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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 602

2018

BROADCASTING CODE FOR BROADCASTING LICENSEES ISSUED IN TERMS OF SECTION 89 OF THE COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of section 89 of the Communications Act, 2009 (Act No. 8 of 2009), prescribes the Broadcasting Code for Broadcasting Licensees set out in this Schedule.

F. KISHI

CHAIRPERSON OF THE BOARD DIRECTORS

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

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PART A
DEFINITIONS AND APPLICATION

Definitions

1. In this Broadcasting Code, any word or expression to which a meaning is assigned in the Act, has the same meaning and -

“Act” means the Communications Act, 2009 (Act No. 8 of 2009);

“advertisement” means any visual or aural communication, representation, reference or notification of any kind, which is intended to promote the sale, leasing or use of any brand, product, belief, goods or services, or which appeals for or promotes the support of any cause and includes promotional content of display material, menus, labels, and packaging but excludes editorial material unless it is editorial material for which consideration has been given or received;

“audience” means both the viewers and listeners of television and radio broadcasting licensees;

“broadcasting licensee” means a broadcasting service licensee as set out in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories published in Government Gazette No. 4714, General Notice No. 124 of 18 May 2011, as amended in Government Gazette No. 5148, General Notice No. 74 of 13 March 2013;

“by-election” means an election through which a vacancy is filled as contemplated in section 63(2) of the Electoral Act;

“child” means a person under the age of 18 years as defined in section 1 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015), and reference to “children” has the same meaning;

“controversial issue” means an issue of public importance to the Namibian people which has topical currency and excites conflicting opinions;

“current affairs” means a programme which is not news but which predominantly focuses on and includes interviews, discussions and comments with regard to, and interpretation and analysis of, issues of immediate social, political or economic relevance and matters of international, regional and local significance;

“election” means any election of the President, members of the National Assembly or any member of a regional council or local authority council, as the context may require, and, if relevant, includes a by-election;

“election broadcast period” means the period within which party election broadcasts may be transmitted commencing after nomination day and ending 48 hours before polling commences;

“Electoral Act” means the Electoral Act, 2014 (Act No. 5 of 2014);

“film” has the meaning assigned to “film” in section 1 of the Namibia Film Commission Act, 2000 (Act No. 6 of 2000);

“local content” means local content music, local content programmes and local content channels;

“local content channel”, with regard to a subscription television broadcasting licensee, means an acquired channel which consists of local content music or local content programmes as contemplated in rule 27(3) and which are compiled and uplinked from Republic of Namibia;

“local content music” means -

- (a) work which is a verbal-musical work originally performed in a Namibian language by a debutant; or
- (b) is a work which complies with at least two of the following criteria, namely -
 - (i) the lyrics (if any) were written predominantly by a Namibian citizen or by a person permanently resident in the Republic of Namibia;
 - (ii) the music was written predominantly by a Namibian citizen or by a person permanently resident in the Republic of Namibia;
 - (iii) the music or lyrics was or were principally performed by musicians who are predominantly Namibian citizens or who are predominantly permanently resident in the Republic of Namibia;
 - (iv) the musical work consists of a live performance which is -
 - (aa) recorded wholly in the Republic of Namibia; or
 - (bb) performed wholly in the Republic of Namibia and broadcast live in the Republic of Namibia;

“local content programme” means a programme, which is produced –

- (a) by a broadcasting licensee;
- (b) originally in a Namibian language on the basis of a script originally in such Namibian language and first registered and broadcast in the Republic of Namibia;
- (c) by a person who is a citizen or permanently resident of the Republic of Namibia (whether or not the programme is produced in conjunction with a co-producer, or an executive producer, who is not a Namibian citizen or a permanent resident of Republic of Namibia but subject to paragraph (c) of this definition);
- (d) by a juristic person of which the majority of the directors, shareholders or members are citizens of, and permanently resident in, the Republic of Namibia;
- (e) in a co-production in which persons referred to in subparagraphs (a), (b) or (c) have at least a 50 percent financial interest;
- (f) by persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the at least 50 percent of key personnel who are involved in the production of the programme, are citizens of, and permanently resident in, the Republic of Namibia; or
- (g) by persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where at least 20 percent of the production costs are incurred in the Republic of Namibia;

“Namibian language”, for purposes of the definition of “local content music” means -

- (a) an indigenous Namibian language or a dialect of such indigenous language;
- (b) any other language spoken by Namibians in the Republic of Namibia subject thereto that in such event the debutant must be a Namibian citizen or permanently resident in the Republic of Namibia;

“NBC” means the Namibian Broadcasting Corporation established in terms of the Namibian Broadcasting Corporation Act, 1991 (Act No. 9 of 1991);

“news” means programming, which is not current affairs, by a broadcaster in which it predominantly presents factual new information on, or reports on news relating to, events of immediate social, political or economic relevance and on matters of international, national and local significance;

“nomination day” means a day determined as nomination day in terms of section 64(1)(a) of the Electoral Act;

“party election broadcast” means any programme, whether pre-recorded or a live event, which is -

- (a) broadcast free of charge or for a fee determined by the licensee; or
- (b) intended or calculated to advance the interests, beliefs or objects of any political party or candidate;

“performance period” means the period of 126 hours in one week measured between the hours 05:00 and 23:00 each day;

“political party” means a political party registered in terms of section 137 of the Electoral Act;

“polling day” means a day determined as a polling day in terms of section 64(1)(b) for voting in an election or a day determined under section 119(5) for voting in a referendum;

“programme” for purposes of the definition of a “local content programme”, means any sound, text, still picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically and, without derogating from the foregoing, includes a film;

“public disaster” has the meaning assigned to “disaster” in section 1 of the Disaster Risk Management Act, 2012 (Act No. 10 of 2012)

“public notice of emergency” means a notice issued by a Government Minister or a duly authorised public enterprise, as defined in the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) or any other public authority or organ of State relating to a sudden or unforeseen event or situation beyond the ordinary which threatens lives or property;

“referendum” means a referendum held as anticipated in section 119 of the Electoral Act;

“sexual conduct” means:

- (a) The display of genitals or of the anus;
- (b) masturbation;
- (c) sexual intercourse including anal sexual intercourse;
- (d) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus and any other inappropriate touching of a child of a sexual nature;
- (e) the penetration of a vagina or anus with any object;
- (f) oral genital contact;

- (g) oral anal contact;
- (h) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person;
- (i) the insertion of any other part of the body of a person or of any part of the body of an animal or of any object into the vagina or anus of another person, except where such insertion of any part of the body (other than the penis) of a person or of any object into the vagina or anus of another person is, consistent with sound medical practices, carried out for proper medical purposes; or
- (j) cunnilingus or any other form of genital stimulation;

“subscription television broadcasting licensee” means a broadcasting licensee providing broadcasting services to a subscriber upon payment of a fee; and

“watershed period” means the consecutive period commencing at 22:00 on a day and ending at 05:00 of the ensuing day.

Application

2. (1) This Broadcasting Code applies to all commercial and community broadcasting licensees unless -

- (a) specifically otherwise determined herein; or
- (b) a determination was made in terms of section 89(4) of the Act that a licensee does not require regulation by a broadcasting code.

(2) Pursuant to section 93 of the Act, until a date determined by the Minister, this Broadcasting Code will not apply to the broadcasting services or to any broadcasting activities carried on by the NBC.

PART B GENERAL CONDITIONS

Obligations regarding information on this Broadcasting Code

3. (1) A broadcasting licensee must ensure that relevant employees and programme-makers, including those from whom such licensee commissions programmes, understand the content and significance of this Broadcasting Code.

(2) A broadcasting licensee must have procedures in place for ensuring that programme-makers and channel providers can seek guidance from such licensee regarding the relevance and application of this Broadcasting Code.

- (3) (a) Subject to paragraph (b), a broadcasting licensee must regularly, and not less than once a week, prominently inform its audience that -
 - (i) it is committed to comply with this Broadcasting Code; and
 - (ii) in the event that an audience member has a concern or complaint, to whom or where such complaint or concern can be submitted.

(b) A broadcasting licensee -

- (i) may, in addition to its obligation under paragraph (a), make such information available on its website, home page or any other appropriate electronic or social media platform;
- (ii) in the event where the broadcasting licensee does not have editorial control over a channel or programme and cannot, within reasonable means, comply with its obligations under paragraph (a), must make such information available in the manner anticipated in subparagraph (i) or in any other way which is appropriate under circumstances.

News and current affairs

- 4.** (1) Subject to this rule, a broadcasting licensee must use reasonable efforts to -
- (a) report news in a factually accurate, impartial and non-partisan manner; and
 - (b) present current affairs in a balanced, clear, factual, accurate and impartial manner.
- (2) A broadcasting licensee must present news in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by -
- (a) distortion, exaggeration or misrepresentation;
 - (b) material omissions; or
 - (c) summarisation.
- (3) A broadcasting licensee may present as fact only such news as may reasonably be true, having reasonable regard to the source of the news, and that fact must be broadcast fairly with reasonable regard to context and importance.
- (4) Where a report or an account by a broadcasting licensee -
- (a) is not based on fact; or
 - (b) is founded on opinion, supposition, rumours or allegations,
- such account must be presented in such a manner as to clearly indicate that that is the case.
- (5) Where a broadcasting licensee has reason to doubt the correctness of a report or an account and it is -
- (a) practical to verify the correctness thereof, the report or account must be verified;
 - (b) not practical to verify the correctness thereof, that fact must be mentioned in the report or account.
- (6) Where it subsequently appears that a broadcasting report or account was incorrect in a material respect, the broadcasting licensee must make reasonable efforts to correct or clarify such incorrectness within a reasonable time and the rectification or clarification -
- (a) must be made with an appropriate degree of prominence to attract attention; and
 - (b) may be made during a later episode of the relevant broadcast or a comparable broadcast; or

- (c) may be made on the broadcasting licensee's or relevant programme's website, home page or main website, as appropriate; or
- (d) may be made in any other way which is appropriate under circumstances.

(7) Unless prior valid consent from the victim concerned is obtained, or in the event of the victim being a child, also the consent of the victim's guardian, a broadcasting licensee may not divulge in a broadcast, whether as part of the news or not, the identity of:

- (a) Rape victims;
 - (b) victims of gender based violence;
 - (c) other victims of sexual violence; or
 - (d) children implicated in criminal cases.
- (8) A broadcasting licensee must advise its audience in advance of -
- (a) scenes or reporting of extraordinary violence, or graphic reporting on delicate subject matter (for example of a sexual nature); or
 - (b) court action related to sexual assault,

and must pay particular attention to this duty during afternoon or early evening newscasts and updates.

(9) A broadcasting licensee may not include explicit or graphic language related to news of destruction, accidents or sexual violence, which could disturb children or sensitive audiences, except where it is in the public interest to include such material.

(10) Current affairs programmes are not required to be impartial and may take a particular stance on issues, however, a broadcasting licensee must provide reasonable opportunities for significant alternative viewpoints to be presented when dealing with controversial issues of public importance while such issues have immediate relevance to the audience.

(11) Subrules (7) to (10) do not apply to a subscription television broadcasting licensee where such licensee does not have editorial control over the contents of a channel or programme and cannot, within reasonable means, ensure compliance with these subrules.

Prohibitions relating to sexual conduct and other explicit material

5. A broadcasting licensee may not broadcast material which contains, or which judged within the context contains, a scene or scenes, simulated or real, of any of the following:

- (a) Child pornography;
- (b) bestiality;
- (c) sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender or sexual orientation and which constitutes incitement to cause harm;
- (d) explicit sexual conduct;
- (e) explicit extreme violence or the explicit effects thereof; or

- (f) explicit infliction of domestic violence.

Protection of children

6. (1) A broadcasting licensee must ensure that reasonable care is exercised in order to avoid content which may disturb or be harmful to children when the licensee broadcasts programmes at times when a large number of children may be likely to be watching or listening to radio or television programmes.

(2) A broadcasting licensee must, in the depiction of violence in children's programming, exercise the following particular care:

- (a) In children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot;
- (b) animated programming for children, while accepted as a stylised form of story-telling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation;
- (c) programming for children must with reasonable care deal with themes which could threaten children's sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol;
- (d) programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys;
- (e) programming for children must not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals;
- (f) programming for children must not contain realistic scenes of violence which minimise or gloss over the effect of violent acts;
- (g) any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators;
- (h) programming for children must not contain frightening or otherwise excessive effects not required by the story line;
- (i) offensive language, including profanity and other religiously incentive material, must not be broadcast in programmes especially designed for children; and
- (j) no offensive language should be used before the watershed period on television or radio or at times when a large number of children are likely to be watching or listening to radio or television programmes.

Violence and hate speech

7. (1) A broadcasting licensee may not broadcast material which, judged within the context -

- (a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or

(b) sanctions, promotes or glamorises violence or unlawful conduct.

(2) A broadcasting licensee may not broadcast material which, judged within context, sanctions, promotes or glamorizes violence or unlawful conduct based on race, age, sex, sexual orientation, ethnicity, colour, nationality, religion, creed, gender, economic or social economic status, age or mental or physical disability.

(3) A broadcasting licensee may not broadcast material which, judged within context, amounts to -

(a) propaganda for war;

(b) incitement of imminent violence; or

(c) is likely to incite, in a reasonable audience, hatred against, or serious contempt for, or severe ridicule of, any person or group of persons because of race, colour, age, ethnicity, nationality, religion, disability, creed, sex, sexual orientation or preferences or gender and that constitutes incitement to cause harm.

Privacy, dignity and reputation

8. (1) A broadcasting licensee must exercise special care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that these rights may be overridden by a legitimate public interest.

(2) In the protection of privacy, dignity and reputation of individuals, a broadcasting licensee must give special consideration to -

(a) the applicable customary law concerning the privacy and dignity of people who are bereaved and their respect for their deceased; and

(b) the privacy, dignity and reputation of children, the elderly, persons living with physical and mental disabilities and any other vulnerable or marginalised groups of society.

Audience advisory assistance

9. (1) In order to assist audiences in choosing television programmes, a television broadcasting licensee must -

(a) provide advisory assistance which, when applicable, must include guidelines as to age, where such programmes contain violence, sex, nudity or offensive language;

(b) show such advisory assistance on the screen for a minimum of 30 seconds after each advertisement or other break;

(c) where the frequency of the subject matters, or any one or some of them, is high, show a continuous advisory assistance, irrespective whether the programme is broadcast before or after the watershed period.

(2) A television broadcasting licensee must use the following visual advisory assistance age system:

(a) 10;

- (b) 13;
- (c) 16; and
- (d) 18.

(3) A television broadcasting licensee must use the following symbols in accordance with the relevant content:

- (a) V = (Violence);
- (b) L = (Language);
- (c) N = (Nudity);
- (d) S = (Sex); and
- (e) PG = (Parental Guidance).

(4) A television broadcasting licensee must ensure that an audio advisory assistance accompany the broadcast of a film with an age restriction of 18 before the commencement of the relevant programme.

(5) This rule does not apply to a subscription television broadcasting licensee where such licensee does not have editorial control over the contents of a channel or programme and cannot, within reasonable means, effect the audience advisory assistance required under this rule, subject thereto that such subscription television broadcasting licensee must -

- (a) classify the programmes it intends to broadcast;
- (b) with regard to such classification, indicate appropriate age restrictions for viewing or listening to a programme or indicate the programme as family viewing;
- (c) indicate whether a programme contains nudity, sexual conduct, violence or offensive language;
- (d) provide clear and consistent information to its audience on programme classification in order to enable its audience to select the programmes they do not wish to view or listen or which they do not wish their children to view or hear.

(6) A subscription television broadcasting licensee must implement adequate measures to enable a subscriber to block a programme or certain levels of undesirable material, based on the classification of the programme, or a channel, included in its services (i.e. parental or viewer control).

Controversial issues

10. (1) A broadcasting licensee must ensure, in so far as is practical or reasonable, when reporting on a controversial issue that a balanced and reasonable range of significant views and opinions is reported, either within a single programme or within a series of programmes, which shall be broadcast as soon as is reasonably possible.

(2) A broadcasting licensee must ensure, in so far as is practical or reasonable, when broadcasting a controversial issue during phone-in programmes, that a balanced and reasonable range of significant views and opinions is represented.

(3) A person or an organisation whose views have been criticised on any controversial issue during a programme and who makes any representations, within a reasonable time, to the broadcasting licensee responsible for the programme that such person or organisation is aggrieved, must, in so far as is practical or reasonable, be offered an opportunity by the broadcasting licensee to reply to such criticism or comment.

Watershed period

11. (1) Subject to rule 5, a television broadcasting licensee may only broadcast programmes on television, which contains scenes of -

- (a) explicit violence;
- (b) sexual conduct;
- (c) nudity; or
- (d) grossly offensive language,

intended for adult audiences during the watershed period.

(2) A broadcasting licensee may only broadcast promotional material and music videos which contain -

- (a) scenes or depiction of explicit violence;
- (b) explicit threatening violence;
- (c) sexual conduct;
- (d) the fondling or touching of breasts;
- (e) nudity; or
- (f) grossly offensive language,

intended for adult audiences during the watershed period.

(3) Some programmes broadcast outside the watershed period may not be suitable for children and a broadcasting licensee must provide sufficient information, in terms of regular scheduling patterns or audience advisory assistance, to assist parents and *de facto* or legal guardians to make appropriate viewing or listening choices for children in their care.

(4) A broadcasting licensee may, with the advance of the watershed period, progressively broadcast more adult material.

(5) A broadcasting licensee must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may be viewed by children.

Competitions and audience participation

12. (1) A broadcasting licensee must make known during a broadcast the full cost of a telephone call or a message service, such as an SMS, where audiences are invited on air to react to a programme or competition.

(2) If applicable, a broadcasting licensee must specify the proportion of the cost of the call or message service, such as an SMS, which is intended for any specified charitable cause.

(3) A broadcasting licensee must ensure that audiences invited to compete in any competition broadcast by such licensee are made aware on air of the basic rules of the competition which must include the closing date and the manner in which the winner is determined and publicly announced.

(4) This rule does not apply to a subscription television broadcasting licensee.

Public notices of emergencies or public disaster announcements

13. (1) A broadcasting licensee must without delay broadcast or otherwise distribute, free of charge, a public notice of emergency or a public disaster announcement requested, in writing, by any Government Minister or duly authorised public enterprise or any other public authority or organ of State.

(2) The broadcasting licensee must, prior to the broadcast or alternative distribution thereof, verify the authenticity of the notice with the relevant Government Minister, State-owned Enterprise or other public authority or organ of State from which the written request emanates.

(3) A designated position in relation to each broadcasting licensee must be identified as the contact person during business and non-business hours for all matters relevant to this rule.

(4) Compliance with this rule is dependent upon the cooperation of the relevant Government Minister, State-owned Enterprise or other public authority or organ of State involved therein and a broadcasting licensee will not be in breach of this rule if any of them fail to respond to the licensee's request for information, provides inaccurate information or otherwise fail in providing the broadcasting licensee with information and assistance necessary to effect the broadcast.

Comments

14. (1) Subject to this Broadcasting Code, a broadcasting licensee may broadcast comment on and criticism of any actions or events of public importance.

(2) Comments by a broadcasting licensee must be an honest expression of opinion, must be presented in such a manner that it appears clearly to be commentary and must be made on facts truly stated or fairly indicated and referenced.

(3) Where a person stated that he or she is not available, or where a person could not reasonably be reached, for comment, that fact must be stated by the broadcasting licensee in the relevant programme including the effort and manner employed to try and reach the person.

(4) This rule does not apply to subscription television broadcasting licensees.

Counter-versions

15. (1) Where it appears that a comment was incorrect or differed in a material respect from what was previously broadcast by a broadcasting licensee, the broadcasting licensee must broadcast or publish, in the manner set out in this rule, a counter-version presented by a person or organisation affected by and objecting against an such incorrect or different fact in any programme transmitted by the broadcasting licensee.

(2) Notwithstanding sub-rule (1), a broadcasting licensee is not obligated to transmit a counter-version in the event where -

- (a) the person or organisation concerned does not have a direct interest in the transmission of the counter-version; or
 - (b) the counter-version is not of reasonable length, and in particular, if the counter-version is substantially longer than the part of the broadcast which dealt with the false assertion of fact.
- (3) The counter-version referred to in sub-rule (1) must -
- (a) be limited to a factual account;
 - (b) not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal action if that material were to be broadcast;
 - (c) be in writing;
 - (d) specify the programme and the assertions to which the objection is raised; and
 - (e) be signed by the person affected or, in the case of an organisation, by a duly authorised representative of that organisation.
- (4) The person or organisation affected is not entitled to insist on the broadcasting or publishing of a counter-version as contemplated in sub-rule (1) if the counter-version is presented to the broadcasting licensee after the expiry of a period of 15 days from the date of broadcast of the apparent incorrect or different fact.
- (5) The broadcasting licensee must, subject to sub-rules (2) and (4) -
- (a) at the first opportunity, but not later than 10 days from receipt of a counter-version referred to in sub-rule (1), broadcast or publish the counter-version within the same programme or programme section as the one in which the incorrect or different assertion was made and at the same time of day or, should that not be possible or reasonable -
 - (i) at a time equal in value to that of the programme to which the objection relates;
 - (ii) on the broadcasting licensee's or relevant programme's website, home page or main website, as appropriate; or
 - (iii) in any other way which is appropriate under circumstances;
 - (b) broadcast or publish the counter-version without any omissions and interruptions; and
 - (c) broadcast or publish the counter-version free of charge.
- (6) A broadcasting licensee must, immediately upon receipt of the counter-version referred to in sub-rule (1) -
- (a) inform the Authority about that fact; and
 - (b) keep and store the programme objected to and the counter-version,

until the broadcasting licensee receives a notice to the contrary from the Authority or for a period of at least 12 months, whichever period expires first.

(7) If a broadcasting licensee makes a rectification or clarification in the manner set out in this rule within the specified timeframe, such licensee will not be in breach of sub-rule 4(1), (2), (3), (6) or (10).

Advertisements

16. (1) An advertisement broadcast by a broadcasting licensee must be presented in such a manner that a reasonable audience will be able to identify such advertisement, at the time of the broadcast, as advertising material.

(2) An advertisement must not deliberately cause serious offence to the intended audience.

(3) Advertising must not promote illegal or unsafe conduct or acts or encourage dangerous behaviour.

Exemptions

17. (1) Rules 5 and 7(3) do not apply to –

- (a) broadcasts of *bona fide* scientific, research, documentary, artistic (including comedy or satire), dramatic, literary or religious programming material, which, judged within context, is of such nature;
- (b) broadcasts which amount to a *bona fide* discussion, argument, report or opinion on a matter pertaining to religion, belief or conscience; or
- (c) broadcasts which amount to a *bona fide* fair comment, discussion, argument or opinion on a matter of public interest,

subject thereto that it is broadcast with due audience advisory after the watershed period on a sliding scale according to contents.

(2) A comment, criticism, opinion or view by a broadcasting licensee is not prohibited if such comment, criticism, opinion or view complies with the following requirements:

- (a) Is honestly-held;
- (b) is without malice;
- (c) pertains to a matter of public interest;
- (d) takes fair account of all material facts which are substantially true; and
- (e) is presented in a manner which clearly indicates that it is a comment, criticism, opinion or view.

(3) Where a broadcasting licensee is of the opinion that a rule applicable to it in this Broadcasting Code will cause it unjustifiable hardship or cannot reasonably be complied with, the licensee may, in writing, apply to the Authority for an exemption or deviation approval from the Authority.

(4) An application contemplated in sub-rule (3) must be sufficiently motivated to substantiate a claim of unjustifiable hardship or inability to reasonably comply with and have attached thereto such additional substantiation as the broadcasting licensee deems relevant.

- (5) The Authority must evaluate each application based on the criteria specified as well as section 89(3) of the Act and may -
- (a) refuse the application if the criteria specified are not met;
 - (b) grant an exemption to the relevant rule without conditions or with such conditions as the Authority deems appropriate;
 - (c) grant such deviation from the relevant rule as the Authority deems appropriate with or without such conditions as the Authority deems appropriate; or
 - (d) make such other determination as the Authority deems appropriate under circumstances.

PART C COVERAGE OF ELECTIONS AND REFERENDUMS

Party election broadcasts

18. (1) A broadcasting licensee may not broadcast, or allow to be broadcast, a party election broadcast under any circumstances except during an election broadcast period.

(2) A broadcasting licensee who decides to broadcast a party election broadcast for a particular party must afford all other political parties a similar opportunity.

(3) A party election broadcast is wholly under the editorial control of the relevant political party and the broadcasting licensee -

- (a) is not liable for the contents of the broadcast;
- (b) may not broadcast a party election broadcast until the relevant political party's duly authorised representative submits the contents thereof on behalf of that political party;
- (c) may refuse to broadcast the party election broadcast until provided with a signed written indemnification against liability in line with rule 22(7)(b).

News and current affairs during elections and referendums

19. (1) News coverage of elections and referendums is at the discretion of the news editor of the broadcasting licensee.

(2) A broadcasting licensee must apply proper balance and fairness to all current affairs programmes that deal with elections or referendums.

Balance and impartiality

20. (1) A broadcasting licensee must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.

(2) A broadcasting licensee must ensure that it is balanced and impartial in its election or referendum reporting and that no political party, candidate or proponent is discriminated against in editorial coverage or the granting of access to coverage.

(3) In the event of any criticism against a political party, candidate or proponent being levelled in a particular programme of any broadcasting service –

- (a) without that party, candidate or proponent having been afforded an opportunity to respond in the same programme; or
- (b) without the view of that party, candidate or proponent having been reflected therein,

the broadcasting licensee concerned must afford that political party, candidate or proponent a reasonable opportunity to respond to the criticism.

(4) In making advertising time available to political parties, no broadcasting licensee may discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(5) Should a political party forfeit or decide to forfeit its allocated party election broadcast airtime, then that airtime must be used by the broadcasting licensee concerned for the purpose of broadcasting its normal programming or material.

(6) Should a political party not wish to use its allocated party election broadcast airtime, the broadcasting licensee concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of party election broadcasts.

Allocation of free airtime by the NBC

21. (1) Subject to section 93(1) of the Act, where the NBC offers free airtime to various political parties participating in an election, it must do so on the basis of the respective formula set out in rule 22 of this Broadcasting Code.

(2) Subject to section 93(1) of the Act, a political party intending to broadcast a party election broadcast utilising the free airtime as allocated by the NBC above must submit its broadcast contents to the NBC at least 96 hours prior to the broadcast thereof.

(3) If a political party fails to deliver the party election broadcast to the NBC before the expiry of the time set out in sub-rule (2), the political party is deemed to have forfeited its free allocated airtime.

(4) In the event of an election and in accordance with rule 22, the formulae must be submitted at least seven days after the publication of the polling day.

Party election broadcasts

22. (1) A political party intending to broadcast a party election broadcast must submit its broadcast contents to a broadcasting licensee at least 96 hours prior to the broadcast thereof.

(2) The political party's party election broadcast contents must be accompanied by a written script in English but, should the political party wish to use a local language, a script must be provided in such language together with a translation thereof in English.

(3) A broadcasting licensee obligated, or intending, to broadcast party election broadcasts must ensure that a political party's party election broadcast contents conforms with this Broadcasting Code.

(4) A broadcasting licensee, to whom a political party submitted its party election broadcast contents for broadcasting, may not in edit or alter the content thereof.

- (5) A broadcasting licensee may not reject a political party's party election broadcast contents without reasonable cause and in such event the broadcasting licensee must -
- (a) no longer than 24 hours after having received the political party's party election broadcast contents furnish the political party concerned with written reasons for the rejection; and
 - (b) allow the political party to alter or edit the relevant party election broadcast contents and resubmit such contents to the broadcasting licensee at least 72 hours prior to the scheduled broadcast thereof.
- (6) A political party must ensure that its party election broadcast contents does not -
- (a) contravene any law and especially not the Constitution of Namibia, the Electoral Act or the Act (including this Broadcasting Code); and
 - (b) contain any material which is calculated, or which in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or which may be perceived as condoning or lending support to any such act.
- (7) A political party submitting its party election broadcast contents to a broadcasting licensee for broadcasting -
- (a) has no claim against the broadcasting licensee arising from the broadcast or failure to broadcast such contents; and
 - (b) is deemed to have indemnified the broadcasting licensee against incurred costs, damages, losses and third political party claims arising from the broadcast thereof.
- (8) A broadcasting licensee broadcasting a party election broadcast contents must -
- (a) make available to all political parties, every day throughout the election broadcast period, four time-slots not exceeding two minutes each as a minimum;
 - (b) do so in accordance with and subject to this Broadcasting Code and such additional requirements as the Authority may determine under the Act;
 - (c) ensure that all party election broadcasts aired by such licensee are clearly identified; and
 - (d) ensure that all party election broadcasts are identified or announced in a similar manner.
- (9) A party election broadcast may not exceed five minutes in duration.
- (10) A broadcasting licensee may not broadcast a political party's party election broadcast or political advertisement immediately before or after another political party's party election broadcast or political advertisement.
- (11) Unless a political party makes prior arrangements with the broadcasting licensee, party election broadcast airtime allocated to but not used by that political party shall be forfeited.
- (12) A broadcasting licensee or political party may not permit or engage in any interference with, or trade-offs in the sequence or scheduling of party election broadcasts.

Political advertising

23. (1) A broadcasting licensee may not broadcast, or allow to be broadcast, a political advertisements under any circumstances except during an election broadcast period.

(2) A broadcasting licensee, to whom a political advertisement is submitted by a political party for broadcast, may not edit or alter the advertisement.

(3) A broadcasting licensee may not reject a political party's political advertisement without reasonable cause and in such event the broadcasting licensee must -

(a) no longer than 24 hours after having received the political party's political advertisement furnish the political party concerned with written reasons for the rejection; and

(b) allow the political party to alter or edit the relevant political advertisement and resubmit such advertisement to the broadcasting licensee at least 72 hours prior to the scheduled broadcast thereof.

(4) Where a broadcasting licensee rejected a political advertisement and the political party concerned confirmed in writing to the broadcasting licensee that it will not be re-submitting the advertisement, the broadcasting licensee must, within 24 hours after receiving such confirmation, notify the Authority in writing of such rejection which notification must be accompanied by the written reasons given to the relevant political party for the rejection.

(5) A political party, whose political advertisement was rejected and who does not accept the reasons provided by the broadcasting licensee for the rejection, may refer the matter to the Authority within 24 hours of being informed of the rejection.

(6) A political party must ensure that its political advertisement does not -

(a) contravene any law and especially not the Constitution of Namibia, the Electoral Act or the Act (including this Broadcasting Code); and

(b) contain any material which is calculated, or which in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or which may be perceived as condoning or lending support to any such act.

(7) A political party submitting a political advertisement to a broadcasting licensee for broadcasting -

(a) has no claim against the broadcasting licensee arising from the broadcast or failure to broadcast such advertisement;

(b) is deemed to have indemnified the broadcasting licensee against incurred cost, damages, losses and third political party claims arising from the broadcast thereof.

Broadcasting on polling day

24. (1) No broadcasting licensee may on polling day broadcast a party election broadcast, political advertisement or any material canvassing for support of any political party or candidate.

(2) A broadcasting licensee must confine election coverage on the polling day to reports and analyses on the progress of voting and information pertaining to voting schedules and location of polling stations.

(3) A broadcasting licensee may not broadcast election results until after the polls are declared closed and official results are announced or published by the relevant officials of the Electoral Commission of Namibia in accordance with the Electoral Act.

PART D LOCAL CONTENT

Local content objectives

25. Every broadcasting licensee must, through the promotion, development or broadcasting of local content strive to -

- (a) encourage the development of Namibian identity and expression by providing, within the type of programmes or music promoted, developed or broadcast by a broadcasting licensee, a wide range of local content which reflects Namibian attitudes, opinions, ideas, values and artistic creativity by displaying Namibian cultures and entertainment through music, dramas, series, news, documentaries, current affairs, movies, films and other programmes;
- (b) serve the needs and interests and reflect the circumstances and aspirations of Namibian women, men and children in a democratic Namibian society;
- (c) promote, develop, produce and maintain local content of high standards and quality; and
- (d) make maximum use of Namibian and African creative and other resources in the creation and presentation of local content.

Local content policy

26. (1) In order to promote the progressive implementation of local content in broadcasting, a broadcasting licensee must, within 12 months after the commencement of this Broadcasting Code develop, and submit to the Authority, its written local content policy in accordance with this rule.

(2) A broadcasting licensee's local content policy must include at least the following matters:

- (a) A description of the type of channels, programmes or music broadcast by the broadcasting licensee;
- (b) a brief analysis or summary of the characteristics of its audience and the preferences of such audience;
- (c) based on the knowledge of the broadcasting licensee and taking into consideration the nature of the broadcasting licensee as contemplated in paragraph (a), a summary of local content available for broadcasting by the broadcasting licensee and the cost implications thereof;
- (d) the purpose or objectives of the broadcasting licensee's local content policy;
- (e) the principles of the broadcasting licensee's broadcasting policy (that is, amongst others, how the broadcasting licensee intends to promote local content in its broadcasts);

- (f) challenges identified by the broadcasting licensee in implementing local content requirements; and
 - (g) any other matter the broadcasting licensee deems appropriate to include.
- (3) The Authority may assist broadcasting licensees in the development of their local content policies by providing them with a sample local content policy covering the matters set out in this rule.
- (4) (a) A broadcasting licensee must every year, on the anniversary of its local content policy, review the policy and, if necessary, make such amendments thereto as are appropriate.
- (b) Where amendments are made by a broadcasting licensee to its local content policy, the amended version of the policy must be submitted to the Authority as soon as practicable.

Local content requirements

27. (1) A broadcasting licensee must, over the reporting period, during the performance period, measured as set out in rule 28, comply with the minimum local content requirements set out in this rule.

- (2) The minimum local content requirements for the different broadcasting licensees are as follows:
- (a) Radio broadcasting licensees: over the reporting period, 15 percent of music broadcast during the performance period must be local content music;
 - (b) commercial television broadcasting licensees (excluding subscription television broadcasting licensees and NBC): over the reporting period, ten percent of programmes broadcast during the performance period must be local content programmes;
 - (c) community television broadcasting licensees (excluding subscription television broadcasting licensees and NBC): over the reporting period, 15 percent of programmes broadcast during the performance period must be local content programmes;
 - (d) subscription television broadcasting licensees: six percent of their annual channel and content acquisition cost as incurred their most recent completed financial year must be expended on the acquisition or development of local content which expenditure may include expenditure in the Republic of Namibia on local content training, skills development and business development;
 - (e) NBC: over the reporting period, thirty percent of programmes and music broadcast during the performance period must be local content programmes or music.
- (3) The local content requirements set out in this rule become enforceable -
- (a) for an existing broadcasting licensees, on the date of the third anniversary of the commencement date of this Broadcasting Code;
 - (b) for NBC, after a period of three years from the date determined by the Minister in accordance with section 93 of the Act;

- (c) for a broadcasting licensee to whom a broadcasting licence was issued subsequent to the commencement of this Broadcasting Code, after a period of three years from the date of commencement of its broadcasting licence.
- (4) The Authority may, by written directive to a subscription television broadcasting licensee^o-
 - (a) determine the minimum percentage local content programmes or local content music which must be included in a channel in order for such channel to qualify as a local content channel;
 - (b) specify the expenses which must be included in, or may be excluded from, the channel acquisition budget for purposes of this Broadcasting Code.
- (5) A channel, with regard to which the person who provides, avails or sells such channel to a subscription television broadcasting licensee -
 - (a) is not required to pay, remunerate or in any manner compensate the subscription television broadcasting licensee for the broadcast thereof qualifies as a local content channel; or
 - (b) is required to pay, remunerate or in any manner compensate the subscription television broadcasting licensee for the broadcast thereof does not qualify as a local content channel.

Measurement of local content

28. (1) A broadcasting licensee must attempt, in so far as reasonably possible or practical, to evenly spread out the broadcast of local content, on a daily basis, over the performance period.

(2) Compliance with local content requirements shall be measured over the reporting period which is a period of 12 months.

(3) Subject to sub-rule (1), a broadcasting licensee must ensure that it meets its local content requirements measured over the duration of the reporting period irrespective of the spacing, duration or frequency of local content broadcast during the daily performance period.

(4) For purposes of measuring local content and local content requirements, the following broadcasts do not constitute music, programmes, local content music or local content programmes (which means that these broadcasts are not taken into consideration when measuring and determining local content programmes or music against other programmes and music broadcast):

- (a) News;
- (b) sport events;
- (c) games;
- (d) programme promotions, bridging and sponsorship music and a broadcasting licensee's continuity and other announcement and theme music;
- (e) advertisements and promotions;
- (f) radio and television shopping;

(g) teletext.

(5) Where a local content programme or music is broadcast more than once during the performance period, measured over a week, any broadcast after the first broadcast thereof during that week does not count towards the local content requirement applicable to that broadcasting licensee.

(6) Based on the above, local content is calculated as follows for each performance period:

$$\frac{A}{B} \times \frac{C}{100}$$

where

A = total number of hours or time the broadcasting licensee broadcast applicable local content during the performance period

B = total number of hours or time broadcasting licensee broadcast exclusions set out in sub-rule (4) during the performance period

C = total number of hours or time the broadcasting licensee broadcast programmes or music (including local content programmes and music) during the performance period

and multiplied by 100 to obtain a percentage.

Local content exemption

29. (1) The Authority may, upon application by a broadcasting licensee, grant an exemption or deviation, with or without such conditions and for such period as the Authority may deem appropriate, from any local content requirement in this Part in the event where -

- (a) compliance would result in unreasonable and unjustifiable economic, financial or other hardship to the broadcasting licensee;
 - (b) the broadcasting licensee generally broadcasts specialised programmes or music to a particular audience and such types of programmes or music are not produced or are not sufficiently produced by persons who will render such programmes or music local content programmes or music;
 - (c) under circumstances, the local content requirements are unreasonably high for that particular broadcasting licensee;
 - (d) the Authority has determined any other criteria with regard to which an application for an exemption or a deviation may be made.
- (2) An application contemplated in sub-rule (1) must -
- (a) be sufficiently motivated on the basis of one or more of the criteria set out in that sub-rule;
 - (b) have attached thereto such additional substantiation as the broadcasting licensee deems relevant;
 - (c) if relevant, include proof that there is no or limited local content available within the context set out in sub-rule (1)(b); and
 - (d) demonstrate the measures the broadcasting licensee took or intends to take in attempting to meet the relevant local content requirements.

(3) The Authority must evaluate each application based on the criteria specified in sub-rule (1) and taking also into account the capacity, cost and strength of local content production and availability and may -

- (a) refuse the application if the criteria specified are not met;
- (b) grant an exemption without conditions or with such conditions as the Authority deems appropriate;
- (c) grant such deviation as the Authority deems appropriate with or without such conditions as the Authority deems appropriate; or
- (d) make such other determination as the Authority deems appropriate under circumstances.

(4) The Authority may, out of own accord, lower any local content requirements on any of the grounds set out in sub-rule (1).

Record keeping

30. (1) A broadcasting licensee must keep and maintain such logs, statistical forms and channel, programme and music records as may be necessary to ensure the keeping of -

- (a) the particulars of all local content programmes or music broadcast during a performance period or, if applicable, expenditures contemplated in rule 27(2)(d);
- (b) sufficient particulars as regards the expenditure contemplated in rule 27(2)(d) or the producer or creator of local content to enable such licensee to substantiate it as qualifying as local content or local content expenditure, as the case may be;
- (c) sufficient information to enable such licensee to calculate and submit to the Authority its statistics on, and compliance with, local content requirements; and
- (d) such other particulars as may be required by the Authority.

(2) A broadcasting licensee must, for every completed year during which this Part D pertaining to local content applied to such licensee, no later than the 31st of January of the ensuing year, submit its compliance report to the Authority -

- (a) in the format determined by the Authority; or
- (b) if the Authority did not determine a format, in such format so as to sufficiently and clearly indicate such licensee's compliance with its local content requirements.

(3) A broadcasting licensee must keep the logs, statistical forms and records contemplated in sub-rule (1) for a period of not less than 12 months after the end of each calendar year to which they relate.

Supervision by the Authority and enforcement

31. (1) The Authority shall supervise compliance with the Broadcasting Code, including the local content requirements, in terms of section 90 of the Act.

(2) The Authority may conduct spot checks on a broadcasting licensee, comparing such licensee's logs, statistical forms and records with its own to verify compliance.

(3) The Authority will periodically review the Broadcasting Code and specifically also the local content requirements to ensure the continued progressive implementation thereof in order to meet the objectives set out in the Concise Statement of Purposes to this Broadcasting Code.

ANNEXURE

SUMMARY AND ANALYSIS OF COMMENTS RECEIVED

1. Introduction

Subsequent to a review of comments received on the Broadcasting Code published in June 2017, a revised final draft Broadcasting Code was published in the Government Gazette for stakeholder comment on 24 May 2018. A public hearing was held on 30 July 2018 during which verbal comments and input were received on the Broadcasting Code. Written submissions were received from Robin Tyson (UNAM), NBC and MultiChoice. The input and comments received are summarised and responded to below. Stakeholders generally found the revised Broadcasting Code acceptable and expressed their appreciation towards the Authority for its consideration and incorporation of input received from the stakeholders.

2. Stakeholder Input

2.1 *Input and Comments Received at Public Hearing*

The public hearing was well attended and interactive. Some relevant input and comments received at the hearing itself¹ are:

- Concerns were again expressed as regards potential negative effects on freedom of press and speech
- There was expression of opinion that the Broadcasting Code discriminates as it is not applicable to NBC
- The Authority should investigate the granting of incentives for broadcasters to promote local content in addition to the stated minimum local content quotas
- Requiring 15% local content for, for example, community radio may be too low since the representative present opined that the minimum percentage was already exceeded by their broadcasting service
- The requirement on subscription television broadcasters to expend a minimum amount on, amongst others, the “development” of local content – in this regard the word “development” has a wide interpretation/meaning
- The definition of “local content music” caused some confusion since its introductory words reference only verbal music in the first line thus appearing that the definition applies only to music containing words (i.e. not instrumental). The definition was thus slightly restructured to eliminate such confusion

The above input and comments are noted but will generally not be addressed in the current Broadcasting Code. Future consideration will be given to relevant comments and input when the Broadcasting Code is reviewed.

2.2 *UNAM – Robin Tyson*

2.2.1 Reference is made to South African broadcasters who regularly announce their compliance with their broadcasting code and the contact details (address, e-mail or phone number, etc) as to where listeners/viewers can submit complaints to the licensee itself. This is a sensible

¹ Input received in writing and summarised in clauses 2.2 – 2.5 is not repeated in this clause 2.1.

proposal and an addition is proposed to rule 3 (“obligations regarding information on this Broadcasting Code) obligating broadcasting licensees to regularly (but not less than once a week) make such announcements. However, flexibility is provided for in that: (a) licensees may also publish the relevant information on electronic and/or social media platforms; and

(b) if a licensee does not have control over a channel or programme and cannot within reasonable means make such announcements, such licensee must publish the information on its electronic or social media platform.

- 2.2.2 Support is given to an obligation on subscription television broadcasters to expend income on the acquisition or development of local content. Proposals are made that such funding can support the training of media students/professionals, media training facilities, the Namibia Film Commission and the construction and development of a student television station at UNAM and that such broadcasters should be encouraged to do so. This comment does not impact on the contents of the Broadcasting Code, since it is already accommodated as such, and these proposals can be relayed and/or encouraged outside the Broadcasting Code.

2.3 Namibian Broadcasting Corporation

- 231 NBC proposes an additional definition for “film” and that local films should attract double points in the calculation of local content quota. Response: the definition of “programme” is wide and includes films.² Should one wish to give local films special treatment, then a definition would probably be necessary. The current local content model (being the first time this is introduced in Namibia) is a simplified model. Countries which have required local content for many years have developed more sophisticated models over time (often inclusive additional points for certain local content or of tax benefits on local content). These type of proposals can be further explored in the future once the current model is reviewed and revised.
- 232 The current definition of “local content programme”, in paragraph (f) thereof, requires at least 50% of key personnel to be citizens of, and permanently resident in, Namibia. NBC proposes that this percentage should be 60%. Similarly to the response in clause 2.3.1 above, the decision is to introduce a minimum but meaningful local content requirement to start off with. The impact and success of the first time local content quotas will be regularly reviewed and gradually increased.
- 233 The Broadcasting Code determines the performance period (for purposes of local content) to be a period of 126 hours per week measured daily between 05:00 and 23:00. NBC proposes a reduction to 112 hours a week between 06:00 and 22:00. This proposal will result in more strenuous local content obligations on broadcasters. For the same reasons given above, the proposal is noted and can be considered when local content increases are considered in the future. Also, as national broadcaster, NBC may carry larger local content and would therefore find the initial local content requirements in the Broadcasting Code less strenuous than their current local content programmes and music.
- 234 NBC recommends the defining of “political advertising” in order to distinguish this from other political party broadcast messages such as announcements of gatherings or fund raising initiatives, the latter not being limited to election broadcast periods only. Note: (a) “advertisement” (and “advertising”) is already defined and thus covers political advertisements in that they are still advertisements but of a political nature; (b) the decision

² In view of a comment received from the Namibia Film Commission the definition of “film” in the Namibia Film Commission Act was cross-referenced and the definition of “programme” now includes “films” in order to avoid any uncertainty on this.

is to prohibit political advertising outside election periods and thus, broadcasts which do not constitute advertising (as defined) and which is not a political election broadcast, are not prohibited.

- 235 As regards what constitutes “child pornography” in the definition of “sexual conduct”, NBC proposes the addition of inappropriate touching of a child. Child pornography currently means “fondling or touching of breasts, genitalia or the anus”. NBC’s proposal is acceptable and added to paragraph (d) of the definition of “child pornography” to now state: “the fondling or touching of breasts, genitalia or the anus and any other inappropriate touching of a child of a sexual nature”
- 236 As regards the watershed period, NBC proposes an earlier start at 21:00 and not 22:00. The comment is noted but is found to be too early and 22:00 is deemed more appropriate.
- 237 NBC proposes the deletion of rule 10(2) since it is difficult for broadcasters to control what callers will say. Rule 10(2) obligates a broadcaster, in so far as is practical or reasonable, to ensure a balanced and reasonable range of views/opinions on controversial issues. NBC’s proposal is noted but the limitations already included (i.e. only in so far as it is practical or reasonable) are deemed reasonable and add flexibility to address this concern.
- 238 Rule 12(1), relating to competitions, requires broadcasters to make known, during a broadcast, the full cost of calling in (or sms) to participate in a competition. NBC states that it could be challenging to apply this requirement to especially phone calls since the rates of various telephone service providers of callers may differ. This is deemed not necessary to amend since these competitions have special numbers and rate is determined between issuer of competition and service provider.
- 239 Rule 13 requires broadcasters to broadcast public emergency notices or public disaster announcements. NBC advises more clarity on these concepts by means of a definition. Note that, without a definition, these expressions will be understood within their ordinary grammatical meaning. It may be beneficial to define these expressions to prevent the indiscriminate use of such announcements and to provide greater clarity. The following definitions are proposed to be inserted:
- “public notice of emergency” means a notice issued by a Government Minister or a duly authorised public enterprise, as defined in the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) or other public authority or organ of State relating to a sudden unforeseen event or situation beyond the ordinary which threatens lives or property; and
- “public disaster” has the meaning assigned to “disaster” in section 1 of the Disaster Risk Management Act, 2012 (Act No. 10 of 2012).³

³ “disaster” means any serious disruption of the functioning of a community or society, posing a significant, widespread threat to human life, health, property or the environment, which exceeds the ability of the affected community or society to cope using its own resources resulting from -

- (a) natural disaster, major accident or other significant events howsoever caused;
- (b) destruction or pollution;
- (c) scarcity of essential supplies;
- (d) disruption of essential services;
- (e) influx of refugees;
- (f) plague or epidemic of diseases; or
- (g) economic failure.

- 23.10 As regards: (a) rule 22(1), NBC proposes that a political party must submit party election broadcast content at least 120 hours before the broadcast to a broadcaster and not 96 hours as currently stated; (b) rule 22(5)(a), NBC proposes that a broadcaster who rejects a party election broadcast must, no longer than 48 hours after having received the content, give notice of the rejection and the reasons therefor and not 24 hours as is currently stated. These timeframes were proposed in the previous published Broadcasting Codes and, apart from NBC, no other broadcaster commented thereon or found them unreasonable. It is recommended that timeframes stay intact. Should NBC have particular challenges to meet such timeframes there is a general rule under which they can apply to the Authority for exemption or adjustment.
- 23.11 Rule 22(6)(a) determines that election broadcast contents may not contravene any law including the Broadcasting Code. NBC proposes adding hereto that such content may also not contravene editorial policies. This proposal is not accepted in view of editorial policies being internal and it is not the intention of the Broadcasting Code to make them enforceable through statute. The ambit of this subrule is limited to laws of Namibia only.
- 23.12 NBC proposes that party election broadcast may not exceed three minutes in duration instead of the current five minutes provided for in the Broadcasting Code. This proposal is not accepted for the same reasons provided in clause 2.3.10 above.
- 23.13 Regarding rule 27(2)(a) which sets the local content requirement for radio broadcasters at 15% of music broadcast, NBC proposes that this be increased to 50%. It is recommended that the percentage remains as published in the previous draft Broadcasting Code. Only two licensees recommended an increase whereas the other licensees did not comment thereon and thus deemed to have found it acceptable. Also, see previous reasoning to start off with lower levels at the first introduction of local content and gradually increase requirements as this aligns with accepted local content principles.
- 23.14 On rule 28(4), NBC proposes the inclusion of news, sport events and games towards local content. It is recommended that this proposal not be accepted. As explained to stakeholders at the public hearing and in the explanatory memorandum, sport coverage, news, advertising, games, promotions and certain announcements broadcast during the performance period will be excluded (i.e. deducted) from the total performance period's hours and the local content percentage will be calculated on the remaining hours. This means, for example, local content music required to be broadcast will be measured against only the total other music broadcast during performance period – not against the total number of hours of the performance period thereby reducing local content burden.

2.4 MultiChoice Namibia

- 24.1 MultiChoice is of the opinion that the Broadcasting Code does not sufficiently distinguish between the following types of broadcasters:

- Those who produce and/or commission programmes
- Those who produce and/or commission channels
- Those who acquire channels which they package into bouquets

This lack of distinction, according to MultiChoice, means that the Broadcasting Code does not cater for a broadcaster such as MultiChoice who has no editorial control over content. MultiChoice is of the opinion that the Code is based on the thinking that all broadcasters commission their own programmes (as opposed to channels and acquisition of channels). MultiChoice states that it does not produce or commission programmes. It acquires complete channels and package them into bouquets. Based on this premise, MultiChoice makes recommendations how the Broadcasting Code could be amended to accommodate their channel acquisition model.

242 Local content: MultiChoice supports the Authority's decision that local content requirements for subscription television broadcasters must be expenditure-based (i.e. a certain minimum amount must be expended on the acquisition or development of local content). Currently the Broadcasting Code determines this to be 1.5% of annual revenue to be expended on local content. MultiChoice proposes that the amount should be determined as a percentage of their annual content acquisition cost of their most recent completed financial year. MultiChoice proposes that such percentage should be 3%. As regards local content requirements for subscription television broadcasters, the following recommendations are made:

- insertion of a definition of local content channels to specify that it is a channel consisting of such a percentage of local content music and programmes as the Authority may from time to time determine – this is to avoid that a channel which features, for example, only 1% local content qualifies as a local content channel
- providing for a percentage-based expenditure requirement of 6% of the subscription television broadcaster's channel acquisition cost during the previous financial year. MultiChoice's proposal of 3% is deemed too low especially since, in the absence of the Authority determining a specific percentage of local content for a channel to qualify as a local content channel, all channels (for example NBC currently broadcast by MultiChoice) qualify as local content and may result in the required local content quota already being exceeded
- provision is made for the Authority to determine which expenses must be included in a subscription television broadcasting licensee's channel acquisition budget and which may be excluded in the event that more clarity may in future be required on this matter
- different from other broadcasters (who are required to broadcast at least the minimum percentage local content), subscription television broadcasters are provided with a choice as to whether to expend the required expenditure on the acquisition or development of local content which expenditure may include expenditure in the Republic of Namibia on local content training, skills development and business development
- a local content channel with regard to which the person who provides or avails the channel is not required by the subscription television broadcaster to compensate the broadcaster for the broadcast thereof qualifies as a local content channel. However, if such channel provider must compensate/pay the broadcaster to broadcast the channel it cannot be claimed as a local content channel
- consequential changes were made to relevant rules in the Broadcasting Code to accommodate the approach recommended herein

243 Due to it not having any editorial control over channels purchased, MultiChoice proposes to be also exempted from rules 4, 8, 10, 12 and 15 of the Code. Their ability to comply was duly considered and it is recommended as follows:

- exemption from rule 4 requiring licensees, amongst others, to report news and current affairs truthfully and objectively, not to reveal the identity of certain victims, not to use explicit language relating to news of destruction, accidents etc which could disturb certain viewers and to provide opportunities for alternative views on current affairs programmes. It is recommended that subscription television broadcasters only be exempted from rule 4(7) to (10) but not rule 4(1) to (6) since if there is non-compliance, the broadcaster is required to rectify the matter either by broadcasting the rectification or by rectifying it on its website or other platforms used or any other way which is appropriate under circumstances. MultiChoice can thus align with the first part of this rule
- exemption from rule 8 which requires broadcasters to respect the privacy, dignity and reputation of persons. Exemption is not recommended since rule 8 is not an absolute prohibition but requires broadcasters to take extra care. It is deemed that MultiChoice can apply such care and consideration within its constraints

- exemption from rule 10 which requires a broadcaster, in so far as is practical or reasonable, to have a balanced approach when reporting on controversial issues. Again, this is not an absolute prohibition and thus this requirement can apply to MultiChoice as they are only required to act in so far as it is practical or reasonable (having thus regard that they may not have editorial control)
- exemption from rule 12 relating to competitions – exemption is recommended in view of MultiChoice not having editorial control and those being foreign competitions not open to Namibians
- exemption from rule 15 regarding the publication of counter-versions where comments were incorrect. It is recommended that MultiChoice not be exempted since rectifications can be made on alternative platforms and not on a programme broadcast thereafter

2.5 Namibia Film Commission & Filmmakers Association of Namibia

251 In order to promote local films and the local film industry, it is proposed that the Broadcasting Code includes a definition of “film” and give promotional prominence to local films for purposes of local content. As explained earlier, to do so requires a more advanced local content model (for example a point based model) and it was decided to introduce a simplified initial local content model. However, to clarify that local programmes include films, the definition of “film” in the Namibia Film Commission Act was incorporated under the Code’s definitions and included as part of “programmes”. This will also lend greater prominence to local films.

252 Concern was expressed as regards protection in the Broadcasting Code for marginalized communities/groups, especially when it pertains to recording them for broadcasting purposes. To accommodate this concern/comment, a reference to marginalized groups is included in rule 8(2).

2.6 Ministry of Information and Communication Technology

261 As regards the consultation of the election part of the Broadcasting Code with political parties, such stakeholder interaction is addressed as follows:

- The Broadcasting Code has been published three times for public comment in the Government Gazette and was widely distributed and consulted;
- The Namibian Electoral Commission was specifically consulted;
- The rules in the Broadcasting Code relating to elections follow and align with the Electoral Act;
- Obligations in the Broadcasting Code mainly relate to broadcasters and not political parties;
- The Broadcasting Code has built-in flexibility and can thus adapt by means of variations and/or exemptions;
- The Broadcasting Code is not cast in stone but will be a living and adaptable code which will be regularly reviewed and continually built upon.