



## **A Licence to Broadcast; Regulatory Requirements Under the Broadcasting Act**

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The transmission of material over the airwaves is often regulated by licences granted under the Broadcasting Radio and Re-diffusion Act (The Broadcasting Act). The type of licence acquired by an entity will depend on the broadcast material and scope of the broadcasts contemplated. The issued licence will authorise the licensee to erect, maintain and operate apparatus used to broadcast material. Each licensee will provide the services concurrently and subject to the rights of other licences.

A Commercial Broadcasting Licence is commonly used by our major radio and television stations. Such licences will allow the holders to carry out sound and/or television broadcasting and may be issued for use islandwide or be limited to a particular geographical area. These licences are deemed to be of a "commercial nature" because the licensees accept valuable consideration for making the broadcasts and through the broadcasts, influence viewers or listeners to engage in or abstain from commercial relations. Commercial Broadcasting licensees, therefore, provide advertisements and other programming with the aim of making a profit.

Subscriber Television Licences are also granted under the Broadcasting Act to entities which are normally called "cable service providers". A "Subscriber television service" is defined as "... the one-way transmission of video programming or other programming service to subscribers for a fee, and subscriber interaction (if any) which is required for the selection of such programming or other programming service". This definition is quite wide and may include both the provision of cable services islandwide or to a single apartment complex. In order to procure a subscriber television licence, the applicant must be;

incorporated in Jamaica; and

be controlled by persons who are nationals of Jamaica or nationals of a member state of the Caribbean Community ("CARICOM"). The affairs of the company must be controlled in accordance with the wishes of these persons whether by virtue of the holding of shares, the possession of voting power in or in relation to that company, an agreement or by virtue of any other powers conferred by the bye laws of the company.

The term "national" is specifically defined as a citizen of a CARICOM member state and "any person who has a connection with the member state of a kind which entitled that person to be regarded as belonging to or, if it be so expressed, as being native or resident of such a member state for the purposes of the laws thereof relating to immigration". A company may be considered a "national" of a CARICOM member state if it is constituted in the member state in accordance with the laws of that jurisdiction and if the member state regards the company as belonging to it. However, the company must be incorporated for gainful purposes, carry on substantial activity and have its registered offices within the CARICOM Community. In addition, the company must be substantially owned and effectively controlled by persons who are citizens of the member states or recognised as belonging to it. Given the "control" requirements, it appears that the Act precludes non-CARICOM companies or CARICOM companies with a foreign parent from applying for subscriber television licences.

In 2008, the Broadcasting Act was amended to provide for International Relay Licences. These licensees provide broadcasts which are relayed worldwide on a non-commercial and non-profit basis. It is noteworthy that there is no requirement that these companies or their parent be

incorporated in CARICOM given the implication that the material will be sourced from a location outside of Jamaica. The 2008 Amendment also provides for Special Subscriber Television Licences which will allow subscriber television service provider to operate islandwide.

The recent changes to the Broadcasting Act indicate that there is an effort to align broadcasting laws with the changing media landscape. Hopefully, this trend will continue.

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