

REVISED BROADCASTING BILL

Summary of Actions Taken In Review of the Revised Bill Following the 13th March Stakeholders' Workshop by the Ministry of Information and Media Relations

1. Constitutionality of Bill

Two stakeholders raised issues on the legal basis of the Bill citing Article 162 of the 1992 Constitution which provides that "there shall be no law requiring any person to obtain a licence as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information."

They believe that in view of the Constitutional provision, frequency allocation should be the basis for authorising the establishment of broadcasting organisations

However, Art 164 subjects Art 162 to laws that are reasonably required in the interest of national security, public order and public morality among others.

The Bill provides a framework to ensure that persons who are to be entrusted with a scarce and critical public resource, the radio spectrum, operate in a manner to safeguard public order, public morality, national security and, generally, use the resource in the best public interest. Frequency authorisation by the NCA without due regard to the content to be provided by the potential broadcaster will not be sufficient to satisfy the primary objective of ensuring that the national resource is used by broadcasters in the best public interest.

International best practice for instance in the USA, UK, Canada, Australia and South Africa show that programme content is a key criterion in determining broadcasting authorization or licensing.

The Bill has strong legal basis under the law, is in the best public interest and in line with international best practice.

It will not be proper to subsume or "hide" considerations of content under frequency authorisation by the NCA. The National Media Commission, NMC, is the constitutional body with oversight of the mass media to ensure its freedom and independence with responsibility "to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media" and must be the primary regulator of the sector.

2. Inclusion of GBC's establishment legislation in the Bill

Part 2 of the Bill on GBC has been removed and all references to GBC in the memorandum have been deleted

The Minister of Information and Media Relations proposed that GBC's establishment law should not be included in the Bill and should remain on its own. The Ministry is the sponsor of the Bill and is responsible for formulating policy on broadcasting.

The consultants had proposed to include provisions on GBC in the Bill in its report to the Ministry on the gap analysis. The inclusion of provisions on the main public service broadcaster in the general broadcasting law is not an unusual practice in British Commonwealth countries. For instance, the broadcasting laws of Canada and South Africa have provisions on the public service broadcasting stations in the respective countries. However, countries such as Australia and New Zealand have specific laws on the public service broadcasters and then a Broadcasting Act for the sector as a whole.

Following the removal of the provisions on GBC from the Bill, it is proposed that the Ministry starts work as soon as possible to review the GBC law and bring it in line with the fast moving changes in the sector.

3. Relationship Between National Media Commission and National Communication Authority

The functions of the two bodies as regards broadcasting services have been fine tuned in clauses 5 and 6 respectively.

Cis 5 (5) has been rewritten to remove any references to management of frequencies and transmission from the functions of the NMC, which are placed fully in the domain of the NCA under cis. 6

Also to further strengthen coordination between the two bodies, the representation of the NCA on the Broadcasting Authorisation Committee in cis 35 has been increased to two from one. If the NCA representation is higher than this figure as proposed by the Ministry, it will be to the disadvantage of the public and civil society representation on the Committee, which is critical to the process in view of the enormous impact of broadcasting on society. However, the figure given to NCA is the minimum as the NMC could appoint more than two NCA representatives if it finds it beneficial to do so.

In other areas such as cis 4 (2) and cis 66 the wording has been changed to make it more clear that issues relating to technical standards are to be handled by the NCA.

An ideal situation will be have one authorization process but there is no indication from the two regulatory bodies that either of them is ready now to assign its responsibilities in broadcasting to the other.

It is significant to note that having two regulatory bodies in the broadcasting sector is not unusual in many countries. In fact the trend to have one regulatory body for telecommunications and broadcasting is a relatively recent development. Hopefully, Ghana will soon follow that path.

Meanwhile the more important factor for smooth operations in the sector is for the managers of the two regulatory bodies to develop a cooperative and collaborative approach in their work. The Bill provides a framework for such collaboration and cooperation.

4. Prescription of minimum time for Local Content in the Bill

It was proposed that the Bill should state a specific amount of time that broadcasters should allocate to local programmes.

In view of the fact that there will be a large number of operators providing a wide range of content it is felt that rather than prescribe a minimum time for local content in the parent law, it should be left to the regulator to take account of the various services and determine the amount of local content they should carry depending on the situation on the ground from time to time.

5. Responsibility of the Minister

It was proposed that the Bill should state the role of the Minister in the broadcasting sector.

Clause 2 has been re written to clearly state that the Minister is responsible for the formulation of policy on broadcasting

6. Validity period for broadcasting authorisation, Cis 42

As proposed by the NCA this has been increased to 10 years for free-to-air television broadcasting and subscriber television to be in line with the validity period for authorisations for those services given by the NCA.

7. Renewal of Broadcasting Authorisation, Cis 44

The NCA asked for the period for the renewal process to be reduced from six months to three months as in the case of renewal of frequency authorisation.

Considering the issues that may come up in the renewal process such as public complaints on the content of a broadcaster and public hearing in some cases, the three months period given for frequency authorisation renewal is rather short and should not apply to the renewal of broadcasting authorisation by the NMC.

8. Comprehensive review of public service broadcaster Cis 50 (4)

There were a number of proposals that the 10 year period is too long and should be reduced.

If the duration of authorisation for a private television station is 10 years then it will not be fair for the public broadcaster to have less time for review. The Comprehensive Review should not prevent the NMC from regularly scrutinizing the work of the public broadcaster. The comprehensive review is intended to be a thorough review of all aspects of the operations of the public broadcaster including a review of its mandate and its relevance to the public.

9. Cis 51 (2)

Has been removed in view of NCA observation

10. Bodies not entitled to grant of authorisation Cis. 54

The Catholic Church wrote to the Ministry protesting against the provision that barred religious bodies from being granted broadcast authorisation. However, at the Stakeholders' Forum the representative of the Catholic Church, Mr Dan Dzide informed the lead consultant, Berifi Apenteng that the church had decided not to pursue their protest anymore and would want to leave the clause as it is in the Bill.

11. Non transferability of Authorisation, Cis. 56

The NCA raised concerns about the differences between the conditions provided under this clause and that of a similar provision in Section 10 of Act 775. It is noted that section 10 of Act 775 has a broader application - to all telecommunication licences, whereas clause 56 is specific to broadcasting. As will be noted, there are more stringent rules in the Bill on ownership in the broadcasting sector so it is logical that the provisions on transferability of authorisation are different. Ownership rules in broadcasting across the world are very stringent and those provided in the Bill are in line with international best

practice.

12. Provisions on content regulations, Cis 62

The proposal by Multichoice and GoTV that there should be a distinction in the application of rules on content between "extra-territorial" broadcasters and services that originate in Ghana amounts to discrimination between foreign and local broadcasters and should not be accepted.

If discretion is left to parents only to determine when to use a parental control button for watching television programmes it would mean that Ghanaian authorities would have no hand over the content of foreign broadcasters distributed by organisations in country.

13. Bank Account of Fund Cis 74

Sub clause (2) has been reviewed to bring it in line with regulation 15 of the Regulations of the Financial Administration Act.

14. Composition of Board of Trustees Cis 76

The Administrator has been made a member of the Board. This is normal practice and his/her exclusion in the original revision was an oversight.

15. Television Receiving Set Licence Fee, Cis 87

A number of sub clauses have been added to the Bill from the original law to allow for the collection of important data on television sets as pointed out by NCA. Also as requested by GBC a penalty has been introduced for infringements under the section.

Regarding the body to collect the fees it has been left to the NMC in consultation with the Minister to determine who should collect it. The idea is to empower the NMC and Minister to appoint one or more bodies, if necessary, to collect the fee. They could appoint GBC to do so.

16. Emergency Powers of Government, Cis. 88

Some stakeholders raised concerns about the wide powers given to government over broadcasting stations during state of emergency. The reach of broadcasting stations as mass communication media is unique and is critical for the authorities in a situation of emergency. As noted by the Chief Director of the Ministry at the forum, government has the responsibility to protect lives and ensure stability in periods of emergency and must have wide powers to be able to do that. The wording in clause 88 (1) has been changed slightly without detracting from the essence of the provision.

17. Definitions, Cis 90

There are improvements to some definitions for greater clarity as well as additional definitions to some words and expressions used in the Bill such as "cross-media ownership", "universal coverage" and "universal access"

18. General note

There are many other minor changes throughout the document in wording for clarity, consistency or, generally to improve the Bill. An electronic copy with the tracked changes has been enclosed with the finalised reviewed copies of the Bill to assist the Ministry and the Attorney General's Department in their follow-up work.