

BROADCASTING BILL 2013

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TURKS AND CAICOS ISLANDS

A PROPOSAL

FOR

A

BILL

FOR

AN ORDINANCE TO MAKE PROVISION FOR THE LICENSING OF SOUND AND TELEVISION BROADCASTING; AND FOR MATTERS CONNECTED THERETO.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Broadcasting Ordinance 2013, and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette* and the Governor may fix different days for the coming into force of any Part of this Ordinance.

Interpretation

2. (1) In this Ordinance—

“audiovisual media service” means a service for the provision of material with a view to its being comprised in signals conveyed by means of a network which is under the editorial responsibility of the service provider of that service;

“broadcasting” means the transmission of programmes whether or not encrypted, by means of telecommunications, for reception by the public on free, pay or subscription or other basis, including sound, radio, television and other types of transmissions, such as those on appoint to multipoint basis;

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telecommunications, a cable or a satellite device, directly or indirectly for reception by the general public, whether that material is actually received or not;

“carriage service” means any service consisting in whole or in part or the conveyance of signals by means of a network, except in so far as it is a content service, including the provision of ancillary services to the conveyance of signals and conditional access or other related services to enable a customer to access a content service;

“Code” means the Code relating to the conduct of broadcasting services that has been prepared under this Ordinance;

“Commission” means the Telecommunications Commission of the Turks and Caicos Islands established under section 3 of the Telecommunications Ordinance;

“Communications Tribunal” means the Communications Tribunal established pursuant to section 55 of the Telecommunications Ordinance;

“content service” means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audiovisual media service;

“customers” means, in relation to a licensee, the following (including any of them whose use or potential use of the network or carriage service is for the purposes of, or in connection with, a business)—

- (a) the persons to whom the network or carriage service is provided in the course of any business carried on as such by the licensee;
- (b) the persons to whom the licensee is seeking to secure that the network or carriage service is so provided;
- (c) the persons who wish to be so provided with the network or carriage service, or who are likely to seek to become persons to whom the network or carriage service is so provided;

“Director General” means the person appointed as such under section 6 of the Telecommunications Ordinance;

“licence” means a licence for the carrying on of broadcasting service issued pursuant to section 12;

“licensee” means a person holding a valid licence;

“licensed service” means a service provided by a licensee under a licence issued pursuant to section 12;

“Minister” means the Minister responsible for broadcasting;

“network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electromagnetic energy, of signals of any description; and
- (b) such of the following as are used by the person providing the network and in association with it, for the conveyance of the signals —
 - (i) apparatus, equipment or facilities comprised in the network;
 - (ii) apparatus, equipment or facilities used for the switching or routing of the signals; and
 - (iii) software and stored data;

“subscriber” means any customer of a licensee who is party to a contract with the licensee for the provision of networks or carriage services;

“Turks and Caicos Islander” has the meaning prescribed in section 132(1) of the Constitution.

(2) The provisions of this Ordinance in so far as they amount to terms and conditions of a licence are deemed to be incorporated in the licence in addition to those actually stated therein.

(3) In determining whether a person is a fit and proper person to hold any particular position in or control of a broadcasting service, regard shall be had to—

- (a) the probity of that person;
- (b) the competence and soundness of judgement of that person for fulfilling the responsibilities of that position;
- (c) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position; and
- (d) whether the interests of the public are, or are likely to be, in any way threatened by the holding of the position by that person.

(4) Without prejudice to the generality of subsection (3), in determining whether a person is a fit and proper person the

Commission may have regard to the previous conduct and activities in business of the person and, in particular, to any evidence that the person has—

- (a) been convicted of an offence involving fraud or other dishonesty or violence;
- (b) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on the method of conducting business of that person; or
- (c) engaged in or been associated with any other business practices or otherwise conducted himself or herself, in such a way as to cast doubt on the competence and soundness of judgment of that person.

Application

3. (1) This Ordinance applies in respect of broadcasting services carried on in whole or in part within the Islands or on board-

- (a) any ship, vessel or aircraft that is—
 - (i) registered or licensed pursuant to the law in force in the Islands;
 - (ii) owned by, or under the direction or control of the Crown;
- (b) any spacecraft that is owned by, or under the direction or control of—
 - (i) the Crown;
 - (ii) a Turks and Caicos Islander; or
- (c) any platform, rig, structure or formation that is affixed or attached to land situated in the territorial waters of the Islands.

(2) This Ordinance applies in respect of broadcasting service whether or not that service is carried on for profit or part of, or in connection with, any undertaking or activity.

PART II

FUNCTIONS AND DUTIES OF THE COMMISSION UNDER THIS
ORDINANCE**Responsibility of the Commission under this Ordinance**

4. The Commission shall be responsible for the regulation and supervision of broadcasting services, in giving effect to the broadcasting policy as determined by the Minister.

Functions of the Commission under this Ordinance

5. (1) The Commission shall ensure that the number and categories of broadcasting services made available in the Islands by virtue of this Ordinance best serve the needs of the people of the Islands having regard to their languages and traditions and their religious, ethical and cultural diversity and without any limitation on this general function the Commission shall—

- (a) supervise and regulate licensees in accordance with this Ordinance, regulations and the Code;
- (b) consider and determine applications for licences;
- (c) advise the Minister on any matter within its knowledge or on which the Minister may seek its advice;
- (d) undertake, sponsor, or assist in research relating to any class or classes of broadcasting which may be subject to control or regulation under this Ordinance;
- (e) issue Codes, rules and guidelines within its jurisdiction under this Ordinance and encourage broadcasting services of the highest possible quality;
- (f) establish a system for monitoring the operations of licensees and the content of their broadcasting services or programming to ensure their adherence to this Ordinance and any Code, rules or Regulations made under this Ordinance;
- (g) collect fees relating to licences;
- (h) investigate complaints of alleged broadcasting violations;
- (i) require licensees to carry certain programmes as public information deemed appropriate and

- necessary in the event of an emergency or a disaster and for national security;
- (j) require licensees to carry out public service broadcast or development support broadcast as public information deems necessary;
 - (k) promote the provision of a diverse range of radio and television broadcasting services throughout the Islands;
 - (l) promote the development of broadcasting services which are responsive to the needs of the audience of the Islands;
 - (m) preserve and promote the plural nature of the culture of the Islands by ensuring that licensees, as far as practicable, include in their services programmes reflecting the cultural diversity of the Islands;
 - (n) ensure fair competition between licensees;
 - (o) implement and provide technical advice and guidance on policies governing broadcasting service in the Islands;
 - (p) monitor compliance with the standards established under this Ordinance; enforce any Code made or prepared under this Ordinance; and report to the Minister on any matter referred to in this subsection.

Powers of the Commission under this Ordinance

6. (1) For the performance of its functions under this Ordinance and to verify compliance with the provisions of this Ordinance by a licensee, the Commission—

- (a) may, by notice in writing require a licensee to provide such information as the Commission thinks necessary in relation to the broadcasting programmes and operations of the licensee, either from time to time or on a regular basis and the licensee shall comply with that request;
- (b) may issue written directions to any licensee and the licensee shall comply with those directions;
- (c) is entitled, subject to section 46, at all reasonable times, to have access to such books, records, vouchers, documents, and other information held by a licensee at any place of business as determined by the Commission.

(2) A licensee who, after being given a reasonable opportunity and time by the Commission to do so, fails to—

- (a) provide information as required under subsection (1) (a); or
- (b) comply with a direction issued under subsection (1) (b),

commits an offence and is liable to a fine of [two hundred thousand] dollars.

(3) Notwithstanding subsection (2), where a licensee or a director, officer or auditor of a licensee fails to comply with a requirement issued by the Commission under this Ordinance, the failure shall be a ground for the suspension, under section 20, of the licence of that licensee.

PART III

LICENSING

Prohibition against broadcasting without a licence

7. Subject to section 11, a person shall not provide a broadcasting service, directly or indirectly in the Islands unless that person is granted and holds a valid licence for that purpose pursuant to the provisions of this Ordinance.

Application for licence

8. (1) A person who wishes to obtain a licence pursuant to this Ordinance shall make an application to the Commission in the manner and form determined by the Commission with all relevant supporting documents and the application must be accompanied with the prescribed application fee.

(2) Upon receipt of an application, the Director General shall transmit the application to the Commission, for its consideration.

(3) The Commission may require the applicant to furnish—

- (a) information in relation to the ability of the applicant to provide a broadcasting service or to the technical material or equipment available to the applicant;
- (b) information which may be reasonably necessary in order to enable the Commission to—

- (i) determine whether the applicant is a fit and proper person to hold a licence pursuant to the provisions of this Ordinance;
- (ii) properly review and consider the application to determine whether the applicant should be granted a licence pursuant to the provisions of this Ordinance;

(c) such other information as may be prescribed.

(4) On receipt of an application made pursuant to subsection (1) the Commission may, if it deems it to be necessary—

(a) cause a notice of the application to be published—

- (i) in the *Gazette*; and
- (ii) in such other manner as the Commission deems fit; and

(b) invite all interested persons, who so wish, to lodge with the Commission such objections as they may have against the application.

(5) Where the Commission has published a notice of an application any person who wishes to object to an application shall, not later than twenty-one days after the date of the publication specified in subsection (4), lodge his or her objection in writing with the Commission.

(6) The Commission shall consider any objection lodged pursuant to subsection (5) in making a determination as to whether or not to grant a licence.

(7) The Commission shall not grant a licence—

- (a) where the applicant, if an individual, is not a Turks and Caicos Islander;
- (b) where the applicant, if a company or body corporate, is not owned or controlled by Turks and Caicos Islanders;
- (c) where the applicant is an un-discharged bankrupt or declared insolvent or has been found liable for defamation or sedition or has been convicted for any offence involving fraud or dishonesty; or
- (d) if it is not in the public interest to do so.

(8) For the purposes of subsection (7) (c), a company or body corporate is owned or controlled by Turks and Caicos Islanders if —

- (a) not less than fifty-one per cent of the members of its board of directors are individual who are Turks and Caicos Islanders;
- (b) otherwise than by way of security only, not less than fifty-one per cent of the company's voting shares issued and outstanding are owned by Turks and Caicos Islander; and
- (c) the company or body corporate is not otherwise controlled by persons that are not Turks and Caicos Islanders.

Consideration of application

9. (1) The Commission shall, in determining whether to grant a licence, have regard, to—

- (a) any objection made pursuant to section 8 (5);
- (b) the background and experience of the management of the applicant;
- (c) the ability of the applicant to comply with the conditions of his, her or its licence and the requirements of this Ordinance;
- (d) the effect the activity of the applicant may have on competition among other broadcasting service providers;
- (e) the ability of the applicant to satisfy the Commission that he, she or it shall comply with the Code; and
- (f) such other matters, as the Commission deems appropriate.

(2) Where the Commission refuses to grant a licence, the Commission shall give reasons for its decision.

Changes

10. (1) A licensee shall as soon as possible after, but within 14 days of a change in relation to any information supplied to the Commission on the licensee's application for a licence under this Ordinance, inform the Commission in writing of the change and the Commission may, within 45 days of the Commission being informed, object to the change.

(2) Where an objection is made by the Commission under subsection (1), a failure by the licensee to rectify the matter objected to may result in the application of section 20.

Procedure for persons carrying on broadcasting service prior to commencement of Ordinance

11. (1) Subject to subsection (2), with effect from the commencement of this Ordinance, a person who has been carrying on a broadcasting service prior to the commencement of this Ordinance, shall be deemed to be a licensee under this Ordinance for a period of no more than six months from the date of commencement of this Ordinance.

(2) A person who is deemed under subsection (1) to be a licensee under this Ordinance, shall, within six months from the date of the commencement of this Ordinance, apply for a licence, in accordance with section 8 to carry on a broadcasting service.

(3) Where a person referred to in subsections (1) and (2) fails to apply for a licence at the time specified in subsection (2), that person shall cease to carry on a broadcasting service in the Islands.

(4) A person who contravenes subsections (2) and (3) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, an employee, officer, a director or manager, to a fine of \$20,000 or to imprisonment for a term of eighteen months or to both such fine and imprisonment;
- (b) in the case of a company, to a fine of \$50,000.

Grant or refusal of licence

12. (1) The Commission shall, not later than three months after the expiry of the period of twenty- one days specified in section 8 (5), inform the applicant and the objector, if any, of—

- (a) the Commission's decision to grant or refuse the application for a licence;
- (b) the reasons for the decision, where the application for a licence has been refused.

(2) Pursuant to section 13, the Commission may grant a licence subject to such terms and conditions as the Commission thinks fit to impose and on payment of the prescribed fee.

(3) Notwithstanding the other provisions of this Ordinance, where the Commission is of the opinion that, by granting a licence, the attainment of the objective of promoting a diverse range of broadcasting services and the plural nature of the Islands culture may be impeded, the Commission may refuse an application for a licence.

(4) A licensee shall comply with the terms and conditions of his, her or its licence.

(5) A person aggrieved by a decision of the Commission shall have a right of appeal in accordance with section 47.

(6) A licensee shall carry on his, her or its activities in compliance with this ordinance, the Code and any rule or regulation made under this Ordinance.

General conditions governing licences

13. (1) A licence may include—

- (a) a requirement that the licensee shall afford, in such manner as may be prescribed, a right of reply to a person whose character, goodwill or reputation has been adversely affected by a broadcast programme;
- (b) the amount of any charge or fee leviable by the licensee on any person who avails himself or herself of the broadcasting service provided by the licensee.

(2) The grant of a licence by the Commission does not constitute consent on the part of the Commission for the doing of any act that amounts to a breach of law or contractual arrangement and every issue of a licence shall be deemed to incorporate this condition.

Other conditions governing licences

14. The Commission shall, before granting a licence, take into account—

- (a) whether the attainment of the objective of promoting a diverse range of radio and television broadcasting services will be achieved;
- (b) whether the public interest and national security interests will be safeguarded; and
- (c) such other matters as may be deemed necessary.

Licence fees

15. (1) The Governor may, with the approval of the Cabinet, prescribe the fees to be paid for the grant of a licence under this Ordinance.

(2)) The prescribed fees payable under subsection (1) shall be in respect of the year commencing on the date on which the licence comes into force.

(3) The prescribed fees under subsection (1) shall be payable for each year for which the licence is in force and such fee shall be due on each anniversary of the date on which the licence was issued.

Regulatory fees

16. (1) Every licensee holding a licence granted under this Ordinance, shall pay to the Commission for every year during the subsistence of the licence such annual regulatory fee as may be prescribed by Regulations.

(2) The regulatory fee under subsection (1) shall be such amounts as shall recover from licensees on an equitable basis being the amounts required to defray cost incurred or anticipated by the Commission in the exercise of its functions in respect of broadcasting.

(3) The Commission shall specify on the licence the date of payment each year of the regulatory fee.

(4) The Commission may revoke any licence granted under this Ordinance where the licensee fails to pay the regulatory fee under subsection (1) on the date specified in the licence.

(5) The Governor may make regulations specifying conditions under which a licensee may be exempted by the Commission from the provisions of this section.

Duration of licence

17. (1) Subject to sections 20, a licence shall be valid for a period of five years.

(2) A licensee who wishes to renew his, her or its licence shall, not later than three months before the expiry of the licence, give written notice of his, her or its intention to the Commission.

Transfer of licence

18. (1) A licensee shall not, except with the written approval of the Commission, assign or transfer his, her or its licence.

(2) The Commission shall have regard to the following matters when deciding on a request for approval of assignment or transfer—

- (a) the circumstances of each transfer or assignment so as to ensure that licensees are not unduly restricted in the management of their commercial affairs;

- (b) whether or not the assignee or transferee satisfies the criteria for the grant of a licence;
- (c) where the assignment is from one or more individuals to a body corporate owned or controlled by the same individual or individuals; the extent to which the assignment achieves a change in their relative interest;
- (d) where the assignment is from a body corporate to its shareholders, the extent to which there is a change in the assignor's interest;
- (e) where the assignment or transfer is the result of a corporate reorganisation, the extent to which there is a change in beneficial ownership.

(3) Notwithstanding subsection (2), the Commission shall not withhold approval where the assignment or transfer achieves no material change in the relative interests of the assignee and assignor, or where the assignment or transfer is to a wholly owned subsidiary of the assignor, or from a body corporate to its parent company, or between wholly owned subsidiaries, or results from a corporate reorganisation that involves no change in the beneficial ownership or management of the assignor.

Modification of licence

19. (1) A licensee may make a written application to the Commission to modify the terms and conditions of his, her or its licence and the Commission may modify the terms and conditions of the licence or refuse to do so.

(2) Where the Commission refuses to modify the terms and conditions of a licence under subsection (1) the Commission shall give reasons for its decision.

(3) The Commission may on its own initiative modify the terms and conditions of any licence granted under this Ordinance.

(4) Before modifying the terms and conditions of any licence under subsection (3), the Commission shall give notice to the licensee who is affected and where substantially similar licences have been issued to more than one person to all licensees who are affected; and may publish the notice in a newspaper circulating in the Islands or on the Commission's website—

- (a) stating that the Commission proposes to make the modifications and setting out their effect;
- (b) stating the date of publication to the licensees, if the notice is being published;

- (c) giving the reasons why the Commission proposes to make the modifications, including whether the modifications are required in the public interest; and
 - (d) specifying a period not less than the end of the period of twenty-eight days beginning with the day after the date on which notice is given to the licensee or of publication, whichever is later, within which representations on the proposed modifications may be made by the licensee.
- (5) The Commission shall consider representations which are made by the licensee and not withdrawn.
- (6) A licence may only be modified—
- (a) with the written consent of the licensee; and
 - (b) where substantially similar licences have been issued to more than one person, with the written consent of the licensees who between them account, according to estimates by the Commission based on available market information, for at least seventy-five per cent of the total broadcasting revenue of all licensees carrying on business under the licences.
- (7) Where consent under subsection (6) is not forthcoming or is impracticable to obtain, the Commission may, after considering representations of the licensee under subsection (5) modify the terms and conditions of licence to include the modifications, if the Commission considers that the modifications are in the interest of national security or the public interest.

Suspension and revocation of licence

20. (1) Where the Commission has reason to believe that a licensee has contravened any provision of this Ordinance or the conditions of the licence, the Commission shall give to the licensee notice in writing—

- (a) specifying particulars of such contravention;
 - (b) requiring the licensee to justify its actions to the Commission or otherwise take such remedial action as may be specified in the notice.
- (2) Where a licensee fails to comply with any requirements of a notice under subsection (1), the Commission may—
- (a) on the first occasion of such failure suspend the licence for a period not exceeding three months; or

- (b) if the failure occurs on any second or subsequent occasion, suspend the licence for such period as the Commission considers appropriate, or revoke the licence.

(3) Before suspending or revoking a licence under subsection (2), the Commission shall notify the licensee accordingly and shall afford the licensee an opportunity to show cause why the licence should not be suspended or revoked.

(4) Subject to subsection (3), the Commission may suspend or revoke a licence, as the case may be, if, on its own initiative or on representations made by any other person, the Commission is satisfied that the licensee has—

- (a) knowingly made any false statement in an application for a licence or in any statement made to the Commission;
- (b) knowingly failed to provide information or evidence that would have resulted in refusal to grant a licence;
- (c) wilfully failed to comply with the terms and conditions of its licence;
- (d) wilfully contravened any provision of this Ordinance or any rules or regulations or Code made thereunder;
- (e) provided services not authorised by its licence;
- (f) failed to make payments of fees prescribed for the licence in a timely manner; or
- (g) has carried on or is carrying on its business in a manner detrimental to the public interest.

(5) Before taking action under subsection (4) the Commission shall carry out such investigations as may be necessary and afford the licensee concerned an opportunity to be heard.

(6) For the purpose of this section, the Commission may—

- (a) summon and examine witnesses;
- (b) call for and examine documents;
- (c) require that any document submitted be verified by affidavit;
- (d) adjourn any investigation from time to time.

(7) If a person fails or refuses without reasonable cause, to furnish information to the Commission when required to do so,

the Commission may apply to the Court for an order to compel the person to furnish the information to the Commission.

Review of decisions

21. (1) The Commission may on application or on its own motion, review, revoke, cancel or vary, in whole or in part, any decision made by it, or may rehear any matter before the Commission.

(2) The Commission may make Rules for the purposes of subsection (1) and such Rules shall be published in the *Gazette*.

Surrender of licence

22. (1) A licensee may surrender his, her or its licence at any time before the expiry of the licence and no part of the licence fee payable under this Ordinance shall be refunded.

(2) A licensee who wishes to surrender his, her or its licence shall give written notice of his, her or its intention to do so to the Commission.

(3) Where a licence has been revoked by the Commission, the licensee shall immediately surrender the licence to the Commission.

Register of licences

23. (1) The Director General shall keep a register of every licence and of the conditions and other particulars relating to the licence.

(2) The register shall be open to inspection by the public.

(3) The Director General shall keep the register up to date and shall record any transfer, variation, suspension, revocation or surrender of a licence.

Broadcasting by Government

24. (1) The Commission shall issue to the Government at the commencement of this Ordinance, a licence, which shall be valid for a period of five years, in respect of any broadcasting service which at that date the Government is providing to the general public, and which the Government continues, in whole or in part to provide.

(2) For the purposes of subsection (1), a broadcasting service provided only on payment of a subscription fee shall not be regarded as being provided to the general public.

PART IV

STANDARDS FOR BROADCASTING AND CONTENT OF PROGRAMMING

General powers to regulate content

25. The Commission may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage service or by broadcasting in the Islands.

Development of codes of practice

26. (1) The Commission shall issue codes of practice that are to be observed by licensees providing audiovisual media services in the Islands.

(2) Codes of practice issued under subsection (1) may include standards which might include one or more of the following—

- (a) methods of ensuring that the protection of children from exposure to programme material which may be harmful to them;
- (b) promoting accuracy and fairness in news and current affairs programmes;
- (c) preventing the broadcasting of programmes that simulate news or events in a way that misleads or alarms the audience;
- (d) in the case of codes of practice developed for broadcasting—
 - (i) time devoted to advertising;
 - (ii) standards requiring advertisements to be distinguished from programme content;
 - (iii) the kinds of sponsorship announcements that may be broadcast; and
 - (iv) the kinds of sponsorship announcements that particular kinds of programme may carry;
- (e) captioning of programmes for the hearing impaired;
- (f) teletext and ancillary services;
- (g) party political broadcasts;
- (h) sports and national events broadcasting;
- (i) must carry regulations; and

(j) national emergency and disaster conditions.

(3) In developing codes of practice relating to matters referred to in subsection (2) the following matters will be taken into account—

(a) the portrayal in programmes of—

- (i) physical and psychological violence;
- (ii) sexual conduct and nudity;
- (iii) the use of drugs, including alcohol and tobacco; and
- (iv) matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;

(b) the use in programmes of offensive language.

Complaints

27. The Commission shall as part of any code of practice issued under section 26(1), determine procedures to be observed by all or some of those persons identified in section 26(1) for—

- (a) handling complaints from the public about programme content or compliance with codes of practice; and
- (b) reporting to the Commission on complaints so made.

Power to delegate

28. (1) The Commission shall have power to allow industry groups to develop, in consultation with the Commission and taking into account any relevant research conducted by the Commission, codes of practice that are to be applicable to the content provision operations of each of those sections of the industry and to monitor compliance with such codes.

(2) Codes of practice developed under this section shall not have effect until published by the Commission.

Limitation of the Commissions power

29. The Commission must not determine that before programmes are broadcast, the programmes, or a sample of the programmes, be approved by the Commission or by a person of body appointed by the Commission.

Register of codes of practice

30. The Commission shall publish a register in which it includes all codes of practice developed under sections 26 and 28.

Retention of content

31. (1) The Commission may issue regulations relating to the procedures acceptable to the Commission for the retention of recordings in sound and vision of any content to which this Part applies.

(2) These regulations may include—

- (a) the time period for which such recordings must be retained;
- (b) the standard or quality of such recordings;
- (c) the manner in which such recordings must be provided to the Commission;
- (d) a requirement to retain the script or transcript of any programme;
- (e) an obligation to record and retain the recordings of app programmes broadcast by a licensee.

PART V**OFFENCES AND PENALTIES****Civil penalty for non compliance**

32. A person who fails to comply with any regulatory or other measures under this Ordinance shall be liable to pay a fine to the Commission under section 33.

Fines and remedies

33. (1) Subject to subsection (3) a licensee or, where such person is not a licensee, a person that contravenes any provision of this Ordinance or a licence condition is liable to a fine or other penalty determined by the Commission, not exceeding ten percent of that licensee's relevant turnover or, where such person is not a licensee, that person's relevant turnover.

(2) The Commission may do one or more of the following—

- (a) issue a determination to the persons in contravention of this Ordinance;

(b) amend, suspend or revoke the licence.

(3) Any order issued by the Commission imposing a fine or other penalty shall specify the date on which that fine or penalty will become due and payable. Where the order relates to —

(a) contravention of a licence condition; or

(b) contravention of the [content] code,

the date so specified shall afford a reasonable period within which to remedy the relevant contravention. Except in the case of repeated contraventions, the fine or penalty shall not be payable if the relevant contravention has been remedied by the date specified in the order.

(4) In specifying a date for the purposes of subsection (3) the Commission shall have regard to—

(a) the seriousness of the contravention and the need for urgent remedy; and

(b) the conduct of the person liable to pay the fine or penalty including any previous or repeated contravention of the same or any other licence condition or provision of the content code.

(5) Any person who fails or refuses on or before the date specified for the purposes of subsection (3) to—

(a) remedy a contravention; or

(b) pay a fine or penalty,

shall in respect of each failure or refusal be liable to pay an additional daily default fine not exceeding one hundredth of one percent (0.01%) of that licensee's relevant turnover or, where such person is not a licensee, that person's relevant turnover until the contravention is remedied or the fine or penalty is paid.

Recovery of fine and penalty

34. Any fine or penalty payable under this Ordinance if remain unpaid constitutes a debt which may be recovered in court.

Penalty for broadcasting without a licence

35. (1) A person who—

(a) being a person referred to in section 11, continues to carry on a broadcasting service after the

expiration of six months from the commencement of this Ordinance without applying for a licence;

- (b) not being a person referred to in section 11, carries on a broadcasting service without a licence being granted to him or her or it; or
- (c) carries on a broadcasting service after a licence granted to him, her or it has been suspended, revoked or expired,

commits an offence and is liable on conviction, to a fine of \$50,000 or to a term of imprisonment of one year.

(2) All machinery and equipment used, or which can be used, for broadcasting and owned by or in the possession of the person convicted shall be liable to be forfeited; but such property not owned by the person concerned shall not be forfeited unless the court is satisfied that the owner of the property knew or ought to have known with reasonable diligence, that the person convicted had no licence to carry on a broadcasting service.

Penalty for other offences

36. A person who contravenes any other provision of this Ordinance or regulation made under this Ordinance for which there is no prescribed penalty is liable, on conviction, to a fine of \$20,000 or to imprisonment for six months.

Offence by body corporate

37. Where an offence under this Ordinance is committed by a body corporate and it is proved that the offence has been committed with the consent or connivance of or is attributable to neglect by, a director, manager, secretary or other officer of the body corporate or a person purporting to act in such capacity, the officer or person as well as the body corporate shall be liable to be proceeded against and punished accordingly.

PART VI

MISCELLANEOUS

Acquisition of interest in licensee

38. (1) An employee or officer of the Commission shall not own or acquire an interest in the business of a licensee.

(2) Where an interest in a licensee devolves upon an employee or officer of the Commission, by inheritance or otherwise, he or she shall, disclose such interest and unless the

Commission otherwise determines, forthwith dispose of that interest.

Confidentiality

39. A member of the Commission, an employee or officer of the Commission or a member of any committee of the Commission shall not, except in the course of, and for the purpose of the performance of his or her duties, disclose to any other person anything that comes to his or her knowledge related to a matter which is to be, is being or has been determined by the Commission or any committee of the Commission.

Limitation of liability

40. A member of the Commission, an employee or officer of the Commission or a member of any committee of the Commission shall not be personally liable for any damage suffered by any person in consequence of any act or thing which was done in good faith or done or omitted to be done in the course of the exercise or performance of a power, duty or function under this Ordinance.

Audited accounts and returns

41. The Director General may instruct a licensee to supply to him, not later than the end of the period of three months beginning with the day after the end of its financial year, a copy of its audited annual accounts and such return as he may instruct

Examination

42. The Commission may from time to time appoint one or more qualified persons to make examination, under conditions of secrecy, of the books and affairs of any licensee under this Ordinance.

Production of books, etc

43. (1) Every licensee of which an examination has been ordered under section 42, on service of an examination notice (the "Examination Notice") from the Commission specifying—

- (a) the relevant books, accounts and documents required by the Commission for examination; and
- (b) the date on which such books, accounts and documents are required, such date to provide the licensee with a reasonable period in which to gather the required information,

shall produce to the person or persons under the provisions of that section, at such times and in such places on the date specified in the Examination Notice as such persons or persons may specify (being times and places which, in the opinion of such person or persons, would not be detrimental to the conduct of the normal daily business of the licensee) all books, accounts and documents in the possession or custody relating to its business as may be specified in the Examination Notice.

(2) If any book, account, document or information is not produced in accordance with subsection (1), the licensee commits an offence and is liable on summary conviction to a fine of \$1,000 in respect of every day during which the offence continues; and if any book, account, document or information specified in subsection (1) is false in any material particular, the licensee concerned commits an offence and is liable on summary conviction to a fine of \$20,000.

(3) As soon as may be after the conclusion of an examination under section 42, the person or persons appointed under the said section 42 shall submit a full report on such examination to the Commission.

Power after examination

44. If in the opinion of the Commission an examination under section 42 shows that the licensee concerned is carrying on its business in a manner contravening any of the provisions of this Ordinance, or any condition of the licence, the Commission may require by notice that the licensee within such time as stated in the notice, not less than fourteen days, to implement such measures as the Commission may consider necessary in relation to its business, and if the licensee fails to implement the said measures, the licensee commits an offence and is liable on summary conviction to a fine of \$20,000.

Production of documents and inspection

45. (1) The Commission may by notice served on a licensee or applicant for a licence, require the production for inspection of any document that is required by the Commission for the performance of any of its functions pursuant to the provisions of this Ordinance.

(2) The Commission may inspect the premises from which a licensee provides a broadcasting service or from which an applicant for a licence proposes to provide a broadcasting service.

(3) The Commission shall not do any thing provided for pursuant to subsection (2), unless in accordance with a warrant

for that purpose issued by a Magistrate on application made by the Commission.

Power of entry and search

46. (1) Where on information provided by the Commission, the Director General or other person, the court has reason to believe that a person is not complying with a condition of a licence, or instructions issued by the Commission or a provision of this Ordinance, the Court may issue a search warrant to a police officer to search the premises of that person.

(2) A warrant issued under this section shall authorise a police officer accompanied by a representative of the Commission—

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any apparatus, documents or equipment in accordance with the terms of the warrant or take in relation to such apparatus, documents or equipment, any other steps which appear necessary for their preservation or preventing interference with them;
- (c) to take copies of or extracts from the documents or test the apparatus or equipment in accordance with the terms of the warrant; and
- (d) to use reasonable force.

(3) Where under this section a police officer and representative of the Commission may take possession of apparatus, documents or equipment or take copies of or extracts from documents or test apparatus or equipment on premises, a person who is on or in charge of the premises shall give them such assistance as they may require in taking possession or extracts or copies or in the testing.

(4) In this section “court” means Magistrate’s Court established under section 3 of the Magistrate’s Court Ordinance.

(5) A person shall not obstruct the Director General or another person in the exercise of authority conferred under this section.

(6) A person who contravenes subsection (5) commits an offence and is liable to a fine of ten thousand dollars.

Appeals

47. (1) An appeal lies to the Communications Tribunal from any decision of the Commission, including any decision made with respect to a refusal to grant or the revocation, suspension, or

modification of a licence or any term or condition of a licence granted under this Ordinance.

(2) A person may, within fourteen days of notice of a decision of the Commission, lodge an appeal in writing to the Communications Tribunal against that decision.

(3) The provisions of the Telecommunications Ordinance with respect to appeals shall apply *mutatis mutandis* to appeals under this Ordinance.

Power to make Regulations

48. (1) The Governor may, after consultation with the Commission, make regulations for the better carrying out of the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations with respect to all or any of the following matters—

- (a) the classes/types of licences;
- (b) the fees to be paid in respect of an application for a licence;
- (c) the fees to be paid for the grant of a licence;
- (d) the annual and regulatory fees to be paid;
- (e) the conditions subject to which a licence may be granted;
- (f) the manner of service of any notice required to be served pursuant to the provisions of this Ordinance;
- (g) any other matter that is required to be or may be prescribed.

(3) Subsection (2) (b) to (c) shall apply without prejudice to any fee that may be prescribed under any law governing spectrum management.

Consequential amendments

49. The enactments set out in the Schedule are amended to the extent set out in that Schedule.

SCHEDULE**CONSEQUENTIAL AMENDMENTS****TELECOMMUNICATIONS TAXATION ORDINANCE**

The Telecommunication Taxation Ordinance is amended as follows:

1. The long title is amended by inserting after the words “public telecommunication services”, the words “and broadcasting services”.

2. The short title is amended by repealing the word “Telecommunication” and substituting “Communications”.

3. Section 2 is repealed and the following section substituted—

“2. In this Ordinance—

“broadcasting service” has the meaning assigned to that expression in the Broadcasting Ordinance;

“licensee” has the meaning assigned to that expression in the Telecommunications Ordinance and the Broadcasting Ordinance;

“telecommunication service” and “telecommunication network” have the meanings respectively assigned to them in the Telecommunications Ordinance.”.

4. Section 3 is amended—

(a) in subsection (1),—

(i) by repealing the words “telecommunication tax” and substituting “communication tax”;

(ii) by repealing the words “telecommunication services and network” and substituting “telecommunication services, telecommunication network and broadcasting services”;

(iii) by repealing the words “telecommunications service or network” and substituting “telecommunication service, telecommunication network or broadcasting service”; and

(iv) by inserting after the words “Telecommunications Ordinance” the words “and Broadcasting Ordinance, as the case may be”;

(b) in subsection (2),—

- (i) by repealing the words “telecommunication tax” and substituting “communication tax”;
- (ii) by repealing the words “telecommunication service or network” and substituting “telecommunication service, telecommunication network or broadcasting service”;

(c) in subsection (3),—

- (i) by repealing the words “telecommunication tax” and substituting “communication tax”;
- (ii) by repealing the words “telecommunications service and network” and substituting “telecommunication service, telecommunication network and broadcasting service”;

(d) in subsection (4), by repealing the words “telecommunication tax” and substituting “communication tax”.

5. Section 4 is amended—

- (a) by repealing the word “telecommunication tax” in each place they occur and substituting “communication tax”;
- (b) by repealing the words “telecommunication service or network” in each place they occur and substituting “telecommunication service, telecommunication network or broadcasting service”.

6. Section 5 is amended—

- (a) by repealing the word “telecommunication tax” in each place they occur and substituting “communication tax”;
- (b) by repealing the words “telecommunication service or network” in each place they occur and substituting “telecommunication service, telecommunication network or broadcasting service”.

7. Section 6 (b) is amended by repealing the words “telecommunication services” and substituting “telecommunication services, telecommunication network or broadcasting services”.

8. Section 7 is amended by repealing the words “telecommunication tax” in each place they occur and substituting “communication tax”.

9. Sections 8 is amended by repealing the words “telecommunication tax” and substituting “communication tax”.

10. Section 9 is amended by repealing the words “telecommunication tax” in each place they occur and substituting “communication tax”.

11. Section 11 is amended by repealing the words “telecommunication tax” and substituting “communication tax”.

TELECOMMUNICATIONS ORDINANCE

The Telecommunications Ordinance is amended as follows:

1. Section 2 is amended by repealing the definition of “Belonger” and substituting in the appropriate alphabetical positions the following definitions—

““Turks and Caicos Islander” has the meaning prescribed in section 132(1) of the Constitution;”;

“domain names” means a name allocated under the global name system assigned to the Turks and Caicos Islands according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision) and includes any second or subsequent level domain names;”.

2. Section 3 is amended in subsection (2) by inserting after paragraph (a) the following new paragraph—

“(aa) the Director General, *ex officio*;”.

3. Section 4 is amended in subsection (1),—

(a) in paragraph (l), by repealing the word “and” at the end of that paragraph;

(b) in paragraph (m), by repealing the full stop at the end of that paragraph and substituting “; and”;

(c) by inserting after paragraph (m) the following new paragraph—

“(n) to discharge such other functions as conferred on to it under the Broadcasting Ordinance.”.

4. Section 6 is amended by repealing subsection (2) and substituting the following subsection—

“(2) The Director General is the Chief Executive Officer of the Commission and, subject to the general direction of the Commission, is responsible for—

- (a) the day-to-day administration and operation of the Commission;
- (b) the appointment of the Commission's employees, except those employees designated by the Commission as senior employees, who shall be appointed by the Commission;
- (c) the management and supervision of the Commission's employees;
- (d) reporting to the Commission the findings of any research conducted by him;
- (e) the discharge of such functions and the exercise of such powers as may be assigned to, or conferred on him, by this or any other Ordinance or that may be delegated to him by the Commission.

(2A) In the exercise of his functions under this Ordinance the Director General may instruct a licensee to supply to him, not later than the end of the period of three months beginning with the day after the end of its financial year, a copy of its audited annual accounts and such return as he may instruct.”

5. Section 9 is amended by repealing the word “Belongers” in each place it occurs and substituting “Turks and Caicos Islanders”.

6. Section 11 is amended by repealing the words “prescribe form” and substituting “manner and form determined by the Commission”

7. Section 13 is amended—

- (a) in subsection (1), by repealing the words “which shall forward the application along with its recommendations to the Minister”;
- (b) in subsection (2),—
 - (i) by repealing the word “Minister in each place it occurs and substituting “Commission”;
 - (ii) by repealing the words “recommended by the Commission” and substituting “the Commission thinks fit”;
- (c) in subsections (4) and (6), by repealing the word “Minister” in each place it occurs and substituting “Commission”.

8. Section 33 is amended in subsection (1), by repealing the words “prescribed form” and substituting “manner and form determined by the Commission”.

9. Section 39 is amended in subsection (2), by repealing the words “prescribed form” and substituting “manner and form determined by the Commission”.

10. Section 53 is amended by repealing subsection (2).

11. Section 55 is amended—

(a) in subsection (1),—

- (i) by repealing the words “Telecommunication” and substituting “Communications”;
- (ii) by inserting after the word “Ordinance” the words “ and the Broadcasting Ordinance”;

(b) by repealing subsection (2) and substituting the following—

“(2) The Communications Tribunal shall consist of a President, who shall be an attorney-at-law of at least seven years standing, and two other persons, one of whom must have experience in telecommunications or broadcasting.”;

(c) in subsection (3), by repealing the words “less than five” and substituting “exceeding three”;

(d) in subsection (6),—

- (i) by repealing the word “Telecommunication” and substituting “Communications”;
- (ii) by repealing the words “the Minister or”;
- (iii) by inserting after the word “Ordinance” the words “or the Broadcasting Ordinance”;

(e) in subsection (7),—

- (i) by repealing the words “or the Minister as the case may be”;
- (ii) by repealing the word “Telecommunication” and substituting “Communications”;

(f) in subsection (8), by repealing the words “or the Minister as the case may be”;

(g) in subsections (9) and (10), by repealing the word “Telecommunication” wherever it occurs and substituting “Communications”.

12. Section 61 is repealed and the following substituted—

“Domain names use

61. (1) The Commission shall assume responsibility for the registration, allocation, assignment and management of domain names.

(2) The Commission may delegate to any person its responsibilities under subsection (1).

13. Section 65 is amended in subsection (2), by inserting after paragraph (c) the following new paragraph—

“(ca) classes of licence;”.

DRAFT

PASSED by the House of Assembly this day of 2013.

Tracey Parker
Clerk to the House of Assembly

Robert Hall
Speaker

DRAFT

EXPLANATORY MEMORANDUM

The Broadcasting Bill seeks to provide for the licensing and regulation of sound and television broadcasting and for matters incidental thereto and connected therewith.

The Bill seeks to give effect to the following policy governing broadcasting services; namely, that broadcasting services:

- (a) while recognising the special role of government-owned media, should nevertheless be open to fair competition;
- (b) contribute to the strengthening of a shared consciousness and identity;
- (c) provide for the safeguarding, enrichment and strengthening of the cultural, social and economic fabric of the society of the Turks and Caicos Islands;
- (d) promote the growth of expression in the Turks and Caicos Islands through diversified programming that reflects the rich cultural diversity, traditions, history, attitudes, opinions, ideas, beliefs and values of the TCI and provides a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern;
- (e) cater for a broad range of services, specifically for the programming needs of children, women, youth, the disabled and the socially disadvantaged;
- (f) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages and interests;
- (g) encourage the development of local programme content and the use of talent, skills and resources;
- (h) provide news and public affairs programming which meets the highest standards of journalism, including fair and unbiased coverage;
- (i) include a significant number of educational programming both curriculum-based and informal, on a wide range of social, political and economic topics such as health, culture, gender issues and youth development; and

- (j) are responsive to the needs of the audience with respect to terms of coverage of national and international events.

PART I, PRELIMINARY: Clauses 1 - 3

The preliminary provisions are set out in this Part and include provisions for the commencement of the Bill, the interpretation of the terms used in the Bill and the applicability of the Bill. In this Part the term “broadcasting” is defined to mean:

“the transmission of radio or video programming to the public on a free, pay, subscription or other basis, whether by cable television, terrestrial or satellite means or by electronic delivery of such programming.”

PART II, FUNCTIONS AND DUTIES OF COMMISSION IN RESPECT OF BROADCASTING: Clauses 4- 6

Clause 4 provides for the responsibility of the Commission, which is stated as the regulation, supervision, and development of national broadcasting in accordance with the broadcasting policy.

Clause 5 provides for the functions of the Commission under the Ordinance.

Clause 6 provides for the powers of the Commission under the Ordinance.

Part III, LICENSING: Clauses 7 – 24

By virtue of **Clause 7**, a person is prohibited from providing a broadcasting service unless the person holds a valid licence for that purpose pursuant to the provisions of the Ordinance.

Clause 8 sets out the context for the application for a licence.

Clause 9 provides the principles that the Commission may apply in deciding whether or not to grant a licence.

Clause 11 sets out the procedure for persons who have been carrying on a broadcasting service prior to the commencement of the Ordinance.

Clauses 12 to 24 provide the general provisions for the granting of or, refusing of a licence, conditions which may be stipulated in the licence, the duration of a licence and the grounds for variation, suspension and revocation of a licence.

Part IV, STANDARDS FOR BROADCASTING AND CONTENTS OF PROGRAMMING: CLAUSES 25 -31

This Part addresses, by virtue of **Clauses 25 to 31**, the regulation of content of programming and standards for broadcasting.

Part V, OFFENCES AND PENALTIES: Clauses 32 - 37

This Part provides for offences and penalties for a person who carries on broadcasting without a licence.

Part VI, MISCELLANEOUS: Clauses 38 – 49

This Part provides for the miscellaneous provisions including examination of books, limitation of liability and production of documents and inspection. **Clause 48** provides for the Governor to make Regulations. Clause 49 provides for consequential amendments to the Telecommunications Taxation Ordinance and the Telecommunications Ordinance.