



3. LICENSING SYSTEMS FOR COMMUNITY BROADCASTING

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AT A GLANCE

- ~ Licensing processes need to be **fair and transparent**, in the sense of the public having a chance to make comments on applicants, and overseen by an **independent regulator**.
- ~ Licensing may be done through a **competitive tender** or in an **ad hoc manner**, depending on the degree of competition.
- ~ Community broadcasting licences should be issued through special procedures, which impose **less onerous requirements** on these broadcasters as compared to commercial broadcasters, taking into account the actual situation prevailing in the licensing location.
- ~ Consideration should be given to putting in place **very low barrier initial short-term licensing procedures** leading to short-term licences, so as to help community broadcasters get established. “Light-touch” licence conditions are also appropriate for community broadcasters.

INTRODUCTION

For community broadcasting to flourish, there is a need for **fair, transparent and appropriate licensing systems** to be in place. It is not enough to expect community broadcasters to compete in open licensing processes with commercial broadcasters because they do not have the resources – whether in terms of expertise or funding – to do so. Instead, **special procedures for licensing community broadcasters should be established**. These procedures need to ensure, however, that community broadcasters also benefit from the general protections that are afforded to all broadcasters.

One of the key general requirements for a fair and appropriate licensing system is that **oversight of the system is conducted by an independent regulatory body**. Independence in this context means a body which is protected against interference on the part both of political actors (and especially government) and of commercial actors (and especially the broadcasters it is supposed to regulate). This principle finds strong support in international decisions and statements. *The Declaration on Principles of Freedom of Expression in Africa*, for example, states clearly, at Principle VII (1):

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.

KEY POLICY ISSUES

A number of key policy issues are relevant to putting in place an appropriate licensing system for community broadcasters. The rules must be set out clearly in law in a way that ensures that the process is fair and transparent. Beyond the very general democratic requirement of an independent regulator, a number of more specific rules that apply generally to licensing processes should also apply to licensing processes for community broadcasters. It is, however, not enough to apply systems designed for commercial broadcasters to



community broadcasters. Rather, **special licensing systems must be put in place which take into account the special needs of community broadcasters**. The same is true of the conditions which may be imposed on community broadcasters, which also need to be tailored to their specific needs and objectives.

1. Set out clearly in law

A licensing process can only be fair if applicants – whether for a community or a commercial broadcasting licence – **know in advance exactly how the process will work**.

The rules may be set out in the primary legislation, in general regulations adopted pursuant to the primary legislation or in the rules for any particular licensing process, as the case may be. This should include, at a minimum, **clear notification about how the process will work**, what is required to be submitted as part of a licence application, including as to any fees, the criteria against which applications will be assessed, or the requirements and qualifications for a successful application, what the timeframes are and the appeals procedure in case an application is refused.

2. General procedural issues

It is not enough for the rules to be set out in law, they must also be fair and transparent. In terms of basic procedures, where there is competition for scarce frequencies for community broadcasting, it is normal to rely on **competitive tender processes** to allocate those frequencies (see *Policy Brief Four: Spectrum*). Where pressure on frequencies is less intense, it may make more sense to consider applications on an **ad hoc basis**, as and when an application comes forward.

Transparency is a hallmark of democratic licensing processes which helps ensure fairness to all involved, avoid any risk of discrimination, and foster public engagement in the

process, keeping in mind that an overriding goal of licensing processes is to promote diversity in the public interest. The particular transparency requirements will vary for tender-based and ad hoc licensing systems, but the **process and applications should always be made public and be designed in a way that allows for public input**. This should normally allow for members of the public and civil society to make specific comments on individual applicants. It is also good practice for licence application hearings to be open to the public.

There are a number of requirements of procedural fairness for broadcast licensing processes. Decisions on license applications should be taken within **reasonable, preset, timeframes**, and in a manner which ensures that the applicant has an adequate opportunity to present its case. Any decision not to issue a licence should be accompanied by **written reasons and be subject to judicial review**.

3. Special procedural issues

The statements in the preceding section should essentially apply to any broadcast licensing process. However, as noted at the outset of this *Policy Brief*, there is a need to ensure that **application procedures for community broadcasting licences are adapted so as to be suitable in terms of accessibility for potential applicants**. Commercial broadcasting licence procedures are often extremely complex, technically and legally, and if these sorts of approaches are applied to community broadcasters, very few of them will ever make it through the process.



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A first point here is that separate licensing processes need to be conducted for community broadcasting licences. It is simply not appropriate to expect community applicants to compete with normally far better resourced commercial applicants.

Beyond this, the **application procedures need to be appropriately simplified** so that community applicants can manage to complete them. It is important for applicants to provide a sense of the content they are proposing to air, the community they will serve, their proposed geographical coverage, their financial and general sustainability plans, including volunteers, and the extent and manner of community involvement in their operations. The specifics of what is required here will, as noted, need to be adapted to what it is reasonable to expect in any given context, which may well vary from location to location within a country.

As noted in *Policy Brief One: Defining Community Broadcasting*, it can often be very difficult for community broadcasters to get started in the first place and, in particular, to meet strict requirements of a link with the community and/or to demonstrate that they will be sustainable. In recognition of this, a number of countries have put in place **very low barrier initial licensing standards, along with relatively short licensing periods**, which then get ratcheted up in a second round of licensing leading to a longer duration licence, once the entity has had a chance to establish itself, forge stronger links with the community and build some sort of base of sustainability.

4. Conditions

Licensing is not just about giving a licence but also about what conditions are attached to it. It is normal to require broadcasters to provide regular reports to the regulator on what they are doing, how they have been complying with their licence conditions, finances and so on. This is also appropriate for community broadcasters but any such reporting requirements should, as with licensing standards, take into account the actual situation. Thus, while it is normal to require commercial broadcasters to submit audited financial statements, **something much simpler would normally be sufficient for community broadcasters**. Similarly, community broadcasters may be required to **demonstrate ongoing links with the community**, particularly at the governance level, which is tied to the essence of what they are, but these should be designed to be something these broadcasters can provide without diverting their resources too much.

INTERNATIONAL STANDARDS

International standards specifically on licensing processes for community broadcasters are somewhat limited. Principle V(2) of the Declaration on Principles of Freedom of Expression in Africa states, rather generally, that, “licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting”.

The UN Human Rights Committee has recognised the importance of appropriate licensing processes for both community and commercial broadcasters, stating, in its *2011 General Comment*:

States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant.

The *2007 Joint Declaration of the special international mandates on freedom of expression* goes beyond these statements to note that community broadcasters should “benefit from fair and simple licensing procedures” and “should not have to meet stringent technological or other licence criteria”.

The *AMARC Principles* provide a detailed statement on selection criteria, stating:

Principle 11: Evaluation criteria

The evaluation criteria will differ for the diverse modes of broadcasting. In the case of community media the following attributes will be highly valued: the



pertinence of the communicational, social and cultural project, the participation of the community in the station, the organization's experience within the community and the contribution the station will make to media diversity in the coverage area. The economic capacity of the proponent should neither be a deterrent nor a selection criterion, although there must be reasonable requirement for the station to demonstrate that it is sustainable.

RECOMMENDATIONS

1. **Clear rules governing the licensing process** for community broadcasters – including on how the process works, what needs to be submitted, the criteria against which applications are assessed, the timeframes and the appeals procedure – should be set out in law.
2. Licensing processes should be **competitive where there is more competition** for community broadcasting licences but may be done on an **ad hoc basis** where there is less competition.
3. Licensing processes should be **fair and transparent** and allow for **public input into the selection process**, including an opportunity for the public to comment on individual applicants.
4. **Separate application processes** should be conducted for issuing community and commercial broadcasting licences. The procedures and requirements for the former should be **significantly less onerous**, taking into account the generally scarcer resources available to community broadcasters, and should be tailored to the situation in the licensing location.
5. Consideration should be given to establishing **very low barrier initial licensing standards** for community broadcasters, leading to **short-term licences**, followed by standard processes leading to longer-term licences.
6. Reporting requirements and other conditions in community broadcasting licences should, like the licence application procedures, be **adapted to take into account the real situation of community broadcasters**.

POLICY CHECKLIST



- Clear rules for licensing community broadcasters are set out in law
- Licensing is competitive where demand is higher and is done on an ad hoc basis in lower demand areas
- Licensing processes for community broadcasters are fair, transparent and accessible, and allow for public input, and are separate from those for commercial broadcasters
- Reporting processes for community broadcasters are adapted to their capacity and resources

