

(Legislative Supplement No. 54)

LEGAL NOTICE NO. 187

THE KENYA COMMUNICATIONS ACT, 1998

(No. 2 of 1998)

IN EXERCISE of the powers conferred by section 46K of the Kenya Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communication Commission of Kenya, makes the following Regulations:—

THE KENYA COMMUNICATIONS (BROADCASTING)
REGULATIONS, 2009

1. These Regulations shall be cited as the Kenya Citations.
Communications (Broadcasting) Regulations, 2009.

PART I—PRELIMINARY

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Kenya Communications Act, 1998; No. 3 of 1998.

“advertise” means to broadcast any item in return for payment or other valuable consideration to a broadcaster with the intention of—

- (a) selling to a viewer or listener, any product or service;
- (b) convincing a viewer or listener of a belief or course of action;
or
- (c) promoting a product, service, belief, course of action, person or organisation;

“broadcasting licence means a license issued by the Commission permitting the licensee to provide broadcasting services;

“broadcast market” means the area, specified in the broadcasting licence by the Commission, within which a licensee is licensed to operate;

“child” means any human being under the age of eighteen years;

“disaster” means a serious disruption of the functioning of the society causing widespread human, material or environmental damage and losses which exceeds the ability of the affected community to cope using their own resources, and includes any event or circumstance arising out of accidents, natural phenomena, fires, floods, explosions, or incidents involving exposure or potential exposure to radioactive or toxic materials;

“infomercial” means any advertising broadcast in visual or audio form, lasting for more than two minutes, which may contain

demonstrations of the use of the product or service advertised, and includes direct offers to the public in return for payment, and results in the broadcaster receiving payment in monetary terms or otherwise;

“licensee” means holder of a broadcasting services licence;

“local content” means the total of all television or radio programmes which fulfil any five of the following conditions:

- (a) the production is made in either Kenya’s native languages or official languages of Kenya;
- (b) production was done in Kenya;
- (c) the content deals with issues that are unique and relevant to Kenyan audiences;
- (d) at least twenty per centum of the share of the production company are owned by Kenyans;
- (e) a majority of the artistes are Kenyans;
- (f) the location of shooting, in case of audiovisual programmes or performance was in Kenya;
- (g) the author thereof must be a Kenyan national and in case of co-authorship or multi-authorship fifty per centum or more of the authors must be Kenyan;
- (h) the production is made under Kenyan creative and technical control,

but does not include news and commentaries;

“national emergency organizations” include the police force, security forces, fire brigade, ambulance services, medical services, veterinarian services and environmental disaster agencies, whether or not such organizations are owned and managed on a private or public organizations;

“political party” means a party registered by the Registrar of Political Parties as a political party in Kenya under the Political Parties Act, 2007;

No. 10 of 2007.

“polling period” means the period covering the period of national general elections are held, including election campaigns and post-election and referendum period;

“programme” means a body of live or recorded material consisting of images, sounds or both embodied in signals emitted for the purpose of ultimate broadcasting’;

“programme segment” means a programme which, in audio-visual sense, presents one whole unit, with a beginning and end, clearly separated from other segments and content;

“public broadcaster” means the public broadcaster designated under section 46E of the Act;

“public emergency service” means broadcasting services offered

in the event of a disaster emergency on the request of person authorized by the government;

“re-broadcasting” means the simultaneous or subsequent broadcasting by one broadcasting organization of the broadcasts of another broadcasting organization;

“satellite broadcasting service” means a broadcasting service that is broadcasted through transmitters situated on a satellite;

“sponsored programme” means a programme which all or part of its costs are paid by a sponsor, with a view to promoting that sponsor's, or another sponsor's name, product or service;

“station programming format” means an arrangement of programmes which are presented on a broadcasting station;

“subscriber” means a person who, in relation to subscription television and or radio broadcasts, has entered into an agreement with a provider of subscription radio or television services;

“subscription broadcasting services” includes, among other services, cable broadcasting and multi-channel satellite distribution services from foreign territories that are offered through subscription;

“subscription management services” means a service which involves the provision of support services to a subscription broadcasting service which may include, among other services, subscriber management support, subscription fee collection, call centers, sales and marketing, and technical and installation;

“terrestrial broadcasts” means the services that are broadcast from a transmitter situated upon the earth's surface within the country;

“terrestrial digital signal distributor” means any person who provides network facility operator services for multimedia broadcasting;

“watershed period” means the time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Commission by Notice in the Kenya Gazette, within which content intended for an adult audience is not to be aired.

PART II—LICENSING

3. (1) Any person who wishes to provide broadcasting services in Kenya shall apply to the Commission for the licence through the prescribed procedure.

General requirements.

(2) The Commission shall provide information relating to the availability of broadcasting frequencies, the application requirements and the selection criteria for issuance of a licence.

(3) A person who wishes to provide broadcasting services in more than one station shall apply for a licence for every broadcasting station it wishes to operate.

(4) The Commission may require an applicant to provide additional documentation or information which that is directly relevant

to assessing whether the applicant meets the criteria established in the Act and regulations for the grant of the licence.

(5) The Commission shall publish applications received for broadcasting licences in the Gazette and invite the public to comment before it issues of a licence.

(6) The Commission shall grant successful a applicant a broadcasting services licence and require the licensee to establish the necessary broadcasting infrastructure and commence broadcasting within a period of twelve months.

(7) The commission shall revoke the licence of a licensee who does not establish the necessary broadcasting infrastructure within the period specified in paragraph (6).

4. (1) A person applying for a licence for a free-to-air commercial broadcasting service or services shall furnish the Commission with a business plan which shall include the—

Application for a commercial broadcasting services licence.

- (a) evidence of technical capacity in terms of personnel and equipment to carry out the broadcasting services;
- (b) evidence of relevant experience and expertise to carry out the broadcasting services;
- (c) evidence of the capacity to offer broadcasting services for at least eight continuous hours in a day;
- (d) programme line-up or schedule for the broadcasting services which the licence is sought; and
- (e) such other information or requirement as the Commission may from time to time prescribe.

(2) A person who applies for a licence to provide subscription television or radio service shall, unless it is otherwise prescribed by the Commission, comply with paragraph (1) and satisfy the Commission that it has the capacity to offer a minimum of ten channels to each subscriber.

5. (1) A person applying for a community broadcasting licence shall furnish the Commission with—

Application for a community broadcasting licence.

- (a) information on the service for which the community broadcasting licence is sought for;
- (b) the minutes of the meeting where it was resolved to establish a community broadcasting station;
- (c) proof of the sources of funding and sustainability mechanisms;
- (d) weekly programme schedules for the broadcasting services which the licence is sought; and
- (e) such other information or requirement as the Commission may from time to time prescribe.

6. (1) The Commission shall—
- Obligations relating to broadcasting services.
- (a) ensure that broadcasting services reflect the national identity, needs and aspirations of Kenyans;
 - (b) ensure that broadcasting services are delivered using the most efficient and effective available technologies;
 - (c) develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among various tiers of broadcasting;
 - (d) ensure that every applicant secures relevant permission or entered into agreements or arrangements necessary for the operation of the broadcasting service.
- (2) All broadcasters shall—
- (a) annually file with the Commission documents showing their station identity and any changes thereto;
 - (b) ensure that their station identity is unique and does not cause confusion;
 - (b) keep such records as the Commission may prescribe from time to time;
 - (c) reveal their station's identity at intervals of sixty minutes during the period which broadcasts are made from that station; and
 - (d) state, at least twice within a period of twenty four hours, all the frequencies and channels on which the broadcasting station is licensed to operate state.
- (3) In the case of free-to-air broadcasting services the Commission shall ensure that the services—
- (a) provide the amount of local content as specified in the licence;
 - (b) include news and information in their programming, as well as discussions on matters of national importance; and
 - (c) adhere to strictly to the Commission's or subscribed programme codes in the manner and time of programming schedules .
7. The Commission may—
- Broadcasting licence fees.
- (a) prescribe fees payable for, among others, the broadcasting services licence, application, renewal, transfer, annual licence fee and any other fees related to the services; or
 - (b) exempt the public broadcasting services and any other licence category from payment of any fees prescribed pursuant to paragraph in (1).
8. A licensee shall, not later than fourteen days before
- Commencement of

commencement of broadcasting services publish a notice in a news paper, with wide circulation in the licensee's coverage area, containing-

broadcasting service.

- (a) a statement on the licensee's intention to transmit a broadcasting service from a station in the licensee's coverage area;
- (b) the commencement date and time of transmissions;
- (c) the assigned frequency or channel that the station shall operate from;
- (d) the station programming format;
- (e) a statement inviting the members of the public to contact the licensee in case any transmission by the licensee causes interference with the services provided by other licensees; and
- (f) the address and telephone number of the licensee.

9. (1) A licensee may, within a period of six months before the expiry of its licence apply to the Commission for the renewal of the in such manner as the Commission may prescribe.

Renewal of licences.

(2) Where a licence is renewed, the applicant shall prior to the issuance of the licence pay such Where a licence is renewed, the applicant shall prior to the issuance of the licence pay such annual fees as the Commission may prescribe fees as the Commission may prescribe.

10. (1) No persons other than the public broadcaster shall be directly or indirectly, entitled to more than one broadcast frequency or channel for radio or television broadcasting in the same coverage area.

Ownership and control.

Provided the Commission shall prescribe a timeframe for existing stations to comply with this requirement.

(2) The shareholding of a licensee shall at all times comply with the Government's Communications Sector Policy, as may be published from time to time.

(3) A licensee shall, at least ninety days prior to effecting such change, notify the Commission of any proposed change in ownership, control or proportion of shares held in it.

Provided that:

- (a) any change in shareholding exceeding fifteen per centum of the issued share capital; or
- (b) the acquisition by an existing shareholder of at least five per centum additional shares,

shall require the prior written consent of the Commission and the Commission shall notify the applicant of its acceptance or refusal stating the reasons for the refusal, within thirty days of receipt of the application for the consent.

(4) A notification of change in ownership, control or proportion

of shares held in a licensee shall state—

- (a) the date when the intended transfer of ownership or part thereof is to be effected;
- (b) the name and address of the acquirer;
- (c) the names, nationality and addresses of persons who are in control of the business; and
- (d) any change in the name or address of the business.

(5) In considering an application for a written consent for transfer of ownership or change of person in control or change in shareholding of a broadcasting licensee the Commission shall consider—

- (a) the capacity of the acquiring entity to roll out the broadcasting services;
- (b) the nature of broadcasting services and programming that the acquiring entity intends to roll out;
- (c) the extent to which the allocated frequency resource(s) of the entity to be acquired have been utilized;
- (d) the possible impact on promotion of pluralism and diversity that the transfer may have;
- (e) the effect or impact of the transfer on competition or promotion of competition in the sector;
- (f) whether the transfer conformity with the stipulations of the sector policy;
- (g) the past and current compliance record, relating to the conditions of the current licences, of the acquiring and acquired entities,; and
- (h) any other matter as the Commission may consider relevant.

(6) A broadcaster shall not lease or transfer broadcast frequencies or channels assigned to it to any other person without the written authority of the Commission.

(8) For companies that are listed in the stock exchange, the Capital Markets Authority Act shall apply.

Cap. 485A.

PART III—BROADCASTING SERVICES

11. (1) A Public Broadcaster shall—

- (a) provide independent and impartial broadcasting services of information, education and entertainment in English and Kiswahili and such other languages as the broadcaster may decide;
- (b) conduct the broadcasting services impartially and consider to the interests and susceptibilities of the different communities in Kenya;
- (c) provide and receive from other persons material to be

Public broadcasting service.

broadcast:

Provided that in acquiring such material, the public broadcaster shall have regard to the need to maintain the distinctive character of the public broadcasting service and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(2) The public broadcasting service shall be supported by revenues from the exchequer, grants, donations and its commercial services but shall not draw from advertising and sponsorship.

(3) The public broadcaster shall not lease or transfer the broadcast frequencies or channels assigned to it for use in public broadcasting.

(4) The Commission may, on application by the public broadcaster, grant the public broadcaster a licence to provide broadcasting services on a commercial basis.

(5) Where the public broadcaster is granted a licence to provide broadcasting services on a commercial basis, it may be required to maintain and keep separate accounts for its public and commercial broadcasting services.

(6) The public broadcaster may, when providing its commercial services, enter into public private partnership:

Provided that the public private partnership complies with the law relating to public procurement.

(7) The Commission shall give priority and ensure equitable allocation of resources for the public broadcasting services.

12. A commercial free-to-air broadcaster shall—

- (a) be issued with a broadcasting service licence which includes the frequency or channel licence for each broadcast station that utilizes a frequency or channel resource ;
- (b) provide a diverse range of programming that reflects the identity, needs and aspirations of people in its broadcasting area;
- (c) where the commercial broadcaster provides national coverage, berequired, without prejudice to paragraph (a) and (b) , to provide programming that reflects the identity and needs of the people of Kenya;
- (d) commence broadcasts within twelve months after being issued with a licence;
- (e) not acquire exclusive rights for the non-commercial broadcast of national events identified to be of public interest as may be determined by the Commission from time to time;

(2) The Commission shall, in consultation with the Minister in charge of information, license foreign commercial broadcasters, subject

Commercial free-to-air broadcasting service.

to availability of frequencies or channels.

13. (1) A Community broadcaster shall—

Community
broadcasting
services.

- (a) reflect the needs of the people in the community including cultural, religious, language and demographic needs;
- (b) deal specifically with community issues which are not normally dealt with by other broadcasting services covering the same area; and
- (c) be informational, educational and entertaining in nature; Provide a distinct broadcasting service that highlights community issues.

(2) The Commission shall, through the frequency plan, ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

(3) A community broadcaster shall ensure all the funds generated from the operations of a community broadcasting station are re-invested in activities benefiting the Community.

(4) The Commission shall monitor community broadcasters to ensure that the funds generated from operations of a community broadcasting station are re-invested in activities benefiting the community.

(5) The Commission shall allow community broadcasting licensees to advertise, on their stations, adverts that are relevant and specific to that community within the broadcast area.

14. (1) The Commission may upon application, in the prescribed form, grant a subscription broadcasting services licence for—

Subscription
broadcasting service
licenses and
subscription
management
services.

- (a) satellite broadcasting services;
- (b) cable broadcasting services; and
- (c) subscription Management services.

(2) The Commission may require a licensee granted a licence under paragraph (1) to—

- (a) distribute broadcasting services, whether through cable or satellite within the borders of the Kenya or from Kenya to other territories;
- (b) provide a prescribed minimum number of Kenyan Broadcasting channels;
- (c) provide diversity in programming:

Provided that a satellite subscription broadcasting service provider whose signal originates from outside Kenya and who wishes to provide their broadcasting services in Kenya shall have landing rights authorization from the Commission and be licensed as

subscription service provider or provide their services through a subscription management service provider.

(3) The Commission may require licensee granted a licence for to offer subscription management services to provide the following services on behalf of a multi-channel satellite provider broadcasting from outside Kenya—

- (a) subscription fee collection;
- (b) marketing and sales;
- (c) technical and installation support;
- (d) operation of a national call centre;
- (e) guarantees of quality of service and customer protection; and
- (f) any other services as the Commission may require.

(4) A subscription management services provider shall not enter into contractual arrangements with a foreign multi-channel satellite provider unless the foreign multi-channel satellite provider has landing rights in Kenya.

(5) A subscription management services licensee shall be required to have minimum local equity participation of twenty per centum.

15. (1) A person licensed to provide subscription broadcasting service or subscription management services shall provide a subscriber with information, in writing, relating to the —

- (a) products and services offered;
- (b) cost of subscription including installation and maintenance;
- (c) options of programming service available;
- (d) conditions under which the service is supplied;
- (e) instructions regarding to usage of the service in the official languages;
- (f) number and allocation of channels carried on the system and the programming available on each channel;
- (g) billing and complaints procedures;
- (h) address and telephone number of the licensee's business office.

(i) notice period of at least fourteen days to be given before effecting to any changes in the programming service or channel allocation, in writing.

(2) A person licensed to provide subscription broadcasting service or subscription management services shall provide means that parents or guardians may use to control access to broadcast content that

Obligations for subscription broadcasting services licensees and subscription management services.

is accessible and that they may consider inappropriate.

16. (1) The Commission may upon application in the prescribed form grant a licence for the provision of terrestrial digital broadcasting signal distribution services.

Terrestrial digital
broadcasting signal
distribution services

(2) The Commission may require a person granted a licence under paragraph (1) to—

- (a) distribute on its digital platform free to air and subscription broadcasting services and related data on behalf of other licensed broadcasters;
- (b) submit to the Commission for approval any contractual agreements entered into with other licensed broadcasters for the distribution of broadcasting services prescribed under its license;
- (c) provide its services on such terms and conditions as to access, tariffs and quality of service as the Commission may prescribe.
- (d) terminate the provision of services to a broadcaster within fourteen days of notification by the Commission.

(3) A person granted a licence under this regulation may impose charges in respect of—

- (a) any contractual arrangements entered into under paragraph (2);
- (b) reception of broadcastings services requiring conditional access;
- (c) the provision by of any apparatus or device enabling the reception of digital broadcasting services, including free-to-air broadcasting services.

(4) A person granted a licence under this regulation shall, in consultation with other broadcasters, prepare an electronic programme guide for audiences to use to access information relating to the schedules of programme materials for all broadcasting services it carries.

(5) A licensee shall ensure that an electronic programme guide prepared in paragraph (4) shall be user friendly and that its easy to navigate through programme materials which are the subject of a broadcasting service.

17. The Commission may issue other broadcasting service licences as it may find necessary from time to time.

Other broadcasting
services.

PART IV—CONTENT

18. Content prescribed in this part shall form the basis upon which the Commission or a recognized body of broadcasters shall prepare their respective programme codes.

Minimum standards.

19. (1) A licensee shall ensure that no broadcasts by its station:-

General
requirements.

- (a) contains the use of offensive language, including profanity and blasphemy;
- (b) presents sexual matters in an explicit and offensive manner;
- (c) glorifies violence or depicts violence in an offensive manner;
- (d) is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- (e) has no program rating from Kenya Films Censorship Board indicated prior to the commencement of such programs.

20. A licensee shall—

Protection of children.

- (a) ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence;
- (b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;
- (c) request for permission to conduct an interview with a minor from the minor's parents or guardian before conducting an interview with a minor.

21. A licensee to ensure that news and information are broadcast and presented in a balanced manner, without prejudice or negligent departure from facts through distortion, exaggeration, misrepresentation and material omissions give fair reporting regardless of its context and importance.

News reporting.

22. A licensee shall ensure that—

Unconfirmed reporting.

- (a) reports broadcast from its station are based on fact and that are not founded on opinion, rumour supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly;
- (b) it does not broadcast any report where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.

23. A licensee shall broadcast correction of any factual error-

Correction of errors in reports.

- (a) without reservation, as soon as it is reasonably possible after it has been established that there was an error; and
- (b) with such degree of prominence and timing and shall be broadcast during a similar time-slot as the original error as soon as is reasonably possible and where appropriate shall include an apology.

24. A licensee shall endeavour to ensure that when broadcasting

Reporting on controversial issues.

controversial issues of public interest during live broadcasts,

- (a) a wide range of views and opinions are represented.
- (b) a person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, and who wishes to reply to such criticism is given an opportunity by the licensee to reply to such criticism within a reasonable time;
- (c) a reply to criticism under subparagraph (b) is given a similar degree of prominence and shall be broadcast on a similar time-slot, as soon as is reasonably possible.

25. During a polling period, a licensee shall—

Polling period.

- (a) provide equitable coverage and opportunities to registered political parties participating in an election and in particular to presidential candidates;
- (b) ensure that the name of the political party or sponsor, if any, on whose behalf a broadcast is made, is announced, immediately before the commencement and immediately after such broadcast;
- (c) permit any broadcast sponsored by or made on behalf of a political party other than an advertisement thereof to be dramatized; and
- (d) ensure that the employees of a licensee who wish to be candidates for any elective position(s) resign from their employment with the licensee during polling period.

26. (1) A licensee shall ensure that any person who is to be interviewed in any of the licensee's broadcast is—

Conduct of interviews.

- (a) advised of the subject of the interview; and
- (b) informed, before the interview takes place, to determine whether the interview is to be recorded or broadcast live.

(2) A licensee shall exercise sensitivity in conducting interviews with bereaved persons, survivors of traumatic incidents or witnesses thereof.

27. A licensee shall ensure that any commentaries that are broadcast by a licensee, whether as comments are made by the licensee or by any person invited by a licensee, are presented in a manner that clearly indicates that they are based on facts which are clearly stated.

Commentaries.

28. A licensee shall—

Sexual offences.

- (a) not disclose, in a broadcast, the identity of a victim of a sexual offence unless such victim consents in writing to the disclosure of his or her identity.
- (b) avoid the use of unnecessary or repetitive detail when broadcasting the circumstances of a sexual offence.

29. A licensee shall not broadcast any information acquired from

Consent to

a person without that person's consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.

broadcast.

30. A licensee—

Programme
sponsorship.

- (a) shall not accept sponsorship of news broadcasts;
- (b) accept sponsorship of weather broadcasts, financial broadcasts or traffic reports:

Provided that the licensee shall retain ultimate editorial control of the sponsored programme;

- (c) shall ensure that sponsorship of an informative programme does not compromise the accuracy and impartiality of the programme's contents;
- (d) shall not unreasonably discriminate against or favour a particular sponsor;
- (e) shall not broadcast any programme which has been sponsored by a political party save for an advertisement by a political party in which case the advert must be distinctly identified so as not to be confused with normal programming;
- (f) shall acknowledge the sponsorship of a programme immediately before and after the programme is broadcasted, and identify any connection between the programme's subject-matter and the sponsor's commercial activities.

31. (1) A licensee shall not broadcast an infomercial—

Infomercials.

- (a) for a period exceeding three and half hours of the performance period in any day;
- (b) during prime-time; or
- (c) during any break in the transmission of a children's programme.

(2) A licensee shall ensure, through visual or audio form, that the broadcast of any infomercial is distinguishable from any broadcast programme material.

(3) A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest, decent and conform with the principles of fair competition.

(4) The provisions of paragraphs (1) and (2) shall not apply to stations which exclusively broadcast infomercials.

32. A licensee shall not knowingly pay any person involved in a crime or any person who has been convicted of a criminal offence, in order to obtain information.

Payment of
criminals.

33. (1) A licensee shall ensure that it only broadcasts advertisements that are lawful, honest, decent and conform with the

Advertisements.

principles of fair competition.

(2) A licensee shall ensure that advertisements broadcast by its station do not—

- (a) contain any descriptions, claims or other material which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and
- (b) unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.

(4) A licensee shall not unreasonably discriminate against or favour any advertiser.

(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when large numbers of children are expected to be watching or listening to programmes.

(6) A licensee shall ensure that—

- (a) any advertising breaks are clearly distinguishable from broadcast programmes; and
- (b) its presenters, when reading advertisements, make a clear distinction between the programming material and the advertisements they deliver.

34. (1) A licensee shall ensure that—

Watershed period.

- (a) content which depicts or contains scenes that are rated by the Kenya Film Classification Board as adult, or are of the language intended for adult audiences are not aired during the watershed period;
- (b) all programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual;
- (c) consumer advice such as warnings, labelling, classification details and other announcements are given prior to the telecast of a programme or its trailers.
- (d) all trailers and promotional material shown before the watershed time comply with paragraph (b) and (c).

(2) All licensees shall exercise responsibility in scheduling of programmes to reduce the risk of causing offence.

35. (1) The Commission may require a licensee to commit the minimum amount of time, as maybe specified in the licence, to broadcast of local content or as may be prescribed from time to time by

Local content.

the Commission by notice in the gazette:

Provided that where a broadcaster is, unable to comply with the foregoing, the Commission shall require such broadcaster to pay such an amount of money, as may be prescribed by the Commission into the Fund.

(2) The Commission shall from time to time prescribe a minimum local content quota for foreign broadcasting stations that broadcast in Kenya.

36. (1) the Commission shall require broadcasters to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted.

Content for the physically challenged

(2) The Commission shall prescribe by notice in the gazette the manner, time and percentage of programmes targeting persons referred to in paragraph (1) shall be broadcast.

PART V—PROGRAMME CODE

37. (1) The Commission shall prescribe a Programme Code that sets the standards for the time and manner of programmes to be broadcast by licensees.

Setting standards for programmes.

(2) A licensee shall be subject to the Programme Code prescribed by the Commission or by a duly recognized body of broadcasters under regulation 38.

38. (1) Pursuant to section 46H of the Act, any registered body of broadcasters wishing to operate under its own Programme Code shall submit such a code to the Commission for approval.

Acceptance of programme code.

(2) A body of broadcasters referred to in paragraph (1) shall satisfy the Commission that all its members subscribe and adhere to the Programme Code that has been approved by the Commission.

(3) A licensee who subscribes to a Programme Code prescribed by a body of broadcasters under paragraph (1) shall furnish the Commission with proof of membership, subscription and adherence to the Programme Code prescribed by the body.

(4) When considering a Code submitted for approval, the Commission shall have regard to the specific standards to be complied with and rules and practices to be observed as prescribed in part IV of these regulations and such other matters as the Commission may prescribe from time to time.

(5) In the event that the Programme Code is not acceptable either in part or in whole—

- (a) the Commission shall notify the body of broadcasters in writing and specify the remedial measures that the broadcasting body is to undertake in order to satisfy the Commission's requirements; and

- (b) the body of broadcasters shall within thirty days from the date of notification resubmit the revised Programme Code for reconsideration by the Commission.

(6) Once the Commission approves the Programme Code submitted under this regulation, the body of broadcasters shall publish its Programme Code and a list of broadcasters subscribing to the code, and avail both the Programme Code and list to the public.

- (7) The body of broadcasters shall —

- (a) avail to the Commission such information relating to the enforcement of the Programme Code as the Commission may be require and in the form prescribed by the Commission;

- (b) inform the Commission within five days if any of its members ceases to subscribe to the Programme Code of the body of broadcasters;

- (c) cause to be published in at least one newspaper circulating in Kenya a notice of the fact that the code is available for inspection by any member of the public.

- (d) review or cause the revision of the Programme Codes and enforcement mechanisms at least once in every two years from the date of the Programme Code and mechanisms came into force;

- (e) file the reviewed programme code with the Commission for approval.

PART VI—COMPLAINTS HANDLING PROCEDURE

39. (1) Every broadcaster shall develop a procedure, for handling complaints from persons who may be aggrieved by its broadcasts.

Complaints
handling.
procedure..

(2) The complaints handling procedure, shall, among other things cover the following —

- (a) full name of the broadcaster as it appears in the licence as well as the broadcast station identity specific to different broadcast services offered;
- (b) the physical postal and email addresses where complaints can be sent;
- (c) the contact person authorized to receive and handle complaints;
- (d) the manner in which the complaint may be lodged including the applicable languages;
- (e) details which need to be submitted when lodging a complaint;
- (f) the need for the complainant to retain a copy of every correspondence exchanged between complainant and broadcaster;
- (g) the manner in which the complaint shall be investigated and

process of investigation;

(3) In addition to the information under paragraph (2) the complaint handling procedure shall also include information—

- (a) to listeners or viewers that the first opportunity to resolve a complaint should be given to the broadcaster to resolve the complaint;
- (b) relating to the timeframes for responding to the complainant, and resolving the complaint;
- (c) relating to how complaints from physically challenged and illiterate consumers who are not capable of providing complaints in writing, shall be addressed;
- (d) on the methods of recording and tracking of complaints, together with the associated responses;
- (e) on the duration of storage of records of complaints received and actions taken;
- (f) on the retention and production of recordings of any programme which is the subject matter of a complaint;
- (g) on the categories of complaints which the broadcaster is under no obligation to respond to or complaints considered frivolous, vexatious or an abuse of the complaint process or from complainants who choose to remain anonymous.
- (h) on any other matter as the Commission may from time to time by notice in the gazette prescribe.

40. (1) A licensee shall—

- (a) document its complaints handling procedure;
- (b) inform their listeners or viewers at least once a day of the existence of a complaints handling procedure and how they can lodge a complaint regarding the broadcast station;
- (c) not dispose off broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Commission, the Tribunal or the High Court:

Provided that the clause in the licence stipulating the minimum duration that a licensee shall retain a copy of recordings of broadcasts shall not apply to this subparagraph; and

- (d) on 1st July of every year, submit to the Commission a written report of all complaints received during the period and the manner in which they were addressed.

41. (1) Every broadcaster shall, prior to the commencement of broadcasting services submit its Complaints Handling Procedure to the Commission for approval.

(2) In the event that the Commission does not approve the complaints handling procedure submitted under paragraph (1), in part

Obligations of licensees

Approval of Complaints Handling Procedure

or in whole—

- (a) the Commission shall specify the remedial measures the broadcaster should take in order to satisfy the Commission's requirements; and
- (b) the broadcaster shall within thirty days of being notified of the disapproval, resubmit the revised complaints handling procedure for reconsideration by the Commission:

Provided that in the interim, the Commission may require the broadcaster to handle any complaints submitted during that period in accordance with the procedure determined by the Commission.

(3) A broadcaster shall, after approval, publish its Complaints Handling Procedure and avail it to any person who reasonably requests.

42. (1) Where any person alleges that he has exhausted the broadcasters' complaints procedure and is not satisfied with the remedy offered or action taken, he may appeal to the Commission and such appeal shall be dealt with in accordance with the Dispute Resolution Regulations or such procedures as may be prescribed by the Commission from time to time:

Escalating
Complaints to the
Commission.

Provided that the Commission may, on its own motion, investigate a matter where in its view a broadcaster has breached the provisions of the Act, Regulations or the Programme Code.

(2) A broadcaster or the Commission shall not entertain a complaint or dispute lodged pursuant to a broadcast after ninety days from the date when the material complained of was broadcast;

PART VII—GENERAL PROVISIONS

43. (1) All broadcasting service providers shall provide a public notice of an emergency or a public disaster announcement upon the request of a person authorized by the Government.

Public emergencies.

(2) The Commission shall prescribe, by notice in the gazette the manner in which broadcasters shall provide information during public emergencies or national disasters.

44. Any person who contravenes any provision of these Regulations commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

Offence and penalty.

PART VIII—TRANSITIONAL PROVISIONS

45. (1) The Commission shall specify the following, among other conditions, in a terrestrial digital signal distribution licence—

Transition from
analogue to digital
television
broadcasting.

- (a) the percentage of the multiplex capacity that shall be used for relaying broadcast content and other related data;
- (b) the technical specifications of the multiplex and associated digital transmitters;

- (c) the requirement that the signal distributor to file such tariffs it proposes to impose on a broadcaster for approval by the Commission; and
- (d) universal service obligations.

(2) After the switchover from analog to digital broadcasting, all analog television broadcasters shall be required to relinquish the frequencies used for free-to-air television broadcasting to the Commission.

(3) Nothing in these Regulations shall be construed as preventing the Commission from requiring broadcasters on digital platform before the enactment of the Kenya Communications Amendment Act, 2009, to comply with the Act and these Regulations.

No. 1 of 2009.

46. (1) Pursuant to section 46R of the Act, all persons issued with broadcast permits prior to the commencement of the Kenya Communications (Amendment) Act, 2009 shall—

Transition of permits to licenses.
No. 1 of 2009.

- (a) be required to apply for broadcast licence(s) such as a manner as may be prescribed by the Commission;
- (b) pay such fees as may be prescribed by the Commission for the issuance of the broadcasting licence(s) to replace the permits and frequency licence and usage fees;
- (c) retain such radio frequency resources already assigned under the same terms and conditions of issuance:

Provided that they comply with such new terms and conditions that the Commission may be impose; and

- (d) in the event of failing to apply or qualify for the licence(s), cease to be a broadcaster.

(2) In addition to the requirements specified under section 46D (2), the Commission shall, when considering an application for a licence to replace a permit, consider—

- (a) the past compliance record of the applicant relating to adherence to the conditions of the broadcasting frequency licence; and
- (b) the status of frequency fee payments.

(3) Any person who holds a broadcasting permit and who has been assigned more than one broadcast frequency for either radio or television broadcasting services in the same broadcast coverage area, shall be required within a period not exceeding the licence term, to surrender all additional broadcasting frequencies to the Commission.

Made on the 22nd December, 2009.

SAMUEL POGHISIO,
Minister for Information and Communications.