



## **Stakeholder Comments on Draft 1 of the Communications (Content) Regulations**

The Malawi Communications Regulatory Authority (MACRA) is in the process of developing the Communication (Content) Regulations. MACRA received comments from interested stakeholders on Draft 1 of the Regulations and has made some revisions to the Regulations in view of the Comments received. MACRA hereby publishes the comments received and its responses to the comments.

Dated this 27<sup>th</sup> December 2022

**Daud Suleman**  
**DIRECTOR GENERAL**

**STAKEHOLDER COMMENTS ON DRAFT ONE (1) OF THE  
COMMUNICATIONS (CONTENT) REGULATIONS 2022 AND  
MACRA'S RESPONSES TO THE COMMENTS**

Clause No.	Provision	Comments	Proposition	MACRA's response
<b>Comments from MultiChoice</b>				
5(d)	<p>The Authority shall issue the following content licences categories –</p> <p>...</p> <p>(d) subscription management content broadcasting licence;</p>	<p>It is not clear from the term used in Reg. 5(d) whether the licence category contemplated is subscription broadcasting service or subscription management service.</p> <p>Subscription management services are purely administrative and do not involve content broadcasting. They therefore ought to not be referred to as content broadcasting services.</p> <p>The licence categorisation in Reg. 5(d) is different from and is not aligned with the licence categorisation in Reg. 19(1). Reg. 19(1) provides for subscription broadcasting and subscription management services licences.</p> <p>We propose that the licence category in Reg. 5(d) be aligned with s99(d) of the Communications Act, 2016,</p>	<p>Amend as follows:</p> <p>"The Authority shall issue the following content licences categories –</p> <p>...</p> <p>(d) <i>subscription <u>content management</u> <u>service</u> <u>content</u> <u>broadcasting</u> <u>licence</u>;</i></p> <p>(e) <i><u>subscription</u> <u>content</u> <u>broadcasting</u> <u>service</u> <u>licence</u>;</i></p> <p>(f) <i>any other licence category determined by the Authority from time to time."</i></p>	<p>Proposal accepted. The regulation has been amended to align with section 99 of the Communications Act and further to differentiate between Subscription Management Services (SMS) and Subscription Broadcasting Services (SBS).</p>

		which provides for a licence category for "subscription content management" and that Reg. 5 include an additional category of "subscription content broadcasting service licence".		
6(1)(b) and (c)	(1) In relation to broadcasting services, an applicant shall pay- ... (b) annual fees; (c) annual levies; ...	<ul style="list-style-type: none"> <li>We understand the importance of ensuring that the Authority is adequately funded in order to enable it to fulfil its statutory mandate.</li> <li>However, given the current post pandemic economy, it is clear that broadcasters are struggling to pay both an annual fee and annual levy while keeping their businesses afloat.</li> <li>We propose that the current suspension on the payment of levies by broadcasting licensees remain in place up until such a time as broadcasting sector has recovered and can afford to support themselves while paying fees and levies.</li> </ul>	<p>Insert a new subparagraph (3) to Reg. 6 as follows:</p> <p><i>"(3) The Authority may, where it deems it fit, grant a suspension of a Licensee's obligation to pay the fees in sub regulation (1)."</i></p>	<p>Proposal not accepted. Currently there is no suspension on payment of levies by broadcasters. Broadcasting licences provide for waiver of obligations including payment of fees in circumstances of <i>force majeure</i> and these are dealt with on a case by case basis.</p>
9(1)(a)	The Authority may amend a licence on any of the following grounds—  to ensure efficient	<ul style="list-style-type: none"> <li>We support the amendment of licences where it is necessary to ensure the efficient management of the communications sector.</li> </ul>	<p>Amend as follows:</p> <p><i>"(1) The Authority may amend a licence on any of the following grounds— (a) to ensure efficient</i></p>	<p>Proposal accepted.</p>

	management of the communication sector;	<ul style="list-style-type: none"> <li>• However, we propose that this be limited to instances where such amendments would not cause substantial prejudice to the licensees.</li> <li>• A similar approach has been adopted in s41(1)(a) of the Communications Act, 2016 ("the Act") in respect of amendments of licences issued under Part III and Reg. 10(1)(a) of the Licensing Regulations.</li> </ul>	<i>management of the communication sector provided that the amendment shall not cause substantial prejudice to the licensee;"</i>	
9(1)(b)	(1) The Authority may amend a licence on any of the following grounds— (b) to comply with any international broadcasting standards; or	<ul style="list-style-type: none"> <li>• While we have no objection to complying with international standards, we propose that amendments to licences be limited to those instances where such standards are binding on Malawi and on licensees. This would occur in instances where, for example, Malawi is a party to an international agreement.</li> <li>• A similar approach has been adopted in s41(1)(b) of the Act in respect of amendments of licences issued under Part III and Reg. 10(1)(b) of the Licensing Regulations.</li> </ul>	Amend as follows: "The Authority may amend a licence on any of the following grounds— (b) <u>if it is necessary</u> to comply with any international <del>broadcasting standards</del> <u>agreement to which Malawi is a party and has ratified</u> ; or"	The regulation has been revised to include international standards that have been adopted and published by the Authority and amendments in relation to compliance with international agreements that Malawi is a party to.
9(2)(a) and (3)	Before amending any provision of a licence, the	<ul style="list-style-type: none"> <li>• Reg. 9(2)(a) suggests that licensees will be given a</li> </ul>	Amend as follows: "(2) <i>Before amending any</i>	The Regulation has been revised. The approach in

	<p>Authority shall—</p> <p>give the Licensee not less than seven (7) days' notice and publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any licensee or any person with an interest an opportunity to make representations concerning the proposed amendment; and</p> <p>(b)...</p> <p>(3) A licensee or any person may submit a response to the proposed amendment within thirty days of the notice.</p>	<p>minimum of 7 days' notice on the proposed amendment, which is inconsistent with Reg. 9(3), which provides a licensee with up to 30 days in which to make representations on the proposed amendments.</p> <ul style="list-style-type: none"> <li>• It also appears from Reg. 9(3) that 30 days is the maximum that the licensee or any person will be afforded to provide their response to the proposed amendment.</li> <li>• We propose that 30 days be the minimum period provided for a licensee or interested parties to make representations.</li> <li>• We propose that these provisions be clarified.</li> </ul>	<p><i>provision of a licence, the Authority shall—</i></p> <p><i>(a) <del>give the Licensee not less than seven (7) days' notice and</del> publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any licensee or any person with an interest an opportunity to make representations concerning the proposed amendment; and</i></p> <p><i>(b)...</i></p> <p><i>(3) A licensee or any person <del>may be</del> given not less than thirty (30) days' notice to submit a response to the proposed amendment—within thirty days of the notice. "</i></p>	<p>section 41 of the Communications Act has been adopted. The minimum period to be given to licences and any interested party has been set at 30 days.</p>
9(4)	<p>If the Licensee does not respond within the thirty day period under this regulation, the amendment shall take effect on the thirtieth day after the date of</p>	<ul style="list-style-type: none"> <li>• We propose that the finalisation of amendments to licences be done in the same manner as the granting of licences, by publication in the Gazette, and that amendments come into force on the date on</li> </ul>	<p>Amend as follows:</p> <p><i>"If the Licensee does not respond within the thirty day period under this regulation, <u>the Authority shall publish the amendment in the Gazette as final and</u></i></p>	<p>Regulation 9(4) has been deleted. A new Regulation 9(5) has been inserted which provides that an amendment shall take effect upon final publication in the Gazette.</p>

	notice.	<p>which they are published in the Gazette.</p> <ul style="list-style-type: none"> <li>• A similar approach is adopted at s41(4) of the Act in respect of licences issued under Part III.</li> </ul>	<p><i>the amendment shall take effect <del>on the thirtieth day after the date of notice</del> upon <u>final publication in the Gazette.</u>"</i></p>	
9(5)(c)	<p>If the Authority receives a response from a licensee or any person, it shall consider the response and notify the licensee within thirty (30) days of the reply of its decision to either—</p> <p>(a) ...;</p> <p>(b) ...; or</p> <p>proceed with the proposed amendment in which case the amendment shall take effect on the fifteenth (15th) day after the date of the Authority's second notice.</p>	<ul style="list-style-type: none"> <li>• We reiterate our proposal that amendments come into force on the date they are published in the Gazette.</li> <li>• Where the Authority proceeds with the proposed amendment irrespective of the licensee's opposition to the proposed amendment, we propose that the Authority provide the licensee with reasons for the decision to proceed with the amendment. This will enable the licensee to assess the reasons and determine whether it intends to take any additional steps in that regard.</li> </ul>	<p>Amend Reg. 9(5)(c) as follows:</p> <p><i>(c) proceed with the proposed amendment in which case the amendment shall take effect <del>on the fifteenth (15th) day after the date of the Authority's second notice</del> upon <u>final publication in the Gazette.</u></i></p> <p>Insert a new subregulation (6) under section 9 to read as follows"</p> <p><i><u>"(6) The Authority shall, where it proceeds with the proposed amendment despite a licensee's opposition, provide the licensee with reasons for its decision."</u></i></p>	<p>Proposal accepted. The regulation has been revised and a new Regulation 9(5) inserted.</p>
10(1)	<p>A licensee may, within a period of six months before the expiry of its licence apply to the Authority for the</p>	<ul style="list-style-type: none"> <li>• It appears this provision requires that an application for licence renewal be done within the last six months of the licence tenure.</li> </ul>	<p>Amend Reg. 10(1) as follows:</p> <p><i>"A licensee may, <del>within a period of at least six months</del> before the expiry of its</i></p>	<p>Proposal accepted. The Regulation has been revised and a new Clause 10(4) inserted.</p>

	<p>renewal of the licence in such manner as the Authority may prescribe.</p>	<ul style="list-style-type: none"> <li>• However, our understanding is that this provision is intended to require that licensees apply for licence renewal at least six months before their licence expires, similarly to licence renewal in the context of electronic communications licensees, as set out in s44(1) of the Act.</li> <li>• We propose that this provision be clarified.</li> <li>• Furthermore, we propose that if a licensee has applied for renewal and the licence expires before they receive the Authority's decision on their application for renewal, then the licensee ought to be authorised to continue operating on the same terms as the expired licence until such time as the Authority has made its decision and issued a new licence.</li> </ul>	<p><i>licence apply to the Authority for the renewal of the licence in such manner as the Authority may prescribe."</i></p> <p>Insert a new Reg. 10(4) as follows:</p> <p><u><i>(4) Where a licence expires before the Authority has made a decision on the application for renewal, the Licensee shall continue operating on the same terms as the expired licence, until the Authority has communicated its decision or issued a new licence to the Licensee."</i></u></p>	
10(3)	<p>In considering an application for renewal of a licence, the Authority shall take into account- the past conduct of the licensee, which shall include, but not limited to-</p>	<ul style="list-style-type: none"> <li>• Reg. 11(1) of the Communications (Telecommunications and Broadcasting) Licensing Regulations, 2016 ("the Licensing Regulations") sets out the factors that the</li> </ul>	<p>Delete Reg. 10 and defer to the Act and the Licensing Regulations.</p> <p>Alternatively, amend Reg. 10 to make it consistent with Reg. 11(1) of the Licensing Regulations.</p>	<p>Regulation 10(3) has been revised to align with the Act.</p>

	<p>(i) level of compliance to the Act, Regulations, Rules, and licence conditions;</p> <p>(ii) timeliness in payment of licence fees and levies; and</p> <p>(iii) submission of information required by the Authority; and the financial and technical capacity of the licensee to provide the services.</p>	<p>Authority must consider when deciding whether to renew a licence. A similar approach is adopted in respect of electronic communications licensees at s44(3) of the Act.</p> <ul style="list-style-type: none"> <li>• However, Reg. 10(3) amends these provisions in respect of broadcasting services and is therefore not consistent with the Licensing Regulations.</li> <li>• We propose that this regulation be deleted, and that the renewal of broadcasting regulations be made in accordance with Reg. 11(1) of the Licensing Regulations.</li> </ul>		
11(4)	<p>(4) A licensee shall keep and store sound and video recordings of all programmes broadcast for a minimum period of three (3) months or for such further period as the Authority may direct</p>	<ul style="list-style-type: none"> <li>• We do not oppose an obligation requiring licensees to provide the Authority, upon request, with sound and video recordings broadcast within the last three months. However, the requirement to store such recordings is unfortunately, not practically or economically feasible for licensees who obtain their channels and content from third parties.</li> <li>• Further, the requirement to possibly store the recordings</li> </ul>	<p>Amend as follows:  <i>"(4) A licensee shall, <del>keep and store upon request,</del> <u>provide the Authority with sound and video recordings of all programmes broadcast for a <del>minimum maximum period of three (3) months or for such further period as the Authority may direct</del></u>"</i></p>	<p>Proposal not accepted. Three months is the minimum period that the licensee should store and keep recordings. The licensee may on its own decide to keep the recording for a longer period. The Regulation however has been revised to delete the part giving the Authority the power to direct a longer period to provide for certainty.</p>



		<p>indefinitely or for a period longer than three months would be even more costly to a licensee.</p> <ul style="list-style-type: none"> <li>We propose that the obligation be amended to require a licensee to provide the Authority with sound and video recordings broadcast within the last three months upon the Authority's request.</li> </ul>		
11(6)(d) to (f)	<p>A licensee shall – ... d) reveal its station's identity at intervals of sixty (60) minutes during the period which broadcasts are made from that station; e) 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.</p>	<ul style="list-style-type: none"> <li>These obligations are appropriate for broadcasters and not subscription management service providers who are not involved in broadcasting.</li> <li>Further, even for broadcasters, they are appropriate only for broadcasters who package their own channels, but would not be appropriate for broadcasters who acquire complete channels from channel suppliers.</li> <li>Subscription management service providers and broadcasters who acquire complete channels do not have control over the content on each channel.</li> <li>While channels from local</li> </ul>	<p>Amend as follows: <i>"A licensee <u>which compiles and packages channels</u> shall – ... d) reveal its station's identity at intervals of sixty (60) minutes during the period which broadcasts are made from that station; e) state, at least twice within a period of twenty-four hours, all the frequencies and; <del>and</del> channels on which the broadcasting station is licensed to operate."</i></p>	<p>Proposal accepted. The Regulation has been revised. It will not apply to content aggregators; entities that obtain content from multiple content providers for redistribution or resale;</p>

		channel suppliers could reasonably comply with these requirements, international channels acquired outside Malawi would not be able to comply with these requirements.		
13(2)	A licensee shall ensure that its local shareholding at all times comply with local shareholding requirements prescribed by the Authority from time to time.	<ul style="list-style-type: none"> <li>• The draft Regulations are silent on how such shareholding requirements will be prescribed by the Authority, including the process for prescribing such requirements and the factors that the Authority will consider.</li> <li>• Given the impact of shareholding requirements on licensees and their operations, we propose that such requirements be prescribed in legislation or through regulations made by the Minister in terms of s200(2)(g) of the Communications Act, 2016.</li> </ul>	Amend as follows: <i>"A licensee shall ensure that its local shareholding at all times comply with local shareholding requirements prescribed by the Authority <del>from time to time</del> in the Act or regulations."</i>	Proposal accepted. The regulation has been revised.
13(4)	A licensee shall not effect any changes to its shareholding without the prior written approval of the Authority	<ul style="list-style-type: none"> <li>• A licensee may experience minor changes in shareholding, such as a change that results in a shareholder move from holding two per cent of the share capital to three</li> </ul>	Amend as follows: <i>"(4) A licensee shall not effect any changes to its shareholding <u>that results in a change in control of the licensee</u> without the prior</i>	Proposal not accepted. A similar requirement is in Regulation 26(3) of the Licensing Regulations and there should not be

		per cent. Such insignificant fluctuation will not result in a change of control in the licensee. A requirement to obtain consent or notify the Authority in respect of such changes will be unduly onerous on both the licensee and the Authority.	<i>written approval of the Authority."</i>	inconsistences between the two Regulations.
14(4)	The licensee shall, at least once a day during prime time, broadcast information to the public on how to lodge complaints about its programming and such broadcasts shall include a notice that members of the public have a right to complain directly to the Authority.	<ul style="list-style-type: none"> <li>It is not clear how this obligation is intended to be applied in the context of a subscription content management service provider (who does not provide a broadcasting service) and a multi-channel broadcasting service provider (who acquires complete channels from local and international channel suppliers and packages these into bouquets).</li> </ul>	Amend as follows: <i><u>"The A licensee which compiles and packages channels, shall, at least once a day during prime time, broadcast information to the public on how to lodge complaints about its programming and such broadcasts shall include a notice that members of the public have a right to complain directly to the Authority. A licensee which acquires complete channels, and does not compile or package channels, shall provide members of the public with information on how to lodge complaints about its programming at its branches and on its website."</u></i>	The Regulations has been revised to differentiate between an aggregator of content and non content aggregators.

<p>17(2) to (4) Second Schedule</p>	<p>Various obligations in Reg. 17 that apply to "commercial content broadcasting licensee", and reference to "commercial television content broadcasting licensees" in the Second Schedule.</p>	<ul style="list-style-type: none"> <li>We understand the reference to "commercial content broadcasting" in these draft Regulations to be a reference to commercial <u>free to air</u> broadcasting, similar to the use of the term in Reg. 17(1).</li> <li>For the sake of clarity, it ought to be made clear that these provisions apply to free to air services.</li> </ul>	<p>Amend as follows: Title – <i>Free to air private commercial broadcasting</i> Reg. 17(2) – amend to refer to "<i>commercial <u>free to air</u> content broadcasters</i>". Reg. 17(3) – amend to refer to "<i>commercial <u>free to air</u> content broadcasting licensee</i>". Reg. 17(4) – amend to refer to "<i>commercial <u>free to air</u> content broadcasting licensee</i>". Second schedule – amend to refer to "<i>commercial <u>free to air</u> television content broadcasting licensee</i>".</p>	<p>The regulation has been revised to indicate the licensees it applies to.</p>
<p>19(1)</p>	<p>The Authority may upon application, in the prescribed form, grant subscription broadcasting services licence for— (a) subscription broadcasting; and subscription management services.</p>	<ul style="list-style-type: none"> <li>This provision blurs the distinction between subscription broadcasting services and subscription management services as it provides for the issuing of a subscription broadcasting service licence for the provision of subscription management services.</li> <li>Subscription management services differ substantially from subscription broadcasting services. They -</li> </ul>	<p>Amend as follows: <i>"The Authority may upon application, in the prescribed form, grant a <del>subscription broadcasting services</del> licence for — subscription broadcasting services; and subscription management services."</i></p>	<p>The regulation has been revised to clearly differentiate subscription Management services and subscription content services. In light with the requirement under the Communications Act that no one can provide content services without a licence, providers of subscription content services whose signal comes from abroad and provide services via satellite</p>

		<ul style="list-style-type: none"> <li>○ are administrative and support services, and do not involve the provision of a broadcasting;</li> <li>○ do not involved the provision of a broadcasting service and subscription management service providers therefore do not have control over the content on a broadcasting service, are not involved in the transmission of a broadcasting service or any</li> <li>• other technical matters relating to the provision of a broadcasting service; and by definition (in Reg. 2 of the draft Regulations), do not constitute a broadcasting service. <ul style="list-style-type: none"> <li>• It is therefore inappropriate for a subscription management service provider to be issued with a subscription broadcasting service licence, and be regulated in the same manner as a subscription broadcasting service licensee.</li> </ul> </li> </ul>		<p>will be required to have a licence.</p> <p>Satellite service providers therefore have two options; to acquire a licence of their own or provide services through an SMS. Where services are provided through an SMS, the SMS shall assume the obligations that would have fallen on the satellite service provider if it were licensed in Malawi.</p> <p>Taking into account that we have SMSs that have been standing in the place of subscription broadcasting service providers, the regulations have provided for a migration period of 6 months, for satellite content service providers to indicate whether it intends to acquire a licence of its own or it will provide content services through an SMS.</p>
--	--	---	--	---

		<ul style="list-style-type: none"><li>• Due to this provision, subscription management service licensees would be subject to provisions in the draft Regulations that apply to subscription broadcasting services. This would however be inappropriate as subscription management services are not broadcasting services - broadcasting obligations are therefore inapplicable or incapable of application to subscription management services.</li><li>• Although we have no objection to the licensing and regulation of subscription management services, such licensing and regulation ought to pertain to and be appropriate to the activities actually undertaken by subscription management service providers themselves - subscription management service licensees cannot be bound by requirements that pertain to services in which they perform no part. It would not be permissible for the draft Regulations to impose</li></ul>		
--	--	---	--	--

		<p>obligations on licensees that the are not capable of complying with.</p> <ul style="list-style-type: none"> <li>• To the extent that the draft Regulations intend to, by issuing a subscription broadcasting service licence in respect of subscription management services, regulate the subscription broadcasting service to which the subscription management service licensee provides services (i.e., regulate the subscription broadcasting service by proxy), this would also not be appropriate.</li> </ul>		
19(2)(a)	<p>The Authority may require a licensee granted a licence under sub regulation (1) to —</p> <p>(a) distribute broadcasting services, whether through cable or satellite within Malawi;</p>	<ul style="list-style-type: none"> <li>• The obligations that may be imposed by the Authority under this section all relate to the provision of a broadcasting service. They are incapable of application to subscription management services. They ought to therefore apply to subscription broadcasting services, and not to subscription management services.</li> <li>• Cable and satellite are not the only modes of distributing broadcasting services. We</li> </ul>	<p>Amend as follows:</p> <p><i>"The Authority may require a licensee granted a licence under sub regulation (1)(a) to—</i></p> <p><i>(a) distribute broadcasting services—whether through cable or satellite within Malawi;</i></p>	<p>Proposal accepted. The regulation has been revised.</p>

		propose that the Authority ought to not prescribe the mode of distributing broadcasting services but maintain its technology and service neutral regulatory regime to enable innovation and technological advancements.		
19(2)(b)	(2) The Authority may require a licensee granted a licence under subregulation (1) to- ... (b) provide a prescribed minimum number of Malawian broadcasting channels;	<ul style="list-style-type: none"> <li>• This provision gives the Authority unfettered discretion to determine a minimum number of Malawian broadcasting channels that licensees must provide. The draft Regulations do not include any guidance regarding the circumstances under which the Authority may prescribe this minimum number of Malawian channels, or how the Authority will determine the number that it ultimately prescribes. However, this requirement will - <ul style="list-style-type: none"> <li>○ intrude on subscription broadcaster's right to design and package their own product in a manner that they regard, based on their own commercial</li> </ul> </li> </ul>	Delete 19(2)(b)	<p>Proposal not accepted.</p> <p>The freedom of expression is not an absolute right and may be limited by public interest considerations.</p> <p>One of the objectives of the Communications Act is to promote the participation of indigenous Malawians in the communications sector. Additionally, the Authority has an obligation to promote the development of content services, particularly Malawian content services. The requirement that a subscription broadcasting service provider should carry Malawian channels is to ensure that we develop and promote Malawian content as required by the Communications Act. The Authority will not</p>



		<p>judgment; and</p> <ul style="list-style-type: none"><li>○ unjustifiably infringe on subscription broadcaster's rights to freedom of expression and of the press, as it will take away their right to decide the minimum number of Malawian channels that they include in their service, depending on their subscriber preferences and needs.</li><li>• Although we support the carriage of Malawian channels on broadcasting services, we do not support a provision which effectively takes away licensees' ability to package a service that is most responsive to their subscriber needs and ongoing competition in the market.</li><li>• In this regard, the curation of packages requires careful and expert editorial discretion. Subscription broadcasting services who offer packages at different price points aim to ensure that their packages contain the appropriate genres of content to cater for the</li></ul>		<p>influence the choice of channels to be carried by the Broadcaster. The choice of content will be made by the broadcaster, but as a minimum, we will require that Malawian content be carried.</p>
--	--	---	--	--

		<p>needs of each individual in a household, while also ensuring that the content and its mix is appealing and distinctive enough for their paying viewers. The content available on a broadcaster's service is therefore integral to its commercial viability and a discernible characteristic of the nature of a broadcaster's business.</p> <ul style="list-style-type: none"><li>• Subscription television is a discretionary purchase and subscription broadcasting services must therefore provide a variety of content which viewers want to watch and are willing to pay for. To the extent that there is subscriber demand for Malawian channels, subscription broadcasters have a commercial imperative to broadcast Malawian channels</li><li>• Furthermore, this provision would not be appropriate for subscription management service licensees who do not provide a broadcasting service and therefore have no</li></ul>		
--	--	--	--	--

		control over the channels, whether Malawian or not, broadcast on a subscription broadcasting service. They would therefore not be able to comply with a requirement to provide a minimum number of Malawian channels.		
19(3) 19(4)	<p>(3) Notwithstanding subregulation (1) and (2), a satellite subscription broadcasting service provider whose signal originates from outside Malawi and who intends to provide its broadcasting services in Malawi shall provide such services through a person with a subscription management service licence.</p> <p>(4)The Authority may require a subscription management service licensee to provide the following services on behalf of a satellite provider broadcasting from outside Malawi—</p>	<ul style="list-style-type: none"> <li>• We support the requirement that foreign broadcasting services appoint a subscription management service provider in Malawi.</li> <li>• However, we propose that this not be limited to cable and/or satellite broadcasting services provided from outside Malawi.</li> <li>• In order to future proof the regulations, we propose that the regulations adopt a technology neutral approach, which will ensure that these requirements will apply to any other current or future technology through which a broadcasting service may be provided from outside Malawi.</li> <li>• Furthermore, Reg. 19(3) requires that foreign broadcasters provide their broadcasting service through a subscription management</li> </ul>	<p>Amend as follows:</p> <p><i>"(3) Notwithstanding subregulation (1) and (2), a <del>satellite</del> subscription broadcasting service provider whose signal originates from outside Malawi and who intends to provide its <del>broadcasting</del> services in Malawi shall <del>provide—such services through a person with a</del> <u>appoint a licensed</u> subscription management service <del>licensee</del> provider in Malawi.</i></p> <p><i>(4)The Authority may require a subscription management service licensee to provide the following services on behalf of a <del>satellite</del> provider broadcasting from outside Malawi—</i></p>	The regulation has been amended to be technology neutral.

		<p>service licensee. This provision blurs the distinction between subscription management services and subscription broadcasting services as it suggests that the subscription management service licensee will be involved in the provision of the subscription broadcasting service that is provided by the foreign subscription broadcasting service provider. We propose that it be clarified that a foreign subscription broadcasting service provider must appoint a subscription management service licensee to provide subscription management services.</p>	...	
20(3)	<p>A subscription broadcasting service or subscription management services licensee shall ensure that the Service Level Agreement in subregulation (2), is submitted to the Authority for approval within thirty (30) days for existing licensees or within thirty days of</p>	<ul style="list-style-type: none"> <li>• Although this provision empowers the Authority to approve Service Level Agreements ("SLAs"), it does not prescribe the factors that the Authority would consider when considering whether or not to approve an SLA.</li> <li>• Licensees' therefore do not have certainty regarding the circumstances under which their SLAs will be approved or</li> </ul>	<p>Insert subparagraph (b) under Reg. 20(3) setting out factors that the Authority will consider when considering SLAs as follows:  <i>"(b) When considering whether or not to approve a Service Level Agreement, the Authority shall consider the extent to which such agreement is consistent with</i></p>	Proposal accepted

	issuance of licence for new licensees	<p>not approved.</p> <ul style="list-style-type: none"> <li>We propose that the Reg. 20(3) be amended to provide clarity regarding the circumstances under which the Authority would not approve an SLA.</li> </ul>	<p><i>the Act, regulations made under the Act, and the licensee's licence terms and conditions."</i></p>	
20(5)	<p>A subscription broadcasting service or subscription management services licensee shall not acquire exclusive rights for the broadcast of national sporting events, or any event which is classified to be in the public interest by the Authority from time to time</p>	<ul style="list-style-type: none"> <li>This provision is not appropriate for a subscription management services licensee, as they do not acquire content.</li> <li>This type of regulation is a fairly onerous intrusion into the commercial activities of a subscription broadcaster, particularly when the draft Regulations give no guidance on which events would constitute national sporting events or events in the public interest.</li> <li>Internationally, countries which regulate the broadcasting of national events in the public interest usually require a minimum set of criteria and a clearly defined list to be established to ensure that there is clarity and certainty up front as to the minimum criteria to be met in order for an event to be classified, and as to which</li> </ul>	<p>Amend as follows:</p> <p><i>"(a) A subscription broadcasting service <del>or subscription management services</del> licensee shall not acquire exclusive rights for the broadcast of national sporting events, or any event which is classified to be in the public interest by the Authority from time to time.</i></p> <p><i><u>(b) An event will constitute a national sporting event or event in the public interest if it meets any of the following criteria:</u></i></p> <p><i><u>(i) It is an event which is an expression of Malawian sporting, cultural, artistic or social identity, in which Malawi participates as a nation, including events having a specific cultural and social value and a strong cohesive function in national Malawian society.</u></i></p>	<p>Proposal accepted. The regulation has been revised to define national events of public interest.</p>

		<p>exact events, or parts thereof, are classified. In this regard, this approach to regulation of events identified to be in the public interests has been adopted in various jurisdictions, including the EU, UK, Spain, Germany, France, Italy and South Africa.</p> <ul style="list-style-type: none"> <li>• In line with international best practice and in the interests of clarity and certainty, the draft Regulations ought to clearly articulate the types of events that would constitute national sporting events or events in the public interest.</li> </ul>	<p><i><u>It is an event which has special national significance or commands widespread attention among viewers in Malawi owing to its importance particularly because of the involvement of top-level Malawian.</u></i></p> <p><i><u>i) It is an event which takes place in Malawi and involves national representatives (group or individual).</u></i></p> <p><i><u>It is a sporting event which either concerns a sport which is played or watched by a substantial portion of the Malawian population either at the venue where it is played or on television, is an event of major importance in Malawian society, involves the Malawian senior national team or national representatives in the sport concerned; or is played in Malawi, other than events organised by multinational or international sports bodies."</u></i></p>	
--	--	---	---	--

20(6)	<p>A subscription broadcasting service or subscription management services licensee shall ensure the provision of “free to air” broadcasting services on its bouquet as determined by the Authority</p>	<ul style="list-style-type: none"> <li>• This provision is not appropriate for a subscription management services licensee, since subscription management services licensees are not involved in broadcasting.</li> <li>• The carriage of all, or any, channels on subscription broadcasting services occurs at significant cost. These costs include both capital and operational expenses made towards transponder satellite capacity, transmission, call centre equipment and staffing, decoder subsidies, installation and technical support costs, encryption software, conditional access systems and fees for continuous over the air software upgrades. Subscription broadcasters recoup these costs from subscription revenue from paying subscribers.</li> <li>• Furthermore, subscription broadcasting service providers are not signal distributors, whose purpose is to distribute channels and provide transmission services for a fee.</li> </ul>	Delete 20(6).	The Clause has been deleted. The promotion of Malawian content has been addressed by Regulation 19(2)(b)
-------	---	--	---------------	--

		<p>Subscription broadcasting service providers' key business is the provision of access to bouquets. The responsibilities of signal distributors, carrying public and free to air broadcasting services, should therefore not be inferred on subscription broadcasting service providers.</p> <ul style="list-style-type: none"><li>• Subscription broadcasting services are primarily reliant on subscription revenue and therefore recoups most of their costs from subscription revenue received from paying subscribers. As a result, a subscription broadcasting service provider must ensure that they carry channels that are, not only appealing to subscribers, but which subscribers would be willing to pay for. Differentiation, achieved through the inclusion of exclusive and original content, is the key to this. A requirement to carry free to air channels, as envisaged in Reg. 20(6) of the draft Regulations, would compromise subscription broadcasting</li></ul>		
--	--	---	--	--



		<p>service providers' ability to operate efficiently, compete on the merits and exercise normal, commercial caution. The free to air channels would also take up bandwidth which subscription broadcasting service providers could use for channels that will advance their commercial objectives.</p> <ul style="list-style-type: none"> <li>• An obligation to carry free to air channels would also constitute an unjustifiable infringement on subscription broadcasters' constitutional right to freedom of expression, which includes the right to decide what materials to publish or broadcast.</li> <li>• We therefore propose that subscription broadcasting services retain the right to decide if they want to carry the channels that are also available free to air.</li> </ul>		
20(7)	A subscription broadcasting service or subscription management services licensee shall ensure that it carries on its bouquet for free, public broadcasting	<ul style="list-style-type: none"> <li>• This provision is not appropriate for a subscription management services licensee, since subscription management services licensees are not involved in broadcasting. However, given</li> </ul>	<p>Amend as follows: Amend as follows: (a) "A <i>subscription broadcasting service</i><del>—or subscription management services</del> licensee shall ensure that it carries on its</p>	<p>Proposal accepted. The regulation has been amended to refer to a subscription content service provider and limiting the must carry obligation to one primary channel of the public broadcaster.</p>

	<p>services as determined by the Authority from time to time</p>	<p>that the intention is to seek to secure the public's access to key public interest content, we propose that subscription management service providers be required to take reasonable steps to facilitate the carriage, by the subscription broadcasting service in respect of which it provides subscription management services, of the primary channel of the public broadcaster.</p> <ul style="list-style-type: none"> <li>• The purpose of must carry obligations is to extend universal access to key public service channels. Due to capacity constraints, we propose that the must carry obligation be restricted to the primary public service channel provided by the public broadcaster. It is important to bear in mind that carriage of public broadcasting service channel results in additional costs for broadcasters, including satellite capacity costs, call centre support costs, technical installation support costs and over the air software</li> </ul>	<p><del><i>bouquet for free, at no charge to the public broadcaster, the primary channel of the public broadcasting services, provided that the public broadcaster shall be responsible for delivering, at its own cost, its primary channel to the subscription broadcasting service licensee's point of transmission as determined by the Authority from time to time.</i></del></p> <p><i>(b) A subscription management service licensee shall facilitate carriage by the subscription broadcasting service provider for whom it provides subscription management services, at no charge to the public broadcaster, the primary channel of the public broadcasting service provider, and the public broadcasting service provider will be responsible for delivering, at its own cost, its primary channel to</i></p>	
--	--	--	--	--

		<p>upgrades.</p> <ul style="list-style-type: none"> <li>• It is also not clear what "for free" is a reference to. We understand this to mean that the public broadcasting channel must be carried at no charge to the public broadcaster. We propose that this be clarified.</li> <li>• We propose that the primary channel of the public broadcaster be a single programme channel provided by the public broadcaster which includes information, news, current affairs and educational content, and is not purely an entertainment channel.</li> <li>• Given that subscription broadcasting service providers will incur the costs of carrying the public broadcaster's channel, we propose that the public broadcaster be responsible for getting its channel to the subscription broadcaster's point of transmission.</li> </ul>	<p><i>the _____ subscription broadcaster's point of transmission."</i></p> <p>Insert a definition of "primary channel of the public broadcasting service at Regulation 2 as follows:  <i>"'Primary Channel' means a single programme channel provided by the Public Broadcasting Service Provider which includes information, news, current affairs and educational content, and is not purely an entertainment channel);"</i></p>	
20(9)	A subscription broadcasting service or subscription management services	Decoders used to receive subscription broadcasting services are primarily used to	Delete 20(9). Alternatively, amend to read as follows:	The Authority no longer intends to proceed as proposed

	<p>licensee shall ensure that decoders for its services are capable of receiving and decoding signals from other service providers</p>	<p>ensure that the subscription broadcasting services are received only by persons who are authorised to receive the subscription broadcasting services, which are paying subscribers. As a result, subscription broadcasting service provides encrypt/encode their broadcast signal and the decoders they sell are fitted with decryption/decoding information that ensures that only those persons that the subscription broadcasting service provider has authorised are able to unencrypt/decode and view the subscription broadcasting service.</p> <ul style="list-style-type: none"> <li>• Each subscription broadcasters' signal and decoder are therefore configured to work together to ensure that only paying subscribers receive the service. Each subscription broadcaster decides on the technology to use on their signals and decoders. Given the need to prevent piracy of subscription broadcasting services to ensure</li> </ul>	<p><i>"A subscription broadcasting service <del>or</del> <del>subscription management services</del> licensee <u>providing a digital terrestrial television service</u> shall ensure that <u>its decoders for its services are capable of to receiveing and decoding the unencoded (whitelisted) signals from other service providers the public signal distributor"</u></i></p>	<p>in the draft Regulation. It has been deleted.</p>
--	--	--	--	--

		<p>revenue protection, this technology constitutes a key trade secret that is not freely available, but is known by very few within each subscription broadcasting service.</p> <ul style="list-style-type: none"><li>• A subscription broadcaster's decoder is specifically configured to decode the encoded signal broadcast by that particular subscription broadcaster similar to a lock and key.</li><li>• It is therefore not possible for a subscription broadcaster's decoder to decode the encoded signals from another subscription broadcaster as it would not have the "keys" to decode such signals.</li><li>• A decoder would only be able to decode signals from other services if the decoder is fitted with the "keys" to decode the signals for all the services. This is however not practically possible. Even if it were practically possible, it would require that service providers share very confidential trade secrets. This would not only infringe on service providers'</li></ul>		
--	--	---	--	--

		<p>intellectual property rights, but will also risk the integrity of their service. In addition, such a decoder could be very bulky (as it must include hardware from multiple service providers) and/or very expensive (as its price must include the hardware and software for multiple services or interchangeable parts such as a common interface which often cost as much as the decoder ).</p> <ul style="list-style-type: none"><li>• Further, subscription broadcasting service decoders often include other software to support various other functions, such as the electronic programme guide. Even if a decoder could receive and decode signals from other services, other software modules in the decoder like the electronic programme guide (the basic text that helps to navigate the labyrinth of channels on offer) will remain the same and would be incompatible with services provided by other service providers. Persons who use</li></ul>		
--	--	---	--	--

		<p>such decoders would therefore not be able to use several other facilities and functionalities provided by existing or new subscription broadcasting service providers.</p> <ul style="list-style-type: none"><li>• Given the above, it is not technically or economically feasible for subscription broadcasting service decoders to receive and decode signals from other service providers.</li><li>• To the extent that the intention is to ensure that DTT decoders are able to receive whitelisted free to air services from the signals broadcast by the MDBNL, this would be achievable by requiring the MDBNL signals for free to air channels be unencrypted and that DTT service providers ensure that their decoders are able to receive the unencrypted signals from the MDBNL. This is the current framework and has worked well, and does not result in additional expenditure to the public.</li><li>• Furthermore, this provision is not appropriate for subscription management</li></ul>		
--	--	---	--	--

		<p>service providers, who are not involved in the determination of the technical specifications of the decoders used for subscription broadcasting services.</p>		
Part IV and Part V	Content obligations in respect of content services and political election broadcasts	<ul style="list-style-type: none"> <li>• Broadcasters have different business models and content acquisition strategies. For example, some produce and/or commission programmes, while some produce and/or commission channels. Others acquire complete channels which they package into bouquets.</li> <li>• Parts IV and V appear to be premised on a model in which all broadcasters have the same level of editorial control over the programming on their broadcasting service. However, depending on the business model adopted, broadcasters exercise varying degrees of editorial control over the programming content. Those broadcasters which produce and/or commission programmes have almost complete editorial control over the programming, while those</li> </ul>	<p>Insert new provisions at the start of Part IV and Part V as follows:</p> <p><i><u>"Unless a different intention appears from the wording of a provision in this Part, compliance with this Part shall be as follows:</u></i></p> <p><i><u>A licensee which packages and/or commissions programming content or channels must ensure that the programming complies with the requirements of this Part.</u></i></p> <p><i><u>A licensee which acquires complete channels, and is therefore not directly able to ensure compliance with this Part, must put in place contractual measures to ensure that its channel provider complies with the requirements in this Part."</u></i></p>	<p>Proposal accepted. The regulations have been revised to:</p> <ol style="list-style-type: none"> <li>1. Indicate that Parts IV and Part V do not generally apply to content aggregators unless the context states other intention states.</li> <li>2. To put an obligation on content aggregators measures that will ensure that channel providers comply with Parts IV and V.</li> </ol>



		<p>that acquire complete channels from local and foreign channel suppliers (who are usually multi-channel broadcasting service providers) have virtually no control over programming and the content on those channels.</p> <ul style="list-style-type: none"> <li>• The nature of a broadcasting service and the degree of editorial control which it exercises over the programming on the service will impact directly on its ability to comply with the provisions of Parts IV and V. For example, a broadcaster who acquires complete channels would not be able to comply with some requirements as they have no control over the programming content on the channels they acquire.</li> </ul>		
Part IV and Part V	Content obligations in respect of content services and political election broadcasts	<ul style="list-style-type: none"> <li>• The content obligations listed in Part IV and Part V are not appropriate for a subscription management services licensee, since subscription management services licensees are not involved in broadcasting.</li> </ul>	<p>Insert the following additional provision at the start of Part IV and Part V as follows:</p> <p><i><u>"(3) The provisions of this part do not apply to subscription content management licensees."</u></i></p>	Proposal accepted. Part IV and Part V have been revised to exclude their application to SMS providers.

		<ul style="list-style-type: none"><li>• Although subscription content management services are listed as a category of content licence in s99(1)(d) of the Communications Act, 2016, the regulation ought to not conflate broadcasting and subscription management services, or make a subscription management service providers responsible for content obligations.</li><li>• This was recognised by the Appeal Court of Botswana (<i>MultiChoice Botswana v Botswana Communications Regulatory Authority</i>, Court of Appeal Civil Appeal no CACGB-177-18, 8 February 2019), which found that MultiChoice Botswana (a subscription management service licensee) cannot be subjected to conditions that have a bearing on broadcasting only. The Botswana Appeal Court also found that it is impermissible to impose conditions on MultiChoice Botswana's SMS licence which have nothing to do with the exercise of its subscription</li></ul>		
--	--	--	--	--

		management services.		
24(4)	A licensee shall ensure that children's programmes are not broadcast during the watershed period and in any event licensees shall ensure that the timing of children's programmes does not coincide with normal school hours except for education programmes which the children can watch or listen to during school hours.	<ul style="list-style-type: none"> <li>This provision is not appropriate for multichannel broadcasting services who include, as part of their services, children's channels that are broadcast 24 hours per day.</li> <li>It is also not appropriate for any channels that are acquired abroad, as these channels are simulcast from their country of origin and cannot be adjusted to the time zones for each country that they are received.</li> </ul>	Amend to read as follows: <i>"A licensee <u>that packages channels, other than niche children's channels that provide children's programmes 24 hours per day</u>, shall ensure that children's programmes are not broadcast during the watershed period and in any event licensees shall ensure that the timing of children's programmes does not coincide with normal school hours except for education programmes which the children can watch or listen to during school hours."</i>	This regulation will not apply to SMS licensees and content aggregators as per the insertion of the application clause in the Regulations
30(4)	A licensee providing subscription management services shall not be required to have a delay machine.	<ul style="list-style-type: none"> <li>We support the exclusion of subscription management services in this section. However, this exclusion appears to be premised on the misunderstanding that subscription management services could practically implement delay machines in respect of a broadcasting service.</li> <li>As the Authority is aware, subscription management</li> </ul>	Amend Reg. 30(4) as follows: "A licensee providing a subscription <u>broadcasting management</u> services shall not be required to have a delay machine."	The regulation has been revised. To indicate licensees that are exempt. It is important that all exempt licensees are listed.

		<p>services do not provide broadcasting services and have no control over broadcasting content, whether live or deferred live. It would therefore not be possible for them to comply with any requirement regarding broadcasting content, including the implementation of delay machines for live broadcasts.</p> <ul style="list-style-type: none"><li>• As a result, the requirements of s30(1) to (3) cannot practically / possibly be applied to subscription management service licensees. It is therefore not necessary to exempt subscription management services from a requirement that would, in any event, not apply to them.</li><li>• Furthermore, given that subscription broadcasting services, which are multichannel services, acquire complete channels and simultaneously broadcast the channels from the channel providers, they would not be able to comply with this requirement.</li></ul>		
--	--	---	--	--

30(5)	<p>A Licensee that syndicates, relays or rebroadcast a live broadcast from another source or station, shall be liable if such broadcast contravenes the Act or these Regulations.</p>	<ul style="list-style-type: none"> <li>• We understand this provision to apply to liability in respect of live broadcasts in the context of syndicated programmes, which are not packages and/or commissioned by a broadcaster.</li> <li>• It is however not clear what this provision is intended to address. Broadcasters who package and/or commission programming content or channels would, in terms of s30(1) to (3), have to comply with the requirement to use delay machines, which delay machines would be implemented irrespective of whether the programme is syndicated. Their liability in respect of that content, due to failure to implement delay machines, is clear and does not require clarification.</li> <li>• With regards broadcasters who acquire complete channels and package them into bouquets, we reiterate our submission in respect of Part IV and Part V and our proposal that these services be regulated</li> </ul>	<p>Delete 30(5)</p> <p>Amend s30(1) to (3) to apply to licensees who package and/or commission programming content or channels.</p>	<p>Proposal not accepted. The reasoning behind the regulation was to avoid a broadcaster escaping liability for broadcasting illegal content just because it is syndicating or relaying the content. By syndicating or relaying content, the broadcaster assumes responsibility over the content</p>
-------	---	---	---	--

		differently, considering their nature.		
38(2)(a)	A licensee shall ensure that advertisements broadcast by its station do not— 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	<ul style="list-style-type: none"> <li>We note that the Authority is seeking to require broadcasters to assess and determine the truthfulness of advertisements and products featured in such advertisements.</li> <li>Within the advertising value chain, the only persons who are able to ensure that advertising is not misleading are the advertisers themselves. While the advertising agencies and channel providers (or broadcasters who packages channels), who interact with advertisers, are able to put in place measures to hold the advertiser to the standards in this regulation, broadcasters who acquire complete channels do not have any relationship with the advertiser and cannot reasonably ensure that advertising complies with this regulation.</li> <li>Therefore, broadcasters who do not commission or produce advertisements do not have any control over the production of advertisements,</li> </ul>	Amend s38(2) to read as follows: <i>"A licensee <u>that packages and/or commissions programming content or channels</u> shall ensure that advertisements broadcast by its station do not –"</i>	This Part will not apply to SMS and content aggregators as indicated above

		<p>nor their contents, and are therefore unable to assess or verify the advertising.</p> <ul style="list-style-type: none"> <li>• Broadcasters who acquire complete channels have no control over the content on the channels which they acquire, including the content of advertising.</li> </ul>		
40(1)	<p>A licensee shall not broadcast an infomercial— for a period exceeding four hours of the performance period in any day;  (b) during prime-time; or  during any break in the transmission of a children's programme.</p>	<ul style="list-style-type: none"> <li>• This provision is not appropriate for multichannel broadcasting services who broadcast multiple channels, including niche channels, 24 hours per day, and therefore continue to provide sufficient choice and diversity of programming content even if any of the channels were to include infomercials inconsistent with the requirements of this Regulation.</li> <li>• We propose that this provision apply to single channel broadcasters who package their channels.</li> </ul>	<p>Amend s40(1) to read as follows:  <i>"A licensee <u>who packages channels</u>, shall not broadcast an infomercial – "</i></p>	Same answer as above
43(5)	<p>Unless otherwise stated by the Authority, local news shall constitute the majority of a licensee's news broadcast content</p>	<ul style="list-style-type: none"> <li>• This obligation is appropriate for broadcasters who package their own channels. It is, however, not appropriate for broadcasters who acquire</li> </ul>	<p>Amend as follows:  <i>"Unless otherwise stated by the Authority, <u>a licensee which compiles and packages channels shall</u></i></p>	Same answer as above

		<p>complete channels and therefore do not have control over the content on each channel.</p> <ul style="list-style-type: none"> <li>• In addition, it is not clear who this provision will apply in a multi-channel environment where most channels do not carry news or where some channels comprise primarily of international news, such as CNN.</li> <li>• While channels from local channel suppliers could reasonably comply with this requirement (to the extent that the channel supplier is also a licensed broadcaster and the obligation is included in their broadcasting service licence), international channels acquired outside Malawi would not be able to comply with these requirements.</li> </ul>	<p><i>ensure that local news <del>shall</del> constitute the majority of that licensee's news broadcast content"</i></p>	
43(7)	<p>The Authority may require any licensee who contravenes this regulation to pay into the Universal Service Fund such amount of money as determined by the Authority</p>	<ul style="list-style-type: none"> <li>• We support initiatives which encourage the development and distribution of local content. However, we believe that a flexible approach to local content regulation would be beneficial to the continued development and increase of</li> </ul>	<p>Insert additional provisions in s43(7) as follows:  <i>"(7)(a) The Authority may require any licensee who contravenes this regulation to pay into the Universal Service Fund such amount of money as determined by</i></p>	<p>Proposal not accepted. Every content provider should be able to provide Malawian content, even for niche markets. Before deciding on the matter, the Authority will consider representations from the Licensee. However, to provide</p>



		<p>local content in our country.</p> <ul style="list-style-type: none"> <li>In this regard, there may be circumstances where a licensee is not able to fully comply with local content requirement due to circumstances beyond their control. For example, where there is insufficient local content to comply with the local content requirement while retain the distinctive nature of their services or continuing to provide niche services. This leaves licensees vulnerable to penalties for non-compliance with the regulations in inappropriate circumstances. In such circumstances, broadcasters should be encouraged to comply to the most extent possible.</li> </ul> <p>In addition, this provision does not prescribe how the quantum of monies payable to the Universal Service Fund should be determined. For example, it is not clear what factors the Authority will consider when determining such payment.</p> <ul style="list-style-type: none"> <li>We propose that the draft</li> </ul>	<p><i>the Authority.</i></p> <p><i>b) <u>When determining the quantum of the amount the licensee must pay into the Universal Service Fund, the Authority shall consider, among other factors, the nature of the licensee's service, the efforts made by the licensee towards complying with the local content requirements and the reasons behind the licensee's failure to comply.</u></i></p> <p><i>Where –</i></p> <p><i>(i) <u>compliance with this regulation would result in unreasonable and unjustifiable economic, financial or other hardship experienced by the licensee;</u></i></p> <p><i>(ii) <u>the licensee generally broadcasts specialised programmes or music to a particular audience and such types of programmes or music are not produced or are not sufficiently produced by persons who will render such programmes or music local content programmes or</u></i></p>	<p>for certainty, a percentage of 1% of gross annual revenue has been set as the amount to be paid to the Universal Service Fund.</p>
--	--	--	---	---

		Regulations grant the Authority the power to exempt a licensee from the obligation to comply with local content requirements under specified circumstances.	<i>music; or</i> <i>(iii) under circumstances, the local content requirements are unreasonably high for that particular licensee, the Authority may authorise a licensee not to comply with this regulation without having to make payment to the Universal Service Fund.</i>	
50(3)	Before the Authority imposes any regulatory sanction on a licensee for failure to comply with the terms and conditions of the Act, these Regulations or the licence, it shall- a) Notify the licensee in writing; and Invite the licensee to make representations on the matter.	<ul style="list-style-type: none"> <li>• We support the requirement for the Authority to receive representations from a licensee prior to imposing sanctions from the licensee.</li> <li>• We note, however, that this provision no longer includes a requirement for the Authority to hold a hearing prior to imposing sanctions.</li> <li>• Although a full hearing may not be necessary in all instances where the Authority intends to impose sanctions, there are circumstances where it would be beneficial for the Authority to provide the licensee an opportunity to make oral submissions to the Authority.</li> <li>• Oral submissions don't only enable licensees to clarify</li> </ul>	Amend as follows: "(3) Before the Authority imposes any regulatory sanction on a licensee for failure to comply with the terms and conditions of the Act, these Regulations or the licence, it shall- (a) notify the licensee in writing; and b) invite the licensee to make representations on the matter; <u>and where it considers it necessary or at the request of the licensee, invite the licensee to make oral submissions.</u> "	Proposal accepted.

		<p>matters and focus on the most important issues, but may be useful to the Authority as they give the Authority an opportunity to ask questions and get details on matters that they Authority requires.</p> <ul style="list-style-type: none"> <li>• We therefore propose that the draft Regulations give the Authority the discretion to give the licensee an opportunity to make oral submissions upon request or where the Authority considers it necessary.</li> </ul>		
51	The Authority may, from time to time, issue guidelines in respect of any regulatory matter under these Regulations	<ul style="list-style-type: none"> <li>• The Act makes provision for two sets of subsidiary laws, namely regulations made by the Minister (as envisaged in s200 of the Act) and rules made by the Authority (as envisaged in s201 of the Act).</li> <li>• Reg. 51 seeks to create additional documents, namely guidelines.</li> <li>• However, it is not clear what the status of these guidelines are. For instance, it is not clear whether such guidelines are binding on licensees and the Authority.</li> <li>• The draft Regulations also do not indicate the process that</li> </ul>	<p>Delete Reg. 51 and defer to the Authority's power to issue rules under s201 of the Act.</p> <p>Alternatively, amend Reg. 51 to clarify -</p> <ul style="list-style-type: none"> <li>• the legal status of guidelines;</li> <li>• the process that the Authority must follow in respect of guidelines; and</li> </ul> <p>the circumstances under which the Authority may issue guidelines (instead of rules under s201 of the Act).</p>	<p>Proposal not accepted. Guidelines are not subsidiary legislation and are not binding. They merely guide how the Authority will interpreted or treat a regulatory matter. The objective of a guideline to provide for certainty in regulatory matters.</p>

		<p>the Authority must take when making guidelines, or whether such guidelines, like rules made under s201 of the Act, must be published in the Gazette.</p> <ul style="list-style-type: none"> <li>• It is also not clear how guidelines issued under Reg. 51 will differ from rules made under s201 of the Act.</li> <li>• We propose that the above be clarified.</li> <li>• Furthermore, to ensure clarity and consistency, as well as efficient regulation, we propose that the Authority only make guidelines in respect of matters that are not already adequately addressed in the Act, regulations or rules, and that they be limited to clarifying the Authority's approach to such matters.</li> </ul>		
N/A	N/A	<ul style="list-style-type: none"> <li>• The draft Regulations do not contain any transitional provisions. It is therefore, unclear how and when the draft Regulations will be enforceable against existing licensees and if existing licensees will be afforded a chance to regularise their</li> </ul>	<p>Insert 56:  Title: <u>Transitional Arrangements</u>  <u>"56. A licensee shall, within twelve (12) months of these Regulations coming into force, put in place measures to comply with these Regulations."</u></p>	<p>Proposal partially accepted. The transitional period has been put at three months.</p>

		businesses to comply with the promulgated Regulations.		
Fourth Schedule	Maximum penalties prescribed for offences breaching the draft Regulations	<ul style="list-style-type: none"> <li>• The schedule contains substantially higher fines in comparison to the corresponding schedule in the draft Communications (Broadcasting) Regulations, 2020 and provides that the Authority impose a fine and imprisonment at the same time for most offences.</li> <li>• While we understand the need to ensure compliance with the draft Regulations, the Forth Schedule adopts a highly punitive approach, which would not necessarily deter non-compliance.</li> <li>• The punitive approach is further exasperated by the fact that the Forth Schedule also does not appear to give the Authority the discretion to decrease the penalty in appropriate circumstances.</li> </ul>	We propose Authority reconsider the Fourth Schedule and that it be amended to prescribe fines or imprisonment (instead of fines and imprisonment) and that the fines listed in the schedule be the maximum penalties and not mandatory penalties for each offence, which gives the authority the ability to consider mitigating circumstances that warrant lower fines or imprisonment.	The Schedule states that the penalties indicated are the maximum penalties that can be imposed.
2	"broadcasting service" means a service consisting of the diffusion of sound or television programmes for general reception by the public;	<ul style="list-style-type: none"> <li>• s3 of the Act already includes a definition of "broadcasting service". It defines "broadcasting service" to mean "any service that consists of broadcasting, but does not</li> </ul>	Delete the definition of "broadcasting service" or replace it with the definition of the same term in s3 of the Act.	Proposal accepted. The definition will be aligned with the Act.

		<p>include ...". It is therefore not necessary and is confusing for the draft Regulations to include a new and different definition for this term.</p> <ul style="list-style-type: none"> <li>• The definition of "broadcasting service" in the draft Regulations is not only inconsistent with s3 of the Act, but is also vague in that it defines broadcasting to consist of "diffusion", a term which is not defined in the Act or the draft Regulations.</li> <li>• We propose that this definition be amended to accord with the definition of the same term in s3 of the Act</li> </ul>		
<b>Times Group</b>				
<b>Clause 17(1)(d)</b>	<p>“not acquire exclusive rights for the non-commercial broadcast of national events identified to be of public interest as may be determined by the Authority from time to time”.</p>	<p>This clause is prohibiting licensees to acquire exclusive rights for non-commercial broadcast of national events identified to be of public interest as may be determined by the Authority from time to time.</p> <p>We request MACRA to give some examples of such events to assist us appreciate the significance of this restriction.</p>		<p>The regulation has been revised to set criteria for defining events to be of public interest</p>

Clause 22(1)	“The licensee shall not broadcast content that... contains the use of offensive, abusive or inflammatory language and profanity”	We are worried that the Regulations have not given any definition or explanations of the open ended words of “offensive”, “abusive” or “inflammatory”.		These are not technical terms and the ordinary meaning of these terms will be applied.
<b>Clause 42</b>	A license 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”.	We do not understand the objective of this restriction. The Licensees are expected to vary out investigations using all necessary means including undercover investigations and documentaries that may involve persons who are convicted of criminal offences.  This restriction may affect generation of content that can assist the Public to draw lessons from crimes or offences of those affected persons. Why should MACRA regulate or restrict licensee from paying informants?		Journalism ethics prohibit payment to criminals to solicit information. The objective is that sources of information should not be compromised or induced by money.
Comments on Part V	Elections coverage			Part V of the Regulations has been reviewed following consultations with the Electoral Commission.
Clause 46(3)	Any party or person that intends to carry out a pre-recorded political election	What has changed? Is it the intention of MACRA to start vetting political messages?		MACRA is not vetting the political message. However the period indicated is for the protection of the Broadcaster to

	<p>broadcast shall submit the broadcast to the licensee at least five days prior to the broadcast.”</p>	<p><input type="checkbox"/> This is clearly interference that has never happened before in the past elections. It is also practically impossible for licensees to get any political party to meet this requirement. During political campaign the players work in crisis mode.</p>		<p>assess the message so that it is in compliance with the law.</p> <p>Additionally, the period has been revised to 48 hours.</p>
<p>Clause 46(4)</p>	<p>A Public Content Broadcasting Licensee shall carry out political election broadcast during an election broadcast period.”</p>	<p>We assume this clause refers to a Public Broadcaster like MBC. However it seems odd that MACRA wants to restrict broadcasting of political messages to an election period.</p> <p>All political parties have freedom to hold political rallies anytime and may invite licensee to broadcast their rallies</p>		<p>The Regulations have been revised to reflect as follows:</p> <ol style="list-style-type: none"> <li>(1) The Public Content Licensee has an obligation to cover political parties, candidates and cover election issues.</li> <li>(2) Other licensees have an option on whether to cover election issues. However, where they choose to cover election issues, the licensee will be an obligation to provide fair and equitable coverage and adhere to the obligations put in place by the</li> </ol>



				Regulations on Elections Coverage.
Clause 46(12)	“The Authority shall consult the Electoral Commission on any matter related to political election broadcast.”	We appreciate the need for MACRA to consult MEC on political related broadcast. It is not clear who will be the final decision maker whether MACRA or MEC?		MACRA will be the final decision maker as per its mandate under the Communications Act to regulate content services. Consultation will not mean that MACRA will abdicate its responsibility to regulate content services.
<b>Clause 46(13)</b>	“A licensee shall not transmit a political election broadcast for more than five minutes.”	It is not clear why MACRA is regulating the duration of the political message. Live broadcast of a political rally can take more than two to three hours.  Is the regulation of five minutes referring to political advertising?		The regulation has been deleted
Clause 50	“Notwithstanding sub-regulation (3), the Authority may make an interim order requiring the licensee to immediately cease and desist any broadcast that the Authority deems to be in contravention with the Act, these Regulations or the licence pending a full hearing of the matter.”	As a Regulator MACRA has given itself a “mini-injunction”. However there is no indication of any time frame within which it would lift the injunction or conduct the Public Hearing.  <input type="checkbox"/> We are proposing that this injunction should have an expiry period of at most 48 hours bearing in mind that we are dealing with broadcasting of programs that have short shelf life.		The proposal has been partially accepted. The time frame for the order has been limited to 21 days.  This will give the Authority adequate time to investigate a matter and make a determination on it, taking into account the limited shelf life of news and current events.

Clause 52	A person who contravenes any provisions of these Regulations commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five (5) years.”	<input type="checkbox"/> We find the penalty amount of K5 million not only too exorbitant but out of tune to the financial capacity of most local licensees. <input type="checkbox"/> The Regulations contain strict liability offences; this means one can commit a violation unknowingly and unintentionally. Surely it would be too punitive to suffer a penalty of K5 million in such cases. <input type="checkbox"/> We are humbly requesting MACRA to reduce the penalty fine to a maximum of K1million.		Proposal not accepted. The K5 million is what the Communications Act has prescribed as the maximum fine for offences under the Act and Regulations
Fourth Schedule		<p>As noted above, the offences contained in this Schedule are strict liability which means are hardly defensible.</p> <p>We therefore request that the penalties and fines be reduced not to exceed K1 million taking into account that most of licensees are facing serious cash flow challenges</p> <p>MACRA has recently threatened to withdrawal licences of some licensees on account of failure to pay for their licence fees.</p>		The offences are not strict liability offences. Penalties are supposed to be deterrent enough, otherwise, licensees would be able to afford non-compliance with the Regulations.

- **End** -



