



**BOTSWANA
COMMUNICATIONS
REGULATORY
AUTHORITY**

BROADCASTING LICENCES IN BOTSWANA

Application and Assessment Procedures for Commercial Broadcasting Services

APRIL 2015

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1 INTRODUCTION

The Botswana Communications Regulatory Authority (“The Authority”) is a statutory body established under Communications Regulatory Act of 2012 (the Act). The Authority was set up to regulate the communications sector in Botswana, comprising telecommunications, information and communications technologies, radio communications, broadcasting, postal services and related matters and for matters connected or incidental thereto. The Authority is mandated to apply the provisions of the Act in a safe, reliable, efficient and affordable manner which promotes efficient provision of communication services throughout the country.

The objective of this document is to outline BOCRA assessment procedures for provision of commercial broadcasting which include Television, Radio and Subscription Management services in Botswana. One of the objectives being to contribute to the realisation of ‘Vision 2016 - Towards Prosperity for All’ which states: “Botswana will have taken strides to become a regional powerhouse in the field of production and dissemination of information. Botswana will also have utilised its communication capacity in the electronic media. This will enable Botswana to become an informed nation in which a culture of transparency and accountability will flourish.”

In particular, the Authority will endeavour to

- “ensure the widest possible diversity of programming and optimal utilisation of the spectrum resources”
- promote development of broadcasting as one engine of economic growth;
- enhance citizen empowerment within the broadcasting sector by specifying quotas for citizen ownership;

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- encourage investment in and promote stability of the broadcasting industry as well as a fair and competitive environment.

To this end, the Authority has developed application and assessment procedures for broadcasting licences in Botswana to guide members of the public on how to apply for a commercial broadcasting and Subscription Management Service licence in Botswana.

2 DEFINITIONS

Authority means “the Communications Regulatory Authority established under Section 3 of the Communications Regulatory Act No.19 of 2012”;

Broadcasting means “the processes whereby the output signal of a broadcasting organisation is taken from the point of origin, being the point where such signal is made available in its final format, and is conveyed to any broadcast target area by means of electronic communications”;

Broadcasting Equipment means “any equipment used for transmitting and receiving broadcasting services including monitors, set top boxes and TV and radio receivers”

Broadcasting Service means “a service which consists in the broadcasting of television or sound material including subscription management service to the public or sections of the public or the subscribers to such service”;

Broadcasting System means “a network of broadcasting equipment which is used or capable of being used to provide broadcasting services”

Commercial Broadcasting service means, “a broadcasting service operating for profit and available to the public free of charge or through a subscription”

Subscription Management Service “means provision of service operated to enable consumption of a subscription broadcasting service;

3 COMMERCIAL BROADCASTING SERVICE

3.1. In terms of Section 31 (1) of the Act, no person shall carry out any broadcasting or re-broadcasting activity unless he or she has a valid licence issued by the Board. A state broadcaster shall not require a licence to operate. Therefore, any person or entity seeking to operate a system for the provision of broadcasting services has to obtain authorisation from BOCRA.

The proprietor of a commercial broadcasting service can either be a natural or a juristic person. In assessing the applicants the Authority will put emphasis not only on the business case and the technical aspect of the proposal but will consider and not limited to the following:

3.1.1 The Authority defines “significant shareholding” to be at least 65 % of shares for television, 51% for Subscription Management Service and 80 % for radio - thus enabling foreign investment in this capital-intensive industry and at the same time securing control by Batswana.

3.1.2 In order to promote diversity, the Authority will - where there is more than one application for a particular frequency - grant preferential treatment to applicants that do not own or have no shares in another broadcasting station in Botswana.

3.1.3 An applicant for a commercial broadcasting service licence will have to demonstrate to the Authority that there is;

3.1.3.1 demand for such a service in the proposed licence area; for example a market study/survey.

3.1.3.2 capability, expertise and experience in television or radio broadcasting or subscription management service;

3.1.3.3 the availability of sufficient financial means and business experience.

3.1.4 No broadcasting licence will be granted to any party, movement, organisation, body or alliance which is of a party political nature. As yardsticks on whether an applicant falls under this disqualification, the Authority will consider ownership, funding, affiliate membership, management, programming and public pronouncements which might indicate identification with a particular political party.

3.2. The Authority requires commercial broadcasting service to provide:

3.2.1 sustainable investment;

3.2.2 a diversity of programming either as variety or special format services or;
Proposed packages of service availed upon subscription

3.2.4 where applicable-regular local news coverage and informative programming with local content;

3.2.6 a contribution to job creation and human resource development in the broadcasting and related industries;

3.2.7 innovation in technology and formats.

3.3. The Authority will not determine how commercial broadcasting services structure their programmes or guide the nature and content of materials for their programming or that of the service enabled by a Subscription management service. The following content-related requirements serve only as broad guidelines. The commercial broadcasting service shall

3.3.1 meet high professional quality standards;

3.3.2 offer programmes that provide information, entertainment and education;

3.3.3 contribute to the development of free and informed opinion and, as such, constitute an important element of the democratic process;

3.3.4 reflect, as comprehensively as possible, the range of opinions and of political, philosophical, religious, scientific and artistic trends;

3.3.5 respect human dignity and human rights and freedoms, and contribute to the tolerance of different opinions and beliefs;

3.3.6 further international understanding and the public's sense of peace and social justice, defend democratic freedoms, serve the protection of the environment, contribute to the realisation of equal treatment between men and women;

3.3.7 broadcast news and current affairs programmes which must be comprehensive, unbiased and independent, balanced as well as commentary which shall be clearly distinguished from news;

3.3.8 promote local content as per the set quota;

3.3.9 observe laws relating to copy-right and neighbouring rights;

3.3.10 not discriminate on the basis of race, ethnicity, place of origin, political opinions, colour, gender, age or creed;

3.3.11 not broadcast programmes which contain pornography and obscenity;

3.3.12 not broadcast programmes which contain, promote or perpetuate hate messages or any prejudices against any person or group of people.

3.3.13 not broadcast content which may disturb or be harmful to children where a large number of children may be expected to be the audience and observe watershed periods.

3.4. Any performance promises by applicants which go beyond the above requirements will form part of the licence conditions.

3.5. Commercial broadcasting services must submit detailed information about their financial resources, business plans and relevant cash flow projections over 5 years, showing a realistic calculation of the expected levels of costs and revenue based on an analysis of the potential market and target group(s).

In considering the applications, the Authority will be guided by the applicant's ability to provide all the necessary resources, including adequate staffing levels; realism of the financial and original business plans that promote competition and market growth submitted; geographic coverage; capacity to explain their broadcasting plans and vision for the service.

All copies of documents submitted to the Authority are to be certified by a Commissioner of Oaths.

3.6. In assessing applications, the Authority shall consider whether the applicant:

3.6.1 will contribute to media diversity in terms of ownership and content;

3.6.2 will provide news and information programming of benefit to the public;

3.6.3 will promote Botswana music, content, creative arts and culture;

3.6.4 will promote the economic empowerment of Botswana citizens in terms of both ownership and employment;

3.6.5 will contribute significant investment to national economic development;

3.6.6 will contribute to job creation and human resource development on a sustainable basis

3.6.7 has the necessary experience and expertise to implement the project;

3.6.8 has secured adequate funding to establish and maintain the proposed broadcasting service;

3.6.9 has adequate financial and administrative capacity to assure appropriate staffing;

3.6.10 has submitted a detailed and realistic business plan that incorporates relevant cash flow and market projections;

3.6.11 has or will obtain equipment for broadcasting of an appropriate standard and in compliance with local and international technical specifications; including International Telecommunication Union (ITU) regulations and that the same is Type Approved by the Authority.

4 TECHNICAL STANDARDS

4.1 Satellite

- **Footprint**

The satellite footprint is the surface area covered by the signal from the satellite transponder. BOCRA will issue the licence in respect of the place of jurisdiction and in this case Botswana.

4.2 Radio Licence

The applicant will be required to apply for a radio licence if the uplink station will be operated from Botswana. Applicants have to submit a list of equipment which they plan to purchase or have in their possession as well as the geographical co-ordinates and the altitude of the transmitter sites and the height above ground of all antennas.

4.3 The licence will require the broadcasting service to operate the signal transmission systems with optimum limits to ensure adequate signal at the coverage area.

5 PROCEDURE FOR LICENSING

5.1 The procedure for licensing shall be transparent.

5.2 Application procedure

5.2.1 The duration for broadcasting service Licence shall for a period of Ten Years (10 years).

5.2.2 All correspondences of the Authority are channelled through the Chief Executive.

5.2.3 The Authority is responsible for making sure that these procedures are adhered to.

5.2.4 Applications have to be submitted on a Broadcasting Service Licence Application Form and hand delivered or through registered mail on or before the deadline.

5.2.5 The Authority will decide on the applications and provide written reasons for its ruling, within ninety (90) working days of receipt of applications.

5.2.6 The Authority shall respond within seven (07) working days after receipt of the application for acknowledgment of receipt, including the next step of action.

5.2.7 Where an Applicant did not fill in an Application Form, the Applicant shall be requested to do so within the stipulated time prescribed by the Authority.

5.2.8 If the Application is accepted, further requirements from the Applicant may be made before a draft licence is sent to the Applicant; if unsuccessful the applicant is notified.

5.2.9 Upon satisfying the Authority with the preliminary requirements, a draft licence is sent to the Applicant to consider.

5.2.10 Negotiations of Terms and Conditions of the Licence will then follow (negotiations can take as long as the Authority deems essential).

5.2.11 BOCRA will notify the Minister in line with Section 6 (2) (i) of the CRA Act.

5.2.12 The Licence is awarded.

5.2.13 Applications shall be processed within a period of 90 (ninety) working days from the date of receipt and if the applicant fails to submit the required information within this period, the application shall be closed. A 'cooling off' period of 06 months shall be enforced within which the applicant shall not be allowed to submit a fresh Application on a similar business.

5.3 Renewal of Licences

5.3.1 The renewal of licences will be dependent upon compliance with the terms and conditions of the Licence. Where an existing Licensee did not satisfy the terms and conditions during its licence term, the procedure as described under 5.1. to 5.2.12 above will apply.

5. Any performance pledges by applicants that go beyond the basic terms and conditions of the licence shall form part of the licence conditions.

6 FEE STRUCTURE

6.1 In terms of Section 31 (4) (a) of the Act, Regulations may provide for “the payment of an annual or other fees for broadcasting or re-broadcasting licences” from the licensees.

6.1.1 Such fees are provided for under the Broadcasting (Fees) Regulations, 2005.

6.2 Application fee as per Broadcasting (fees) Regulations, 2005

6.2.1 Commercial broadcasting services application fee is P5,000.00. These fees must accompany the application and are not refundable.

6.3 Annual licence fee

6.3.1 for Commercial broadcasting services: 1 % of Annual Net Turnover, payable three months after the end of each operational year;

All broadcasting services shall submit audited financial statements to the Authority annually within 90 days of the end of the financial year.

6.4 Amendment Fee

An Amendment fee shall be charged for any application for an amendment of the original licence conditions by more than 15 %, there shall be charged an Amendment Fee which shall be determined by the Authority in line with the scope of the proposed amendments, but which shall not exceed the original application fee.

6.5 Renewal Fee

The Renewal Fee shall be identical to application fee.

7 MONITORING

7.1. The Authority will monitor adherence by operators to ensure compliance with all Licence conditions imposed on the licensee. BOCRA has a responsibility to protect and promote the interests of consumers, purchasers and other users and to monitor the performance of the regulated sectors in relation to among other things availability, quality and standards of services, competition, pricing, the efficiency of production and distribution of services.

In terms of Section 36 of the Act, the Licensee shall;

7.1.1 keep and store sound and video recordings of all programmes broadcast or re-broadcast for a minimum period of 3 months after the date of transmission of the broadcast or re-broadcast, or for such further period as may be directed by the Authority; and

7.1.2 on demand by the Authority produce such material that has been broadcast for examination or reproduction.

7.2. In addition, all Licensees shall keep the following records for the period of their licence or any period that the Authority may decide:

7.2.1 documentation relating to the ownership and management of the service such as legal status and the constitution, details of the directors, members or trustees, the shareholding and financial records;

7.2.2 all contracts entered into by the Licensee;

7.2.3 a log of all programmes broadcast by the station or service enabled by the Subscription Management Service;

- 7.2.4 a file containing full records of public complaints received by the licensee and correspondence in this regard;
 - 7.2.5 a log of all advertisements broadcast by the station or service enabled by the Subscription Management Service;
 - 7.2.6 during an election period a log of all party-political advertisements and/or party political broadcasts;
 - 7.2.7 a log of all sponsorships for programmes,
 - 7.2.8 a log containing the percentage of Botswana music broadcast between 6 a.m. and 10 p.m.
- 7.3 The Authority shall from time to time request Licensees to submit to the Authority material as listed under 8.1. and 8.2 for examination. The Authority will audit such material to check whether the service is in compliance with its licence conditions and will send a report on the findings to the Licensee within eight weeks of receipt of the material.
- 7.3.1 Where there are minor irregularities, the Authority will recommend remedial action. However, in more severe cases the Authority will impose penalties in terms of the provisions of Section 88 of the Act.

8 PENALTIES

- 8.1.** In term of Section 6 (i) BOCRA shall impose administrative sanctions and issue follow up enforcement procedures to ensure compliance with conditions of licences permits, permissions, concessions, authorities and contracts. Hence any person who contravenes the provisions of the Act or Licence Conditions shall be dealt with accordingly with the applicable Section as outlined in the Act or Licence Conditions.
- 8.2.** The revocation of Licences or the refusal to renew licences shall be done in accordance with Section 86 of the Act.
- 8.2.1** The Licence may be withdrawn if Licensee does not commence its operations within a period stated in the licence conditions.
- 8.3** Where the Licensee does not comply with the conditions of the Act and/or the Licence, the Authority may issue a warning, giving a time limit for necessary corrections. If at the expiry of the time limit the licensee has still not complied, the Authority may withdraw the Licence.

9 APPENDIX

APPLICATION FORM FOR A COMMERCIAL BROADCASTING SERVICE LICENCE

This Form must be accompanied by a P5000.00 (Five Thousand Pula) Application Fee as per the Broadcasting (Fees) Regulations 2005

(Frequency)..... (Area).....

1. PARTICULARS OF APPLICANT (Person or body applying for licence)

1.1. Full name of applicant:

Street address:

Postal address:

Telephone number:

Fax number:

e-mail:

Name of contact person if different from name of applicant:

1.2. Broadcasting Service Licence applied for:

1.3. Proposed name of broadcasting service:

1.4. Legal form of applicant (attach founding documents):

1.5. If registered:

Office and place of registration:

Registration No.:

Date of registration:

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- 1.6. Attach a complete ownership profile, listing consortium partners and their equity holdings valued in Pula. Distinguish between owners who take an active role in the company and those with an equity interest only.
 - 1.7. Attach a shareholder agreement stating the control of and/or veto rights in the company.
 - 1.8. Attach details of any ownership interests in media, including broadcasting, subscription management services, postal and telecommunications, of the owners listed in the ownership profile.
 - 1.9. Attach curriculum vitae of the staff and management personnel setting out their relevant experience and qualifications in media, business, management, technical, journalism and other appropriate fields.

2. THE MARKET

- 2.1. Provide a population or subscriber profile of the licence area.
- 2.2. Describe the target group for the proposed broadcasting service.
- 2.3. Attach a market study.
- 2.4. Describe how the proposed broadcasting service will differ from the existing market players:

3. PROGRAMMING

3.1. Proposed hours of broadcasting for free to air or proposed packages of services upon subscription. For Subscription Services outline the options of programming service to be provided and conditions, under which the service is supplied;

3.1.1 the supply the time for initial connection after payment and the types of maintenance service offered either directly or through an agency, the compensation and refund arrangements for subscribers which apply if the contracted service is not met and summary of the method initiating procedures for the settlement of disputes as well as termination clauses;

3.1.2 the minimum number and allocation of channels carried on the billed system;

3.2. Describe the uniqueness of the proposed programming format or the service enabled by the managed subscription service and explain how it will add to the diversity of broadcasting in the licence area.

3.3. Will the proposed broadcasting or proposed managed subscription service provide for regular news services and programmes on matters of public interest? If so, how often during the day or how many channels will be dedicated to the same?

3.4. What kind of music and general programming will be broadcast and what approximate percentage is envisaged for Botswana music and other local content production?

3.5. Attach a draft programme schedule and different packages with the pricing should be included for subscription services.

4. FINANCES AND MANAGEMENT

4.1. Provide an organogram of the service's management and administration.

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- 4.2. Provide a business plan and relevant cash flow projections showing a realistic calculation of the expected levels of costs and revenue over a period of five years, in particular with regard to
- costs for capital investment (equipment, building, offices, vehicles and the like)
 - current costs (staff, royalties, rent, energy, communications and the like)
 - financial investment from owners
 - revenue (advertisements, sponsorships).
- 4.3. Attach a financial guarantee equivalent to the required peak funding for the service underwritten by a recognised financial institution registered in Botswana.
- 4.4. Are there any commitments from advertisers or sponsors? If so, attach documentation.
- 4.5. How many jobs - full-time, part-time, freelance - will be created by the broadcasting service?
- 4.6. Do applicants have any previous convictions, are there any pending charges against them, or have they ever been declared insolvent?

5. THE LICENCE AREA

5.1 Use a map to describe the geographical boundaries of the area of coverage or geographical coverage of the service enabled by the subscription management and the presence of offices for broadcasting service.

5.2 Provide the technical details of the service you are enabling;

- The name of the content integrator, including the location of the uplink facility and
- Name and detail the position of the Satellite used for the DTH service

6. EQUIPMENT

6.1. Provide a list of all the equipment which will be used by the broadcasting service.

6.2. For subscription services provide a list of all the equipment which will be used to enable the subscription management service. In considering the prevailing consumer equipment in Botswana, which equipment will the customer continue to use without having to acquire new equipment. Who will be responsible for setting up the equipment?

6.3 Clarify if the decoder or receiving equipment has a parental control mechanism allowing a subscriber to block a programme based on the classification of the programme, or a channel included in the service for which it provides support services and subscribers with information on how to use it.

6.4 Kindly provide information on the party responsible for software upgrades of your customer equipment and the mode of upgrade, that is, either physical or over the air upgrade. In case of technical fault during these upgrades who incurs the cost of maintaining or replacing the customer equipment?

6.5 The CRA Act requires that all the equipment used for broadcasting should be Type Approved. The purpose of Type Approval is to ensure that equipment that is being sold to consumers is safe for use, is able to be used near other equipment without causing interference or being interfered with (Electromagnetic Compatibility) and that conforms to right frequency bands designated to be used in Botswana. You are required to submit the following to enable approval of your equipment;

6.5.1 A brief technical description of the equipment including an explanation of the intended use of the equipment as presented to the user and any installation specific information relevant to compliance

6.5.2 User manual of the equipment

6.5.3 Declaration of conformity; this is a document produced by the manufacturer of the equipment declaring what standards the equipment complies to in reference to the above requirements

6.5.4 Test Report from a lab that the did the testing on the equipment

6.5.5 If the equipment has been Type approved in another country in Europe or Africa, you can submit the copy of that approval certificate as an alternative to (c) and (6.5.4) above

7. TECHNICAL MATTERS (give particulars where known)

7.1. Make and model of each proposed transmitter:

7.2. Proposed effective radiated power (ERP):

7.3. Proposed power output:

7.4. Proposed antenna polarisation:

7.5. Antenna gain

7.7 Type of antenna

6.8. Physical address (if any) of location of proposed transmitter:

6.9. Geographical co-ordinates or map reference of transmitter's position:

6.12. Kind of studio equipment to be used by the broadcasting service:

6.13. Licensee shall ensure that the broadcasting equipment complies with the relevant ITU recommendations for Region 1 and are compliant with the Authority's type approval procedures

6.14. Name, physical and postal addresses, qualifications of person/s that will be in charge of technical matters:

6.15 Proposed technical service plan. This should cover activities milestones and timeframes such as, acquisition of equipment, installation, trials/testing and live broadcasting.

7 COMMENCEMENT OF SERVICE

If a licence is granted, when will the service begin operations?