



Broadcasting Services Act

Fact Sheet Three:

Licensing of mass media services

Introduction:

Generally, all functional governments the world over control electromagnetic transmission of audio, data and video signals, within the available frequency spectrum.

This is so because of the limited frequency spectrum, which has to be regulated in the interests, both of national security and efficient usage. In Zimbabwe, this is provided for in the Constitution (see Section 20 (2) (b) (iv)).

As a result, section 7 of the BSA makes it illegal for anyone to operate a broadcast media service or signal carrier service without a licence. Licensing allows for the creation of the necessary regulatory framework used to determine the efficient use of electromagnetic spectrum, and to control the number and identity of persons permitted to broadcast.

Thus, licensing should only be directed at “regulating the technical administration, operation and general efficiency” of broadcasting services and not as a form of political (or other) control. Zimbabwe’s licensing regime as will be illustrated is not for technical administration and ensuring efficiency, but designed to maintain the monopoly of the government on the airwaves.

Licensing:

According to section 7(2) of the BSA, there are 10 kinds categories of licences that the BAZ can issue to individuals wishing to enter the sector, namely:

- (1) Commercial
- (2) Community
- (3) Satellite
- (4) Cable
- (5) Subscription narrow casting
- (6) Open narrow casting
- (7) Data casting;
- (8) (8) Broadcasting
- (9) rail casting
- 10 webcasting.

While it is true that in most countries everyone needs a licence to operate any of these broadcasting services (except maybe for webcasting), the oddity of the Zimbabwean legislation lies in the terms and conditions that are imposed on prospective licensees. It is argued that these terms and conditions are not only onerous, but seem to be deliberately crafted to deny individuals their fundamental right to freedom of expression via the media by discouraging entry into the sector.

Terms and conditions of licences:

Section 11 sets the general terms and conditions for all prospective license holders in the broadcast media in Zimbabwe. According to section 10(1), only after the BAZ has published a notice (in the *Gazette* and in one national newspaper) inviting applications for licences to provide broadcasting services can prospective broadcasters start applying. Not before that.

In the event of a licence being issued, section 11(1)(a) of the BSA empowers the Minister of Information to impose different terms and conditions to different licensees, meaning that the Minister is at liberty to impose impossible conditions to those licensees the Minister may not like for any reason. There is nothing to prevent the Minister imposing certain onerous terms and conditions on any particular licensee.

Section 11(2) states that these conditions are binding and their violation is enough grounds for the Minister to revoke the licence. In addition, the Minister may impose the conditions at *any* time during the tenure of the licence. The discretion of the Minister is therefore not restrained. This is certainly more than necessary for the technical administration of the electronic media.

Further, all licensees are required by law to make one hour *cumulatively* per week of their broadcasting airtime available for the purpose of enabling the Government to explain its policies to the nation (section 11(5)). In addition to these burdensome licensing conditions, there are also specific conditions for community and commercial broadcasting. These are discussed briefly below.

Community broadcasting:

Part IV of the BSA states that it is illegal for a community broadcaster to broadcast “any political matter” (Section 10(1)(a)). Without a universally agreed legal definition of what constitutes a “political matter”, this clause exposes all community broadcasters to the caprices and whims of the Minister of Information, who has the discretionary power to determine what is political and what is not political.

For example, a programme on prices hikes in the transport sector or a programme of the deteriorating economy can easily fall into the ambit of “political matters” since eventually government policies are going to be scrutinised. This means that community broadcasters are in fact gagged even before they go on air, and this constitutes an abridgement of individuals’ rights to freely express themselves as guaranteed under Section 20(1) of the Zimbabwean Constitution.

The phrasing of this section seems to be intended to ensure that the Minister of Information has sweeping powers in terms of terminating community licences against communities that dare broadcast any matter that the government may not like. Unless these provisions are removed or the wording clearly defined, it is most unlikely that community broadcasters will survive under such regulations.

Commercial broadcasting:

According to the regulations, a commercial broadcasting licence is valid for two years and is only renewable at the instance of the Minister of Information. This impractical licence period is clearly unconstitutional in that it violates section 20 of the Constitution by unduly restricting the exercise of the right to receive and impart information, views and opinions for citizens. The restriction seems directed at ensuring that only a few people, if any, will apply for licences. Further, like with community radio licence restrictions, the two-year long licence terms have a negative impact in encouraging people to invest in broadcast media in the country for several reasons.

Firstly, broadcasting equipment and programme production can cost billions of dollars. If a commercial broadcaster is to invest in these, they have to be assured that they will be able to recoup their investment capital and in a poorly performing economy such as Zimbabwe’s, this can take up to five years. Clearly, the two-year license period, whose renewal is uncertain and based on the goodwill of the Minister of Information, makes broadcasting a particularly high-risk investment venture. For example, the only television service in the country, the Zimbabwe Television (ZTV) has not made any profits since independence although it operates in a monopolistic environment and is subsidised by taxpayers!

Secondly, the uncertainty of renewal means that strategic planning for programmes is always short term, making it difficult to generate much popularity among audiences and goodwill from advertisers and other clients. The risks simply outweigh the benefits.

Thirdly, it means that since broadcasting is a capital intensive venture, potential investors have to borrow finance from banks and other lending institutions, but with the current risks associated with the venture, a few financial institutions will be likely to lend out their monies to prospective broadcasters. The end result of all these impractical terms and conditions is to maintain the state-owned Zimbabwe Broadcasting Holdings (ZBH) monopoly on the airwaves by proxy, which is a clear case of contempt of the Supreme Court on the part of the government.

The mirage liberalisation created by this Act is abnormal considering that the world over, governments take cognisance of the fact that broadcasting is a long-term business venture, thus allow for longer license periods. In South Africa, for example, community broadcasting licences are valid for four years, while television and radio broadcasting licences are valid for eight and six years, respectively (refer to section 54 of the Independent Broadcasting Authority (IBA) Act of South Africa).

Signal carrier licences:

To compound the Zimbabwean situation, no holder of a broadcasting licence (other than Transmedia, wholly owned by the state¹) is allowed to hold a signal carrier licence. This means that both commercial and community broadcasters' activities will be limited to only producing programmes (or buying pre-produced programmes) and then sending these programmes to either Transmedia for transmission or to the new signal carrier licensee to be introduced at the mercy of the Minister of Information. The splitting of broadcasting between producers of programmes and signal carriers unnecessarily interferes with the right to freedom of expression. In addition, it creates a very risky investment environment.

Further, signal carriers are not obliged to flight programmes submitted to them by broadcasters. It is therefore possible for a signal carrier to interfere with the nature and content of broadcasts.

In practice, all broadcasters will be obliged to enter into lease agreements with Transmedia seeing that the government will not be issuing any private signal carrier licences any time soon. This will constitute an immeasurably costly exercise for all broadcasters, particularly community broadcasters. This situation compares unfavourably with the South African example where all licensed broadcasters are also free to apply for a signal carrier licence.

Finally, the BSA states that only one signal carrier licence – again valid for only two years – will be issued nationally. It is impractical to expect that the prospective holder of such a licence will have purchased very expensive signal carrying equipment worth billions of dollars, only to be told after two years that their licence has been revoked or will not be renewed because the Minister of Information said so.

In South Africa, a common signal carrier licence is valid for 15 years and a signal carrier licence given to a commercial broadcaster is valid for eight years (see section 38 of the South African IBA Act). Zimbabwe's licence tenure periods stifle growth of a viable and plural electronic mass media service industry. It is also arguable that the licence periods are designed to maintain the broadcasting monopoly currently enjoyed by the government in the sector, and are therefore designed to discourage entry.

Ends.

¹ Transmedia was born out of the split of the Zimbabwe Broadcasting Corporation (ZBC) under the ZVC Commercialisation Act of 2001. While Transmedia carries out signal work, Zimbabwe Broadcasting Holdings born out of this law is the state broadcaster.