
GOVERNMENT OF ZAMBIA

ACT

No. 26 of 2010

Date of Assent: 14th August, 2010

**An Act to amend the Independent Broadcasting Authority
Act, 2002**

[16th August, 2010

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Independent Broadcasting Authority (Amendment) Act, 2010, and shall be read as one with the Independent Broadcasting Authority Act, 2002, in this Act referred to as the principal Act.

Short title

Act No. 17 of
2002

2. The principal Act is amended in the long title by the deletion, immediately after the words “regulation of broadcasting”, of the words “and diffusion”.

Amendment
of long title

3. Section two of the principal Act is amended—

Amendment
of section 2

(a) by the deletion of the definitions “diffusion service” and “appointments committee”;

(b) by the insertion in the appropriate places of the following new definitions:

“broadcasting licence” means a licence entitling the holder to provide one or more broadcasting services;

“broadcasting licensee” means a holder of a broadcasting licence;

“broadcasting service” means any service consisting of broadcasting and is conveyed by means of an electronic communications network but does not include—

(a) a service which provides no more than data or text, whether with or without associated still images;

(b) a service in which the provision of audio-visual material or audio material is incidental to the provision of that service;

or

(c) a service or a class of service, which the Authority may determine does not fall within this definition;

“ electronic communication ” has the meaning assigned to it in the Information and Communication Technologies Act, 2009;

“ electronic communications network ” has the meaning assigned to it in Act No. 15 of 2009 the Information and Communication Technologies Act, 2009;

“ free-to-air service ” means a service which is broadcast and capable of being received without the payment of any subscription fee;

“ subscriber ” means a person who lawfully accesses, uses or receives a retail service of a broadcasting licensee; and

“ subscription broadcasting service ” means a broadcasting service provided to a subscriber upon payment of a fee;

(c) by the deletion of the definitions “ broadcasting ” and “ public broadcasting service ” and the substitution thereof of the following new definitions:

“ broadcasting ” means any form of uni directional electronic communication intended for reception by—

(a) the public;

(b) sections of the public; or

(c) subscribers to any broadcasting service, whether conveyed by means of radio frequency spectrum or any electronic communications network or any combination thereof; and

“ public broadcasting ” means any broadcasting service provided by the Corporation.

Act No. 15 of
2009

Amendment
of section 3

4. Section *three* of the principal Act is amended by the deletion,

immediately after the words “ regulation of broadcasting ”, of the words “and diffusion”.

5. Section *five* of the principal Act is amended in paragraphs (d) and (e) of subsection (2) by the deletion of the words “ and diffusion ” wherever they appear. Amendment of section 5

6. Section *seven* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following new section: Amendment of section 7

(2) The Board shall consist of nine part time members appointed by the Minister.

7. The principal Act is amended by the repeal of section *eight*. Repeal of section 8

8. Section *ten* of the principal Act is amended— Amendment of section 10

(a) in subsection (2) by the deletion of the words “ three months ” and the substitution therefor of the words “ twelve months ”; and

(b) in subsection (5) by the deletion, immediately after the word “ may ”, of the words “ on the recommendation of the appointments committee and subject to ratification by the National Assembly ”.

9. The principal Act is amended by the repeal of Part IV and the substitution therefor of the following Part: Repeal and replacement of Part IV

PART IV

BROADCASTING SERVICES

19. (1) Subject to the provisions of this Act, a person shall not operate or provide a broadcasting service in Zambia without a broadcasting licence. Prohibition of provision of broadcasting service without broadcasting licence

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

20. (1) The Board shall, in consultation with the Zambia Information and Communication Technologies Authority, where it determines that there is need for the provision of additional broadcasting services, publish a notice in the *Gazette* and in a daily newspaper of general circulation in Zambia inviting applications to provide the broadcasting service specified in the notice. Advertisement for tender to provide broadcasting services

(2) The Board shall put the frequencies assigned to the various

broadcasting services up for public tender as soon as they become available and specify the deadline for receiving the applications.

(3) The Board may conduct a public inquiry to determine priorities within the broadcasting industry.

Application
for
broadcasting
licence

21. (1) An application for a broadcasting licence shall be made to the Board in the prescribed manner and form upon payment of the prescribed fee.

(2) The Board shall, within thirty days of receipt of an application under subsection (1), grant or reject the application.

(3) The Board shall, where it rejects an application under subsection (2), inform the applicant accordingly and give the reasons therefor.

Issuance of
broadcasting
licence

22. (1) The Board may issue a broadcasting license subject to the provisions of this Act and to such conditions as the Board may determine:

Provided that —

- (a) a political party or organisation or a legal entity formed by a political party or organisation does not qualify to provide a broadcasting service; and
- (b) a person who is not a citizen of Zambia does not qualify to provide a broadcasting service.

(2) In this section, “citizen of Zambia”, in relation to a body corporate, means a company in which not less than seventy-five percent of the company’s shares are held by Zambians.

(3) A broadcasting licence issued under subsection (1) shall be for such duration as the Board may determine.

(4) A broadcasting licensee shall pay such annual fee for the broadcasting licence as may be determined by the Board.

(5) Without prejudice to the generality of subsection (1), the conditions of a broadcasting licence may —

- (a) specify the site or sites at which any broadcasting station to be operated under the authority of the broadcasting licence are to be located, and regulate the manner of their installation;
- (b) specify the kind of broadcasting authorised by the

broadcasting licence and regulate the type and standard of broadcasting station apparatus to be used in any such broadcasting station;

- (c) require the payment to the Authority of an annual fee;
- (d) require the broadcasting licensee or any other person concerned in providing any service authorised by the broadcasting licence to furnish to the Board such documents, accounts, returns, estimates and other information as the Board considers necessary for the purposes of exercising or performing the powers and functions of the Authority under this Act;
- (e) require the broadcasting licensee to refer specified matters to the Authority for determination;
- (f) require the broadcasting licensee to comply with directions given by the Board in relation to specified matters;
- (g) provide for arbitration of disputes arising in connection with the terms and conditions of, or otherwise concerning, the licence in accordance with the Arbitration Act, 2000;
- (h) require and regulate the payment of fines and penalties by the broadcasting licensee for breach of any specified terms and conditions of the broadcasting licence under this Act; and
- (i) require such broadcasting licensee to provide programming which reflects *Zambian* circumstances in accordance with the provisions of this Act.

Act No. 19 of
2000

23. (1) A broadcasting licence may be issued by the Board for the following services:

Categories of
services
under
broadcasting
licence

- (a) a commercial broadcasting service to provide—
 - (i) a diverse range of programming addressing a wide section of the Republic;
 - (ii) programming in the official language or in any other local language of the Republic widely spoken in the Republic or any particular area;
 - (iii) within such period as the Board may specify, comprehensive coverage of the areas which the broadcasting licensee is authorised to serve; and
 - (iv) such free-to-air broadcasting services as may be determined by the Board;
- (b) a community or religious broadcasting service to provide—

- (i) free-to-air radio broadcasting services; or
- (ii) free-to-air television services; or
- (c) a subscription broadcasting service to provide a broadcasting service that draws revenue from subscription, advertising sponsorship:

Provided that a person licensed to provide a subscription broadcasting service, may not acquire exclusive rights to the broadcasting of any national, sporting or other event which is identified, by the Board, to be in the public interest.

Content of
broadcasting
services

24. (1) The programming provided by a commercial broadcasting service shall, subject to the conditions of the broadcasting licence and the provisions of this Act —

- (a) reflect the culture, character, needs and aspirations of the people in the areas specified in the broadcasting licence;
- (b) provide an appropriate amount of local or national programming;
- (c) include news and information programmes on a regular basis, including discussion on matters of national, regional, and where appropriate, local significance;
- (d) include significant portions of Zambian drama, documentaries and children's programmes that reflect Zambian themes, literature and historical events; and
- (e) meet the highest standards of journalistic professionalism.

(2) The programming provided by a community broadcasting service shall reflect the needs of the people in the community, including the cultural language and demographic needs and shall —

- (a) provide a community broadcasting service dealing specifically with issues which are not predominately dealt with by the broadcasting service covering the same areas;
- (b) be informative, educational and entertaining;
- (c) focus on the provision of programmes that highlight grassroot community issues including, developmental issues and general educational affairs, environmental affairs, local, international and current affairs reflective of local culture; and
- (d) promote the development of a sense of common purpose and improved quality of life.

(3) The programming provided by a religious broadcasting service shall reflect the religious beliefs and needs of the people and shall—

- (a) provide a community broadcasting service dealing specifically with religious issues;
- (b) be informative, educational and entertaining;
- (c) focus on the provision of programmes that highlight grassroots community issues including, developmental issues, health care, basic information and general educational and environmental affairs and other spiritual matters; and
- (d) promote the development of a sense of common religious purpose and improve the quality of life.

25. A broadcasting licence issued under this Part shall not be transferred, bought, sold, assigned, leased, mortgaged or charged to a third party.

Prohibition of transfer, selling, leasing, etc. of broadcasting licence

26. A broadcasting licensee shall display the broadcasting licence in a conspicuous place at the place of business of the broadcasting licensee.

Display of broadcasting licence

27. (1) A broadcasting licensee shall notify the Board of any change of that broadcasting licensee's particulars relating to the issuance of the broadcasting licence.

Changes in detail or character of broadcasting programming

(2) A broadcasting licensee shall, where the broadcasting licensee intends to change the character of the broadcasting programming, apply to the Board for variation of the character of the programming.

(3) The Board shall, where it receives an application under subsection (3) and where it determines that the envisaged change in the broadcasting programming has significant public interest, call a public hearing on the matter.

28. (1) A broadcasting licensee may, at least six months before the expiry of the broadcasting licence, apply to the Board for renewal of the broadcasting licence in the prescribed manner and form upon payment of the prescribed fee.

Renewal of broadcasting licence

(2) A broadcasting licence that is not renewed in accordance with subsection (1) is void.

(3) A broadcasting licensee who provides a broadcasting service during any period in which the broadcasting licensee's broadcasting

licence is void commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

Cancellation
or
suspension
of
broadcasting
licence

29. (1) Subject to the other provisions of this section, the Board may cancel a broadcasting licence if —

- (a) the broadcasting licensee informs the Board, in writing, that the broadcasting licensee does not intend to provide broadcasting services any longer;
- (b) the Board has reasonable grounds to believe that the broadcasting licence was obtained through fraud, misrepresentation, concealment of a material fact or submission of incorrect information;
- (c) the broadcasting licensee has not, within one hundred and twenty days of the issue of the broadcasting licence, commenced the business for which the broadcasting licence was issued;
- (d) the broadcasting licensee provides a broadcasting service that the broadcasting licensee is not licensed to provide;
- (e) the period for which the broadcasting licence was issued has lapsed;
- (f) the broadcasting licensee is convicted of an offence involving fraud or dishonesty, or any other offence under this Act or any other written law and sentenced therefor to a term of imprisonment of six months or more without option of a fine;
- (g) since the issue of the broadcasting licence, circumstances have arisen disqualifying the broadcasting licensee from holding the broadcasting licence;
- (h) the broadcasting licensee, without a justified reason, has ceased to provide the broadcasting services, for which the broadcasting licence was obtained, for more than sixty consecutive days or ninety days with intermissions during the calendar year;
- (i) the broadcasting licensee has failed, in spite of written notice, to comply with the conditions of the broadcasting licence;
- (j) the cancellation of the licence is necessary in the interest of public safety, security, peace, welfare or good order; or
- (k) the Board considers it appropriate in the circumstances of the case to do so.

(2) Where a broadcasting licensee does not comply with this Act or with the conditions of the broadcasting licence, the Authority shall notify the broadcasting licensee of the measures that the broadcasting licensee should undertake, within a specified period, to comply with the conditions of this Act or the broadcasting licence.

(3) The Authority shall, where a broadcasting licensee fails to comply with a notice issued under subsection (2), within a specified period of time, suspend the broadcasting licence for a specified period of time or cancel the broadcasting licence.

(4) The Authority shall not be liable to refund a broadcasting licensee whose broadcasting licence is cancelled in terms of this section, the fee or any portion of the fee paid on the issue of the broadcasting licence.

(5) Where a broadcasting licence is cancelled under this section, the broadcasting licence shall be void and shall be surrendered to the Authority.

(6) The Board may, before cancelling a broadcasting licence, suspend the broadcasting licence for such period and on such terms and conditions as the Board may determine.

(7) The Board shall, before cancelling or suspending a broadcasting licence under this section, give the broadcasting licensee an opportunity to be heard.

30. (1) A broadcasting licensee whose broadcasting licence is destroyed or lost may apply to the Board for a duplicate broadcasting licence in the prescribed manner and form upon payment of the prescribed fee.

Duplicate
broadcasting
licence

(2) The Board may, upon receipt of an application under subsection (1), issue a duplicate broadcasting licence to the applicant.

31. (1) A person who is aggrieved with a decision of the Board under this Part may appeal to the Minister within thirty days.

Appeals

(2) A person who is aggrieved with a decision of the Minister under subsection (1) may appeal to the High Court within thirty days.

32 (1) The President may, where there is in force a proclamation of a state of public emergency or threatened public emergency under the Constitution, make an order authorising an officer or an authority, in the public interest, to—

Powers of
President in
public
emergency
Cap. 1

(a) take over all broadcasting stations or any particular broadcasting station in Zambia; and

(b) control and direct all broadcasting stations or a

broadcasting station to which the provisions of paragraph (a) relate for so long as the President considers it expedient;

and in so doing may require the exclusive services of the persons employed in working, maintaining or carrying on the same.

(2) Where an officer or an authority is authorised to take over a broadcasting station under subsection (1), the person owning or controlling the broadcasting station shall give up possession to the President, the officer or authority, and the person employed in working or maintaining the broadcasting station or in carrying on a broadcasting service from the broadcasting station shall, if the President, in terms of that subsection, requires their exclusive services, diligently and faithfully obey, during the period the broadcasting station is in possession of the officer or authority, all such orders and other directions as the officer or authority may give in connection with the working or maintenance of the broadcasting station or the carrying on of broadcasting services from the broadcasting station.

(3) Reasonable compensation shall be paid, from monies appropriated for the purpose by Parliament, to a person who suffers loss or damage through the exercise of the powers conferred by this section in such amount as may be agreed upon between the person and the Minister.

(4) Where a dispute arises as to the amount of compensation payable under subsection (3), any person claiming to be entitled to compensation may refer such dispute to a court.

(5) In determining the amount of any compensation, including costs or expenses, payable under this section, the court and every other person shall have due regard to the fact that the take-over has been necessitated by a state of public emergency.

Amendment
of section 46

10. Section *forty-six* of the principal Act is amended in the proviso by the deletion immediately after the words the broadcasting licensee ” of the words “or broadcasting licensee of diffusion service”.

Repeal and
replacement
of section 48
Transitional
provisions

11. The principal Act is amended by the repeal of section *forty-eight* and the substitution therefor of the following new section:

48. (1) A holder of a licence issued under the repealed Part shall, within six months of the commencement of this Act, apply to the Board for a new licence in accordance with the provisions of this Act:

Provided that the Board shall only issue a licence for the unexpired period for which it was issued.

(2) For the avoidance of doubt, a licence issued under the repealed Part shall cease to be valid six months after the commencement of this Act.

12. Section *forty-nine* is amended —

Amendment
of section 49

(a) in paragraph (c)—

(i) by the deletion in subparagraph (ii), immediately after the words “ radio receiving station ”, of the words “ and radio and other apparatus to be used in connection with diffusion services ”; and

(ii) by the deletion of sub-paragraph (iii) and the substitution therefor

of the following sub-paragraph:

(iii) the classes, types and standards of radio stations; and

(b) in paragraph (g) by the deletion, immediately after the words “ radio stations ” of the comma and the words “ radio apparatus used for operating diffusion services ”.
