

COMMUNICATIONS ACT

(Cap.68:01)

COMMUNICATIONS (COMMERCIAL TELEVISION) RULES, 2021

In EXERCISE of the powers conferred by section 201 of the Communications Act, the Malawi Communications Regulatory Authority makes the following Rules:

PART 1 - PRELIMINARY PROVISIONS

1. Citation

These Rules may be cited as the Communications (Commercial Television) Rules, 2021.

2. Interpretation

In these Rules unless the context otherwise requires-

“Content Service Provider” means a person licenced to provide a television content service under section 99 of the Act;

“conditional access” means the ability to restrict television content access to certain groups of users for purposes of collecting revenue for access to such services;

“Signal Distributor” means a Network Service Licensee authorised to provided broadcasting signal distribution services to a Content Service Provider

PART II – GENERAL PROVISIONS

3. Conditional Access of Television Content Services

- (1) A Content Service Provider may provide its services on a conditional access basis.
- (2) Where a Content Service Provider decides to provide its services on a conditional access basis it shall enter into a service agreement with a Signal Distributor for purposes of transmission and distribution of its television programming on a conditional access basis.

4. Service Agreement between Signal Distributor and Content Service Provider

- (1) A Signal Distributor shall, on request, provide broadcasting signal distribution services to a Content Service provider on a conditional access basis.
- (2) A Signal Distributor and a Content Service Provider shall negotiate and conclude a service agreement within thirty days from the date of the request made under subrule (1) by the Content Service Provider.
- (3) The service agreement between the Signal Distributor and the Content Service Provider shall include the following—
 - (a) obligations of the Signal Distributor;
 - (b) obligations of the Content Service Provider;
 - (c) subscription fees and payment arrangements;
 - (d) technical and installation support;
 - (e) parental control mechanism;
 - (f) electronic program guide;
 - (g) subscriber management support;

- (h) dispute settlement mechanism;
- (i) customer care service;
- (j) programme classification; and
- (k) any other matter prescribed by the Authority.

5. Approval of Service Agreement by the Authority

- (1) The Signal Distributor and the Content Service Provider shall file a copy of the service agreement made under Rule 4(2) Rule with the Authority for approval within thirty days from the conclusion of the agreement.
- (2) The Authority shall notify the parties in writing within thirty days from the date of submission of the service agreement whether it approves the agreement or not.
- (3) Where the Authority determines that the service agreement or any term or condition of it is not consistent with the Act or these Rules, it shall notify the parties and direct them to agree on new terms and conditions that are consistent with the Act and these Rules, within thirty days.

6. Failure to conclude service agreement

- (1) Where the Signal Distributor and the Content Service Provider fail to conclude the service level agreement within the prescribed under Rule 4(2) or Rule 5(3), the parties shall refer the matter to the Authority to make a determination.
- (2) Each party shall submit to the Authority, with a copy to the other party, written representations on the matters on which they cannot agree.

- (3) Upon receipt of the representations, the Authority shall determine the terms of the agreement to apply between the parties.

7. Obligations of Signal Distributor

- (1) A signal distributor shall have the following obligations—
 - (a) provide conditional access services to Content Service Providers;
 - (b) provide television content aggregation and programme bouquet handling system;
 - (c) provide services to current and new Content Service Providers in a fair, transparent, impartial and non-discriminatory manner;
 - (d) collect subscription fees on behalf of Content Service Providers and disburse such to Content Service Providers;
 - (e) ensure that there is uninterrupted broadcast of television content from Content Service Providers;
 - (f) where there is an interruption in the broadcast of television content, inform without delay Content Service Providers the reasons for the interruption and the likely duration of the interruption.
 - (g) determine the numbering sequencing of content channels it shall carry.
- (2) The Signal Distributor shall, in consultation with Content Service Providers, set the subscriptions fees for conditional access by subscribers of television content.

8. Obligations of Content Service Providers

A Content Service Provider shall—

- (a) ensure that its television content for transmission by the Signal Distributor carries station identification information by periodic announcements and the logo for the television station;
- (b) provide information to the Signal Distributor, for inclusion in the electronic program guide;
- (c) provide content to the Signal Distributor that is compliant with copyright laws and copyright agreements; and
- (d) provide periodic viewers guide, warning and information on the rating of broadcasting content.

9. Prohibition on Conveyance of Unlicensed services

A Signal Distributor shall ensure that all television content services are provided by holder of a content service licence issued under section 99 of the Act.

10. Subscription Fees

A subscriber shall pay subscription fees to the Signal Distributor in order to access television content provided on a conditional access basis by a Content Service Provider.

11. Audited Accounts

- (1) The Signal Distributor shall maintain financial statement audited in a manner consistent with internationally recognized standards and certified by a qualified auditor.

- (2) A Content Service Provider may inspect the financial records of the signal distributor in so far as they relate to provision of conditional access services to verify the subscription fees collected by the Signal Distributor.

12. Viewership

A Signal Distributor shall have a system capable of indicating the viewership of television programmes of Content Service Provider.

13. Provision of Television Content to other platforms apart from Signal Distributor

- (1) Subject to sub-rule (2) a Content Service Provide shall not provide its television content for broadcasting to any person other a Signal Distributor.
- (2) A Content Service Provide, may in addition to providing its television content to a Signal Distributor, provide such content for broadcasting to another person provided that this is done on commercial terms approved by the Authority.

PART III – OFFENCES AND ENFORCEMENT

14. Offences

Any person who fails to comply with any provision of these Rules commits an offence.

15. Enforcement

- (1) The Authority may, for contravention of any provision of these Rules, impose any enforcement order or sanction as provided for under section 195 of the Act.

- (2) In imposing an enforcement order or sanction under subrule (1), the Authority shall consider any aggravating factors, including but not limited to—
- (a) the gravity of the contravention;
 - (b) the duration of the contravention;
 - (c) whether the contravention resulted in injury to a person or property;
 - (d) whether the provider acted knowingly, recklessly, or in a negligent manner; or
 - (e) whether the provider has a previous history of contraventions.

PART IV - MISCELLANEOUS

16. Directions

- (1) The Authority may issue directions on any aspect of these Rules.
- (2) The directions issued under sub-rule (1) may either be of general or specific application relating to conditional access of television content.

Made this..... day of ,.....2021

Stanley Khaila (PhD)

Chairperson of the Malawi Communications Regulatory Authority