



ORGANISATION OF EASTERN CARIBBEAN STATES

BROADCASTING BILL
(FIRST DRAFT)

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JUSTIFICATION FOR HARMONIZED BROADCASTING LEGISLATION IN OECS MEMBER STATES

Introduction

The broadcasting industry is a powerful tool in disseminating information which contributes to safeguarding and strengthening democracy, development of society, gender equality, nation building, education and the spiritual and moral fibers of society. In the OECS Member States the media especially television and radio dominate cultural life. More hours of life seem to be spent watching television than on anything else but working and sleeping and thus the role that broadcasting plays in influencing and shaping opinions and perceptions remains unparalleled. In light of this, a proper regulatory framework for broadcasting is necessary in all the OECS Member States. The attached proposed draft Broadcasting Bill has been prepared by the OECS Legislative Drafting Facility to give effect to such a regulatory framework based on the policy objectives outlined below and is submitted to OECS Member States for consideration.

Present environment

In the OECS Member States broadcasting has moved from a position in which the Government owned television and radio stations were the monopoly to a new era in which there are virtually unlimited television and radio channels with high quality sound and pictures and interactive facilities through the integration of broadcasting, telecommunications and computer technology. At the same time because the regulatory regime in the OECS Member States have not been altered or updated to address the phenomenon there is a lack of legislation¹ and obvious potential for unaccountability and unfair competition.

The broadcasting industry in the OECS Member States is self regulatory and highly competitive so that while broadcasters will ensure that programs give maximum returns there is no assurance that the desired content will be available in the programs which are broadcasted or that undesirable content such as violence or sexually explicit imagery will be controlled.

It is proposed that what is required is a systematic approach to ensure the regulation of broadcasting through legislation with clear policies specifically aimed towards the strengthening and development of the society and which provides for the licensing of broadcasting, the setting of broadcasting standards, fair competition, accountability and transparency.

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Policy objectives

Broadcasting Bill

The draft Broadcasting Bill prepared by the OECS Legislative Drafting Facility takes account of the above mentioned observations and is based on the following policy objectives for the broadcasting systems in the OECS Member States:

1. To contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibers of society.
2. To safeguard, enrich and strengthen the cultural, social and economic fabric of the OECS Member States.
3. To ensure plurality of news, views and information and provide a wide range of entertainment and education programmes.
4. To cater for a broad range of services and specifically for the programming needs in respect of children, the youth, adults and the disabled.
5. To encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups.
6. To ensure broadcasting services are effectively owned and controlled by OECS and CARICOM nationals.
7. To encourage investment in the broadcasting sector.
8. To ensure fair competition in the broadcasting sector.
9. To provide a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision as well as articulation of long-term and immediate-term goals.
10. To establish a strong and committed public broadcasting service which will service the needs of the people of the OECS Member States.
11. To integrate multi-channel distribution systems into the broadcasting framework.
12. To provide access to signal distribution services for content provider.
13. To provide access to signal distribution services for broadcast content receivers.

14. To encourage the development of local programming content.
15. To be readily adaptable to scientific and technological advance.
16. To conform to international technical standards.
17. To contribute in an appropriate manner to the creation and presentation of OECS Member States' programming.
18. To makes maximum use, of OECS Member States' creative and other resources in the creation and presentation of programming.
19. To provide programming that is-
 - i. varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes;
 - ii. drawn from local, regional, national and international sources;
 - iii. includes educational and community programs;
20. To provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.
21. To include a significant contribution from the OECS Member States' independent production sector.

Regulations

It recognized that the Regulations to prescribe broadcasting standards and codes of practice especially relating to children and family viewing, are necessary to further provide for the policy objectives referred to above. The OECS Legislative Drafting Facility therefore proposes to assist in the drafting of the required Regulations in due course.

BROADCASTING BILL

EXPLANATORY NOTES

1. The Bill for consideration is the Broadcasting Bill.
2. The purpose of the Bill is to establish a Broadcasting Authority to regulate, supervise and develop the broadcasting system, to provide for the licensing of broadcasting and to encourage the production and broadcasting of television and radio programmes having relevance generally to the life and culture of the people and for related matters (preamble).
3. The Bill seeks to cure the defects caused by the lack of legislation and the self regulatory nature of the present broadcasting industry, thereby ensuring, among other things, access to desired information, fair competition, investment in the industry and the enrichment and strengthening of the cultural, political social and economic fabric of the society.
4. The preliminary provisions of the Bill are set out in Part 1 of the Bill include provisions for the commencement of the Bill, the interpretation of the terms used in the Bill and for the applicability of the Bill (clauses 1-3). In the interpretation provision the term “broadcasting” is defined to mean-

“any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication, for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programmes-

(a) made on demand of a particular person for reception only by the person; or

(b) made solely for performance or display in a public place.”

5. The provisions of the Bill are by virtue of clause 3 binding on the Crown and apply to broadcasting carried out in whole or in part in the State except where the person carrying out the broadcasting is a telecommunications provider in which case the governing legislation would be the Telecommunications Act.
6. The Broadcasting Authority is established in Part 2 of the Bill. Clause 4 sets out the criteria for appointment as a member of the Board of the Authority and also sets out the criteria for disqualification as a member of the Board. By virtue of clause 4 persons who are disqualified include members of Parliament, bankrupts, persons of unsound mind, persons convicted of offences involving dishonesty and persons holding an interest in a licensee. By virtue of clause 5 the functions and powers of the Authority include the maintenance of a broadcasting system and the consideration of applications for licences. Provisions relating to the procedure of the Authority, confidentiality, protection from liability, the appointment of staff, the

revenue and accounts of the Authority and the duration of appointment of members are provide for in (clauses 6-30).

7. The licensing of broadcasting is provided for in Part 3 of the Bill. The requirement for a licence to carry on broadcasting coupled with a provision for exemption from this requirement is found in clause 31. By virtue of clause 33 persons already carrying on broadcasting for continuous period of twelve months immediately prior to the date of commencement of the Bill are eligible on application made within two months of the commencement date to a grant of a licence as of right for a period not exceeding six months after the date of commencement of the Bill. In clauses 34-44 of the Bill provisions are made for the procedure for application for a licence, recommendation by the Board, the grant or refusal of a licence by the Minister, issuance and form of a licence, validity, suspension, revocation and transfer of a licence and breaches by the licensee
8. The miscellaneous provisions found in Part 4 of the Bill include, the establishment of an appeals tribunal, a general penalty clause and the power of the Minister to make Regulations generally and particularly to set codes of practice and standards relating to broadcasting.
9. The First Schedule captures the policy objectives of the Bill and lists them as the principles which the Authority must regard in maintaining the broadcasting system and in considering applications for licences.
10. The Second Schedule lists the categories of licenses for the carrying on of broadcasting.

BROADCASTING BILL

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BROADCASTING BILL

AN ACT to provide for the establishment of a Broadcasting Authority responsible for the regulation, supervision and development of the national broadcasting system and to provide for the licensing of broadcasting and to encourage the production and broadcasting of television and radio programmes having relevance generally to the life and culture of the people of [OECS Member States] and for related matters:

BE IT ENACTED.....

PART 1 PRELIMINARY

Short title and commencement

- 1.(1) This Act may be cited as the Broadcasting Act 200[].
- (2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

- 2.(1) In this Act-

“Appeals Tribunal” means the Appeals Tribunal” established pursuant to section 47;

“Authority” means The [OECS Member State] Broadcasting Authority established pursuant to section 4;

“Board” means the Board of the Authority appointed pursuant to section 4;

“broadcasting” means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication, for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programmes-

(a) made on demand of a particular person for reception only by the person; or

(b) made solely for performance or display in a public place,

“broadcasting system” means the broadcasting system to be maintained by the Authority pursuant to section 5(1)(d);

“Chairperson” means the Chairperson of the Board appointed pursuant to section 4;

“Deputy Chairperson” means the Deputy Chairperson appointed pursuant to section 4;

“Executive Director” means the Executive Director of the Authority appointed pursuant to section 9;

“Fund” means the Broadcasting Authority Fund established pursuant to section 24;

“licence” means a licence for the carrying on of broadcasting issued pursuant to section 38;

“member” means a member of the Board appointed pursuant to section 4;

“Minister” means the Minister responsible for communications;

“person” includes a body corporate or an unincorporated body;

“prescribed” means prescribed in the Regulations;

“Regulations” means Regulations made pursuant to section 49;

“Reserve Fund” means the Reserve Fund referred to in section 24;

(2) The provisions of this Act 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.

Application

3.(1) This Act binds the Crown.

(2) This Act applies in respect of broadcasting carried on in whole or in part within [OECS Member State] or on board-

(a) any ship, vessel or aircraft that is –

- (i) registered or licensed pursuant to the law in force in [OECS Member State];
- (ii) owned by, or under the direction or control of the Crown;

(b) any spacecraft that is under the direction or control of-

- (i) the Crown;

- (ii) a citizen or resident of [OECS Member State]; or
- (iii) person resident in [OECS Member State]; or

(c) any platform, rig, structure or formation that is affixed or attached to land situated in the territorial waters of [OECS Member State].

(3) This Act applies in respect of broadcasting whether or not carried on for profit or as part of, or in connection with, any other undertaking or activity.

(4) This Act does not apply to any telecommunications provider, as defined in the Telecommunications Act [], when acting solely in that capacity and pursuant to a valid licence.

PART 2 BROADCASTING AUTHORITY

Establishment of Authority

4.(1) There is hereby established the [OECS Member State] Broadcasting Authority which shall be a body corporate.

(2) The affairs of the Authority shall be administered by a Board which subject to subsections (3) and (4) comprises the following five members-

- (a) a Chairperson, a Deputy Chairperson and one other member appointed by Cabinet in its own deliberate judgment;
- (b) one member appointed by Cabinet after consultation with the broadcasting community;
- (c) one member appointed by Cabinet after consultation with consumer representative bodies.

(3) The persons eligible for appointment pursuant to subsection (2) shall have experience in at least one of the following areas-

- (a) wireless telegraphy;
- (b) law;
- (c) performing arts;
- (d) literature;
- (e) science;

- (f) finance;
- (g) accountancy;
- (h) administration and public service;

and shall have high professional integrity.

- (4) A person shall be disqualified from being a member of the Board if that person –
- (a) holds or is beneficially interested in more than five percent of any stock, share, bond, debenture or other security of, or other interest in, any licensee or any other person which is in competition with, or provides similar services to those provided by the licensee;
 - (b) has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a licensee;
 - (c) is declared by a court to be a bankrupt;
 - (d) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
 - (e) has been convicted of an offence involving dishonesty or an offence pursuant to this Act; or
 - (f) is a member of Parliament.

(5) Notwithstanding subsection (4)(b), a member of the Board shall not be held to have a pecuniary or other material interest in a licensee by reason only of the fact that he or she is a consumer of a programme broadcast by the licensee for general reception.

(6) Where pursuant to section 20 a vacancy exists in the membership of the Authority the Cabinet shall in accordance with this section appoint a person to fill the vacancy.

(7) Cabinet shall by Order publish the names of the members of the Board as first constituted and every change in the membership thereof in the *Gazette*.

Functions and powers and exemption from liability of Authority

5.(1) The functions and powers of the Authority include the following —

- (a) to receive and consider applications for licences for the carrying on of broadcasting;

- (b) to make recommendations to the Minister for the grant or refusal of applications made pursuant to paragraph (a);
- (c) to consider the operation of any enactments that relate to or in any way affect the broadcasting system, and make to the Minister such representations with respect to matters of general concern arising in connection with the operation of those enactments, and such recommendations for their extension or modification, as the Authority thinks fit;
- (d) to maintain a broadcasting system having regard to the principles listed in the First Schedule;
- (e) to establish and maintain a data base of information necessary for the regulation of the broadcasting system;
- (f) to promote public awareness concerning the broadcasting system;
- (g) to promote the sustainability of the broadcasting system;
- (h) identify additional research and development resources;
- (i) to determine a claim by customers against a licensee in accordance with the terms of the licence in the event that the customer and the licensee have not been able to resolve the claim;
- (j) to promote economy and efficiency in the delivery of broadcasting services;
- (k) to provide information to be prescribed in the Regulations regarding a licensee's activities and performance;
- (l) to advise the Minister on the standards to be prescribed in the Regulations made pursuant to section 49(2)(g) relating to the provisions of a service;
- (m) to advise the Minister on the codes of practice to be prescribed in the Regulations made pursuant to section 49(2) (d);
- (n) to advise the Minister with regard to the enacting of the Regulations; and
- (o) to administer the provisions of this Act and the Regulations.

(2) Where the Authority reasonably suspects that a licensee is in breach of this Act, the Regulations or a licence held by the licensee, or where an allegation of breach is made to the Authority against a licensee, the Authority may conduct any investigation it considers necessary in relation to the licensee and may perform any of the following in the course of such investigation —

- (a) compel the production of documents and records in the custody or control of the licensee;
 - (b) compel the appearance of an employee or officer of a licensee, or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the relevant licence;
 - (c) inspect, examine or make copies of any document or record in the possession of the licensee relevant to the licence held by the licensee;
 - (d) require verification of income and all other matters pertinent to the licence;
 - (e) enter or inspect any premises for the purpose of ascertaining compliance with this Act, the Regulations or the licence; and
 - (f) seize, remove or impound any document or records relating to the licence or service for the purpose of examination and inspection.
- (3) The Authority shall not be liable for the acts of a licensee.

Committees

6.(1) The Board may for the purpose of carrying out its functions pursuant to this Act, establish committees and delegate to such committees such of its functions as they consider necessary or expedient.

(2) The Board may appoint, or arrange for the appointment of advisory committees to give advice to the Board on such matters relating to the Authority's functions as the Board may determine.

(3) The Board may appoint persons as members of a committee who are not members of the Board or who are not employees of the Authority and such persons shall hold office for such period as the Board may determine but the chairperson of each committee shall be a member of the Board.

(4) Each committee shall keep minutes of its meetings and shall keep the Authority informed of its activities.

Authority to regulate own procedure

7.(1) Subject to this Act and to the Regulations, the Authority shall regulate its own procedure.

(2) The Board shall cause to be kept minutes of the proceedings of its meetings and of meetings of any of the committees established by it.

Seal

8.(1) The Authority shall have an Official Seal.

(2) The affixing of the Official Seal of the Authority shall be in the presence, and witnessed by-

- (a) the signature of the Chairperson or the Deputy Chairperson; and
- (b) the Executive Director.

(3) All documents, other than those required by law to be under seal, which are executed by, and all decisions of, the Board shall be signed by-

- (a) the Chairperson or any other member duly authorized in writing by the Chairperson to act on behalf of the Chairperson; and
- (b) the Executive Director.

Executive Director

9.(1) The affairs of the Authority shall be managed by an Executive Director who shall be appointed by the Board upon such terms and conditions as it may determine and who shall be the *ex officio* Secretary to the Board.

(2) The Executive Director shall perform all the functions entrusted to him or her under this Act and shall attend all meetings of the Board unless —

- (a) the Executive Director is instructed by the Chairperson of a meeting to withdraw;
or
- (b) the Executive Director has obtained leave of absence or is prevented from attending for good cause.

(3) The Board may, during the absence of the Executive Director, appoint a person to act as Executive Director upon such terms and conditions as the Board may determine.

Meetings of Board

10.(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times as the Chairperson shall determine.

(2) The Chairperson of the Board may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to the Chairperson by any other member of the Board.

(3) The Chairperson and any other member of the Board shall be deemed to be present at a meeting of the Board if that Chairperson or the member participates by telephone, video link or satellite and all members participating in the meeting are able to hear and to speak to each other.

(4) At a meeting of the Board –

(a) the Chairperson shall preside;

(b) if the Chairperson is not present the Deputy Chairperson shall preside;

(c) if neither the Chairperson nor the Deputy Chairperson is present, the members present shall choose one of their number to preside.

Quorum

11. A meeting of the Board is duly constituted for all purposes if at the commencement of the meeting there is a quorum of not less than three members of the Board participating in the meeting.

Voting

12.(1) Decisions of the Board shall be taken by a majority of votes of members present and voting at the meeting.

(2) The Chairperson shall have the right to vote and in cases of equal division the Chairperson shall have the casting vote.

Additional person to attend meetings

13. The Board may co-opt any person to attend any particular meeting of the Board at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Board, but no such co-opted persons shall have the right to vote.

Confidentiality and oath of secrecy

14.(1) A member, officer or employee of the Authority shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duty.

(2) Except with the written consent of the Authority or for the performance of his or her duties or under legal obligation, a member, officer or employee of the Authority shall not communicate any confidential matter to any person nor permit any person to have access to any records in the possession, custody or control of the Authority.

(3) Every member, officer or employee of the Authority shall be required to take the prescribed oath of secrecy.

Protection from liability

15. No action or other proceeding shall lie against any member, officer or employee of the Authority for or in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under the Act.

Declaration of interest and abstention from voting

16.(1) A member of the Board who is in any way, either directly or indirectly, interested in a matter before the Authority shall declare the nature of his or her interest at the first meeting of the Board at which it is practicable to do so and shall leave the meeting upon the matter coming up for discussion.

(2) A declaration and the departure of a member of the Board from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.

(3) A member of the Board shall not-

(a) vote in respect of a matter before the Board in which he or she is in any way interested, whether directly or indirectly; or

(b) seek to influence the vote of any other member of the Board in relation to the matter.

(4) A member of the Board who fails to comply with subsection (3) commits an offence and upon summary conviction is liable to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding three years or to both.

(5) Notwithstanding subsection (4), where a member of the Board fails to comply with subsection (3), the failure to comply amounts to misconduct in which case section 18 shall apply.

Duration of appointment

17.(1) The appointment of a member of the Board shall, subject to subsection (2), be for a period of not less than [three years and no more than seven years] and the person so appointed shall be eligible for reappointment.

(2) The appointments of the members of the Board shall be staggered in accordance with the Regulations.

Revocation

18.(1) Subject to subsection (2), Cabinet may at any time, in writing, revoke the appointment of any member of the Board if, upon evidence, Cabinet is satisfied that the member is-

- (a) disqualified from being a member of the Board pursuant to section 4(4) and has failed to comply with section 19(1).7
- (b) guilty of neglect of duty, misconduct or malfeasance; or
- (c) has failed to act in the best interests of the Authority.

(2) Cabinet shall give reasons in writing for revoking the appointment of any member of the Board pursuant to subsection (1).

Resignation

19.(1) A member of the Board shall, in writing submitted to Cabinet, resign from the membership of the Board immediately if that member becomes disqualified by virtue of section 4(4).

(2) A member of the Board who fails to comply with subsection (1), commits an offence and upon summary conviction is liable-

- (a) in the case of disqualification pursuant to section 4(4)(a) or (b) to a fine which amounts to twice the financial gain which he or she would reasonably be expected to receive and to revocation of his or her appointment as a member of the Board;

(b) in any other case to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one month and to revocation of his or her appointment as a member of the Board.

(3) A member of the Board may, for any reason other than disqualification pursuant to section 4(4), resign from the membership of the Board by giving at least three months notice in writing to Cabinet of his or her resignation.

Vacancy

20.(1) The office of a member of the Board is vacated-

- (a) upon the death of the member;
- (b) if the member becomes disqualified pursuant to section 4(4);
- (c) if the member resigns from membership pursuant to section 19;
- (d) if Cabinet revokes the appointment of that member pursuant to section 18;
- (e) if the member's appointment is not renewed by Cabinet as of the date of expiry of the member's term of appointment; or if the member fails to attend three consecutive meetings of the Board without presenting a medical certificate or without being excused by [Chairperson / Cabinet] in writing.

Decisions not invalidated

21.(1) A vacancy in the membership of the Board shall not invalidate a decision of the Board made at a meeting with the quorum required pursuant to section 11.

(2) Where a disqualified member sits at a meeting of the Board, the Board may review and amend its decision within two months of that decision being made.

Secretary and staff

22.(1) The Board shall appoint a person at such salary and upon such terms and conditions as it may determine to perform the functions of Secretary to the Board.

(2) The Secretary shall perform all the functions entrusted to him or her pursuant to this Act and shall perform such additional duties as may be assigned to him by the Executive Director.

(3) The Board may appoint such staff as it may require for the proper carrying out of its functions pursuant to this Act.

(4) A person appointed pursuant to subsection (1) shall perform the duties assigned to him or her by the Executive Director.

Remuneration

23. The members of the Board shall be remunerated per meeting attended from funds allocated by Parliament for that purpose.

Fund for use by Authority

24.(1) There is hereby established a fund to be known as the Broadcasting Authority Fund to be used by the Authority as revenue for the execution of its functions and discharge of its obligations pursuant to this Act.

(2) The Fund shall consist of —

- (a) sums received by the Authority in respect of application fees and licence fees and other charges imposed by the Authority under this Act;
- (b) sums allocated to the Authority by Parliament;
- (c) revenue raised by the Authority in the form of loans, grants, investments or other means; and
- (d) all other sums that may become payable to or vested in the Authority in respect of matters incidental to its powers and duties.

(3) The Authority may establish a Reserve Fund into which may be paid any surplus funds of the Authority.

(4) The Authority may withdraw any funds from the Reserve Fund in cases of a shortfall for purpose of exercising its functions or discharging its duties pursuant to this Act.

(5) Subject to any general or specific direction of Cabinet, the funds in the Reserve Fund may be invested in securities by the Authority on such terms and conditions determined by the Authority except that the Authority shall not invest its funds in securities offered by any person under its supervision.

Financial year of Authority

25. The financial year of the Authority shall begin on 1st January and shall end on 31st December in each year.

Budget and plan of action of Authority

26. The Board shall not later than October 31st in each year cause to be prepared and shall adopt and submit to Cabinet-

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action;

for the Authority in respect of the next financial year,

Accounts

27. The Authority shall keep proper records of accounts in accordance with generally accepted international standards and principles and shall prepare and retain financial statements in respect of each financial year.

Audit

28.(1) The Authority shall as soon as is practicable after each financial year have its accounts audited annually by an independent auditor appointed by the Board, who shall conduct the audit in accordance with generally accepted international accounting standards and principles.

(2) The Board, the Executive Director, officers and employees of the Authority shall grant to the auditor appointed pursuant to subsection (1) access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person required to appear, make a signed statement or to provide information under subsection (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one months or to both and to revocation of his or her appointment as a member of the Board, the Executive Director or a staff member of the Authority in accordance with this Act.

Auditor's report

29. An independent auditor appointed pursuant to section 28 shall as soon as practicable and not later than two months after the end of each financial year submit copies of the audited financial statement of the Authority and a report on the financial statement to the Board.

Annual report

30.(1) Subject to subsection (2) and not later than three months after the end of each financial year the Authority shall submit to Cabinet an annual report on the work and activities of the Authority for that financial year and Cabinet shall not later than one month later lay the same in Parliament.

(2) An annual report pursuant to subsection (1) shall be accompanied by the auditor's report pursuant to section 29.

(3) A summary of an annual report pursuant to subsection (1) shall be published in the *Gazette* and at least two newspapers in general and at least weekly circulation in [OECS Member State] and the entire annual report shall be available to the public on payment of the prescribed fee to the Authority.

PART 3 BROADCASTING

Requirement for a licence

31.(1) A person shall not carry on broadcasting unless that person holds a valid licence for that purpose issued pursuant to this Part or is exempt from the requirement of holding a licence pursuant to subsection (2).

(2) Cabinet may by Order published in the *Gazette* exempt a Government owned entity from requiring a licence for the carrying on of broadcasting.

(3) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine of not less than ten thousand dollars or to imprisonment for a term not less than one year or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

(4) A licence granted pursuant to this Part shall not have the effect of dispensing with the necessity of obtaining permission where such permission is required pursuant to any law in force in [OECS Member State].

Categories of licences

32. Licences shall be in any one of the categories listed in the Second Schedule.

Licence as of right

33.(1) A person who has been carrying on broadcasting for a continuous period of twelve months immediately prior to the date of commencement of this Act is, subject to section 38, entitled on application made within [two] months of commencement of this Act in accordance with section 34, to the grant of a licence for a period which expires [six] months after the date of commencement this Act.

(2) Where a person referred to in subsection (1) fails to make an application for a licence within the time specified pursuant to that subsection that person shall cease to carry on broadcasting.

(3) A person who contravenes subsection (2) commits an offence for which the penalty shall be the same as provided for in section 31(3).

Application for licence

34.(1) In order to obtain a licence to carry on broadcasting, a person may, subject to subsection (2), in the prescribed form apply to the Minister for a licence for the type of broadcasting that the person intends to carry on having regard to the categories of licences pursuant to this Act.

(2) A person shall submit a copy of an application made pursuant to subsection (1) to the Authority together with the prescribed application fee.

Recommendations

35. (1) Subject to subsections (2), (3) and (4) and to section 38 where the copy of an application is submitted to the Authority pursuant to section 34(2), the Board shall having regard to the principles for the maintenance of a broadcasting system for [OECS Member State] listed in the First Schedule, make a recommendation to the Minister for the grant or refusal of a licence to that applicant and shall give reasons for a recommendation of refusal.

(2) The Authority may within fourteen days of the receipt of an application, request additional information from the applicant for the purpose of considering an application by the Board.

(3) Where the Authority makes a request for information pursuant to subsection (2), the applicant shall submit that information within fourteen days of the request or within a further period of time granted and specified in writing by the Authority.

(4) The Authority shall not unreasonably refuse to give a further time period pursuant to subsection (3).

(5) The Board shall submit a recommendation pursuant to subsection (1) to the Minister, within twenty eight days of the application being made or information requested pursuant to subsection (3) being submitted as the case may be.

Grant or refusal of licence

36.(1) In accordance with a recommendation made pursuant to section 35, the Minister shall grant or refuse a licence and shall within fourteen days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.

(2) A person aggrieved by the decision of the Minister shall have the right of appeal in accordance with 47.

No recommendation or notice

37.(1) If no recommendation is made by the Board within the period specified in section 35(5) or if no notification is given by the Minister to the applicant within the fourteen day period specified in section 36(1), the applicant shall have the right to make a case before the Board or the Minister as the case may be and the Board or the Minister shall hear the case within seven days of an application for the hearing being made.

(2) An application for a hearing before the Board or the Minister shall be in the prescribed form.

(3) Where, after a hearing pursuant to subsection (2)-

(a) the application is refused by the Minister;

(b) the Board fails to make a recommendation or the Minister fails to give a notice of a grant within fourteen days of the hearing;

the applicant shall have the right to appeal pursuant to section 47.

Issuance and form of licence

38.(1) A licence granted pursuant to this Part shall be issued on payment of the prescribed licence fee to the Authority and be in the prescribed form and-

- (a) shall clearly establish the category and scope of the licence;
- (b) shall include the terms and condition, in addition to those provided for in this Act or the Regulations, under which the licence is granted.

(2) The Authority shall publish in the *Gazette* the names and other relevant details of persons to whom a licence has been granted.

General conditions of broadcasting

39. A licensee shall, in addition to any other conditions specified in this Act, the Regulations or its licence, be subject to the following conditions in carrying on broadcasting pursuant to a licence-

- (a) a licensee shall not broadcast material unsuitable for children at times when children are expected to be viewing;
- (b) a licensee shall where a programme to be broadcast is not suitable to be exhibited to children, advise or warn viewers, its audience or members of the public accordingly;
- (c) a licensee shall not include anything in its programming which offends against good taste or decency or which is likely to encourage or incite crime or to lead to violence or disorder, or to be offensive to public feeling;
- (d) any information given in whatever form in the programming of a licensee shall be presented with due accuracy and impartiality;
- (e) due responsibility shall be exercised by the licensee with respect to the content of any of its programmes which are religious programmes and that in particular any such programmes shall not involve-
 - (i) any improper exploitation of any susceptibilities of those watching the programmes; or
 - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination;
 - (iii) lack of respect for or ridicule of religious or cultural beliefs;

- (f) a licensee's programmes and advertisements do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influences the minds of persons watching the programme or advertisement without the persons being aware, of what has occurred.

Validity of licence

40. Subject to sections 33 and 42, a licence shall be valid for the period specified therein.

Breaches by licensee

41. Where an allegation of breach of the terms of a licence is made by an aggrieved person to the Authority or where the Authority reasonably suspects a licensee of being in breach of its licence, the Authority, shall conduct an investigation in accordance with section 5(2) and if it finds that-

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the licensee of its findings and where appropriate issue directions to the licensee-
 - (i) requesting the licensee to stop the breach and take remedial action within a specific time period;
 - (ii) requesting the licensee to compensate any person aggrieved for any foreseeable damages caused by the breach within a specific time period;
- (b) the person's claim is frivolous or vexatious or that its suspicions are incorrect, it shall stop its investigations and the person bringing the action shall be liable for the cost incurred.

Suspension or revocation of licence

42.(1) Where a licensee fails to comply with any direction given by the Authority pursuant to section 41, the Board shall advise the Minister who may subject to subsection (2) suspend or revoke the licence of the licensee in accordance with the terms of the licence.

(2) Prior to the suspension or the revocation of a licence pursuant to subsection (1) the Minister shall give the licensee concerned notice in writing of its intention to do so, specifying the grounds on which he or she thinks that the licence ought to be suspended

or revoked shall require the licensee to submit to it within a limited period being not less than fourteen days a written statement of objections to the suspension or revocation.

(3) A notice issued pursuant to subsection (2) must be served at the last known address of the licensee and must be published in the *Gazette* and in at least two newspapers in general and at least weekly circulation in [OECS Member State].

(4) On receipt of a statement of objection from the licensee, the Minister shall acting on the advice of the Authority inform by notice issued in accordance with subsection (3) the licensee of its decision and in the case of a decision to suspend or revoke shall include the reasons for the decision.

Offence of not complying with direction of Authority

43. A licensee who fails to comply with a direction of the Authority given pursuant to section 41 commits an offence and upon summary conviction is liable to a fine of not less than five thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

Transfer of licence

44.(1) A licence granted to a person shall not be transferred to any other person without, subject to subsection (2), the prior written consent of the Minister acting on the advice of the Authority.

(2) The Minister shall not consent to the transfer of a licence if the transfer would be contrary to the public interest or in breach of national security.

PART 4 MISCELLANEOUS

Record to be kept by licensee

45. A licensee shall keep and store sound and video recordings of all programmes broadcasted for a minimum period of six months after the date of transmission of the broadcast, or for such further period as may be directed by the Authority.

Amendment of Schedules

46. The Minister may by Order published in the *Gazette* amend the First Schedule or the Second Schedule.

Appeal

47.(1) There is hereby established an Appeals Tribunal for the purpose of hearing appeals against decisions of the Board and the Minister.

(2) The constitution and procedure of the Appeals Tribunal shall be as prescribed in the Regulations made pursuant to section 49(2)(f).

(3) An appeal from a decision of the Board or the Minister pursuant to this Act lies to the Appeals Tribunal.

(4) A person may, within fourteen days of notice of a decision of the Board or the Minister, apply in writing to the Appeals Tribunal against that decision.

General penalty for offences

48. Any person who contravenes any provision of this Act or the Regulation for which no penalty is prescribed shall, on summary conviction, be liable to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding three months or to both.

Regulations

49.(1) The Minister may, after consultation with the Authority make Regulations for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may after consultation with the Authority make Regulations particularly —

- (a) relating to any category of licence;
- (b) to prescribe the forms required pursuant to this Act;
- (c) to prescribe the fees payable pursuant to this Act;
- (d) to prescribe codes of practice to be observed by licensees;
- (e) to prescribe the oath of secrecy for members, employees and officers of the Authority pursuant to section 14;

- (f) to prescribe the constitution and procedure of the Appeals Tribunal established pursuant to section 47;
- (g) to set standards relating to broadcasting;
- (h) to provide for the staggering of the duration of appointments of the members Board pursuant to section 17(2).

FIRST SCHEDULE

(Sections 5, 35 and 46)

Principles for maintenance of broadcasting system to be regarded by Authority in making recommendation for grant or refusal of licence

In maintaining the broadcasting system for [OECS Member State] the Authority shall ensure that the broadcasting system-

- (a) contributes to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibers of society;
- (b) serves to safeguard, enrich and strengthen the cultural, social and economic fabric of [OECS Member State];
- (c) ensures plurality of news, views and information and provide a wide range of entertainment and education programmes;
- (d) caters for a broad range of services and specifically for the programming needs in respect of children, the youth, adults and the disabled;
- (e) encourages the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups;
- (f) ensures that broadcasting bodies are effectively owned and controlled by CARICOM nationals;
- (g) encourages investment in the broadcasting sector;
- (h) ensures fair competition in the broadcasting sector;
- (i) ensures efficient use of the broadcasting frequency spectrum;
- (j) provides a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision as well as articulation of long-term and immediate-term goals;
- (k) establishes a strong and committed public broadcasting service which will service the needs of the [OECS Member State] society;
- (l) integrates multi-channel distribution systems into the broadcasting framework;
- (m) provides access to signal distribution services for content providers;
- (n) provides access to signal distribution services for broadcast content receivers;
- (o) encourages the development of local programming content;
- (p) is readily adaptable to scientific and technological advance;
- (q) complies with international technical standards.
- (r) contributes in an appropriate manner to the creation and presentation of [OECS Member State] programming;

- (s) makes maximum use, and in no case less than predominant use, of [OECS Member State] creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than English and [], renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
- (t) provides programming that is-
 - i. varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes;
 - ii. drawn from local, regional, national and international sources;
 - iii. includes educational and community programs ;
- (v) provides a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern;
- (u) includes a significant contribution from the [OECS Member State] independent production sector.

SECOND SCHEDULE

(Sections 32 and 46)

Categories of licences

1. free-to-air radio service licence;
2. free-to-air television service licence;
3. satellite free-to-air radio service licence;
4. satellite free-to-air television service licence;
5. terrestrial-subscription television service licence;
6. direct-to-home delivery service licence, including multi-channel satellite distribution;
7. local delivery service licence;
8. cable television subscription service licence;
9. low power radio service licence.