

JAMAICA

No. 11 – 2008

I assent,

[L.S.]

KENNETH O. HALL,
Governor-General.

31st day of July, 2008.

AN ACT to Amend the Broadcasting and Radio Re-Diffusion Act.

[31st July, 2008]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Broadcasting and Radio Re-Diffusion (Amendment) Act, 2008, and shall be read and construed as one with the Broadcasting and Radio Re-Diffusion Act (hereinafter referred to as the principal Act).

Short title
and
construction.

2.—(1) The principal Act is amended by—

Amendment
of principal
Act.

- (a) deleting from section 2 the definition of “special broadcasting licence”;
- (b) deleting the words “special broadcasting licence” wherever else they appear and substituting therefor in each case the words “international relay service licence”

Amendment
of section 2
of principal
Act.

3. Section 2 of the principal Act is amended—

- (a) by deleting the definition of “non-commercial broadcasting service”;
- (b) by inserting the following definitions in the appropriate alphabetical sequence—

“Caribbean Community” means the Caribbean Community established by Article 2 of the Treaty;

“community access channel” means a channel dedicated to the provision of access to news, information and other content of public interest related to the geographic area or zone served by the subscriber television operator or subscriber television licensee;

“independent programme provider” means a programme provider who—

- (a) transmits at least fourteen hours of new, unrepeated local content per week, on a subscriber television channel; and
- (b) is licensed to operate pursuant to section 11D;

“international relay service licence” means a non-exclusive international relay service broadcasting licence granted under section 11F to provide broadcasts which are relayed worldwide and are consistent with the national interest and which—

- (a) include broadcast matter of any description that is not intended to influence listeners thereto or viewers thereof to engage in or abstain from engaging in commercial relations with any other person;

- (b) are not for profit; and
- (c) do not in any manner involve engagement in commercial activity;

“local content” means local television programming which—

- (a) originates in Jamaica or any other Member State;
- (b) is created and produced by a Jamaican national or a national of any other Member State;
- (c) relates to Jamaica or any other Member State;

“Member State” means a Member State of the Caribbean Community excluding an Associate Member within the meaning of Article 231 of the Treaty;

“national” means a person who—

- (a) is a citizen of a Member State; or
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such a Member State for the purposes of the laws thereof relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws thereof and which that Member State regards as belonging to it, provided that such

company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

“non-commercial broadcaster” means a broadcaster—

- (a) whose articles of incorporation or equivalent document states that the objects of the broadcaster are non-commercial in nature;
- (b) that does not operate its broadcasting services at a profit;
- (c) that establishes a programme format, content and schedule not subject to the control or influence of any commercial entity;
- (d) that does not collect advertising revenue which represents more than 30% of its total revenue; and
- (e) that submits a business model that does not reflect reliance on commercial revenue for sustainability,

and the terms “non-commercial” and “non-commercial broadcasting” shall be construed accordingly;

“special subscriber television service licence” means an island-wide national subscriber television licence;

“subscriber television operator” means a person who operates a subscriber television service;

“subscriber television programme provider” means a subscriber television operator that—

- (a) provides, on a non-commercial basis, local programming on dedicated channels located on his own subscriber television service; and
- (b) is registered as a subscriber television programme provider under section 11D;

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community and the CSME signed in The Bahamas on July 5, 2001, as is in force in relation to Jamaica.”.

4. Section 3 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

Amendment
of section 3
of principal
Act.

“ (1) No person shall establish or maintain any broadcasting apparatus with a view to engaging or shall engage, in commercial broadcasting or non-commercial broadcasting, except under and in accordance with the terms of one of the following licences granted under this Act—

- (a) commercial (sound broadcasting) island-wide licence;
- (b) commercial (sound broadcasting) limited area licence;
- (c) commercial television broadcasting island wide licence;
- (d) commercial television broadcasting limited area licence;
- (e) public service: non-commercial island-wide licence;

- (f) public service: non-commercial limited area licence;
- (g) public service: commercial island-wide licence;
- (h) public service: commercial limited area licence;
- (i) international relay service licence.”.

Amendment
of section 6
of principal
Act.

5. Section 6 of the principal Act is amended—

- (a) by deleting the word “commercial” wherever it appears; and
- (b) in subsection (5)—
 - (i) by inserting next after the words “is in force any” the word “applicable”; and
 - (ii) in paragraph (a), by inserting next after the words “holder of such” the word “applicable”.

Repeal and
replacement
of section
6A of
principal Act.

6. Section 6A of the principal Act is repealed and the following substituted therefor—

“ Non-commercial broadcasting services originating outside of Jamaica. 6A.—(1) No person shall establish or maintain any broadcasting apparatus to engage in non-commercial broadcasting services which originate outside of Jamaica, except under and in accordance with the terms of an international relay service licence granted under this Act.”.

(2) Every person who contravenes subsection (1) shall be guilty of an offence and shall be liable on a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Amendment
of section 7
of principal
Act.

7. Section 7 of the principal Act is amended by deleting the words “for commercial broadcasting by the holder of a commercial broadcasting licence or for non-commercial broadcasting by the holder of a special broadcasting licence” and substituting therefor the words “for broadcasting by the holder of a broadcasting licence granted under this Act or for broadcasting by the holder of an international relay service licence”.

Amendment
of heading to
Part IIIA of
principal Act.

8. The principal Act is amended in the heading to Part IIIA, by inserting next after the words “Subscriber Television Service” the words “and Independent Programme Providers”;

9. Section 11A of the principal Act is amended—

Amendment
of section
11A of
principal Act.

- (a) by deleting the marginal note thereto and substituting the following—

“Licence required for subscriber television operator and independent programme provider.”;

- (b) by deleting subsection (1) and substituting therefor the following—

“ (1) No person shall—

- (a) establish, maintain or operate a subscriber television service; or
(b) operate as an independent programme provider,

except under and in accordance with the terms of a licence granted under this Act.”.

10. Section 11B of the principal Act is amended—

Amendment
of section
11B of
principal Act.

- (a) by deleting subsection (1) and substituting therefor the following—

“ (1) A company referred to in subsection (2) shall be eligible to apply for a licence—

- (a) to operate a subscriber television service; and
(b) to operate as an independent programme provider.”;

- (b) in subsection (4), by deleting the words “articles of association” and substituting therefor the words “articles of incorporation”.

11. Section 11D of the principal Act is amended—

Amendment
of section
11D of
principal Act.

- (a) in subsection (2), by deleting the words “for a licence” and substituting therefor the following—

“ for—

- (a) a subscriber television service (wired) licence;

- (b) a subscriber television service (wireless) licence; or
- (c) a special subscriber television service licence.”;

(b) by—

- (i) renumbering subsection (3) as subsection (9); and
- (ii) deleting subsection (2A) and inserting the following as subsection (3) to (8)—

“ (3) Subject to subsection (4), a person who is desirous of providing non-commercial broadcasting services shall make an application to the Minister in the prescribed form for one of the following licences—

- (a) an international relay service licence;
- (b) a public service: non-commercial islandwide licence; or
- (c) a public service: non-commercial limited area licence.

(4) A company referred to in section 11B (1) which is desirous of operating as an independent programme provider shall make an application to the Minister in the prescribed form for a licence.

(5) A person who is desirous of providing independent local content to any subscriber television service shall make an application to the Minister in the prescribed form, for an independent programme provider licence or an independent programme provider (subscription only) licence.

(6) A subscriber television operator who provides, or intends to provide on a non-commercial basis, local programming on dedicated channels located on his subscriber television service shall make an application to the Minister in the prescribed form for registration—

- (a) as a subscriber television programme provider; and
- (b) of the relevant channels.

(7) A subscriber television operator who provides, or intends to provide on a commercial basis, local content on dedicated channels, whether or not such channels are located on his, or any other subscriber television service (with the exception of one community access channel) shall make an application to the Minister in the prescribed form for an independent programme provider licence or an independent programme provider (subscription only) licence.

(8) A person who is desirous of offering an island wide subscriber television service shall make an application to the Minister in the prescribed form for a special subscriber television licence.”

12. Subsection 11E of the principal Act is amended—

Amendment
of section
11E of
principal Act.

- (a) in subsection (1), by inserting next after the words “applications for licences” the words “and registration”; and
- (b) in subsection (2), by deleting paragraph (a) and substituting therefor the following—

- “ (a) shall determine whether or not the applicant satisfies the prescribed requirements for—
 - (i) commercial or non-commercial broadcasting;

- (ii) radio re-diffusion;
- (iii) operation of a subscriber television service;
- (iv) operation as an independent programme provider; or
- (v) registration as a subscriber television programme provider,

as the case may be;”.

Amendment
of section
11F of
principal Act.

13. Section 11F of the principal Act is amended—

- (a) in the marginal note, by inserting next after the word “licence” the words “or registration”;
- (b) in subsection (1), by inserting next after the word “licence”, wherever it appears, the words “or issue a certificate of registration (as the case may require)”;
- (c) in subsection (2) by—
 - (i) inserting next after the words “grants a licence” the words “or issues a certificate of registration”;
 - (ii) inserting next after the words “and the licence” the words “or certificate (as the case may require)”;
 - (iii) deleting the words “prescribed licence fee” and substituting therefor the words “prescribed fee”;
- (d) in subsection (3), by inserting next after the word “licence” the words “or issue a certificate of registration”.

Amendment
of section
11G of
principal Act.

14. Section 11G of the principal Act is amended—

- (a) in subsection (1), by deleting the word “commercial” wherever it appears; and
- (b) in subsections (3) and (5), by inserting next after the words “subscriber television service”, the words “, an independent programme provider, an independent programme provider (subscription only) or a subscriber television programme provider”.

15. Subsection (1) of section 11H of the principal Act is amended by deleting the words “the decision of the Minister to refuse to grant or renew a licence” and substituting therefor the words “the decision of the Minister to refuse to—

Amendment
of section
11H of
principal Act.

- (a) grant or renew a licence;
- (b) issue a certificate of registration.”.

16. Section 23 of the principal Act is amended by—

Amendment
of section 23
of principal
Act.

- (a) renumbering subsections (2), (3) and (4), as subsections (3), (4) and (5); and
- (b) inserting next after subsection (1) the following as subsection (2)—

“ (2) Regulations made under subsection (1) shall be subject to negative resolution.”.