e) the equitable development of public, private and community broadcasting service;

- (f) equity and participation in broadcasting services;
- (g) universal coverage, non-discrimination and fair competition in broadcasting services; and
- (h) the prevention of dominance by the government or a section of society in the consumption, ownership, management, production or distribution of broadcasting services

### **Object of Broadcasting**

#### **4 Broadcasting shall**

- (a) offer education, information and entertainment to the society in its diversity;
- (b) safeguard, strengthen and enrich the cultural, political, social and economic fabric of the society;
- (c) promote
  - (ii) national identity, culture and languages of the country;
  - (iii) a society that is democratic, self-reliant, well-informed, open-minded, scientific, creative, tolerant and reflects national priorities, experiences and aspirations; and
  - (iv) economic, social and national development;
- (d) provide
  - (ii) diversity and balance in national discourse, and
  - (iii) a platform for participation and critical public debate in matters of good governance; and
- (e) assure the right to freedom of expression.

### **Functions of the National Media Commission as regards broadcasting services**

- 5 (1) The Commission is responsible for the grant of authorisation for broadcasting and shall take account of the provisions in sections (3) and (4) when granting broadcast authorisation.

- (2) The Commission shall develop and maintain standards for broadcasting services
- (3) The Commission shall in respect of a broadcasting service ensure
  - (a) that the service is provided with maximum freedom and independence that assures editorial independence and integrity;
  - (b) that priority is given to national security and defence in consultation with the National Security Co-ordinator, Minister for Interior and the Minister responsible for Defence;
  - (c) that the service is available for the mobilisation of essential services in times of emergency;
  - (d) fair competition and transparency in the operations of the broadcasting sector;
  - (e) that private service providers live up to their public interest obligations;
  - (f) that public service providers are not unduly commercial in their operations; and
  - (g) that service providers comply with the Copyright Act, 2005 (Act 690).
- (4) The Commission shall encourage
  - (a) the development of human resources through capacity-building within the broadcasting industry; and
  - (b) promote the growth of the broadcasting sector.
- (5) The Commission shall promote the use of new, up-to-date and appropriate information and communication technologies in broadcasting.
- (6) The Commission shall perform any other function ancillary to the authorisation and regulation of broadcasting services.

- (7) The Commission may issue guidelines, statements or directives for general application in respect of any matter of this Act.

### **Functions of the National Communications Authority as regards broadcasting services**

- 6 (1) The Authority is responsible for the planning and management of the radio frequency bands allocated to broadcasting.
- (2) The Authority shall regulate the radio spectrum designated or allocated for use by broadcasting organisations and providers of broadcasting services in accordance with the standards and requirements of the International Telecommunications Union and its Radio Regulations as agreed to or adopted by the Republic
- (3) The Authority shall assign frequencies and grant approvals for the use of the service of network operators in accordance with the Electronic Communications Act, Act 775 to entities granted broadcasting authorisation by the Commission
- (4) The Authority shall collaborate with the Commission in carrying out its functions in this section.

### **Classification of broadcasting services**

- 7 Broadcasting service is by this Act classified into three types which are
  - (a) public service broadcasting,
  - (b) commercial broadcasting, and
  - (c) community broadcasting.

#### *Public Service Broadcasting*

### **Meaning of public service broadcasting**

- 8 (1) Public service broadcasting is the delivery of broadcasting service through radio and television by a statutory corporate body wholly or substantially public funded.
- (2) Substantial public funding is where more than 20% of the funds for the establishment of the entity or for running its operations are provided from public funds.

## **Objects of public service broadcasting**

- 9 The objects of public service broadcasting are to
- (a) provide high quality broadcasting that reflects the diversity of society; and
  - (b) inform, educate and entertain the general public.

## **Independence of a public service broadcaster**

- 10 A public service broadcaster shall
- (a) be operationally and administratively independent from any person including government and its agencies; and
  - (b) have its staff protected by the Commission from undue influence in the discharge of their duties.

## **Accountability of public broadcasting service**

- 11 (1) A provider of a public broadcasting service is accountable to the general public through the Commission.
- (2) The Commission shall ensure the accountability of a public service provider to the general public by
- (a) organising periodic public hearings on the performance of a provider; and
  - (b) providing other platforms and modalities for the public to assess the performance of a provider on an on-going basis.

## **Functions of a public broadcasting service provider**

- 12 (1) A public broadcasting service shall
- (a) provide
    - (i) a wide range of programming that informs, educates, entertains and serves the people and takes into account the gender, age, ethnic, cultural, ideological, religious and other diversities of society;
    - (ii) innovative, creative and high quality broadcasting that

- encompasses divergent views and perspectives and satisfies the needs and interests of the general public;
- (iii) comprehensive news and current affairs programmes of the highest professional standard that cover national and international events of public interest with fairness, impartiality, balance and objectivity;
  - (iv) educational broadcasting which is based both on curricula and general educational themes;
  - (v) programmes on a range of social, political, cultural and economic issues that nurture and promote local languages and Ghanaian identity;
  - (vi) support for traditional and contemporary creative expression;
  - (vii) entertainment that gives expression to Ghanaian and indigenous artistic talent and creativity;
  - (viii) programmes for the youth and children to enhance their participation in national development; and
  - (ix) programmes for national sports and promote minority sports;
- (b) promote a sense of national identity that reflects and recognises the cultural diversity and multilingual character of this country;
  - (c) contribute to the development of a culture of informed debate and actual thought;
  - (d) adequately cover proceedings of Parliament;
  - (e) broadcast important public hearings and announcements and national addresses by the executive arm of government;
  - (f) address and reflect the needs and concerns of persons with disabilities in its programmes;
  - (g) encourage and promote the development and application of new information and communication technologies in broadcasting; and
  - (h) make its infrastructure available on reasonable and equitable terms to other broadcasters.

(2) A public broadcasting service may be created for a specific purpose that may exclude some of the criteria of programme objectives stipulated for a public broadcasting service.

### **Governing body of public service broadcaster**

- 13 (1) The governing body of a public service broadcaster is a board of directors responsible for the management of the broadcaster and is accountable to the Commission.
- (2) The members of the board shall be individuals who demonstrate
- (a) commitment to the freedom of expression, particularly, media freedom and independence and a culture of debate; and
  - (b) expertise in broadcasting policy and regulation, journalism, culture, education, media, law, entertainment, advertising, business, finance or other relevant field.
- (3) The Commission shall appoint the members of the board in consultation with the President in an open and transparent manner and shall in the appointment
- (a) give civil society organisations with interest in the media the opportunity to nominate individuals for consideration by the Commission;
  - (b) publish a shortlist of candidates and give the public an opportunity to make representations on the candidates; and
  - (c) ensure fair representation of a broad cross section of Ghanaian society and gender and regional balance.

### **Conditions for appointment to the board of a public service broadcaster**

- 14 (1) A person may be appointed a member of the board of a public service broadcaster if that person
- (a) is a citizen ordinarily resident in this country;
  - (b) has mental health and has not been lawfully detained as an offender with mental disorder;
  - (c) does not hold a position in, receive payment from or have a direct

or indirect significant financial interest in broadcasting or telecommunications that could lead to conflict of interest;

(d) is not an official or employee of a political party; and

(e) is not a politically exposed person;

(2) A person does not qualify to be appointed a member of the board of a public service broadcaster if the person

(a) has been convicted of

(i) a serious offence, or

(iii) an offence that involves fraud or dishonesty committed in this country or elsewhere;

(b) has been found by a commission of inquiry to be unsuitable to hold public office;

(c) is a person in respect of whom a commission of inquiry has found that during the course of service as a public officer or in previous employment, the person

(i) acquired assets unlawfully;

(ii) defrauded the Republic or that person's employer; or

(iii) misused or abused that person's office;

and the findings have not been set aside on appeal or by judicial review and the normal time limit prescribed for appealing or applying for judicial review has passed; or

(d) acted in a manner prejudicial to public interest or the person's employer.

### **Effective date of disqualification**

15 (1) Where a Commission of Inquiry makes an adverse finding against a person, the adverse finding made which disqualifies the person to hold a public office specified in the First Schedule, shall not take effect subject to an appeal unless

(a) six months have passed after the finding is made and announced to the public, or

- (b) the Government issues a statement in the *Gazette* and in the national media that it does not intend to issue a White Paper on the report of the Commission whichever is the earlier.

(2) The person against whom the adverse finding has been made may, within three months after the finding takes effect, appeal against the finding

### **Dispensation**

16 Despite the disqualification provided in this Part, a person is qualified to hold a public office if

- (a) ten years or more have passed since the effective date of disqualification as specified in section 15; or
- (b) that person has been pardoned by the President.

### **Independence of the board of public service broadcaster**

17 Subject to article 168 of the Constitution and this Part, the board of a public service broadcaster shall be independent and shall not be subject to governmental control or direction in the management of the broadcast service by any person.

### **Chief executive of the public service broadcaster**

- 18 (1) A public service broadcaster shall have a chief executive appointed by the Commission in consultation with the President.
- (2) The chief executive shall hold office on the terms and conditions specified in the letter of appointment as chief executive.

### *Commercial broadcasting*

### **Meaning of commercial broadcasting service**

- 19 (1) A commercial broadcasting service is a broadcasting service provided by a radio or television organisation which is privately owned and operated for profit and controlled by an independent entity.
- (2) The Commission shall give due consideration to the different types of commercial broadcasting services including their funding, technology for distribution and reception, and programming in the application of the provisions of this Act.

## **Public interest obligation of a commercial broadcasting service**

- 20 The Commission shall ensure that commercial broadcasting provides programmes that in the aggregate
- (a) are of diverse range and reflect and respond to the diversity of society and promote the public interest; and
  - (b) are in a broad range of local languages, English and any other language approved by the Commission

## **Broad programme content of free-to-air commercial broadcasting service**

- 21 The Commission shall ensure that free-to-air commercial broadcasting in the aggregate provides programmes that:
- (a) promote the culture and aspirations of the people of the area covered by the service in accordance with the terms and conditions of the authorisation for the service;
  - (b) have significant amounts of Ghanaian content;
  - (c) include news and discussions on matters of local, national, regional and international significance and other informative items; and
  - (d) uphold the highest ethical broadcasting standards.

## **Commercial subscription and multi-channel broadcasting services**

- 22 (1) The programmes of a commercial subscription or a multi-channel broadcasting service shall be in accordance with the terms and conditions of the authorisation issued by the Commission and the performance contract entered into between the broadcasting service provider and the Commission.
- (2). The terms and conditions of an authorisation may include terms requiring the service to carry local programme channels and items that reflect local themes, culture and history as may be determined by the Commission in accordance with criteria prescribed by it.

## **Commercial broadcasting service coverage**

- 23 A commercial broadcasting service shall extend its services to comprehensively cover the area for which it is authorised to provide services in accordance with its document of authorisation and promise of performance.

## **Funding of commercial subscription broadcasting service**

- 24 (1) The funds of a commercial subscription broadcasting service may include income from
- (a) subscription,
  - (b) advertising, and
  - (c) sponsorship

but advertising or sponsorship or both shall not constitute the major source of income.

- (2) For purposes of this section, “major” means not more than forty per cent of the income of the commercial subscription broadcasting service or as may be prescribed by the Commission.

## *Community broadcasting*

### **Meaning of community broadcasting**

- 25 (1) Community broadcasting is a non-profit broadcasting service provided for a specific marginalised community by a radio or television station whose ownership and management are representative of the community for which the service is provided.
- (2) A community broadcasting service shall have a participatory social development agenda.
- (3) Despite subsection (1), a tertiary education institution may establish a campus broadcasting service for the needs of a campus community.

### **Characteristics of community broadcasting**

- 26 (1) A community broadcasting service shall have programmes that:
- (a) reflect the needs and concerns of the community and provide particularly for the language, gender, cultural and demographic needs of the community;

- (b) deal in particular with community issues that are not normally dealt with by other broadcasting services covering the same area;
  - (c) highlight grassroots community issues on human rights and development, health care, basic information, general education and environmental matters of special concern to the poor or marginalised in the community; and
  - (d) deepen democratic values;
  - (e) enrich the culture of the community;
  - (f) Create a sense of shared community among the people of the community;
  - (g) promote
    - (i) community participation and access,
    - (ii) the improvement of the quality of life of members of the Community; and
    - (iii) local productions and local languages.
- (2) The Commission shall prescribe guidelines for the operation of campus broadcasting;
- (a) to include
    - (i) the nature of staffing,
    - (ii) the use of the broadcasting service for academic purposes; and
  - (b) to provide a platform to discuss academic and campus issues.

### **Local productions and local languages in community broadcasting**

- 27 The Commission shall in consultation with community broadcasting stakeholders prescribe the minimum percentage of airtime of a community broadcasting service that shall represent local content and be
- (a) produced by that service and its stakeholder community; and
  - (b) in the local language of the community for which the service is provided.

## **Local community music in community broadcasting**

- 28 Community broadcasting services will, as much as possible, introduce to their communities music of other cultures of the world, but in the selection of music for programmes in general, priority will be given to indigenous music of the community, next to Ghanaian music and then to African music.

## **Advertisement in community broadcasting**

- 29 (1) A community broadcasting service may run advertisements and announcements which are in keeping with the objectives and character of community broadcasting with priority given to advertisements and announcements that promote social and economic development of its community.
- (2) The Commission may by regulation determine the amount of time that a community broadcasting station may use for the broadcast of commercial advertisements.

## **Revenue from operation of community broadcasting service**

- 30 (1) A community broadcasting service shall invest all the revenue earned from its operations in the community broadcasting service.
- (2) A community broadcasting service is exempt from the payment of tax on any income earned from the provision of community broadcasting services and may in addition be granted tax waivers which the Minister of Finance may determine with the approval of Parliament.

## **Provision of community television service**

- 31 The Commission may grant authorisation for the provision of community television service where the Commission is satisfied after the necessary investigation, that the service is viable and that the appropriate legal framework in relation to community ownership, access and sustainability exists for the provision of the service.

### *Broadcast authorisation*

## **Register of national broadcasting frequencies and programme channels**

- 32 (1) The Authority shall prepare a register of radio frequencies, multiplex channels and network operating capacity available for broadcasting within six months after the commencement of this Act.

- (2) The Authority shall provide a copy of the register to the Commission.
- (3) A person may request a copy or extract of the register and shall pay the prescribed fee.

### **Content and review of the register**

- 33 (1) The register shall
- (a) indicate the terrestrial frequencies and digital programme channels available for broadcasting services;
  - (b) indicate network operator capacity including satellite services for broadcasting services;
  - (c) state the current assignment of frequencies and programme channels whether by radio frequency, cable wire or other technologies; and
  - (d) clearly state the general policy for the frequency and programme channel assignment, including policy for the use of cable, wire or other technologies.
- (2) The register shall be reviewed by the Authority at least once each year.

### **Prohibition on grant of authorisation contrary to the register**

- 34 The Commission shall not grant an authorisation contrary to the register.

### **Broadcast Authorisation Committee**

- 35 (1) There is established by the Commission a committee to be known as the Broadcast Authorisation Committee.
- (2) The Committee comprises nine persons including a Chairperson who shall be appointed by the Commission
  - (3) The Committee may consist of members of the Commission and non members but not be more than four members of the Commission shall serve on the Committee.
  - (4) A member shall not have an interest in broadcasting or be a senior member of a broadcasting entity or broadcasting service provider.
  - (5) The Authority shall have two representatives on the Committee.

- (6) The Commission shall consider civil society representation and gender equity when appointing non-members to the Committee.
- (7) The Committee shall co-ordinate the policy and regulatory functions of the Commission and the frequency assignment functions of the Authority.

### **Qualifying criteria for appointment to the Committee**

36 A person shall only be appointed a member of the Committee if

- (a) the appointment does not create a conflict of interest in respect of that person; and
- (b) that person has
  - (i) shown commitment to public interest and freedom of expression; and
  - (ii) the requisite knowledge, training and expertise in the media, law, business, public policy and in frequency management.

### **Grant of authorisation for sound or television broadcasting**

37 (1) The Commission may grant an authorisation for sound or television broadcasting including multi-channel distribution, subscriber broadcasting and satellite broadcasting for a specified area in respect of

- (a) public service broadcasting;
- (b) commercial broadcasting; and
- (c) community broadcasting;

on the terms and conditions prescribed.

(2) The Commission may grant special authorisation for sound or television broadcasting to any person for a special event but the authorisation shall not be for more than fourteen days.

- (3) The grant of the authorisation shall be on the advice of the Committee.
- (4) The holding by a person of an authorisation by the Commission to provide a broadcasting service shall not relieve that person of any requirement to

hold an authorisation under section 2 of the Electronic Communications Act, 2008, Act 775 in connection with the provision of that service.

### **Authorisation as condition for provision of broadcasting service**

- 38 (1) A person may provide broadcasting service only if that person
- (a) is a body corporate registered as a limited liability company under the Companies Act, 1963 (Act 179)
    - (i) In the case of a commercial broadcasting service, the body shall be limited by shares, and
    - (ii) in the case of a community broadcasting service, the body shall be limited by guarantee;
  - (b) has an authorisation issued under this Part;  
and
  - (c) has entered into a promise of performance agreement with the Commission.
  - (d) has approval for use of frequency or programme channel from the Authority
- (2) A person who provides a broadcasting service without authorisation from the Commission commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units.
- (3) Where a person other than a body corporate commits the offence that person is liable on summary conviction, in addition to the fine specified in subsection (2), to a term of imprisonment of not more than five years or to both.

### **Requirements for grant of broadcasting authorisation**

- 39 (1) The Commission shall prescribe by legislative instrument the details of requirements and procedures for the
- (a) grant of an authorisation; and
  - (b) establishment and operation of special event broadcasting services within six months after the commencement of this Act.

- (2) Without limiting the effect of subsection (1), an applicant for an authorisation shall
- (a) submit a programme plan to the Commission, as one of the requirements for authorisation;
  - (b) specify the intended coverage area of the broadcasting service; and
  - (c) undertake to abide by any broadcasting standards issued and regulations made by the Commission and the Authority as part of the promise of performance.

### **Public hearing for authorisation**

- 40 (1) An application for an authorisation may be subject to a public hearing convened by the Commission for the purpose of considering the application.
- (2) The requirements for the public hearing shall be prescribed by the Commission.
- (3) The Commission shall in the case of free to air broadcasting convene a public hearing to consider an application
- (a) for national coverage of a broadcasting service,
  - (b) for more than two broadcasting authorisations,
  - (c) for more than three digital programme channels,
  - (d) where the frequencies or programme channels available in the area to be served are fewer than the number of applications for such authorisation.
  - (e) where there is significant public interest for a hearing on an application and,
  - (f) in any other situation where the Commission considers a public hearing necessary for the assessment of the application.
- (4) The public hearing shall be held at a location within the area to be covered by the broadcasting service or in the district in which the station is located.

- (5) The High Court may order that a particular public hearing or part of a public hearing be held in camera where it is considered expedient to do so.

### **Grant of broadcasting authorisation**

- 41 (1) The Commission shall use as the basis for the grant of an authorisation,
- (a) an assessment of information from the written application and any written presentations made to it where a public hearing is not held;
  - (b) the proceedings of the public hearing including oral and written presentations made at the hearing or soon after the hearing; and
  - (c) other information solicited or made available to it outside the public hearing.
- (2) The Commission shall grant an authorisation to a person who satisfies the requirements for the grant of an authorisation where a frequency or multiplex channel and network capacity is available and the grant is in the public interest.
- (3) The Commission shall charge a fee for the grant of the authorisation.
- (4) The fees for an authorisation shall be published in the *Gazette* from time to time as determined by the Commission.
- (5) The grant of an authorisation for television in the case of a digital programme service shall include authorisation to provide ancillary service but shall not include authorisation to provide digital additional service.
- (6) The grant of an authorisation shall be in writing and is valid for the period and under the terms and conditions specified in the authorisation.

### **Validity period for broadcasting authorisation**

- 42 (1) An authorisation for sound broadcasting is valid for five years
- (2) An authorisation for free to air television broadcasting is valid for ten years
- (3) An authorisation for subscriber television is valid for ten years
- (4) The Commission may vary the duration of the authorisation for specified reasons as prescribed.

## **Amendment of broadcasting authorisation**

- 43 (1) The Commission may amend an authorisation if:
- (a) the amendment is in accordance with this Part;
  - (b) national security considerations, change in legislation or the implementation of an international obligation by the Commission or the Authority require the amendment;
  - (c) the Commission, on account of public interest, decides that the amendment is necessary to achieve the object of this Act.
  - (d) the Commission gives prior notice to the authorisation holder stating among others, the
    - (i) particulars of the amendment, and
    - (ii) detailed reasons for the amendment;
    - (iii) the date on which the amendment is to take effect; and
  - (e) the holder of the authorisation is given sufficient opportunity to make representations on the amendment to the Commission

(2) Where the amendment is required for reasons relating to the management of the radio spectrum the amendment shall be in accordance with the Electronic Communications Act, Act 775.

## **Renewal of broadcasting authorisation**

- 44 (1) An application for the renewal of an authorisation may be made to the Commission by the authorisation holder not later than six months before the date on which it expires.
- (2) Sections 40 and 41 apply to the renewal application for an authorisation.
- (3) The Commission shall grant an application for the renewal of an authorisation on condition that
- (a) the applicant has complied materially with the terms, conditions and obligations specified in the existing grant;
  - (b) it is satisfied that the applicant will comply with the conditions of the authorisation if the authorisation is renewed;

- (c) there are no compelling reasons for the authorisation to be granted to another applicant.
- (4) An authorisation shall continue to subsist and operate until the Commission has taken the decision as regards the application for the renewal of the authorisation.
- (5) The validity period for a renewal of authorisation shall be five years in the case of a sound broadcasting service and ten years in the case of a television broadcasting service.
- (6) The Commission may renew the authorisation of a broadcasting service for a period less than provided in sub section (5) of this section for stated reasons.
- (7) Where the Commission decides not to grant the renewal for an authorisation, it shall state the grounds for its contemplated refusal of the renewal and give the authorisation holder the opportunity to present its views and submit a written statement of objections to the Commission within the time specified by it.
- (8) The Commission shall take into account the views and the written statement of the authorisation holder before taking its final decision.
- (9) The Commission shall give the holder of an authorisation advance notice of not less than thirty days of its intention not to renew the authorisation.

### **Suspension and revocation of broadcasting authorisation**

- 45 (1) The Commission shall revoke an authorisation at any time that the Commission finds out that the broadcaster has obtained the authorisation by deception or other unlawful means
- (2) The Commission may suspend or revoke an authorisation where
    - (a) the authorisation holder has failed to comply materially with
      - (i) any of the provisions of this Act or the terms and conditions of its authorisation; or
      - (ii) a lawful direction of the Commission;
    - (b) the holder of an authorisation ceases to operate the broadcasting service; or

- (c) the suspension or revocation is necessary for reasons of national security or is in the public interest.
- (3) The Commission shall give the authorisation holder thirty days notice in writing of its intention to suspend or revoke an authorisation and shall specify in the notice, the grounds on which it proposes to suspend or revoke the authorisation.
- (4) Where the Commission decides to suspend or revoke an authorisation, the Commission shall give the authorisation holder the opportunity to:
  - (a) present its views;
  - (b) remedy the breach which has occasioned the decision to suspend or revoke the authorisation; and
  - (c) submit to the Commission within the time specified by the Commission, a written statement of objections to the suspension or revocation of the authorisation.
- (5) The suspension or revocation shall take effect on the date specified by the Commission in the notice.
- (6) Until the Commission suspends or revokes an authorisation, the authorisation holder shall continue to operate and if the period of the authorisation comes to an end before the decision of the Commission, an interim renewal of the authorisation shall be granted on the same terms.
- (7) Despite subsection (3), where the suspension or revocation is for reasons of national security, the Commission may suspend an authorisation without notice and shall provide the authorisation holder with written reasons for the suspension within two days of the effective date of the suspension.
- (8) Where an authorisation holder objects to the suspension or revocation of its authorisation, it shall present the objection to the Commission which shall make a determination on it within seven days after receipt of the objection.
- (9) An authorisation holder may appeal the determination of the Commission in the High Court within ninety days after receipt of the decision on the appeal.

- (10) Where the Commission fails to provide the broadcast provider with the reasons for a suspension or revocation of the authorisation, the suspension or revocation shall cease to be of effect after two days.
- (11) An authorisation shall be revoked on the making of a winding up order by the Court or the Registrar-General.

### **Promise of performance**

- 46 The authorisation shall include a promise of performance by the applicant that shall
- (a) specify the area of coverage and the plan for the attainment of full coverage of the area by the broadcaster;
  - (b) the programme plan approved by the Commission;
  - (c) guarantee to abide by the programme standards of the Commission; and
  - (d) include any other terms and conditions the Commission may determine.

### **Consideration of applications for authorisation by the Commission**

- 47
- (1) The Commission shall fix at least two dates in a calendar year for the consideration of applications for authorisations.
  - (2) The dates shall be published in the *Gazette*.
  - (3) The Commission shall give notice to the applicant of the grant or refusal of an authorisation within sixty days after the date fixed for consideration of the application.
  - (4) The Commission shall state the reasons for the refusal of an authorisation in the notice to the applicant.

### **Limits to broadcast authorisations for regional and national broadcasting**

- 48
- (1) The number of authorisations granted to a person shall not exceed
    - (a) one in each region and a total of three in the country in the case of free-to-air sound broadcasting;
    - (b) one in the case of free-to-air television broadcasting in the analogue form;

- (c) three programme channels in each region and a total of six channels in the case of free to air television broadcasting in the digital form.
- (2) The Commission shall make regulations for the conditions for authorisation of satellite, subscription and multi-channel broadcasting, taking into account the economic viability of the service and the public interest.
- (3) Subsection 1 (c) shall not apply to a free-to-air television broadcasting service granted authorisation for nationwide coverage where the total number of channels shall not exceed three.
- (4) The Commission shall determine cross-media control subject to the limitations that are reasonably necessary in the public interest.

### **Exemption for public service broadcasting**

49 Public service broadcasting entities shall be exempt from the processes and conditions in sections 42, 47 and 48.

### **Application by public service broadcaster**

- 50
- (1) An application for a frequency and programme channel by a public service broadcaster shall be by the entity in consultation with the Commission and with the consent of the Minister.
  - (2) A frequency or programme channel granted a public service broadcaster,
    - (a) shall not be transferred to another entity or used for any purpose other than the one for which it was granted; and
    - (b) which is not used for the purpose for which it was granted or used within the time stipulated in the grant, shall revert automatically to the Authority.
  - (3) A public service broadcaster shall be exempt from the payment of any fees to the Commission or Authority related to the grant of an authorisation and approval for use of a frequency and multiplex channel.
  - (4) The Commission shall conduct a comprehensive review of the operations of a public service broadcaster at least once in every ten years to determine whether the broadcaster is:
    - (a) meeting its public service mandate in the programme services it provides;

- (b) operating efficiently and in a cost effective manner; and
  - (c) serving the public interest in its overall operations.
- (5) The review report shall include a summary of any representations made to the Commission by the public and shall be placed before Parliament at least six months before the end of the ten year period to which it relates.

### **Grant of frequency for broadcasting**

- 51(1) A person granted an authorisation by the Commission who requires a frequency or the use of the services of a network operator to broadcast shall be assigned a frequency or granted approval for the use of the network operator services by the Authority in keeping with the Register.
- (2) The frequency or channel assigned shall be used in accordance with the conditions given by the Authority and the authorisation granted by the Commission.
  - (3) The Authority shall make regulations in consultation with the Commission on the procedures for the assignment of a frequency or channel to the holder of an authorisation.
  - (4) The regulations shall include provisions that ensure equity in the treatment of authorisation holders by multiplexers and network operators.
  - (5) The assignment of use of a frequency or channel by the Authority shall be a requirement for the use of the services of multiplex providers and network operators.
  - (8) Where the Authority is unable to grant a frequency authorisation or approval for the use of network operator services it shall inform the Commission and the applicant.

### **Multiplex service providers and broadcasting network operators**

- 52 (1) A multiplex service provider and a network operator licensed by the Authority to provide broadcasting services shall register with the Commission.
- (2) A multiplex service provider and a broadcasting network operator who intends to provide service to broadcasting services other than itself shall register as a common carrier and shall give an assurance to the Commission to

- (a) operate independent of governmental control
  - (b) treat broadcasting entities that use their services fairly without discrimination and under the same terms and conditions.
- (3) Multiplexers and network operators shall provide broadcasting services only to broadcasting entities with authorisation from the Commission and approval for use of a frequency or programme channel by the Authority.
  - (4) A person who uses a broadcast frequency or programme channel without an authorisation or frequency authorisation commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or to both.
  - (5) A person who provides multiplex or network operator services to a person without an authorisation or frequency authorisation, commits an offence and is liable on summary conviction to a fine of not more than three thousand penalty units or to a term of imprisonment of not more than five years or to both.
  - (6) A multiplexer or network operator who refuses to provide its services to an authorisation holder that has approval for the use of a frequency or programme channel without good reason, commits an offence and is liable on summary conviction to a fine of not more than nine thousand penalty units and each director of that entity shall be deemed to have committed the offence.
  - (7) Where an offence under sub sections (4) and (5) is committed by a body corporate that entity is liable to a fine of not more nine thousand penalty units.

### **Authorisation for satellite broadcasting and multi-channel distribution**

- 53 (1) A person shall not provide a satellite broadcasting service or a multi-channel distribution service unless that person is a limited liability company registered under the Companies Act, 1963 (Act 179) that has applied for and obtained authorisation for the service from the Commission.
- (2) The programme channels may be originated locally or internationally or both.

- (3) The Commission shall make regulations for the authorisation of multi-channel distributors, broadcasting subscriber management service and satellite broadcasters.

### **Bodies not entitled to grant of authorisation**

- 54 The Commission shall not grant an authorisation to
- (a) a political party;
  - (b) a district assembly;
  - (c) a person who is or is controlled by a politically exposed person; or
  - (d) a religious body.

### **Register of broadcasting authorisations**

- 55 (1) The Commission shall keep a register in which it shall record
- (a) authorisations,
  - (b) persons with controlling interest in broadcasting entities
  - (c) directors of broadcasting entities
  - (d) persons with significant interest in broadcasting entities
  - (e) frequency assignments, multiplex channel approvals and approvals for use of the services of network operators given to broadcasters by the Authority, and
  - (f) amendments to or transfers of authorisations and frequencies granted by the Commission and Authority.
- (2) An interest of more than twenty per cent in the entity constitutes a significant interest in a broadcasting entity.
- (3) The register shall be open for public inspection during the normal office hours of the Commission.

- (4) The Commission at the request of an interested person and on the payment by that person of the prescribed fee, shall furnish that person with a copy of or an extract from the register.

### **Non-transferability of authorisation**

- 56 (1) An authorisation is specific to the person to whom the authorisation was granted and is not transferable without the prior written approval of the Commission.
- (2) For the purposes of subsection (1), transfer includes
- (a) change in control of the operator;
  - (b) voluntary transfer of a right under the licence to another person; and
  - (c) any action specified in the conditions of authorisation.

### **Control and directorship of free to air broadcasting services**

- 57 (1) A person engaged in free-to-air sound broadcasting services shall not
- (a) have controlling interest over more than three sound broadcasting services; or
  - (b) be a director of a company that exercises control or is in a position to exercise control over more than three sound broadcasting services.
- (2) A person engaged in free-to-air television broadcasting services shall not
- (a) have controlling interest over more than two television broadcasting services;
  - (b) be a director in a company that exercises or is in a position to exercise control over more than two television broadcasting services;
  - (c) have controlling interest over a television broadcasting service and be a director of another company that exercises control or is in a position to exercise control over more than one other television broadcasting service.;

- (d) be a director of a company that exercises or is in a position to exercise control over a television broadcasting service and at the same time be in a position to exercise control over more than one television broadcasting service;
- (3) A person who intends to acquire a controlling interest in a free to air broadcasting service shall seek prior approval from the Commission.
- (4) The Commission shall respond to the request to acquire the controlling interest within sixty days after the application.
- (5) Only a citizen shall
  - (a) be granted an authorisation to operate a sound or television broadcasting service;
  - (b) exercise direct or indirect control over a sound broadcasting or television service; and
  - (c) have financial or voting interests that exceed thirty percent in a television broadcasting service.
- (6) A foreign person shall not have financial or voting interests in a sound broadcasting service.

### **Exemption from ownership limits for free to air broadcasting services**

- 58
- (1) The Commission may exempt a citizen from any of the limitations of ownership on an application and for good cause shown.
  - (2) The Commission shall make regulations stating the criteria and conditions for the grant of exemption from limitations on ownership.
  - (3) The regulations shall include evidence that the applicant has met the promise of performance conditions where the person is already in operation.
  - (4) There shall be a public hearing for the exemption from broadcasting authorisation in accordance with section 40.
  - (5) The Commission shall not grant an exemption from limitation that may lead to unfair competition or the monopoly of the airwaves in a local area or nationally by one or a few persons.

## **Control and directorship of subscription, multichannel and satellite broadcasting**

- 59 (1) The Commission shall make regulations for the control and ownership of subscription, multichannel and satellite broadcasting taking into account their economic viability and operational circumstances.
- (2) These regulations shall include rules that preclude dominance by one or a few persons or authorisation holders, ensure fair competition and the participation of citizens in the ownership and control of these broadcasting services.

## **Rights and duties of holders of authorisations**

- 60 The holder of an authorisation is entitled to
- (a) provide broadcasting services subject to the conditions of the authorisation and the promise of performance;
  - (b) continuously provide the broadcasting service, subject to
    - (i) the payment of annual fees, except where the fees have been waived; and
    - (ii) any other matter that the Commission may prescribe by regulations.

### *Programming and Broadcast Standards*

## **Commission to establish standards**

- 61 The Commission in consultation with broadcasting services, advertisers and civil society organisations shall make regulations to prescribe advertising, programming and broadcast standards to promote
- (a) high quality broadcasting services;
  - (b) a broad range and diversity of services; and
  - (c) the sustainability, growth and development of the different categories of broadcasting

and ensure that in the aggregate the content of broadcasting services promote democratic culture, economic, social and national development, national identity and unity and diversity of national culture and local languages.

## **Content of the regulations**

- 62 Regulations made under section 61 shall prescribe the matters stipulated in the Second Schedule on broadcasting standards.

### *Broadcasting Standards and Complaints Committee*

## **Broadcasting Standards and Complaints Committee**

- 63 (1) There is established by this Part a committee of the Commission to be known as the Broadcasting Standards Committee.
- (2) The Broadcasting Standards Committee is responsible for the promotion and maintenance of broadcasting standards.

## **Composition of the Broadcasting Standards Committee**

- 64 (1) The Broadcasting Standards Committee comprises nine persons including a chairperson who shall be appointed by the Commission.
- (2) The Broadcasting Standards Committee may consist of members of the Commission and non-members or both.
- (3) The number of Commissioners on the Broadcasting Standards Committee shall not be more than four.
- (4) The Broadcasting Standards Committee, where it is composed entirely of non-members of the Commission, shall only advise the Commission.
- (5) In appointing non-members of the Commission, consideration shall be given to civil society representation and gender equity.

## **Qualifying criteria for appointment to the Broadcasting Standards Committee**

- 65 A person may only be appointed a member of the Broadcasting Standard Committee if
- (a) the appointment does not create a conflict of interest in respect of that person; and
- (b) that person has
- (i) shown commitment to public interest and freedom of

expression; and

- (ii) the requisite knowledge and expertise in the media, public policy and in dispute resolution.

### **Complaints to the Broadcasting Standards Committee**

- 66
- (1) A person or a group aggrieved by any decision or action taken in the performance of a function under this Act, other than a decision or an action of the Broadcasting Standards Committee, may lodge a complaint with the Commission through the Broadcasting Standards Committee.
  - (2) The Broadcasting Standards Committee shall, within thirty days after the receipt of a complaint in writing, invite the party who lodged the complaint and the person against whom the complaint is made to appear before it for a determination of the complaint.
  - (3) A person invited to appear before the Broadcasting Standards Committee may give evidence by
    - (a) oral testimony, and
    - (b) presentation of documents

and may be cross examined on the evidence.

- (4) A person invited to appear before the Broadcasting Standards Committee may be represented by a lawyer.
- (5) The Broadcasting Standards Committee shall inform the parties in writing of its decision, stating the reasons for the decision within thirty days after it has heard the parties.
- (6) A person aggrieved with the decision
  - (a) of the Broadcasting Standards Committee may apply to the Commission for a review of the decision in the prescribed manner.
  - (b) of the Commission may within ninety days after the decision, appeal against the decision to the High Court.
- (7) A person who fails to appear before the Broadcasting Standards Committee when summoned by the Committee commits an offence and is liable to an administrative sanction of two hundred and fifty penalty units by the Commission..

- (8) Despite sub section (1), the Commission may refer to the Committee for action a person who broadcasts any material that contravenes the regulations under this Part.
- (9) Complaints and matters on technical issues in the use of frequencies and programme channels shall be determined by the Authority in accordance with the Electronic Communications Act, 2008, Act 775

### **Procedure for the determination of complaints**

67 The Broadcasting Standards Committee shall adopt its own procedure for the determination of complaints but shall be open, transparent, fair and non discriminatory and conduct the proceedings expeditiously.

### **Power of the Broadcasting Standards Committee to impose sanctions**

- 68 (1) The Broadcasting Standards Committee may recommend administrative sanctions on a broadcasting service provider to the Commission for
- (a) breach of any of the provisions of this Part;
  - (b) an infringement of a regulation or order issued by the Commission in relation to programmes and advertisements;
  - (c) breaching the terms of its authorisation or its promise of performance; and
  - (d) actions that pose a threat to national security or public order.
- (2) The administrative sanctions may include
- (a) a warning;
  - (b) an order for compulsory broadcast of a retraction, apology or the provision of free airtime for a complainant to respond to statements made or innuendos cast on the service provider's network or programme;
  - (c) a pecuniary penalty of not more than five thousand penalty units;
  - (d) suspension from operation for a period of not more than three months;

- (e) reduction of the scope and period of authorisation;
  - (f) refusal to renew an authorisation; or
  - (g) withdrawal of authorisation.
- (3) An administrative sanction imposed by the Commission on the advice of the Broadcasting Standards Committee shall be proportional to the offence but subject to subsection (4), the Commission may impose a warning or a fine on a first time offender.
- (4) Where the Commission rejects the advice of the Broadcasting Standards Committee on the administrative sanction, the Commission shall provide stated reasons
- (5) Repeat offenders and broadcasting service providers who commit serious offences in broadcasts that pose a real threat to national security or public order or that incite violence, ethnic or sectarian conflict shall attract severe sanctions even if they are first time offenders.
- (6) Sanctions for persistent offenders include withdrawal of authorisation and refusal to renew authorisation.
- (7) A broadcasting service provider's record of offences and sanctions imposed on that service provider shall be taken into consideration in determining whether or not to renew an authorisation.

### **Syndication of programmes**

- 69 (1) The Commission shall by legislative instrument make regulations for the syndication of programmes among local broadcasting services as well as between foreign broadcasting services and local broadcasting services to ensure plurality of voices, avoid dominance by one or a few broadcasting services and ensure fair competition in commercial broadcasting.
- (2) The Commission shall take into account the distinct character of each broadcasting sector in making regulations for syndication.
- (3) Both local and foreign syndicated programmes shall be subject to the same standards as other programmes.
- (4) Syndicated programmes that relate to national events including independence and national day celebrations and key sports events shall

be taken into consideration to determine the maximum time for syndication.

### **Record of programmes broadcast**

- 70 (1) The holder of an authorisation shall
- (a) retain each programme broadcast for a period determined by the Commission which shall not be less than ninety days; and
  - (b) produce a retained programme on request by the Commission.
- (2) Despite subsection (1), a broadcasting service provider shall retain the recording of a broadcast segment which is the subject of judicial proceedings, dispute, complaint or other controversy until the judicial proceedings, dispute, complaint or controversy is resolved.
- (3) A broadcasting service provider shall retain
- (a) political broadcasts, and
  - (b) a written record of the terms for political and religious broadcasts including political and religious advertising

for the entire duration of the authorisation and make these available for the inspection of the Commission and the general public on request.

- (4) The Commission may by legislative instrument make regulations for
- (a) the details of the terms of political and religious broadcasts that are to be retained by the broadcaster, and
  - (b) the details for inspection of documentation by the Commission or a member of the public.
- (5) Despite subsection (1) (a), the Commission may direct a station to keep the recording of a broadcast in the public interest for as long as the Commission considers necessary.
- (6) Despite subsection (1) (a), a broadcast authorisation holder who solely redistributes the service of another broadcaster shall not be required to retain the broadcast material but shall produce the broadcast to the Commission within thirty days if the Commission makes a request for it within ninety days after the date of the broadcast.

## **National Broadcasting Development Fund**

71 There is established by this Act a fund to be known as the National Broadcasting Development Fund.

### **Objects of the Fund**

72 The objects of the Fund are to

- (a) promote the overall development of the broadcasting sector,
- (b) support public service broadcasting, and
- (c) promote research and development in the broadcasting sector.

### **Sources of money for the Fund**

73 The sources of money for the fund are:

- (a) Television receiving set licence fees or equivalent levy;
- (b) moneys approved by Parliament;
- (c) advertising revenue;
- (d) programme sponsorship that is ethical in nature;
- (e) grants and donations;
- (f) authorisation fees and any other moneys payable under this Part or any other enactment;
- (g) fees from broadcasting service providers; and
- (h) revenue generated from the commercial activities of public service broadcasters.

### **Bank account for the Fund**

74 (1) The Commission shall open and operate a bank account on behalf of the Fund with the approval of the Accountant-General.

- (2) A person who receives money intended for the Fund shall pay the money into the bank account opened for the purpose within twenty four hours after receipt of the money.

### **Establishment of Board of Trustees**

75. There is establishment by this Act a Board of Trustees to administer and manage the Fund.

### **Composition of the Board of Trustees**

- 76 (1) The Fund shall be administered and managed by a Board of Trustees that comprises
- a) a chairperson appointed by the Commission;
  - b) one member of the Commission;
  - c) the Administrator of the Fund;
  - d) one representative of the Authority nominated by the Authority;
  - e) one member of the Parliamentary Select Committee on Communications nominated by that Committee;
  - f) one representative of the Ministry of Finance;
  - g) one representative of the broadcasting associations nominated by the associations;
  - h) one representative of the public service broadcasting providers;
  - i) one representative of the Ministry responsible for broadcasting and
  - j) two other persons nominated by the Commission
- (2) The members of the Board of Trustees shall be appointed by the Commission.

## **Functions of the Board of Trustees**

- 77 (1) In furtherance of the management of the Fund, the trustees shall
- (a) pursue policies to achieve the object of the Fund;
  - (b) collect or arrange to be collected moneys lawfully due the Fund;
  - (c) account for the moneys in the Fund;
  - (d) determine procedures for disbursement of the Fund and disburse the Fund;
  - (e) monitor the utilisation of moneys disbursed by the Fund;
  - (f) invest the moneys of the Fund in safe securities that the Board considers financially beneficial to the Fund; and
  - (g) perform any other function incidental to the achievement of the object of the Fund.

## **Tenure of office of trustees**

- 78 (1) A trustee, excluding the Administrator, shall hold office for a period not exceeding three years and is eligible for re-appointment but a trustee shall not be appointed for more than two terms.
- (2) Where a trustee resigns, dies, is removed from office or is for a reasonable cause unable to act as a trustee, the Administrator shall notify the Commission of the vacancy and the Commission shall, acting on the advice of the nominating authority, appoint another person to hold office for the unexpired portion of the trustee's terms of office.
- (3) A trustee may at any time resign from office in writing addressed to the Commission through the Administrator.
- (4) A trustee who is absent from three consecutive meetings of the Board of Trustees without reasonable cause ceases to be a trustee.
- (5) The Commission may by letter addressed to a Trustee revoke the appointment of that trustee.

## **Meetings of the trustees**

- 79 (1) The trustees shall meet at least once every two months for the

despatch of business at the times and in the places determined by the chairperson.

- (2) The chairperson shall at the request in writing of not less than one-third of the trustees convene an extraordinary meeting of the trustees at the place and time determined by the chairperson.
- (3) The quorum at a meeting of the trustees is six trustees or a greater number determined by the trustees in respect of an important matter.
- (4) The chairperson shall preside at meetings of the trustees and in the absence of the chairperson, a trustee elected by the trustees present from among their number shall preside.
- (5) Matters for decision by the Board of Trustees shall be decided by a majority of the trustees present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.
- (6) The trustees may co-opt a person to attend a trustees' meeting but that person shall not vote on a matter for decision at the meeting.
- (7) The proceedings of the Board of Trustees shall not be invalidated because of a vacancy among the trustees or a defect in the appointment or qualification of a trustee.
- (8) Subject to this section, the trustees may determine the procedure for their meetings.

### **Disclosure of interest**

- 80 (1) A trustee who has an interest in a matter for consideration by the Board of Trustees
- (a) shall disclose in writing the nature of that interest and the disclosure shall form part of the record of the consideration of the matter; and
  - (b) shall not participate in the deliberations of the Board in respect of that matter.
- (2) A trustee ceases to be a member of the Board of Trustees; if that member has an interest on a matter before the Board and
- (a) fails to disclose that interest; or
  - (b) participates in the deliberations on the matter

### **Establishment of committees**

- 81 The Board of Trustees may establish committees consisting of trustees

or non trustees or both to perform a function.

## **Allowances**

- 82 The trustees and members of a committee of the trustees shall be paid the allowances approved by the Commission in consultation with the Minister responsible for Finance.

## **Appointment of the Administrator**

- 83 (1) The Commission shall appoint a chief executive of the Fund in consultation with the Public Services Commission who shall be known as the Administrator.
- (2) The Administrator is responsible for the day-to-day management and administration of the Fund subject to the directives of the Board of Trustees.
- (3) The Administrator shall hold office on the terms and conditions specified in the letter of appointment.

## **Funding of public service broadcasting**

- 84 Public service broadcasting may be funded through moneys from
- (a) the Fund;
  - (b) grants and donations;
  - (c) advertising revenue and announcements;;
  - (d) sponsorship which is ethical in nature; and
  - (e) moneys approved by Parliament from the Consolidated Fund.

## **Funding of commercial broadcasting services**

- 85 (1) Commercial broadcasting services may be funded through moneys from
- (a) advertising revenue and announcements;
  - (b) programme sponsorship that is ethical in nature;

- (c) subscriptions;
- (d) grants and donations; and
- (e) any legal endeavours

(2) Where the grants or donations are from public funds, they shall not exceed fifteen per cent of the annual operating costs of the broadcasting service

### **Funding of community broadcasting service**

86 (1) Community broadcasting may be funded through

- (a) moneys from contributions from members of the community served;
- (b) grants and donations;
- (c) programme sponsorship that is ethical in nature;
- (d) moneys approved by Parliament; and
- (e) advertising revenue and announcements..

(2) Where the grants or donations or moneys are from public funds, they shall not exceed twenty five per cent of the annual operating costs of the broadcasting service.

### **Television receiving set licence fee**

87 (1) There shall be a licence fee prescribed for the installation or use of a television receiving set.

(3) A person shall not use or install a television receiving set without the payment of the television receiving set licence fee.

(4) A person who carries on the business of selling, hiring or otherwise disposing of television receiving sets or of manufacturing, assembling or repairing of television receiving sets shall register in a prescribed manner with the Commission.

(5) All licences granted under this section shall be annual licences and shall expire on the 31st day of December in the year in which they are issued. Provided that for the purposes of this paragraph the period commencing on the ..... 2014 and ending on the 31st day of December, 2014 shall be deemed to be a full year.

- (6) Any person who on the date this Act is published in the Gazette carries on the business of selling, hiring or otherwise disposing of television receiving sets or manufacturing or assembling of television receiving sets shall within 90 days after the said date notify the Commission in writing of the fact that he carries on such business, and of the name and address of such business.
- (7) A person authorised in writing by the Commission may at any reasonable time enter into and inspect any premises for the purpose of ensuring due compliance with the provisions of this section or with any regulations made thereunder.
- (8) The Commission may by writing request from any person any information reasonably required for ensuring that the provisions of this section or of any regulations made under this Act are complied with.
- (9) The Commission shall by legislative instrument make regulations
  - a. for carrying into effect the provisions of this section
  - b. for prescribing the fees to be charged in respect of any licence or registration under this part
  - c. for prescribing details and the form of information to be provided by persons carrying on the business of selling, hiring or otherwise disposing of television receiving sets or of manufacturing, assembling or repairing of television receiving sets to the Commission
- (10) A person who
  - a. contravenes any provision of this part or regulation made thereunder
  - b. knowingly gives false or misleading information to the Commission
  - c. installs or uses a television receiving set without a licence
  - d. fails to register or renew registration, where required, of a business referred to in subsection (3) of this section
  - e. obstructs an authorised person from carrying out any function conferred on him under subsection (10) of this section

commits an offence and shall be liable on conviction to a fine not exceeding 2000 penalty points or imprisonment for a term not exceeding two years or to both.

- (11) The Commission shall determine the licence fee for the installation or use of a television receiving set and for the registration of businesses under subsection (3) in consultation with the Minister and providers of public service broadcasting.

- (12) The Commission in consultation with the Minister may appoint a statutory corporation or body to collect the fees under this section.
- (13) The television receiving set licence fee and fees charged for the registration of businesses under this section shall be paid into the Fund

### *Miscellaneous provisions*

#### **Emergency powers of Government**

- 88 (1) Where a state of emergency is declared pursuant to article 31 of the Constitution and the President is of the opinion that broadcasting services serving the geographic area for which the state of emergency has been declared must broadcast or refrain from broadcasting any announcement, programme or other material in the public interest, the President may make the declaration by notice published in the *Gazette* or by any other mode of public announcement or notification as the circumstances may permit.
- (2) The Minister may give directions to a broadcasting service provider that the President considers necessary to meet the requirements of an emergency and the broadcasting service provider shall give effect to those directions.
- (3) The Commission shall ensure that broadcasting authorisation holders and broadcasting service providers have the capacity to simultaneously broadcast announcements and information by the essential services in periods of national or local emergencies.
- (4) The Commission shall make regulations for the operation of broadcasting services in periods of emergency.

#### **Regulations**

- 89 (1) The Commission may by legislative instrument make regulations
- (a) to prescribe the minimum percentage of airtime for local productions and local languages in community broadcasting;
  - (b) the use of local content by broadcasting services;
  - (c) for campus broadcasting services;

- (d) for the fees required in this Act;
  - (e) for subscription, multi-channel and satellite broadcasting services;
  - (f) for the operation of the Broadcasting Authorisation Committee responsible for the grant of authorisations;
  - (g) for the details of requirements and procedures for the
    - (i) grant and variation of duration of broadcasting authorisation; and
    - (ii) the establishment and operation of special event broadcasting services.
  - (h) for the procedure for the public hearing on an application for broadcasting authorisation;
  - (i) for the syndication of programmes;
  - (j) for the conditions and procedures for the application of an authorisation by a public service broadcasting entity;
  - (k) on advertising, programming and broadcast standards;
  - (l) for broadcasting services in periods of emergency; and
  - (m) generally for the effective implementation of this Act.
- (2) A person who commits an offence under the regulations is liable on summary conviction to a fine of not more than five thousand penalty units and an administrative sanction imposed by the Commission
- (3) The regulations shall be signified under the hand of the chairperson of the Commission.

## Interpretation

90 In this Part, unless the context otherwise requires:

“Administrator” means the chief executive of the Fund

“administrative sanction” means a penalty imposed by a non-judicial body;

“ancillary service” means any service provided by the holder of a broadcast authorisation for a digital programme service or by a broadcaster in the analogue form and consists of the provision of

- (a) subtitling for the deaf and hearing impaired in connection with programmes included in a digital programme service or qualifying service provided by the person; or
- (b) other services apart from advertising that
  - (i) are ancillary to these programmes and directly related to their contents, or
  - (ii) relate to the production or listing of these programmes

“authorisation” means broadcasting authorisation;

“Authority” means the National Communications Authority;

“broadcast authorisation” means a grant from the Commission that permits a broadcasting service;

“broadcaster” means a person who composes packages, distributes television or radio programme services for reception by

- (a) the public or a section of the public; or
- (b) a subscriber to the television or radio programme service irrespective of the technology used;

“broadcasting service” means the transmission of images or sound or both images and sounds, through electromagnetic emission, light beams or wire, cable or other means for reception by the general public or sections of the public over a distance by means of radio or television, or appropriate receiving facilities but does not include

- (a) a service including text service that provides no more than data, or no more than text with or without associated still images;
- (b) a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; and
- (c) a service or a class of service that the Commission determines by notice in the *Gazette*;

“broadcasting service provider” means a person who holds a

broadcasting authorisation;

“broadcasting services frequency bands” means that part of the electromagnetic radio frequency spectrum which is allocated for the use of broadcasting services by the International Telecommunications Union in so far as the allocation has been agreed to or adopted by the Republic;

“broadcasting signal distribution” includes multi-channel distribution in which the output signal of a broadcasting service is taken from the point of origin, being the point where the signal is made available in its final content format and conveyed to any broadcast target area by means of telecommunications;

“Broadcasting Standards Committee” means the Broadcasting Standards and Complaints Committee established in section 63;

“civil society” means a body that is voluntary, self-generating and autonomous from the State, formed by a group of citizens acting collectively in a public sphere to express their interest, passions and ideas, exchange information, achieve mutual goals, make demands on the government and hold public officers accountable;

“Commission” means the National Media Commission;

“Commissioners” mean members of the Commission;

“Committee” means the Broadcast Authorisation Committee established in section 35;

“common carrier” means an entity that provides multiplex, transmission or network services to broadcasting services other than itself

“communication service” means the transmission of data, images or sound either together or not through electromagnetic emission, light beams or wire, cable or other means from one point to another point;

“community” means the people bound by a distinctive identity by virtue of living in one place or locality considered as a whole or by common interests and objectives

“Court” means High Court.

“cross-media control” means having controlling interest or ownership of print and broadcasting media at the same time in a geographic area by a person

“digital additional service” means any service which

- (a) is provided by any person with a view to it being broadcast in digital form by means of a multiplex service, whether by the person or by some other person, but
- (b) is not a digital programme service, a qualifying service, an ancillary service or a technical service;

“digital programme service” means a service consisting of the provision by any person of television programmes with a view to their being broadcast in digital form for general reception whether by the person or some other person, but which is not

- (a) an analogue television service, re-transmitted in digital form;
- (b) a teletext service; or
- (c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images being seen as moving pictures.

“digital switchover date” means the date after which the Minister of Communications may no longer permit the provision of television services by analogue means in specified parts of the country;

“encryption” means a method for changing a broadcasting signal in a systematic way so that the signal would be unintelligible without suitable receiving equipment;

“electronic communications network” means any wire, radio, optical or electromagnetic transmission, emission or receiving system, or any part of these, used for the provision of electronic communications service;

“essential service” includes the police, fire, health and other vital services;

“ethical broadcasting standards” means programming that does not offend the moral sensitivities of the public;

“executive” means the President and Vice-President of the Republic and Ministers appointed by the President;

“foreign person” means

- (a) an individual who is not a citizen, and
- (b) a company wherever incorporated, where the individuals who actually control the company whether directly or indirectly are not citizens; or a company wherever incorporated which is controlled either directly or indirectly by another company controlled by individuals who are not citizens of Ghana;

“free-to-air service” means provision of broadcasting service capable of being received on receivers without payment by the end-user to the broadcaster except the television receiving set licence fee;

“Fund” means the National Broadcasting Development Fund;

“in camera” means in a private room, without the press or the public being present;

“link frequency” means a frequency used to transmit a broadcast signal from one point to another for the operation of a broadcasting service;

“local content” includes programmes produced by a broadcasting service in the country or produced by a citizen whether or not resident in the country or by a non-citizen who is ordinarily resident in the country;

“local programme channel” means a television or radio channel packaged in Ghana by a broadcasting service authorised by the Commission

“marginalised community” means a situation where there is a lack of resources, voice and the capacity to make a difference in the lives of people in a particular locality or demographic group due to economic social or cultural disadvantage where those concerned cannot change their circumstances;

“mental health” means the state of well-being of the mind in which one is capable of functioning at a satisfactory level of emotional, psychological and behavioural adjustment personally and with society;

“Minister” means the Minister responsible for the broadcasting;

“Ministry” means the Ministry responsible for broadcasting;

“multi-channel distribution” means the packaging of more than one

programme channel for distribution to the general public or sections of the public either for subscription or otherwise by wire, cable, optical or radio and may be by terrestrial or satellite transmission;

“multiplex channel” means the space offered by a multiplex operator on the radio frequency spectrum for the broadcast of a single defined programme service or programme channel

“multiplex service” means a service provided by any person that consists in the broadcasting for general reception of two or more programme channels by combining the relevant information in digital form, together with any broadcasting in digital form of digital additional services;

“national security” means the safety of citizens and the country as ensured by the Government;

“National Security Co-coordinator” means the person appointed by the President to the position specified in section 18 of the Security and Intelligence Agencies Act, 1992 (Act 526);

“network operator” means a person licensed by the Authority to operate a public electronic communications network;

“offender with mental disorder” means a person determined by a court of competent jurisdiction to be suffering from a condition of the mind in which there is a clinically significant disturbance of mental or behaviour functioning associated with distress or interference of daily life and manifesting disturbance of speech, perception, mood, thought, volition, orientation or other cognitive functions to such a degree as to be considered pathological but excludes social deviance without personal dysfunction;

“person with disability” means an individual with a physical, mental or sensory impairment including a visual, hearing or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one or more of the major life activities of that individual;

“political broadcast” mean programmes, advertisements or announcements of a partisan political character;

“politically exposed person” includes a person who is entrusted with prominent public functions in this country such as a senior politician or government, judicial or military official, a senior executive of a public corporation and an important political party official as listed in Schedule

1 of this Act;

“programme channel” means a single defined television programming service of a broadcasting authorisation holder other than a video on demand programming service;

“programme plan” means the outline of overall programme schedule to be broadcast by the applicant or holder of broadcast authorisation

“programme service” means the same as programme channel

“promise of performance” means an agreement between a broadcasting service and the Commission relating to the provision of broadcasting service;

“provider of public service broadcasting” means a person who provides broadcasting service specified in section 7;

“public interest” includes economic viability and a right or advantage that enures or is intended to enure to the general benefit of the people of this country;

“public order” means the situation that exists when people obey the laws, rules or authority of the State;

“radio” means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency lower than 3000 GHZ;

“register” means the list of radio frequencies and programme channels available for broadcasting;

“regulations” means subsidiary legislation;

“religious body” includes an affiliate or an associate of a faith based organisation;

"satellite broadcasting service" means a service which is broadcast by transmitters situated on a satellite;

“serious offence” means an offence for which the maximum penalty is death or imprisonment for a period not less than twelve months;

"sound broadcasting service" means a broadcasting service destined to be received as sound by a radio receiver or any other technology;

“subscription broadcasting service” means a broadcasting service

provided to the end-user upon payment of a fee;

“syndicated programme” means broadcast material transmitted by another broadcaster contemporaneously with the original broadcaster or at different time schedules;

“technical service” means a service

- (a) provided for technical purposes connected with the encryption or decryption of one or more digital programme services or digital additional services, and
- (b) of a description specified in guidelines published by the Authority;

“telecommunications” mean any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another;

“television broadcasting service” means an a broadcasting service that consists of the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

“television licence fee” means a television receiving set fee;

“television receiving set” means an apparatus constructed for the reception of pictures from a broadcasting service.

"terrestrial broadcasting service" means a service that is broadcast from a transmitter situated upon the earth's surface;

“tertiary institution” includes a university, university college, post-secondary diploma awarding institution that awards certificates, diplomas or professional training.

“universal access” means the ability of all people with the appropriate receiving set in any part of the country to receive radio and television programmes of the main channels of the public service broadcaster generally referred to as Ghana Broadcasting Corporation without payment of a fee except the television licence fee in the case of television reception

“universal coverage” means the availability over the whole geographic area of Ghana of broadcast services for radio and television by the aggregate of persons granted broadcast authorisation .

### **Consequential transitional regulations**

91 Within six months after the commencement of this Act, the Commission shall submit new Regulations to Parliament to amend the National Media Commission (Complaints Settlement Procedure) Regulations 1994, (L.I. 1587) to accord with the provisions of this Part.

### **Transitional and savings provisions on authorisations**

- 92 (1) A broadcasting service in operation before the commencement of this Act shall be deemed to have satisfied the requirements for the grant of authorisation under this Act for the period for which the authorisation remains valid.
- (2) Despite subsection (3), a broadcasting service that does not qualify for a grant of an authorisation under this Part shall only be allowed to broadcast until the expiry of its current authorisation period and the broadcasting service may subsequently re-apply for an authorisation to the Commission.
- (3) The restrictions on foreign control of broadcasting services shall not apply to a broadcasting service in operation at the commencement of this Act for the remainder of the period for which the authorisation remains valid.

### **Transitional provisions on switch-over to digital terrestrial television broadcasting**

- 93 (1) Subject to subsection (2), the Minister for Communications may announce a date for the cessation of television broadcasting services provided by analogue means in a district or region at any time.
- (2) For the purpose of considering how long it would be appropriate for television broadcasting services to continue to be provided by analogue means in a district or region, the Minister for Communications shall
- (a) keep under review the extent of
- (i) the availability of multiplexes in the district or region,

- (ii) the availability in the district or region by digital means of the services specified in subsection (3),
  - (iii) the ownership or possession in the district or region of equipment capable of receiving the services specified in subsection (3) when transmitted by digital means,
  - (iv) the likely future extent of the availability of the equipment as well as the ownership or possession of the equipment,
  - (v) the likely effects on viewers of any of television broadcasting services provided by analogue means ceasing to be broadcast; and
- (b) on or before the second anniversary of the day on which the first multiplex licence is awarded, or when considered fit require the Authority to report on the matters referred to in paragraph (a) of this subsection.
- (3) The services specified for the purposes of subsection 1 (a) (ii) are
- (a) the national television broadcasting service commonly known as Ghana Television,
  - (b) the free to air television services that are available in a district or region by the date of commencement of this Act.
- (4) The Authority shall submit the report to the Minister for Communications within three months after the request has been made.
- (5) Before making the report, the Authority shall consult with
- (a) the holders of television multiplex licences;
  - (b) the holders of television broadcasting authorisation in the relevant district or region;
  - (c) the holders of network operation licences providing broadcasting Services;
  - (d) the Commission;
  - (e) persons representative of a cross section of the general public in the relevant district or region; and

- (f) any other persons that the Minister for Communications may direct.
- (6) The Authority shall include in its report a summary of any representation made to them by the persons consulted.
- (7) The Minister for Communications may, upon consideration of the report, issue a policy direction regarding the date or dates after which television services provided by analogue means shall cease in districts or regions throughout the country.
- (8) The Minister for Communications shall not however issue any directives for digital switchover in a district or region where the effect of the directive means that the majority of viewers in the district or region will be deprived of television services only by reason of the fact that they do not have the receiving facilities for digital television transmission.
- (9) A television broadcasting service shall not switch off its analogue transmission in a district or region before the switch over date for the area announced by the Minister for Communications.
- (10) A television broadcasting service that switches off its analogue transmission in a district or region before the switch over date and fails to resume the service within ten days after the direction to do so by the Authority, commits an offence and is liable on summary conviction to a fine of not more than two thousand five hundred penalty units and the revocation of the authorisation or to both.
- (11) The Authority shall endeavour to ensure that the viewers of services referred to in subsection ( 2) (a) and (b) provided by analogue means are made aware in general terms of
- (a) the digital switchover date in their respective areas,
  - (b) the reasons for it,
  - (c) the consequences of the switchover, and
  - (d) practical information on how viewers can receive the services by digital means after that date.
- (12) After the cessation of analogue television transmission, frequencies used for television broadcasting by analogue means shall revert to the Authority.

## **Consequential amendment**

94 (1) Section 13 of the National Media Commission Act, 1993 (Act 449) is amended by the addition of subsection (3);

“(3) For purposes of this section media is restricted to the print media.”

## First Schedule

### Section 15

1. President of the Republic
2. Vice-President of the Republic
3. Speaker, Deputy Speaker and a Member of Parliament
4. Minister of State or Deputy Minister
5. Chief Justice
6. Justice of the Superior Court of Judicature
7. Ambassador or High Commissioner
8. Secretary to the Cabinet
9. Head of a Ministry or a government department or equivalent office in the Civil Service
10. Chairperson, Electoral Commission and Chairperson's deputies
11. Chairperson, National Commission on Civic Education and deputies
12. Chairperson and members of the National Media Commission
13. Chairperson and deputy chairperson's of the Commission on Human Rights and Administrative Justice
14. Presidential staffer or aide
15. District Chief Executive, Presiding Member, Municipal or District Assemblies
16. Head, Office of the Civil Service
17. An executive office holder at the constituency, district, regional or national level of a political party

## Second Schedule

### Section 62

1.
  - (a) the minimum time for provision of programmes with local content
  - (b) the presentation of news in a fair and accurate manner;
  - (c) the modalities for the presentation of factual programmes;
  - (d) the manner in which violence and sex are presented in programmes;
  - (e) matters that relate to interference with the process of obtaining material for programmes;
  - (f) broadcasts by political parties and their candidates;
  - (g) religious programmes and programmes for children;
  - (h) restrictions on the re-transmission of programmes of foreign broadcast services;
  - (i) modalities and conditions for the broadcast of
    - (i) foreign programmes;
    - (ii) programmes and music of Ghanaian origin;
    - (iii) raffles, lottery and appeals for donations; and
    - (iv) events of national interest;
  - (j) advertising standards, including maximum time for advertising;
  - (k) the practice and conditions for sponsorship of programmes;
  - (l) programme production requirements for community stations that ensure the participation of the community in the production of substantial amounts of the programmes;
  - (m) any other matter relating to programming that is in the public interest;
2. The Regulations prepared under paragraph 1 shall provide
  - (a) the differential application of some standards to broadcasting services

depending on whether the broadcasting service is public, commercial or community;

- (b) that news is presented in an impartial objective accurate and fair manner;
- (c) that programmes do not include material that borders or centres on exploitation of sex, horror, cruelty, suicide and violence or which is degrading or dehumanising or incites to violence or leads to public disorder;
- (d) that due responsibility is exercised with respect to programmes shown at a time when children are likely to be watching or listening to the programmes;
- (e) that matters of political or industrial controversy or that relate to public policy are presented in a fair and accurate manner;
- (f) that reasonable and equitable opportunity is given to political parties and their candidates for political office at the national and local levels to express their views and programmes;
- (g) that a broadcasting station shall not be required to broadcast political messages but if the station chooses to broadcast political messages for a politician or any political party, the station shall satisfy paragraphs (f) and (h);
- (h) that a political party is not subject to discrimination or favoured in the provision of opportunities for broadcast on any broadcasting service;
- (i) that the contents of religious programmes reflect a sense of responsibility;
- (j) that the broadcast of hate speech is prohibited;
- (k) that broadcasting service providers do not use any code or other system in their programmes to convey messages without their audience being aware of the code or systems;
- (l) that commercial and other advertisement are clearly distinguished from normal programmes and news items;
- (m) that there is no discrimination in the acceptance of advertisement for broadcast;
- (n) the prohibition of broadcast of advertisement of unlawful business, service or product;
- (o) that advertisements which contain health claims are not broadcast without the prior approval of the Food and Drugs Board
- (p) that claims of fact contained in advertisements intended for broadcast are

verifiable and that those advertisements are not misleading to the public;

- (q) that advertisements which are offensive to public sensibilities are not broadcast;
- (r) the broadcast of locally produced advertisements with local themes are promoted;
- (s) the prohibition of broadcast of advertisements of cigarette and other tobacco products;
- (t) that broadcast of advertisements for alcoholic beverages does not target children;
- (u) that broadcast of advertisements for alcoholic beverages does not promote the abusive use of alcohol; and
- (v) that sponsors of programmes are clearly identified, and are not anonymous.

Kindly Send Comments to :

[comments@moc.gov.gh](mailto:comments@moc.gov.gh)