



Broadcasting Policy
for the
Republic of Namibia
2009

18 February 2009

Foreword

The adoption and exploitation of ICT has been instrumental to the creation of sustainable growth and development by countries in the last fifty years. The global economy is currently dependent and shaped by the benefits arising from ICT. From the perspective of a developing country, ICT is both a prerequisite for economic progress and a major potential contributor to economic progress. It contributes to limitless possibilities – with few boundaries - for all sectors of society (public sector, civil society and industry). By embracing the development of ICT, Namibians will benefit through:

- a. The access and availability of information that will assist them in their daily lives
- b. The ability to collectively deliberate and participate in the democratic governance of their country through freedom of expression and access to information via a pluralistic range of media and media institutions of diverse ownership and control
- c. The ability to exploit the growing potential of electronic communications to originate and exchange as well as receive and consume information and services
- d. The establishment of an environment conducive to the development of Namibian - based content and service providers that are competitive players on international markets, and in so doing, create opportunities for employment and economic diversification.

This document provides a Broadcasting Policy (the 'Policy') for Namibia. The Policy should be read in conjunction with two other policies, namely Telecommunications and Information Technology. These three policies have also been combined into an overarching policy document that is in line with national, regional, continental and global developments in the Information and Communications technology (ICT) sector.

In developing this Policy, the point of departure has been to facilitate the growth of broadcasting, and broadcasting - like services, in Namibia. In so doing, the Policy has been developed after extensive consultation with stakeholders.

The Namibian Government's Vision 2030 document stipulates that ICT must be the most important sector in the economic development of the country by 2030. Core to the achievement of this Vision is a demand driven need to transform Namibia into a knowledge based economy. This Policy supports Vision 2030 and national development targets. The aim of this Policy is to provide Namibia with a clear vision and policy direction that will drive national development in the years ahead. The document also sets out a strategic implementation plan with short, medium and long term actions to ensure the growth of ICTs in Namibia.

A key element in this process is management of the transition to an integrated electronic communications sector post - convergence from a 'legacy' structure of largely separate broadcasting, telecommunications and ICT policies and institutions. The establishment of an environment conducive to the growth of telecommunications and converged Information and Communication Technology (ICT) in Namibia is a national imperative. Namibia has a large unmet demand for ICT which will more quickly be satisfied by the deregulation and liberalisation of the market as part of a managed programme of reform. The transition to a liberalised ICT environment (with a commensurate increase in institutional capacity to develop, regulate and implement policy) is also paramount if broader national development goals and the growth in the Namibian ICT industry is to be achieved. The recent establishment of a single Ministry of Information and Communication Technology (in line with international trends) is an important first step on this journey, but much work remains.

Since independence, Namibia has not had a broadcasting policy. This is the first Broadcasting Policy for the Republic of Namibia.

Honourable Joel Kaapanda

Minister of I&CT

February 2009

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1 Introduction

This document provides a Broadcasting Policy (the 'Policy') for Namibia. The Policy should be read in conjunction with two other policies, namely Information Technology and Telecommunications. These three policies will be combined into an overarching 'converged' policy document that is in line with national, regional, continental and global developments in the broadcasting and wider, converged, sector.

Broadcasting is a product of technological development and change. One of its original purposes was to extend news of maritime weather conditions to distant regions. A host of separate discoveries, inventions and applications combined in the first quarter of the twentieth century to bring into existence a communication medium that made it possible to distribute sound messages over wide areas cheaply and accessibly.

The Namibian Government's Vision 2030 stipulates that by 2030 Namibia should be a knowledge - based economy. This Policy is framed in the context of Vision 2030 and National Development Plan targets. The aim of this Policy is to provide Namibia with a clear vision and policy direction that will drive national development in the years ahead.

2 Purpose of document

The purpose of this document is to set out the Broadcasting Policy in the context of the convergence of Information and Communications Technology (ICT) for the Republic of Namibia.

3 Definitions

Broadcasting is defined as the simultaneous, real - time distribution of any media from one source to many recipients using any transport method. Broadcasting forms a very large segment of the mass media. Broadcasting to a very narrow range of audience is called narrowcasting.

Traditional broadcasting will be affected by the convergence to ICT. In the context of a policy looking forward to convergence, it remains a meaningful term because familiar radio and television institutions and practices continue to be important in Namibia and elsewhere. The usefulness of the term broadcasting will decline as convergence develops. This Policy therefore looks both backward and forward: backward, to the continuing importance of Namibian 'legacy' radio and television broadcasting and forward to convergence when broadcasting - like services will increasingly be available via new means such as mobile telephones and the Internet. Accordingly, the term broadcasting henceforth, and depending on context, means either or both the familiar one – to - many mass media of conventional

television and / or radio as well as a range of forms of content provision (some doubtless yet to be developed), including provision of content via the Internet and mobile telephones.

Broadcasting, like telecommunications and Information Technology (IT), is an economic sector of growing importance. Vision 2030 sets out the objectives of transforming Namibia into a knowledge - based and a highly competitive nation. To contribute to the realisation of these objectives, Namibia will develop its share of the global 'tradable information' market and develop activity in this sector as part of the knowledge society. Similar to telecommunications and IT, broadcasting is one of hitherto separate disciplines which are converging into integrated electronic communications.

Broadcasting is distinct from telecommunications and IT in that it is of capital, political and economic importance. Broadcasting policy involves considerations (such as spectrum allocation and management; universal roll out of affordable connectivity, policies for economic development and effective competition) similar to those in the telecommunications and IT domains, but also considerations (such as freedom of expression, the right to know, media independence, pluralism and diversity) which apply to the political and human rights domains.

4 ICT in Namibia – a national imperative

The Government of Namibia recognises the need to be part of the global information society. It further recognises the important role of ICT in economic growth. As part of ICT, broadcasting in Namibia contributes to six important roles:

- a. Economic growth
- b. Industrial development
- c. Socio - political development
- d. Poverty eradication
- e. Equal opportunity
- f. Regional coordination.

5 Access to information through broadcasting and media services

The Government of Namibia aims to ensure access to local and global broadcasting services to enable individuals and communities throughout Namibia, whether in the smallest and most remote villages or the largest cities, to have equality of access to information for personal development, education, stimulation, cultural enrichment, economic activity and informed participation in democracy.

6 Establishment of an enabling framework for broadcasting sector development in Namibia

The rapid development of electronic communications has changed the social, economic and policy contexts for broadcasting policy and regulation. Broadcasting continues to play an important part in society and the economy but classic, free to air broadcasting is changing fast under the influence of two major developments:

- a. The rapid evolution of new technologies and innovative new applications
- b. The convergence of the information technology, telecommunications and broadcasting industries.

Accordingly, Namibia will shift from a platform and media specific regulatory and policy regime to one based on its national laws, which apply generally to the media, in combination with pro - social self - regulation practiced by media firms. This new regime distinguishes between media where users exercise control over the content which they consume (so called 'pull' media) and those where content and its consumption is largely controlled by providers ('push' media). Because users of 'push' media may involuntarily be exposed to potentially harmful or offensive content, higher regulatory expectations will apply to 'push' media. This Broadcasting Policy looks forward to the changing circumstances which will increasingly influence Namibia.

The establishment of an environment conducive to the development and growth of broadcasting; and a successful transition to a converged environment of electronic delivery of content and services (including broadcasting and broadcasting - like services) in Namibia are a national imperative.

6.1 Guiding principles

Namibia adheres to the *African Charter on Broadcasting 2001* which prescribes both procedural and substantive matters for media regulation in Africa. It states that broadcasting and telecommunications regulation "should be exercised by public authorities who are protected against interference, particularly of a political or economic nature, by, among other things, an appointment process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party". It enjoins "open and participatory" decision - making and prescribes that "frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting" and that this process of frequency allocation and licensing should promote "media diversity in ownership and content". It further specifies that "Broadcasters should be required to promote and develop local content" and "independent production and diversity in broadcasting".

This Policy reflects this mandate - and subscribes to a liberalised broadcasting sector characterised by:

- a. Provision of services to all Namibians in appropriate languages
- b. Freedom of expression

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- c. Pluralism and diversity in the provision of content and services
 - d. Competition, open markets and media independence
 - e. Transparency, consistency and proportionality in decision making and regulation
 - f. Government support for public service broadcasting and for provision of high quality Namibian content
 - g. The promotion of users' influence in the development of broadcasting and broadcasting - like content and services
 - h. Consumer protection
 - i. Economic development of the electronic media and tradable information sectors.

6.2 Roles and structures within the broadcasting sector

6.2.1 Role of Government

The roles and responsibilities of Government are as follows:

- a. Government (via the Ministry of Information and Communication Technology) assumes responsibility for overall policy functions and establishes the legal framework for the ICT sector
- b. The Minister of I&CT may impose specific conditions on the broadcasting sector
- c. The Minister of I&CT is responsible for all broadcasting related legislation and provides inputs into other legislation that may affect the broadcasting sector
- d. The Ministry of I&CT is responsible for Government ICT policy development. This includes all e - government and other initiatives to provide citizen's access to Government. In so doing, the Ministry of I&CT facilitates and coordinates all e - governance policy and strategy development in the Namibian Government
- e. The Ministry of I&CT is co - responsible with individual line Ministries for line Ministry specific ICT policy development
- f. The Minister of I&CT may appoint a Strategic ICT Advisory Council and / or Advisor on ICT Policy related matters
- g. An Act of Parliament establishes an autonomous Regulatory Authority. The Minister of I&CT appoints the Board of the Regulatory Authority
- h. ICT Policy making is separated from regulatory and shareholding functions and responsibilities within the Ministry of I&CT. The ICT Policy Unit's responsibilities are as follows:
 - i. Research Policy development trends – global and regional
 - ii. Obtain stakeholder requirements
 - iii. Translate NDPs into ICT Policy requirements
 - iv. Draft policy and regulations (Information, Media, IT, Telecommunications, Broadcasting, Postal, Convergence)

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- v. Consult all stakeholders
 - vi. Liaise with and brief the legal drafters
 - vii. Produce final draft / amendment for Minister's approval
 - i. Monitor current policy, legislation and regulations (i.e. liaison with the Regulator and the operators)
 - j. The Ministry of I&CT participates in determining Government's internal ICT policy and practices.

6.2.2 Role of the Regulatory Authority

The Regulatory Authority is tasked with the responsibility to provide a context in which independent, pluralistic and diverse Namibian broadcasting will thrive.

The Regulatory Authority operates independently from the Ministry of I&CT and is governed by a Board of Commissioners. The responsibilities of the Regulatory Authority to the Ministry of I&CT are:

- a. Implement Government Policy notified by the Minister of I&CT
- b. Provide advice and report to the Minister of I&CT in the formulation of national policies
- c. Advise the Minister of I&CT on broadcasting matters
- d. Assist the Ministry of I&CT in negotiations with international bodies and operators
- e. Represent Government at international meetings
- f. Report to Parliament on operators' audited accounts.

The specific responsibilities of the Regulatory Authority are:

- a. Regulate and direct the broadcasting sector
- b. Secure freedom of expression, pluralism and diversity; to foster entry and encourage competition; secure universal access at affordable prices to a range of electronic media services and in languages widely spoken and understood in the locations of reception
- c. Ensure compliance with legislation and regulations directives
- d. Grant, renew, amend, transfer and suspend or revoke licences
- e. Ensure operators are technically, financially and managerially capable of carrying out services specified in their licences
- f. Protect consumers and purchasers in respect of prices, quality and variety of services offered
- g. Promote efficient competition amongst service providers and operators
- h. Attract foreign direct investment (FDI)
- i. Administer the radio frequency spectrum (management and allocation)
- j. Ensure broadcasting services are operated in a manner best suited to the economic and social development of the country

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- k. Lay down procedures for ensuring safety and quality of services
 - l. Review and respond to consumer complaints
 - m. Ensure compliance to regulatory measures
 - n. Implement a transparent and fair pricing regime that facilitates competition in the market
 - o. Manage the Universal Service Fund (USF)
 - p. Monitor sector performance and supervises compliance with rules, regulations and other conditions imposed on players in the industry
 - q. Establish advisory bodies.

The Regulatory Authority is primarily funded through licence fees. Fees from other sources comprise spectrum auctions and fines.

6.2.3 Role of industry

Competing public and private broadcasters and content providers provide a wide range of independent, high quality and affordable broadcasting and content services to Namibians. Broadcasters are categorised as public, commercial and community broadcasters. The Regulatory Authority sets guidelines to distinguish between public, community and commercial broadcasters.

- a. **Public broadcasting** – Any broadcasting or transmission service provided by a public body, such as a council or a legally constituted authority. In Namibia, the Namibian Broadcasting Corporation (NBC) ensures that broadcasting operates to provide information, education and entertainment to the citizens and society in general, and independently of Government, party politics or other interests.
- b. **Commercial broadcasting** – A broadcasting service provided for profit from advertising revenue and is owned and controlled by private individuals, or by commercial enterprises.
- c. **Community broadcasting** – A non - profit service that is owned and managed by a particular community, usually through a trust, foundation, or association. Its aim is to serve and benefit that community. It is, in effect, a form of public-service broadcasting, but it serves a community rather than the whole nation. It relies on, and must rely mainly on the resources of the community. A community is considered a group of people who share common characteristics and/or interests. The commonality of interests may be based on:
 - The sharing of a single geographical location, that is to say those living in a specific town, village, or neighbourhood
 - The sharing of economic and social life through trade, marketing, exchange of goods and services.

6.2.4 Role of consumers

Consumers are users of the services and decide which products and services are required.

6.2.5 Market structure

The Namibian broadcasting market structure is subject to market and competitive forces; with proportionate Government intervention where markets are not realising public policy objectives.

- a. The Namibian broadcasting market is open to entry
- b. Private and community interests are encouraged to assume greater responsibility for the development of the sector and meeting public policy objectives
- c. Foreign interests are encouraged to enter and assist in building and developing broadcasting and content services in Namibia
- d. Spectrum is a finite resource. Access to radio frequency spectrum requires public management. Where allocation and re-allocation of the radio frequency spectrum is required, it will be allocated in accordance with the high level principles of: pluralism and diversity, competition and open markets, transparency, consistency and proportionality in decision making and regulation.

6.2.6 Ownership structures

Except for the Public Broadcaster, the broadcasting sector is owned by commercial and community interests. Government aims to reposition the National Broadcaster as a Public Broadcaster which will be mandated to a public service vocation. The Public Broadcaster will be independently governed.

6.3 Policies for the broadcasting industry

6.3.1 Competition

Policy statement:

The Government will create an equitable, fair, just and competitive environment based on the principles of the free market and open unfettered access to products and services.

Justification:

Competition instils a sprit of innovation and excellence in service.

6.3.2 Consumer protection and standards

Policy statement:

The Government promotes efficient, reliable and ethical services that conform to international technical and quality standards.

Justification:

The Government should prescribe quality of service and technical standards in keeping with global best practices which shall be met by all service providers.

6.3.3 Ownership and foreign participation

Policy statement:

The Namibian Government encourages foreign participation in the broadcasting sector. The Strategic ICT Advisory Council and / or Advisor on ICT Policy related matters will advise the Minister of ICT on minimum local shareholding participation in the sector.

Justification:

All Namibian broadcasters are currently required to have a minimum fifty one percent local ownership. This Policy will be reviewed with the aim to its relaxation.

6.3.4 Cross media ownership

Policy statement:

The Government of Namibia accepts cross - media ownership within defined checks and balances which include defined cross - media limitations, licence area limits, directorship limitations, limitations on control and ownership by foreign persons; sale of public shares; and other qualifications (as required). The overall objective of cross - media ownership is to secure the objectives of the Namibian Constitution and ensure freedom of expression is not compromised and, further, to provide a sustainable and locally controlled media industry that will contribute to increased participation of locals in the broadcasting and media industry as a whole. Government's policy on cross - media ownership is therefore premised to allow cross media ownership but subject to a set of key criteria to ensure fair competition and diversity of ownership in Namibia.

Justification:

Over concentration of power over broadcasting through concentration of ownership in too few hands may lead to an unacceptable reduction of pluralism and diversity in the information and comment which circulates through television and radio. Namibia will ensure pluralism in ownership in the broadcasting sector so as to ensure that Namibians have access to the diversity of views necessary for democracy to flourish.

7 Pluralism and diversity

Policy statement:

Namibia aims to establish a broadcasting and content regime that ensures the objectives defined in the *African Charter on Broadcasting* and inform the *Declaration of Principles on Freedom of Expression in Africa* underpin Namibian broadcasting policy.

Justification:

Namibia's commitments in adherence to relevant continental African policies are given effect. These are:

- a. The 2002 *Declaration of Principles on Freedom of Expression in Africa* of the African Commission on Human and Peoples' Rights states that freedom of expression imposes an obligation on governments to take positive measures to promote diversity including:
 - Availability and promotion of a range of information and ideas to the public
 - Pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups
 - The promotion and protection of African voices, including through media in local languages; and the promotion of the use of local languages in public affairs, including in the courts.
- b. The *African Charter on Broadcasting* also includes several provisions stressing the importance of pluralism. For example, Part I: General Regulatory Issues, states that licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content and that Member States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.

Achieving these objectives points to the importance of a policy which promotes entry to and competition in both content and connectivity sectors. This policy thus defines a general authorisation of entry to content and connectivity markets in Namibia subject to the Government's duty to manage scarcity where it exists – notably in the radio frequency spectrum.

8 Regulation

The Government of Namibia aims to provide a robust and forward looking framework for regulation compatible with the spirit and letter of Namibia's Constitution and international commitments.

Namibia promotes journalistic independence and quality as key means to promote desired pro - social behaviour by broadcasters and content providers whilst safeguarding over - riding Constitutional and other commitments to human rights, notably to freedom of expression.

The Regulatory Authority is tasked to create level playing fields for all sector participants.

8.1 Positive and negative regulation

Policy statement:

The Government will implement a regulatory framework which distinguishes between positive and negative regulation.

Justification:

Negative regulations prohibit or inhibit undesired behaviour. Negative measures include, for example, the prohibition of possession of indecent or obscene photographic matter in the Indecent or Obscene Photographic Matter Act of 1967 In Namibia, other laws, such as the Protection of Information Act (Act 84 of 1982), date from the apartheid era and are not compatible with the principles embodied in the Constitution of Namibia and in the *Windhoek Declaration* and the *African Charter on Broadcasting*. These laws will be repealed.

Positive regulations encourage desired behaviour, for example, the support of audio - visual production under the Namibian Film Commission Act of 2000.

8.2 Regulation for 'push' and 'pull' media

Policy statement:

Regulation will distinguish between the measures appropriate for content and services consciously sought out and chosen by users ('pull' media) and those where choice and control cannot be exercised so effectively ('push' media). In respect of 'pull' media the provisions of general Namibian law (for example on competition, freedom of expression, access to information, offensive and harmful content) will constitute the main governing framework. In respect of "push" media these general legal provisions also apply but so too will additional requirements which will be embodied in codes of conduct formulated by the organised broadcasting sector (a self - regulatory media council) in conjunction with the independent Regulatory Authority. The mandate of the Regulatory Authority will distinguish between pull and push media.

Justification:

A robust and equitable framework for regulation which protects users from involuntary exposure to possibly harmful and offensive material will be created. A single, self regulating mechanism is preferred above Government intervention.

8.3 Content regulation

Policy statement -1:

All content providers will be subject to relevant Namibian law. Additionally, the Regulatory Authority will require likened 'push' broadcasters to adhere to regulatory standards designed to protect the vulnerable (especially children) from involuntary exposure to harmful and offensive broadcast material. These standards will be embodied in a code formulated after a process of public consultation, will be consonant with the Namibian Constitution and will be reviewed through a process including public consultation every five years.

- Content (including programmes) will be subject to Namibia's general laws as they apply to other media – notably print. However, content distributed via 'push' electronic media where users (such as viewers and listeners) are not able to exercise control over their consumption (such as by choosing from a range of options and / or by controlling the time of consumption) will be subject to *ex - ante* regulation by the Regulatory Authority
- This *ex - ante* regulation will ensure that users are protected from possible harm or offence by appropriately timing (such as by transmitting material unsuitable for children at a late hour after a 'watershed') transmission and by labeling it so users are able to make informed choices.

Justification:

Namibia aims to have a robust, fair and effective policy for regulation of content provided by 'push' and 'pull' media as convergence develops. Standards may include prohibition of 'push' broadcasters transmitting certain types of material, confining 'push' broadcasts of certain types of material to defined hours and clear labeling of possibly offensive or harmful material. Broadcasters will have the first responsibility for receiving and adjudicating on complaints and will be required to maintain an adequate complaints handling service in order to do so.

Policy statement -2:

The Government of Namibia encourages local programming content such as news, local affairs and listener participation.

Justification:

The creation of local content in programmes enhances community building, skills development and cultural diversity.

8.4 Self-regulation

Policy statement -1:

Namibian broadcasters, in conjunction with the Regulatory Authority, will be responsible for developing self - regulatory codes. However, the Government anticipates that self - regulatory codes will prescribe a requirement for clear labelling of possibly offensive (such as sexual or violent) content provided by 'push' media. Namibian providers of 'pull' media are encouraged to similarly label their content.

Justification:

Media self - regulation and co - regulation are emerging international general and best practices. Namibia will foster the development of codes of media ethics. This promotes the desired pro - social behaviour by broadcasters and content providers whilst safeguarding over - riding Constitutional and other commitments to human rights, notably to freedom of expression.

Policy statement -2:

To give effect to Namibia's policy on self - regulation, the Regulatory Authority will receive and adjudicate complaints that have not been resolved by the 'push' broadcaster to the satisfaction of the complainant. The Regulatory Authority will have the power to exercise proportionate sanctions in cases where complaints are upheld. The Regulatory Authority will encourage other providers of electronic content services ('pull' broadcasters) to formulate and adhere to self - regulatory media content codes and to establish efficient complaints handling.

Justification:

The primary responsibility for resolving complaints rests with broadcasters. The Regulatory Authority will receive and adjudicate complaints that have not been resolved by the 'push' broadcaster to the satisfaction of the complainant and the Regulatory Authority will have the power to exercise proportionate sanctions in cases where complaints are upheld. The Regulatory Authority will encourage other providers of electronic content services ('pull' broadcasters) to formulate and adhere to self - regulatory media content codes and to establish efficient complaints handling, for example by establishing a media ombudsman, and resolution services in cases where complainants claim the codes have been breached. If 'pull' broadcasters / content providers do not within a reasonable time formulate a code and a satisfactory means of handling and adjudicating complaints (either by the broadcaster / content provider in question or by a self – regulatory media council) then the Regulatory Authority will be empowered to do so.

8.4.1 Self-regulatory agency

Policy statement:

Government encourages broadcasters and media to establish a self - regulatory agency to formulate, revise and update codes and to undertake adjudication of complaints. This agency should have non - industry participation. This self - regulatory agency, provisionally known as the Namibian Media Council (NMC), should have:

- An independent Chairperson who commands widespread respect in Namibia and who has a record of commitment to media freedom and to consumer interests
- A governing board with a sizable element (at least forty percent) of non - industry representatives and who are drawn from independent institutions, including Non - Governmental Organisations (NGOs), educational bodies and the judiciary in Namibia
- The NMC should have a steady and adequate source of funding to carry out its responsibilities effectively and this should be provided by a levy on firms in the sector.

Justification:

Regulation is most effective when the effective practice of norms of good conduct are internalised within organisations, rather than enforced by an external agency. Both the beneficial internalisation of norms and the effective operation of a self - regulatory agency are assisted by the formulation of codes of conduct to establish norms for user protection and redress and for the safeguarding of editorial and journalistic independence in conformity with the provisions of Namibia's Constitution.

The essence of an effective code is that it enjoys the support of those who are to abide by it and this is best secured by their drafting it. The code should ensure that the entitlements specified in the preamble to the Namibian Constitution, the basic consumer entitlements to access, choice, representation, redress and information are secured and that journalists' and editors' rights and duties are clearly defined.

8.4.2 Media ombudsmen

Policy statement:

To give effect to Namibia's policy on self - regulation, the primary responsibility for the implementation of self - regulation rests with broadcasters. Independent spokespersons, often called readers' editors or media ombudsmen, need to be appointed to advance the interests of users.

Justification

Establishment of such functions in Namibia will positively foster the development of practices which conform to the stipulations of the *SADC Protocol on Culture, Information and Sport* which states, in Article 21, that:

State Parties shall encourage the establishment or strengthening of codes of ethics by various sectors of the media through the creation of an enabling environment for the formulation of such frameworks.

9 Policies for Broadcasting

9.1 Legacy radio frequency spectrum users and grandfathering

Policy statement -1:

The Government distinguishes between services and spectrum licence ownership. The reselling of spectrum requires the approval of the Regulatory Authority, the reselling of services is not subject to the same condition.

Policy statement -2:

Established 'legacy' users of Namibia's radio frequencies will be licensed on a 'grandfathered' basis for a period of five years for radio and eight for television licences after which the spectrum will revert to the Namibian State. The Regulatory Authority, acting for Namibia, will allocate spectrum through a transparent public process. Entitlements to use spectrum for a defined finite period of time will be auctioned. Spectrum holders will have the right to resell spectrum during the period in which they have been licensed to hold it subject to Regulatory Authority reservation of certain frequencies for particular kinds of use (for example, for community broadcasting in the interests of promoting the diversity defined in the *African Charter*). Reserved frequencies will be subject to competitive tender though with the Regulatory Authority able to define particular pro - social objectives (notably area and range of coverage, quotas for programming in particular languages, Namibian content quotas) rather than finance as the criteria used for spectrum allocation.

Justification:

Namibia aims to give effect to its commitments to pluralism and diversity and to ensure effective and efficient use of a key Namibian public resource whilst recognising the claims of those who have invested in Namibia's broadcasting and content services sector.

9.2 Facility sharing, co-location and rights of way

Policy statement -1:

Facility and network licensees, in the interests of making efficient use of facilities or networks, must upon request lease facilities (for example poles, ducts) to other licensed network operators. The rates charged must be fair and just.

Policy statement -2:

Shared access is required from all facility licensees unless such a request is technically or financially infeasible. Facility licensees shall not unreasonably obstruct network licensees from the construction of networks.

Policy statement -3:

Facility licensees must obtain rights of way, servitudes and / or way leaves to dig trenches or plant poles for cable systems and place facility infrastructure over land owned by another.

Justification:

Sharing of infrastructure reduces capital and operating expenditures, and introduces long term efficiencies.

9.3 Digital switchover

Policy statement:

The Regulatory Authority, in consultation with broadcasters and other interested parties, will develop and implement an analogue / digital television switchover plan.

Justification:

An analogue / digital television switchover plan needs to be developed to ensure Namibians will continue to enjoy access to broadcast television services after the end of protection for analogue transmissions in 2015. This will provide an opportunity to extend the range of services available to Namibians by co - locating transmitters and multiplexing signals. In order to secure the most effective and economical extension of digital services the Regulatory Authority will require broadcasters / content and service providers to maximise interoperability of equipment and standards to ensure effective and efficient use of a key Namibian public resource.

10 Development of the broadcasting industry through positive regulation

10.1 Support for national content

Policy statement -1:

The Government will establish a Universal Service Fund (USF) to, inter alia, assist with content production by local broadcasters in Namibia. The Regulatory Authority is mandated to manage the USF. All Namibian – licensed broadcasters are obliged to contribute to the USF. In turn, all local broadcasters may apply for financial support from the USF for local content production support grants.

Policy statement -2:

The Government will incentivise both local and foreign productions using Namibia as a location through tax rebates.

Policy statement -3:

The Government will continue to support the Film Development Fund, which aims to develop local film production.

Justification:

High quality Namibian content will be promoted through incentives and funding rather than by using the 'negative' regulation of content quotas (excluding the public broadcaster).

Policy statement -4:

Two thirds of the Public Broadcaster's content is required to be of Namibian origin.

10.2 National provision of services

Policy statement:

The Public Broadcaster is obliged to provide services to all parts of Namibia.

Justification:

The Government aims to promote equity, diversity and universality in service provision.

11 Development of the broadcasting industry through skills development

Policy statement -1:

The Government will stimulate the development of the content production skills through the establishment of Centres of Excellence at centres of further learning. Government will allocate funds toward the development of study centres at tertiary level. Where possible, Government will form partnerships with industry to develop content production skills in Namibia.

Policy statement -2:

The commitment to the development of local skills will be a condition to tax rebates for both local and foreign productions using Namibia as a location.

Justification:

Namibians can acquire more experience through on the job training in international and local productions undertaken in Namibia. This will develop a bigger pool of skilled camera operators, directors, graphic designers and competent managers and administrators.

12 The role and structure of public, private and community broadcasting in Namibia

12.1 Public broadcasting

Policy statement:

The Namibian Broadcasting Corporation (NBC) will enhance its capacity to be a public service broadcaster, charged with editorial independence and with providing Namibians with a diverse range of high quality programmes with a suitable proportion of local content. As a public service broadcaster, the NBC will have its own mandate and will be governed through its own Board, appointed through a transparent process.

Justification:

The *African Charter on Broadcasting* 2001 enjoins that:

All State and Government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one - sided reporting and programming in regard to religion, political belief, culture, race and gender and that such public broadcasters should be free of political interference and enjoy editorial independence. In thus re - versioning the NBC, Namibia will implement its undertakings under the *African Broadcasting*

Charter. The NBC will also be subject to the jurisdiction of the Regulatory Authority and will be charged with the same rights and duties as other Namibian broadcasters.

12.2 Commercial and community broadcasting sectors

Policy statement:

The Government will continue to encourage commercial and community broadcasting.

Justification:

The policy gives effect to the injunctions of the *African Commission on Human and Peoples' Rights' Declaration of Principles on Freedom of Expression in Africa*. Paragraph 2 of Principle V, entitled "Private Broadcasting", states:

The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:

- There shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community
- An independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions
- Licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting, and
- Community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves. A community broadcaster shall be confined to non - profit distributing bodies which are not financially or organisationally linked to commercial or political bodies and are able to demonstrate clear and substantial links to a relevant community or communities.

13 Broadcasting policy implementation

The Government recognises the need for the establishment of adequate institutional capacity to assist with the implementation of this Policy.

14 Review of this Broadcasting Policy

Given the dynamic nature of the Information and Communications Technology sector, it is important to ensure that the Policy framework remains relevant and adequately addresses all issues. The Ministry of I&CT will establish mechanisms for the collection of relevant information from operators and the comprehensive research to identify relevant issues, trends and other matters that may affect the sector. In addition, the Ministry will establish a formal mechanism for the periodic reviews of this Policy, taking into consideration the information collected, the research done and feedback from key stakeholders.

15 Glossary

Broadcasters - A public broadcaster is distinguished from a national / state broadcaster by acting independent from Government. Commercial broadcasters are profit oriented, community broadcasters are not profit seeking and are subject to an annual audit of their financial accounts.

Broadcasting - The simultaneous, real - time distribution of any media from one source to many recipients using any transport method. Broadcasting forms a very large segment of the mass media. Broadcasting to a very narrow range of audience is called narrowcasting.

Communications - Any emission, transmission or reception of sound, pictures, text or any other information by wire, radio waves, optical media, electromagnetic systems, telecommunications networks or any other means of a like nature and includes both telecommunications and broadcasting.

Commercial broadcasting – Commercial or private broadcasting provides programmes designed primarily for profit from advertising revenue and is owned and controlled by private individuals, or by commercial enterprises.

Community broadcasting – A non-profit service that is owned and managed by a particular community, usually through a trust, foundation, or association. Its aim is to serve and benefit that community. It is, in effect, a form of public-service broadcasting, but it serves a community rather than the whole nation. It relies on, and must rely mainly on the resources of the community. A community is considered a group of people who share common characteristics and/or interests. The commonality of interests may be based on:

- The sharing of a single geographical location, that is to say those living in a specific town, village, or neighbourhood;
- The sharing of economic and social life through trade, marketing, exchange of goods and services.

Communications network - The transmission systems at large and, where appropriate, switching and routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

Convergence – The integration of industries that up to now have largely operated separately from one another, but meshing along a specific value chain or bundling from different services at the applications end. Convergence is driven by the digitisation of the presentation, transmission, storage, processing and creation of information.

Ex-ante regulation - Is anticipatory intervention. Ex ante regulation is mainly concerned with market structure that is the number of firms and level of market concentration, entry conditions, and the degree of product differentiation. With ex-ante regulations, a dominant provider needs to get approval. *Ex-ante* regulation uses government-specified controls to:

- Prevent socially undesirable actions or outcomes in markets, or
- Direct market activity towards socially desirable ends.

Ex-post regulation - With ex-post regulation the abusive behaviour in a generally competitive market environment is controlled. Here the operator does not need approval of any measures, but they can be prohibited if they should constitute an abusive behaviour.

Facility sharing – Allowing other service providers to share the telecommunications facilities of another.

Incumbent – Term used to describe existing often first established as regulated monopolies.

Industry – A segment of the economy concerned with the production of goods and services.

Information and Communications Technology (ICT) - Any communication device or application, encompassing: radio, television, cellular phones, computer and network hardware and software, satellite systems and so on, as well as the various services and applications associated with them, such as videoconferencing and distance learning.

Information Society – A modern population that is conversant with – and actively using – information and communications technology. It is a society where the creation and exchange of information is a predominant social and economic activity.

Information Technology (IT) - The study, design, development, implementation, support or management of computer-based information systems, particularly software applications and computer hardware.

Internet – A “network of networks” linking millions of computers worldwide for communications purposes.

Licensee - A person granted or issued with a broadcasting telecommunications licence.

Non-Government Organisation (NGO) – NGOs strive to achieve public objectives and derive their sources of funding through donors. NGOs are both a source of funding and a delivery mechanism.

Public Broadcasting – Is generally conducted by a statutory entity, which is usually - though not necessarily – a state-supported or a state-owned corporation. Its broadcasting policies and programming are often controlled by a public body, such as a council or a legally constituted authority. This body ensures that broadcasting operates to provide information, education and entertainment to the citizens and society in general, and independently of government, party politics or other interests. Much of the funding for the operation comes from license fees that the listeners/viewers pay for the receivers they have in their homes.

Public Private Partnerships (PPP) – An approach to facilitate cooperation between the public and private sectors in delivering important Government policy initiatives. PPPs can take various forms.

‘Push’ and ‘pull’ media – Convergence creates the need for an important new regulatory distinction - between the measures appropriate for content and services consciously sought out and chosen by users (‘pull’ media) and those where choice and control cannot be exercised so effectively (‘push’ media).

Sector – A distinct part of a market that can be described, categorised and targeted according to its own criteria and characteristics.

Telecommunications network - A transmission system (including any apparatus, software and stored data comprised within such a system) intended for the conveyance, transmission, and routing of signals of any description by the use of electrical, magnetic or electromagnetic energy, including a private telecommunications network, but shall not include a system intended to be used for broadcasting.

Telecommunications services - Services whose provision consists wholly or mainly in the conveyance, transmission or routing of signals on telecommunications networks but does not include broadcasting or content services.

Universal Service – Service available, as far as possible, to all the people without discrimination on any basis with adequate facilities at reasonable cost.