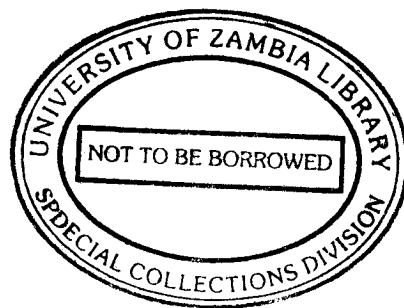


**INTERNET BROADCASTING: THE NEED FOR
REGULATION IN ZAMBIA**



BY

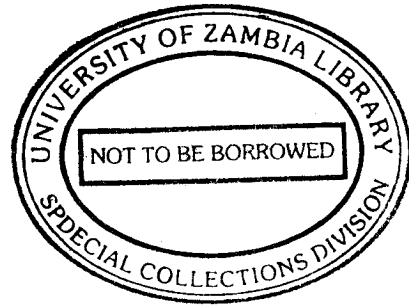
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**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FEBRUARY 2008

INTERNET BROADCASTING: THE NEED FOR REGULATION IN ZAMBIA

BY



ELIZABETH MWEENE-CHANDA

A Directed Research submitted to the University of Zambia, Law faculty, in partial fulfilment of the requirements of the Bachelor of Laws degree.

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Be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils
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DECLARATION

I, Elizabeth Mweene-Chanda, Computer number 91036925, do hereby declare that I am the author of this Directed Research entitled INTERNET BROADCASTING: THE NEED FOR REGULATION IN ZAMBIA, and confirm that it is my original work. I further declare that due acknowledgement has been given where other people's work has been used I verily believe that this research has not been presented in the Law School or indeed in any other learning Institution for academic purposes.

Date... 6th FEBRUARY 2008 Student's Signature..... *Elizabeth*

DEDICATION

Dedicated to my husband Charles Chanda, for encouraging me to undertake this law degree programme (LLB). It is also dedicated to my son Bupe who was born at the time I was undertaking this research. Both of you have a special place in my heart.

ACKNOWLEDGMENTS

A paper of this nature would have been difficult, if not impossible to accomplish without the valuable assistance and encouragement I received from people to whom I am grateful. I am greatly indebted to my supervisor Dr Patrick Matibini, whose meticulous guidance, and learned advice made this research what it is.

I also give thanks to my classmates for their assistance one way or another.

Above all I give thanks and praises to the Lord Almighty for his mercy and unending blessings. May the knowledge acquired be used to the glory of his name and for the benefit of his people.

ABSTRACT

Over the years, there has been convergence of Information and Communication Technologies (ICT's). Convergence is the ability to provide a range of broadcasting and telecommunications services over a single network. Convergence has effects at various interrelated levels. At one level, regulated sectors in broadcasting such as radio services can now be offered on computer networks. On another level, broadcasting and telecommunications services can potentially be made available over one platform, as boundaries have been blurred and redefined. Zambia, being part of a global village like any other African country, has also experienced these effects.

This research endeavoured to;

- a) Determine whether the current broadcasting regulatory framework provides for the regulation of internet broadcasting;
- b) Examine whether the existing regulatory framework is ideal for the regulation of internet broadcasting in view of the convergence;
- c) Identify lacunas in the current regulatory framework in view of the need to regulate internet broadcasting;
- d) Make necessary recommendations in view of the identified lacunas in the current regulatory framework.

It was found that currently, the regulatory framework for broadcasting does not cater for the regulation of internet broadcasting as there are no provisions related to internet broadcasting. Consequently, the current licencing format equally does not cater for internet broadcasting. On this basis it has been recommended that provisions be made in relevant sections to include internet broadcasting. There is also a need to re-format licences for broadcasting by establishing licence formats that allow operators to utilize various channels. It was also found that the country is still using the unconverged model for regulating broadcasting and telecommunication. It is however recommended that since the country has not yet tested the uncharted waters of regulation by an independent authority, since the Independent Broadcasting Authority is not yet operational, the current status quo should be maintained. This is also based on the premise that the distinctive regulatory aspects of broadcasting require a distinctive regulatory agency for broadcasting even in a technologically-converging digital environment.

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Radiocommunications Act, Chapter 169 of the Laws of Zambia

Telecommunications Act, Chapter 469 of the Laws of Zambia

Zambia National Broadcasting (Licensing) Regulations No. 13 of 1994

Zambia National Broadcasting Corporation Act, Chapter 154 of the Laws of Zambia

Zambia National Broadcasting (Amendment Act) No. 20 of 2002

Zambia Independent Broadcasting Authority Act, No 17 of 2002

GLOSSARY OF ABBREVIATIONS

IBA	Independent Broadcasting Authority
CA	Communications Authority
FM	Frequency Modulation
SW	ShortWave Modulation
SATRA	South African Telecommunications Regulatory Authority
ICASA	Independent Communications Authority of South Africa
ICT	Information and Communication Technologies

GLOSSARY OF KEY TERMS

Authorised assignment	the frequency at which a radio station is allowed to operate
Convergence	the ability to provide a range of broadcasting and telecommunication services over a single network.
Converged regulator	regulation of telecommunications and broadcasting sectors is done by the same umbrella body even if there may be separate units therein
Unconverged regulator	regulation of broadcasting and telecommunications is done by two separate bodies
Frequency Modulation	narrowband form used for voice communications in commercial radio settings.
Internet broadcasting	transmission of audio content using a computer network via a centralized server
Regulatory model	regulatory structure or framework i.e. whether there are two separate bodies regulating telecommunications and broadcasting or one
ShortWave Modulation	sound wavelength frequency used in radio broadcasting.
Traditional media	radio and television

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CHAPTER ONE

CONVERGENCE AND IT'S IMPACT ON THE BROADCASTING REGULATORY FRAMEWORK IN ZAMBIA

1.1 Introduction and Background

Over the past decade, there has been tremendous development in the area of Information and Communication Technologies (ICT's). This development can be said to have passed two stages. The first stage involved fundamental technological developments like computerisation and digitalisation. Computerisation basically involved the deployment of computers in the production and consumption parts as well as within the network infrastructures. Digitalisation on the other hand involved technological development from analogue to digital. Digitalization enables the integration of different services in the same network and enables synergy to be reaped in the whole value chain of service-production, distribution and consumption.¹ Therefore, these technologies enabled possibilities for the creation of new services and created conditions for gaining synergy in technological development.

The second stage involved among other things development of programmes like the internet. The internet is defined as a set of interconnected networks which allows computers in different locations to exchange information.² The internet, introduced interconnectness of billions of IP-based devices like computers. Originally, the internet was primarily used for data services such as e-mail and world wide web (www). It has

¹ www.med.govt.nz/buslt.int_prop/figital/discussion/digital-08html (accessed June 20, 2007)

² www.med.govt.nz/buslt.int_prop/figital/discussion/digital-08html (accessed June 20, 2007)

expanded, to include internet radio also known as webcasting.³ Furthermore, the combination of the internet and digitalization which enables the integration of different services in the same network has brought about convergence. Convergence is generally understood to mean the ability to provide a range of services over a single network.

Convergence has effects at various interrelated levels. On one hand, it means that any form of content, whether it be still or moving pictures, sound, text or data, can potentially be made available over any communications platform. This has in turn facilitated the offering of regulated services like radio, over computer networks. On the other hand, traditional boundaries between industry sectors such as broadcast, and telecommunications, are being blurred or redefined. This means that services of these sectors are no longer distinct as belonging to a specific industry or platform alone. These developments have therefore led to challenges of regulatory frameworks of various countries including Zambia. Therefore, the key questions in a converged environment are; is content carried by such platforms being regulated? Is there any case for continuing to regulate according to the technology of a platform since all platforms deliver the same services, applications and content?

Internet Broadcasting

Traditionally, broadcasting was used to refer to audio or visual signal through traditional media such as radio and television. However, convergence has brought about internet

³ <http://www.ictregulationtoolkit.org/en/Section.1508.html> (accessed October 5, 2007)

broadcasting, also known as webcasting. This type of broadcasting usually has geographical boundaries, limited to a specific country, community or location. Internet broadcasting involves communication to multiple computers at the same time via the internet. This is done by “streaming” live audio and /or live video using streaming media which is the technology that makes web casting possible.⁴

Audio and video content is distributed through a centralized server, ready to be transmitted live or on-demand to users who request it by visiting a website. A software package called a ‘media player’ turns the data into a high impact video or audio experience, played as it is received.⁵ Therefore, internet broadcasting is a broadcast to a wide potential audience that can include anyone with access to the internet. Therefore, other than difference in term of the type of medium that is used for broadcasting, the audience in internet broadcasting is wider (international) in terms of geographical boundaries as the broadcast can be accessed by anyone connected to internet.

Broadcasting regulation in Zambia

The broadcasting sub sector in Zambia, in relation to licensing and allocation of frequencies is regulated by two major bodies. Namely, the Independent Broadcasting Authority (IBA), which is established under the Independent Broadcasting Act of 2002. Although not yet fully implemented, the Act provides for the establishment of the Independent Broadcasting Board whose functions are among other things to issue out licenses for public, commercial, community, religious and subscription broadcasting

⁴ www.med.govt.nz/buslt.int_prop/figital/discussion/digital-08.html (accessed June 20, 2007)

⁵ www.med.govt.nz/buslt.int_prop/figital/discussion/digital-08.html (accessed June 20, 2007)

services.⁶ While the IBA is expected to be responsible for regulating broadcasting per se, the Act leaves much of the technical infrastructural aspects of broadcasting within the domain of the Communications Authority (CA), the other regulatory body, which is itself accountable to the Ministry of Transport and Communication. The Communication Authority is established by the Telecommunications Act.⁷ However the CA regulates broadcasting through the Radiocommunications Act, which provides for the CA's general supervision and control of radiocommunication service.⁸ It is also responsible for the overall management and administration of the frequency spectrum.⁹

Since 1994, Zambia has made significant advances in liberalizing the airwaves, thereby allowing private sector participation in the sub-sector of broadcasting. This has resulted in the opening of a number of commercial and community radio stations. On the other front, the convergence of technologies has created opportunities such as internet radio broadcasting, which is becoming popular among local, commercial and non-commercial radio stations. This type of broadcasting enables such stations to reach the entire world. Currently, stations like the Zambia National Broadcasting Corporation (ZNBC), Q, FM, Yastani Radio, Radio Phoenix etc are using these opportunities and are currently broadcasting via the internet.

⁶ Independent Broadcasting Authority Act, No.17 of 2002, s. 5(2)

⁷ Cap. 469 of the Laws of Zambia

⁸ Radiocommunications Act, Cap. 169, s. 4 (1)

⁹ Radiocommunications Act, Cap. 169, s. 5

1.2 Statement of the problem

There have been technological developments which have led to the convergence of ICTs. This has resulted in the fading of the boundaries between broadcasting, telecommunications, information technology and multi media. On other hand, these developments have brought about new broadcast innovations such as internet broadcasting. Currently, stations such as Radio Phoenix, QFM, Radio Yastani etc, are engaged in audio internet broadcasting without necessarily acquiring a license or frequency from the IBA or the CA. Meanwhile, licencing is a key regulatory tool through which public authorities exercise control. However, no licence is acquired by radio stations for this type of broadcasting.

Furthermore, the blurring of boundaries between broadcasting and telecommunications has implications for the regulatory framework for broadcasting. This is because services for both broadcasting and telecommunications can be offered over a single network. However, Zambia has continued to follow the traditional model of regulation. It currently has two separate broadcasting regulators for purposes of licensing and allocation of frequencies.

1.3 Justification of Study

Zambia, being part of a global village like any other African country, is under the onslaught of the globalization of communication. This globalization has resulted in various areas including technological developments in broadcasting being rendered permeable to distant influence.¹⁰ Some of these distant influences include the “digital revolution” which has brought about new modes of broadcasting and the fading of boundaries between telecommunications and broadcasting. These technological influences present new challenges in regulation of such areas and thereby raising the need to identify gaps in regulation and review the effectiveness of existing legal and regulatory frameworks.

1.4 Rationale

The convergence of information and communication technologies poses new challenges in the regulation of broadcasting. Therefore, in view of these developments there was need to identify existing gaps and come up with suitable structures, provisions or legal frameworks that will effectively encompass these developments.

1.5 Objectives

The objectives of this study were to:-

- (a) To determine whether the current broadcasting regulatory framework provides for the regulation of internet broadcasting;

¹⁰ C. Arthur, *The Globalisation of Communications: Some Religious Implications*. Geneva: At World Council of Churches, 1998

- (b) Examine whether the existing regulatory framework is ideal for the regulation of internet broadcasting in view of the convergence of ICT's;
- c) Identify lacunas in the current regulatory framework in view of the need to regulate internet broadcasting
- (c) Make necessary recommendations in view of the identified lacunas in the current regulatory framework.

1.6 Methodology

This study was based on analytical research as it was aimed at investigating whether the current legal and regulatory frameworks for broadcasting, provide for regulation of internet broadcasting.

1.6.1 Data Collection and Analysis

Data was collected mainly by reviewing existing legal instruments and any literature related to the area of study. Given the nature of the study, data analysis basically involved desk analysis of legal instruments and other information collected.

1.7 Limitations of study

The Independent Broadcasting Authority was not yet operational at the time of conducting this research, therefore data collection was restricted.

CHAPTER TWO

HISTORICAL BACKGROUND TO REGULATION OF BROADCASTING IN ZAMBIA

2.1 Introduction

This chapter gives a general overview of the regulation of broadcasting in Zambia from colonial era to date. It therefore looks at the various pieces of legislation that characterised this period and influential factors to the said legislation.

2.2 Background to Broadcasting in Zambia

Broadcasting in Zambia started with radio in 1941. This was two years after experimental broadcasts by the Copperbelt Amateur Wireless Club on the Copperbelt (Fraenkal, 1959).¹¹ The Northern Rhodesia Government established the first small radio station in Lusaka at the city airport, known as the Northern Rhodesia Broadcast Station (NRBS). This station carried out one hour transmissions for three days of the week with the main purpose of informing people about the progress of the Second World War.

The need to expand access to radio for Africans led to the introduction of the Sauce-pan Special - a hardy but cheap radio set, designed in the then Northern Rhodesia, but

¹¹ P. Fraenkal, Wayaleshi. (Britain: At Wyman and Sons Limited, 1959)

actually made in the United Kingdom (UK). This set was designed by the then Director of Information, Harry Franklin in conjunction with the Eveready Company Limited.

In 1950, the NRBS became known as the Central African Broadcasting Station (CABS). This was after an agreement was reached between the Federal Government and the Central African Council (CAC) that the station concentrates on local languages. In 1958, after the formation of the federation of Rhodesia and Nyasaland in 1953, the Federal Broadcasting Corporation of Rhodesia and Nyasaland was born. At this time television was also provided in 1961, in Kitwe by the London Rhodesia Company (Lonhro) serving mainly the white mining and commercial community on the Copperbelt. It later moved to Lusaka. When the federation ended in 1963, Northern Rhodesia established its own station which became known as the Northern Rhodesia Broadcasting Corporation (NRBC). After independence in 1964 it was renamed Zambia Broadcasting Corporation (ZBC).

2.3 Regulation of Broadcasting in Pre-Independence Era

During this period there was no specific piece of legislation regulating broadcasting per se. Most laws that were in place were for the regulation of the print press. Some of these were provided under the Penal Code.¹² The Penal Code was introduced in 1930; six years after the British Government took direct administration of Northern Rhodesia.¹³ Under the said piece of legislation acts such as sedition, blasphemy, defamation of the president, publication of false news with intent to cause fear and alarm to the public, and

¹² Cap. 146 of the Laws of Zambia

¹³ Task Force Report on Media Law Reform (2000)

defamation of foreign princes were criminalised. The Penal Code was inherited by the Zambian Government at independence, and the preceding provisions are still in force to date.

Defamation is defined as;

any matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead¹⁴

The clear use of the word 'publication' is an indication that such provisions did not encompass the regulation of broadcasting. However, a plausible explanation is that the print press started much earlier than broadcasting. This is evidenced by the fact that the first newspaper was the Livingstone Pioneer which was published in 1906.¹⁵ This is 35 years earlier than broadcasting which started in 1941 as earlier alluded to.

2.4 Regulation of Broadcasting in Post Independence Era

Zambia, like any other African country once under colonial rule, inherited media institutions from their colonial masters at independence. Therefore, in the same manner that the colonial rulers had used these institutions as vehicles to further their own ends, the nationalist Governments similarly inherited this approach.

Therefore, against this backdrop early regulation frameworks were designed to facilitate control of the media by the state.

¹⁴ Penal Code, Cap. 146, s. 192

¹⁵ F.P Kasoma, The Press in Zambia. (Lusaka: At Multimedia Publications, 1986).

The first post-independence piece of legislation for broadcasting was the Broadcasting Act of 1966. This was enacted soon after independence as the new Government set out to tighten its hold on broadcasting. The enactment of the 1966 Act, was however mainly designed to allow for the dissolution of the ZBC, and pave way for the establishment of the Zambia Broadcasting Services (ZBS) in 1967. At this time television moved to Lusaka from Kitwe and became part of ZBS. ZBS was to be under direct Governmental control and became part of the department of the Ministry of Information and Broadcasting (Mensah, 1998).¹⁶

In 1975 President Kenneth Kaunda in watershed speech to the National Council of the United National Independent Party (UNIP), set out the terms of reference for the state broadcasting. These directives were in line with the philosophy of humanism. The philosophy elevated the state as the custodian of all national assets, and national media were expected to support this ideology. This was done in the name of fostering national development and unity. Therefore, the media were there to serve the interests and programmes of the state.¹⁷ This was cemented with the declaration of Zambia as a One Party State in 1973, with the UNIP as the sole political party.

2.4.1 Zambia National Broadcasting Corporation Act, Cap. 154 of the Laws of Zambia

In 1987 the Zambia National Broadcasting Act, was put in place.¹⁸ The Act was meant to provide for the establishment of the Zambia National Broadcasting Corporation (ZNBC),

¹⁶ A. Mensah, Up In The Air: The State of Broadcasting in Southern Africa. (Lusaka: At Panos Southern Africa, 1998)

¹⁷ Mensah, Up In The Air, 106

¹⁸ Cap. 154 of the Laws of Zambia

to define the functions and the powers of the corporation, to provide generally for the control and regulation of the broadcasting and diffusion services and to provide for matters connected with or incidental to the foregoing. Therefore, the Act was meant to transform ZBS, hitherto under state control, into a body corporate that would facilitate commercialization and hence less dependence on state funds. Therefore, section 3 of the Act, provided for the establishment of ZNBC. However, this change was more in name than in status as the station continued to operate under state control.

This is demonstrated by a number of provisions in the said Act.

Namely;

1. the Minister of Information and Broadcasting was empowered to appoint the Board of ZNBC and its chairperson;¹⁹
2. the Minister was empowered to remove a director at any time and without cause;²⁰
3. the Minister was empowered to give the Board of ZNBC general or specific directions with respect to the carrying out of the functions of ZNBC;²¹
4. the Minister was empowered to approve the appointment and termination of services as the case may be of the Director General of ZNBC;²²
5. the Minister was empowered to issue or cancel licenses to broadcasters;²³
6. the Minister was empowered to oversee the funds of ZNBC;²⁴

¹⁹ Zambia National Broadcasting Corporation Act, Cap. 154, ss. 4(2)(a) and (b)

²⁰ Zambia National Broadcasting Corporation Act, Cap. 154, s. 5(4)

²¹ Zambia National Broadcasting Corporation Act, Cap. 154, s. 7(2)

²² Zambia National Broadcasting Corporation Act, Cap. 154, s. 17(1)(b)

²³ Zambia National Broadcasting Corporation Act, Cap. 154, s. 25 (1)

²⁴ Zambia National Broadcasting Corporation Act, Cap. 154, ss. 19 and 20

7. the Minister was empowered to prohibit broadcasts which in his or her opinion was considered to be defamatory or obscene or seditious²⁵ and
8. the Minister was empowered to regulate ZNBC.²⁶

It has been argued that the declaration of the One-Party State, rationalized by the philosophy of humanism set the scene for the regulation of the media industry, and this is the period for the genesis of media regulation in Zambia.²⁷ Furthermore, although unknown at the time, the 1987 Act to some extent lay the foundation that triggered events leading to current regulatory frameworks in the broadcasting industry.

By the late 1980s, the One-Party State's grip on the country began to loosen, paving way for a multi-party democracy and the possibility of pluralism. This was as a result of a combination of factors such as break up of the Communist Soviet Union; the International Monetary Fund (IMF) and World Bank pressures on the Government to remove subsidies on essential goods, a continually deteriorating economy etc. Therefore, the period leading up to the 1991 democratic elections was characterised by an environment of increased optimism among the people for a more democratic and pluralistic Government.

The lack of media freedom during this period became a matter of concern. Political parties like the Movement for Multi Democracy (MMD), complained against biased coverage by various state owned media institutions, in favour of UNIP. The lack of

²⁵ Zambia National Broadcasting Corporation Act, Cap, 154, s. 27

²⁶ Zambia National Broadcasting Corporation Act, Cap. 154, s. 33

²⁷ F.Banda, 'Convergence of Technologies' (May 2005) 2

editorial independence of various state owned media including ZNBC was seen as a major threat to the spirit of democracy that was beginning to take shape in the country at the time.

Therefore, when MMD took over power in 1991, they championed a liberal approach to operations of the media. This was pursuant to the MMD manifesto which stated that:

The MMD believes that freedom of expression and the right to information are basic human rights. As such journalists will have to play an important role in promoting democracy and development in a MMD-led government²⁸

This era saw the adoption of free market policy initiatives in various sectors including broadcasting.²⁹ This in turn saw a number of pieces of legislation being put in place for the regulation of broadcasting.

2.4.2 Zambia National Broadcasting (Licensing) Regulations No. 13 of 1994

Since liberalization of the broadcasting industry entails an attempt to achieve pluralism of views and ideas, the MMD enacted the Zambia National Broadcasting (Licensing) Regulations,³⁰ The MMD relied on a clause in the Zambia National Broadcasting Corporation Act which provided for ZNBC to be a radio and television licensing authority. Therefore, although not expressly stated under this new Act, ZNBC continued this role in consultation with the Minister.

The enactment of the Zambia National Broadcasting (Licensing) Regulations, while meant to pave way for the liberalisation of the broadcasting industry, still vested final

²⁸ F.T.J Chiluba, 'Exactly Three Years'. (December 1994) 332

²⁹ Mensah, Up in the Air, 107

³⁰ No. 13 of 1994

authority for the awarding of radio and television licenses in the Minister of Broadcasting and Information Services.³¹ This demonstrated a cautious de-regulation process.

However, the Zambia National Broadcasting (Licensing) Regulations also included different categories of licenses including satellite broadcasting which can be said to be a plus in recognition of new information technologies.³² This was in contrast to the Zambia National Broadcasting Corporation Act which did not have such categories.

2.4.3 Telecommunications Act, Cap. 469 of the Laws of Zambia

The Posts and Telecommunications Corporation Limited was until 31st July 1994, mandated to manage the radio spectrum on behalf of the Government of the Republic of Zambia. However, with the advent of plural politics and liberalization of the various sectors, the Government unshackled the industries and allowed private participants in the running of the economy. Hence the Government through an Act of Parliament created the Communications Authority to oversee the liberalization of the telecommunications industry in the country. This was necessitated by the need to remove the monopolistic tendencies inherent with one party system that was prevailing at the time. Therefore, in 1994, the Telecommunications Act was passed and established the Communications Authority (CA).³³ The CA was established to regulate the telecommunications industry in the country. However, the Authority is also mandated through the Radiocommunications Act to manage the radio spectrum.

³¹ Zambia National Broadcasting (Licensing) Regulations, No. 13 of 1994 s. 3 (1)

³² Zambia National Broadcasting (Licensing) Regulations, No. 13 of 1994 s.2

³³ Cap. 469 of the Laws of Zambia

2.4.4 Radiocommunications Act, Cap. 169 of the Laws of Zambia

The Radiocommunications Act, was also passed in 1994.³⁴ This was an Act which was meant to regulate provisions of radiocommunication services; to provide for the functions of the Communications Authority in connection with radiocommunications. The Communications Authority under the Radiocommunications Act is responsible for the overall management and administration of the frequency spectrum.³⁵ Therefore, this Act provided the scope for the Communications Authority's general supervision and control of radio communications services including receiving and approving applications for radio licenses.³⁶

2.4.5 The Information and Media Policy of 1996

In 1996, the Ministry of Information and Broadcasting Services produced the first Information and Media Policy with the aim of proposing a policy framework for the media industry in Zambia. The mission statement was to promote and facilitate the growth of a sustainable media industry, capable of enhancing free flow of information and freedom of a sustainable media industry, capable of enhancing free flow of information and freedom of expression for national development. The policy articulated Government's position on the media. The three main objectives were;

- a) to increase media outreach and access to all, particularly to rural communities;
- b) to pursue legal reforms to enhance citizens rights to information and freedom of expression and freedom of the press; and

³⁴ Cap. 169 of the Laws of Zambia

³⁵ Radiocommunications Act, Cap. 169, s. 5(1)(b)

³⁶ Radiocommunications Act, Cap. 169, s. 6

c) to encourage private investment in the media and media support industries

These main objectives entailed the following in relation to the broadcasting sector

(i) to strengthen ZNBC as a public broadcasting service; and

(ii) to create an independent broadcasting authority to regulate the broadcasting industry

The policy document was later revised in 2001 under the title 'National Media Policy' but maintained the outlined objectives above. The objectives set out in the policy document, were however never implemented despite the Government's proclaimed commitment to a liberalized media industry and promotion of freedom of expression. Similarly, pieces of legislation that were put in place such as the Zambia National Broadcasting (Licensing) Regulations still vested power in the Minister.³⁷ This was complimented with the Zambia National Broadcasting Corporation Act, which had a similar effect. Therefore, up to the time that Government passed the Media Policy, it had demonstrated lack of commitment to implement media reforms. This is because earlier in 1993, the Government had convened the national seminar on 'Democracy and the Media in Zambia – the way forward'. At that conference a Media Reform Committee (MRC) was formed. The task of this committee was to recommend to Government ways in which media freedom and also the democratic process could be advanced in the country.³⁸ This was different from the Media Law Reform Committee (MLRC) which was later formed to spearhead the fight for media reforms.

³⁷ No. 13 of 1994

³⁸ B. Lingela , 'Advocating for Media Law Reform'. (March 2002) 2

The Committee identified critical areas which required attention by Government. Among these were;

- a) the need for constitutional and comprehensive legal reform;
- b) the need to privatise the state run press and address the economic and financial constraints to the development of an independent and plural press; and
- c) the need to place state owned broadcasting services under independent public participation in broadcasting.

These entailed introducing legislation on freedom of information, introducing amendments to make the ZNBC Act of 1987 fall in line with aspirations of a true public broadcaster, and the establishment of an independent public authority.

Ironically, a Task Force was appointed by the MMD Government with a similar mandate as that of the MRC. Therefore, similar to the preceding committee, among the recommendations of the Task Force were;

- i) the creation of an independent broadcasting authority;
- ii) the promulgation of new legislation separate from the ZNBC Act of 1987 to provide for licensing and allocation of frequencies.

However, like the other Government initiatives, none of these recommendations were effected. Therefore, it was due to this lack of political will that the media fraternity launched a sustained campaign to advocate for the implementation of media law reforms which was led by the Zambia Independent Media Association (ZIMA), currently known as Media Institute Southern Africa (MISA) in 1999. The MLRC earlier alluded to was

formed in 2002 to spearhead the fight. It however suffices to mention that since the 1990s, broadcasting had undergone many changes in most southern African countries including Zambia. Scholars like Banda (2005) have stated that factors like privatisation; commercialisation, internalisation and technological convergence have had an influence on regulation of broadcasting. Furthermore, global pressures for political and economic liberalisation in the 1990's set out the agenda for the liberalisation of public utilities including broadcasting. A three-tier broadcasting structure was advocated on the basis that it could contribute to the enhancement of democracy in the region. This structure entails the transformation of state broadcasters into genuine public service broadcasters, the introduction of private commercial broadcasters and the establishment of community broadcasters. Complimentary to this model would be the establishment of independent broadcasting regulators and the reduction of the state's role in the broadcasting sector. Therefore against this backdrop the fight led to the enactment of the Zambia National Broadcasting (Amendment Act) of 2002 and the Independent Broadcasting Authority No. 17 of 2002.

2.4.6 Zambia National Broadcasting Corporation (Amendment Act), No 17 of 2002

Although the Government was originally not for the idea of repealing the Zambia National Broadcasting Corporation (Amendment Act), No. 17 of 2002, the consultative meetings yielded positive results as amendments were made. In line with the shortcomings identified by the media fraternity the following changes were made;

- a) the ZNBC board is to be appointed by the Minister on recommendations by the appointments committee. These are subject to ratification by Parliament;

- b) section 5 which granted powers to the Minister to remove a director as repealed and replaced;
- c) the licensing powers previous enjoyed by the Minister were removed and transferred to the IBA;
- d) section 27 was repealed and as such the Minister no longer enjoys power to prohibit material that he may in his opinion consider blasphemous or defamatory; and
- e) section 7 which granted powers to the Minister to give general directions to ZNBC was repealed.

The Corporation was given also new functions, of which among them is to provide varied and balanced programming for all sections of the populations programmes. Therefore, the major achievements of these changes were that ZNBC was given editorial independence which was key for it to perform its role as a public broadcaster effectively.³⁹

2.4.7 Independent Broadcasting Authority Act, No. 20 of 2002

The enactment of the Independent Broadcasting Authority Act, No 20 of 2002, was a historical development as the media now had a law to establish an independent body to monitor the broadcasting industry. The IBA Act provides that the IBA shall not be subject to the directions of any other person or authority. This provision encapsulates the

³⁹ P. Matibini, 'Review of the Independent Broadcasting Act and Amendments to the Zambia National Broadcasting Corporation Act'. (December 2004), 3

notion that regulatory bodies should be independent of both Government and broadcasting operators.⁴⁰ Among the functions of the IBA is to grant, review, suspend and cancel licences and frequencies for broadcasting and diffusion services in an open and transparent manner. However, it suffices to mention that although the two Acts are in place, the Boards meant to carry out the duties outlined are not yet operational.

2.5 CONCLUSION

The regulation of the broadcasting industry after independence was characterized by the entrenchment of new nationalist Government through a series of heavy regulatory activities. As earlier alluded to, the philosophy of humanism coupled with the declaration of the One-Party State, set the scene for regulation of the media. However, with the advent of multiparty politics, and the pursuit of pluralism in various sectors including the media brought a new approach in regulation with a number of legislation being put in place. External factors such as globalization also played an important role in shaping the current regulatory frameworks for broadcasting in Zambia. However, convergence and new services such as internet broadcasting was not one of the factors that influenced any legislative changes at the time.

⁴⁰P. Matibini, The Struggle for Media Law Reforms in Zambia. (Lusaka: At Media Institute of Southern Africa, 2006)

CHAPTER THREE

REGULATORY MODELS FOR BROADCASTING IN VIEW OF CONVERGENCE

3.1 Introduction

This chapter discusses various approaches used and types of regulatory models pursued by countries like South Africa, in response to convergence.

Single sector regulators

Prior to liberalization in most countries in Africa and outside, it was common for a state-owned operators to be responsible for regulating the post and telecommunications industries as well as for radiocommunications issues. After liberalization, this structure was no longer possible under most countries' legislation. Therefore, the operation and regulation functions were separated and independent regulators were established. In the case of Zambia as stated in the previous chapter, the Telecommunications Act, established the Communications Authority which was mandated to oversee the liberalization of the telecommunications sectors.⁴¹

This led to separate regulators for telecommunications and broadcasting. Many countries around the world including Zambia, still use the single-sector regulatory authority approach. A key advantage of a single-sector regulatory authority is that it can be focused on relevant issues peculiar to each sector. For example, the telecommunications sector includes technical challenges including network and service development. Broadcasting

⁴¹ Cap. 469 of the Laws of Zambia

on the other has a technical aspect but is also concerned with the regulation of content. However, a disadvantage of sector-specific regulators is that sufficient resources may not be available to staff the different regulator agencies and there may be duplication for regulatory activities that are common to different industries especially in the face of convergence.

3.2 Ways of meeting challenges of convergence

However, technological convergence of broadcasting, telecommunication and computers has fundamentally altered the way in which broadcasting services are distributed to the consumers. These changes have increased the speed of delivery, created new formats, and made multi-channel distribution possible, as earlier alluded to. Convergence and digitalisation have added a new dimension to the policies and regulatory frameworks that have previously been separate entities. In view of convergence, various approaches to meeting the challenges outlined above have been developed. These include; legislative, regulatory and converged regulator approaches.

3.2.1 Legislative Approach

The legislative approach consists of developing legislation that responds to convergence, either in the immediate term or in anticipation of convergence trends.⁴² Legislative solutions define new laws or create new regulatory frameworks to respond to

⁴² <http://www.ictregulationtoolkit.org/en/Section.1508.html> (accessed October 5, 2007)

convergence and guide future policy direction. This can be done by developing and implementing a reform of the entire legal framework for telecommunications and broadcasting. Although a legislative approach commonly involves a modification of the entire legal framework, it may also be carried out through a process of amendments. The amendment process can be quite effective to address urgent convergence challenges without the time-consuming process required for an entire legal framework reform. Therefore this approach of amending existing legislation seems ideal to meet challenges of regulation of content brought about by convergence such as regulation of internet broadcasting. This is because it is easier to introduce provisions dealing with specific issues arising from convergence.

3.2.2 Regulatory Approach

Under the regulatory approach, countries do not develop new legislation to address convergence. Instead, they modify existing legislation or institute new regulations to address new technologies.⁴³ However, in most cases, the regulatory approach is used by policy-makers in conjunction with the legislative approach. This complementary mix allows governments to establish new legal frameworks to address convergence while dealing with its specific issues such as internet broadcasting through regulation. When used in conjunction with the legislative approach, it allows for the quick updating of necessary and relevant sections. It is under the regulatory approaches that models have

⁴³ <http://www.ictregulationtoolkit.org/en/Section.1508.html> (accessed October 5, 2007)

been suggested for the regulation of broadcasting. One of these is the converged regulator.

3.3 Converged regulator

Under this design, communications services *i.e.*, telecommunications including radiocommunications, broadcasting and media (and in some instances postal services), are under the umbrella of one agency. Several countries both at international and regional level have followed this route, by converging the institutions dealing with the communications sector, into one entity. For example, in the United Kingdom the Office of Communications (OFFCOM) was established in December 2003 as a result of the Communications Act 2000. It became the regulator for television, radio, and telecommunications. OFFCOM combines five former agencies: the Broadcasting Standards Commission (BSC), the Independent Television Commission (ITC), the Office of Telecommunications (OFTEL), the Radiocommunications Agency (RA), and the Radio Authority.⁴⁴

An advantage of the converged communications regulator is that it meets the challenges posed by service convergence by bringing in related skills, under one roof. This model also better meets the need for flexibility in terms of its internal administration's ability to meet market realities. This is to say, that it gives the regulatory authority and its staff the flexibility to better handle the continuous technological and regulatory changes and developments within the ICT sector.

⁴⁴Bussiek, H. 'Convergence of New Technologies'. (August 2005) 5-6

Furthermore, by having all services being provided over a single network under one regulator, the staff responsible for specific services can work with other parts of the regulator that are dealing with related issues, and therefore the regulator can take a more consistent approach when considering changing technologies and their effect on regulations.

In addition, the converged model helps to resolve some of the overlaps between telecommunications and broadcasting that has tended to become one of the regulatory issues regarding convergence.

3.4 The South African Experience

One country that has used this model is South Africa. The Independent Communications Authority of South Africa (ICASA) is the regulator of telecommunications and the broadcasting sectors. It was established in July 2000, as a result of the Independent Communications Authority of South Africa Act, No 13 of 2000. It took over the functions of two previous regulators, the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority of South Africa.

The history of this Act started soon after the first post-Apartheid elections in 1994, when the government began the first efforts to regulate the telecommunications sector. In consultation with the general public and industry, the government issued a white paper outlining the legislation.⁴⁵ The first telecommunications law was passed in 1996 and saw the establishment of an independent regulatory authority called the South Africa

⁴⁵N. Ndlela Broadcasting Reforms in Southern Africa: Continuity and Change. South Africa: At Hedmark University College, 2003

Telecommunications Authority (SATRA). On the other hand, the Independent Broadcasting Authority Act of 1993 and the Broadcasting Act of 1999, regulated the radio and television industries. The 1993 law created the Independent Broadcasting Authority of South Africa and constitutionally protected the new regulator's independence, in contrast with SATRA. This is because the Constitution of the Republic of South Africa states that 'national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society'.⁴⁶

The primary functions of the Independent Broadcasting Authority of South Africa were to issue licenses for the provision of radio and television broadcasting services, as well as the supervision of content. The two bodies were mandated to form a Joint Technical Committee, as a standing committee to deal with matters relating to overlapping responsibilities that existed at the time. However, with convergence of information and communication technologies, Cabinet decided to merge Independent Broadcasting Authority of South Africa and SATRA

Therefore, the Independent Communications Authority of South Africa Act, 2002 was passed. This Act provided for the dissolution of the Independent Broadcasting Authority of South Africa and SATRA and for the creation, in their place, of a regulatory body known as the Independent Communications Authority of South Africa (ICASA).⁴⁷ This Act dealt only with the merger of the organisational structure of the previous regulators. The result was that although merged, ICASA was not converged, and managed two

⁴⁶ Constitution of the Republic of South Africa, s. 192

⁴⁷ Independent Communications Authority of South Africa Act, No. 13 of 2000, s. 18(1)

separate licensing regimes. In respect of broadcasting matters, ICASA remained functionally independent, in respect of its licensing and regulatory powers, whereas in telecommunications matters the Minister retained some licensing powers and veto powers on regulations developed by the Authority.

Some of the reasons for establishing a converged regulator was that during this time, there emerged radio and television broadcasters who used the radio spectrum as well as satellite and Internet facilities.⁴⁸ This was because Government had liberalised the sector and therefore removed ownership restrictions on radio and television broadcasters. This led, for example, to the emergence of companies such as World Space that offered to provide more than 25 multilingual television and radio channels as well as internet access.⁴⁹ Therefore, liberalization of radio and television broadcasting created a high demand for licenses and thus greater need for frequencies was necessary. Furthermore, the South African Government also stated that the merger of IBA and SATRA, would reduce the costs of maintaining two regulatory structures and take advantage of the combined technical skills and facilities of having the two agencies together.⁵⁰ This confirms the advantages of the converged system earlier alluded to.

⁴⁸ Bidoli, M "Please be patient, your broadcast is on the internet interactive", *Financial Mail*, June 25, . 1999, Published/EmeraldFullTextArticle/Pdf/2720070102_ref.html (accessed October 20, 2007)

⁴⁹ Stones, L. Global digital radio service becomes reality", *Business Day*, 20 October 1999. Published/EmeraldFullTextArticle/Pdf/2720070102_ref.html (accessed October 20, 2007)

⁵⁰ The Star, "Scuth Africa: broadcast and telecom bodies' merger approved", .6 November 1999, Published/EmeraldFullTextArticle/Pdf/2720070102_ref.html (accessed October 20, 2007)

Another plausible explanation could be that the authorities decided to merge the regulators as a proactive move to accommodate not only the entry of new carriers, but also the imminent convergence of technologies, companies, and services that has been occurring throughout the world. However, in general it was the liberalisation of both the broadcasting and telecommunications that prompted the emergence of converging services. However, it suffices to mention that although the ICASA Act has addressed the institutional regulatory challenges brought by convergence, it does not really address the issue of regulation of internet broadcasting. As earlier alluded to the essence of ICASA was the merger of the institutional structure of the previous regulators in broadcasting and telecommunications. As a result, one of the functions of ICASA is to perform functions imposed on it by former authorities and other underlying statutes.⁵¹ Currently, the ICASA Act has been amended by the ICASA (Amendment) Act of 2005. The Amendment Act is meant to give ICASA independence from the Ministry of Communications in its regulation of the communications sector. It also provides for the incorporation of the Postal Regulator into ICASA.

3.4 Conclusion

Technological convergence of broadcasting, telecommunication and computers has fundamentally altered the way in which broadcasting services are distributed to the consumers as already alluded to. This has therefore brought out a number of challenges when it comes to regulation. It is for this reason that various countries have been developing varying ways of meeting some these challenges.

⁵¹ Independent Communications Authority of South Africa Act, No. 13 of 2000, s. 4(1)

CHAPTER FOUR

REGULATION OF INTERNET BROADCASTING IN ZAMBIA

4.1 Introduction

This chapter examines the current legal framework for broadcasting to determine whether it provides for the regulation of broadcasting and the adequacy of the regulatory framework in view of convergence. This will be done by identifying lacunas therein.

During the early 1990's, globalization operated as a powerful buzzword in discussions of media reform policy in the region of Southern Africa. A three tier broadcasting structure was advocated on the basis that it could contribute to the enhancement of democracy in the region. The broadcasting reforms in Zambia yielded a three tier system of broadcasting comprising of public service, commercial and community broadcasting. However, the Independent Broadcasting Authority Act, No. 17 of 2002 creates a four and not three tier system of broadcasting This is as a result of the seemingly separation of community and religious media. Section 19(2) provides that the authority may issue a commercial, community, religious or public broadcasting license. Community broadcasting is defined as a broadcasting service which is;

- a) fully controlled by a non profit entity and carried on for non-profitable , purposes;
- b) serves a particular community;
- c) encourages members of the community served by it of persons associated with or promoting the interests of such community participation in the selection and provision of programmes to be broadcast; and

- d) may be funded by donations grants, sponsorship or advertising or membership fees, or by a combination of any of them.⁵²

Religious broadcasting on the other hand is defined ‘as a broadcasting service which transmits programmes of a religious nature’. Therefore, it seems that in terms of criteria, a difference was made on the basis that community media serves a given community, whilst religious broadcast was defined on the basis of content being broadcast. However, in reality, a religious broadcaster can be a community media, only that it broadcasts religious content only. However, in its present state the Act seems to treat the two separately. This is further demonstrated by section 19(4)(b) which provides that ‘a broadcasting licence shall authorize the licensee to provide any of the following classes of broadcasting services, among them a community and religious broadcasting service.’

Based on the criteria alluded to, there are currently over 15 community radio stations in the country and 6 religious broadcasters. The convergence of technologies has made it possible for these stations to engage in internet broadcasting. Currently, QFM, Yatsani Radio and Radio Phoenix also broadcast through the internet.

4.2 Regulation of internet broadcasting

Tomaselli and Dunn (2001) states that;

‘Should we regulate the internet? if so how? Should media houses be just selfregulating or should we create and oversee codes of practice and standards for

⁵² Independent Broadcasting Authority Act No. 17 of 2002, s. 2

content or should all these things be left to the wisdom of the market? These issues will not go away but will have to be negotiated through regulation'

This demonstrates the need to respond to challenges brought in by convergence such as internet broadcasting. Other scholars have argued that in order to determine whether a particular regulator meets the some of the challenges of convergence the following questions should be asked;

1. Does the regulatory framework facilitate the provision of different services over different platforms?
2. Does the regulatory framework allow service providers to offer multiple services?⁵³

Therefore, in view of the above, the regulation of internet of broadcasting under the Independent Broadcasting Authority Act, No. 17 of 2002, can be determined by looking at the licencing provisions and provision for development of ethical codes of conduct.

4.2.1 a) Licensing Provisions

The Independent Broadcasting Authority Act, No. 17 of 2002 currently provides that a broadcast licence shall authorize the licensee to provide any of the following classes of broadcasting services

- a) a public broadcasting service
- b) a commercial broadcasting service

⁵³ G. Berger, 'Convergence or Divergence: Which way the Broadcasting in Southern Africa.' (May 2006)³

- c) a community and religious broadcasting service or
- d) a subscription broadcasting service⁵⁴

Section 27(2) of the Act, provides the conditions of licenses and one of the conditions provided are that the licence may specify the kind of broadcasting authorized by the licence and regulate the type and standard of broadcasting station apparatus to be used in any such broadcasting. Therefore, it can be said that a license will specify the kind of authorized broadcasting based on the classes of broadcasting services provided under s. 19, which does not include internet broadcasting service. Therefore, the Independent Broadcasting Authority Act, No.17 of 2002 does not provide for the provision of various services over various platforms. Instead the Act provides for specific services which are outlined. These services do not include internet broadcasting. Therefore there is a lacuna in this regard.

On the other hand, the Radiocommunications Act provides the scope for the Communications Authority's general supervision and control of radiocommunications services.⁵⁵ Section 5(1) of this Act provides among other things that the authority shall:

- a) allocate the frequencies on which all radio transmission shall work, b) approve the mode of transmission to be adopted in connection with all transmitting stations and the power to be radiated there from. However, the mode is more in relation to the authorized assignment i.e. Frequency Modulation(FM) broadcasting, Shortwave (SW) as per current construction and licence permit format form which is use (see appendix) Therefore, in

⁵⁴ Independent Broadcasting Authority Act, No 17 of 2002, s. 19(4)

⁵⁵ Cap. 169 of the Laws of Zambia

view of technological developments, there is no provision for the medium or channel through which broadcasting is done. A plausible explanation is that when these forms were designed when there were only the traditional types of media i.e. radio and television.

Meanwhile, internet broadcasting involves the distribution of content by means of a software package called a media player which turns the data into high impact-audio or video experience via a centralized server. Therefore, stations can engage in internet broadcasting without any frequency allocation as long as they have the necessary devices. Radio phoenix and Q Fm have licences as commercial radio stations via frequency Modulation. They hold similar construction and licence permits as that of Unza Radio (see appendix). However, they currently are also broadcasting on the internet through computer networks not included in the Radiocommunications Act⁵⁶ nor the Independent Broadcasting Act, No. 17 of 2002, as earlier alluded.

Therefore, this leaves internet broadcasting unregulated. However, as alluded to, the radio service under the broadcasting industry is a regulated service and therefore the need to regulate internet broadcasting. There is a lacuna in this regard.

4.2.2 Ethics provision

Another way of determining whether the Act provides for the regulation of internet broadcasting is by examining provisions of ethical codes of conduct. This is an aspect of regulation which aims at ensuring that professional standards are met and maintained in

⁵⁶ Cap. 169 of the Laws of Zambia

broadcasting. This is usually done by having an ethical code of conduct. Professionalism is the process by which a given occupation attains professional status. Therefore, most professions abide by a set of ethical codes of conduct which are aimed at upholding the standards and integrity of the said profession.

On this basis one of the functions of the IBA as provided for is to oblige broadcasters to develop codes of practice and monitor compliance with those codes.⁵⁷ This is the first time that a provision on ethical conduct by the media has been provided for under an Act of Parliament.

It was earlier established that the Independent Broadcasting Authority Act, 2002 does not provide for internet broadcasting under the licencing provisions. Therefore, it can be safely concluded that even the codes of ethics to be developed are meant for broadcasting done through the traditional media. However, ethics in broadcasting are of general application regardless of the medium used for broadcasting. Therefore, internet broadcasting will be subject to the same ethical requirements and governed by the same ethical principles.

It suffices to mention that previously, regulation of ethical conduct by the media in general was being done by the Media Council of Zambia (MECOZ) only. MECOZ is a non-statutory voluntary, self-regulatory body⁵⁸ which was established in 2004. MECOZ has continued to operate to date. It is therefore interesting to see how MECOZ and the IBA will co-ordinate their activities in the regulation of ethics in the media industry when the IBA becomes operational. This is notwithstanding the fact that the IBA will mainly

⁵⁷ Independent Broadcasting Authority Act, No 17 of 2002, s. 5 (2) (g)

⁵⁸ Constitution, Media Council of Zambia, art. 1

regulate the broadcasting industry. Currently, among the objectives of MECOZ is to promote professionalism by enforcing journalism ethics.⁵⁹ MECOZ has also developed a code of ethics which is supposed to be adhered to by its members who include both print and broadcasting media.

However, it is hoped that the requirement to develop codes of ethics will be mandatory for all broadcasters in Zambia, unlike as is the case under MECOZ. Currently, the Post Newspaper does not subscribe to MECOZ and thereby do not adhere to the code of conduct. This has led to difficulties for the media fraternity to galvanise support for the re-introduction of the Freedom of Information Bill earlier alluded to in chapter one. According to the some opposition Members of Parliament (Mp's) questioned why the Post Newspaper did not subscribe to the media council MECOZ. The said group of Mp's indicated they would not support the reintroduction of the bill in the absence of a statutory ethics regulatory body. This was during a consultative meeting organised by Media Institute Southern Africa, Zambian chapter (MISA Zambia).⁶⁰

4.3 Adequacy of regulatory framework in regulating internet broadcasting?

Broadcasting sector is regulated by the Independent Broadcasting Authority pursuant to the Independent Broadcasting Authority Act, No. 17 of 2002 and CA pursuant to the Radiocommunications Act. The IBA although not yet fully implemented as earlier alluded to, has powers through its board to issue out licenses for public, commercial,

⁵⁹ Constitution, Media Council of Zambia art. 3

⁶⁰ Times of Zambia Newspaper, 27 February 2007

community, religious and subscription broadcasting services.⁶¹ However, under the Radio Communication Act, the technical infrastructural aspects of broadcasting such as the overall management and administration of the frequency spectrum are within the domain of the CA.⁶² The telecommunication sector is regulated by the CA under the Telecommunications Act.

Therefore, the regulatory model being used in Zambia is the single sector regulation as broadcasting and telecommunicated are regulated separately notwithstanding the fact that the CA, through the Radiocommunications Act, is in charge of the technical aspects of radio.⁶³ Meanwhile, convergence of ICT's which has resulted in traditional boundaries between broadcasting and telecommunications, to be blurred and redefined This is because services under these industries can now be offered over a single network. As a result services such as internet broadcasting are being carried out not through radio frequencies such as FM or SW, but over computer networks which are purely under the telecommunications domain. Therefore, since internet broadcasting is done over computer networks, it does not fall within the scope of regulation provided for the CA under the Radiocommunications Act. As discussed earlier the CA under the Radiocommunications Act is in charge of among other things allocation of radio frequencies, approving transmission sites etc.⁶⁴

⁶¹ Independent Broadcasting Authority Act, No. 17 of 2002, s. 5(2)

⁶² Radiocommunications Act, Cap. 169, s. 5

⁶³ Cap. 169 of the Laws of Zambia

⁶⁴ Cap. 169 of the Laws of Zambia

Therefore, this regulatory structure is not ideal in relation to the regulation of new services such as internet broadcasting. There is a lacuna in this regard.

4.4 Conclusion

It has been established that the Independent Broadcasting Authority Act, 2002 does not provide for regulation of internet broadcasting as the relevant sections dealing with licencing make no mention of the same. It has also been established that the regulatory framework currently being pursued is not adequate for the regulation of services such as internet broadcasting considering broadcasting is a regulated sector. A workshop on Information and Communication Technologies acknowledged that the convergence of communication technologies (broadcasting telecommunications, internet) has become a reality in many countries. On this basis, it was recognized that there is a need for most countries of the region to develop broadcasting laws in order to provide clear objectives for the industry, and to set a policy framework for the regulation of broadcasting.⁶⁵

⁶⁵ 'Broadcasting and ICT Regulation: To Merge or not merge.' (October 2005) 1

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter makes conclusions and recommendations based on issues raised in previous chapters and also bearing in mind regulatory models and the pros and cons discussed in chapter two.

5.2 Conclusions

From the preceding chapter, it has been established that the current regulatory framework in its current form does not provide for the regulation of internet broadcasting, because it does not have any provisions catering for internet broadcasting. Furthermore, the current licence formats equally do not provide for internet broadcasting

Furthermore, even in the face of convergence, Zambia is currently operating under an unconverged regulatory system where telecommunications is regulated by the Communications Authority pursuant to the Telecommunications Act⁶⁶ while broadcasting will be regulated by the Independent broadcasting Authority pursuant to the Independent Broadcasting Authority Act, No. 17 of 2002 as soon as it becomes operational. However, the Radiocommunications Act, provides the scope for the Communications Authority's general supervision and control of radio communications services including receiving and approving applications for radio licenses.

⁶⁶ Cap. 469 of the Laws of Zambia

5.3 Recommendations

Therefore, the following recommendations are made;

1. Include provisions for Internet broadcasting

Scholars have stated that when designing new legislative frameworks to address convergence, flexibility and foresight are critical elements. Given that the market of new services and technologies is extremely dynamic, legislators must be mindful not to develop legislation that may rapidly become outdated. Legislation should allow the regulator sufficient flexibility for interpretation so that solutions can be implemented as needed despite the evolving nature of convergence, and can do so without constricting future applications and technologies that could benefit the economy and consumer welfare.⁶⁷ Unfortunately, the current regulatory framework was designed in such a manner that it overlooked emerging technological innovations such as internet broadcasting. Therefore, there is need to ensure that these are included. In addition, the evolution of convergence, combined with the uncertainty about which technologies and services will succeed in the marketplace, requires a continuous review of the applicable legislation.

In chapter two various approaches were discussed as regards to meeting the challenges brought about by convergence. One of these was the legislative approach which involves

⁶⁷ http://www.ofcom.org.uk/media/speeches/2003/12/currie_20031210. (accessed December 5, 2007)

developing legislation that responds to convergence. This includes either modification of the entire legal framework, or carrying out a process of amendments. As alluded, amendment process can be quite effective to address urgent convergence challenges without the time-consuming process required for an entire legal framework reform. This will be ideal in relation to including provisions to cater for internet broadcasting. Therefore, it is recommended that using this approach, the Independent Broadcasting Authority Act, No. 17 of 2002 s. 19, which provides categories of services should be amended to include internet broadcasting service. This will currently be the best approach considering that Zambia has not yet tested the uncharted waters of independent broadcasting regulation. It was stated earlier that the

Therefore, it is ideal that such provisions are included in the Act such that even if the country decides to have a converged regulator in the near future, such provisions would be in the Act. In South Africa, as alluded to in the chapter two, the ICASA, merely took over the functions of the previous regulatory bodies. Therefore, it is ideal to have such provision in the Independent Broadcasting Authority Act, No. 17 of 2002, like the ones under the Independent Communications Authority of South Africa Act, in case the country decides to have a converged regulatory body which like ICASA merely takes over responsibilities.

Furthermore, provisions should also be the Radiocommunications Act, so that the scope of technical supervision by the CA under the Act, includes computer networks for internet broadcasting as earlier alluded to.⁶⁸

⁶⁸ Cap. 169 of the Laws of Zambia

2. Change Licence Format

The introduction of provisions mentioned above can only work if the licences are also reformatted to make similar provisions. Considering that licensing is a key regulatory tool through which public authorities can exercise control over their national markets, particularly in relation to the provision of broadcasting services. Therefore, the following licencing formats should be considered;

- (i) introducing technology-neutral licences with broader service categories;
- (ii) establishing licence provisions that allows operators to utilize various channels.
- (iii) “de-licensing” whereby the operator merely needs to submit a notification or registration with the regulator. This means that a decision would have to be made whether to specifically licence internet broadcasting or to merely request media houses to notify the IBA.⁶⁹

However, considering the service provisions provided in the Independent Broadcasting Authority Act, No. 17 of 2002, s.19, outlined in the previous chapter, the second format is ideal because such a licence would make provisions which allow media houses to utilize various channels for broadcasting. Therefore, it would be ideal that the licence is formatted in such a way that media houses actually indicate which channels and frequency which they intend to use for their broadcasting. As earlier alluded to, when

⁶⁹ <http://www.ictregulationtoolkit.org/en/Section.2104.html> (accessed December 10, 2007)

designing new legislative framework to address convergence, flexibility and foresight are critical elements. Therefore, such a format of licensing will allow any new forms of technology that may be used in the near future to be catered for.

The neutral technology format is more ideal in relation to a converged regulator for broadcasting and telecommunications. In this instance, such services will include Network Facilities Provider (NFP); Network Services Provider (NSP); Application Services Provider (ASP); and Content Application Services (CSP). A special subset of application services that includes television and radio broadcast services and Internet content services) would be provided for under such a licence.

On the other hand the de-licencing format leaves too much freedom to broadcasters since they are only required to notify the regulator. Meanwhile, there is no penalty for failure to notify. Also operators may not have to wait for approval before commencing service. Therefore, in order to achieve effective regulation, the second licensing format will be ideal for the current regulatory framework in Zambia.

It suffices to mention that in certain jurisdictions such as the United States of America, a trend that has been followed is to eliminate licencing requirements with the regulator on converged services. This is on the basis that the services fall outside of the regulator's authority or because the regulator has decided to forbear from regulating a particular service. However, broadcasting in most jurisdictions is a regulated sector and therefore the mere fact that broadcasting is offered on a platform like the internet should not make any difference.

3. Include provisions for policy recommendations

The IBA is not mandated to develop broadcasting policy. In Zambia policy formulation is an executive function.⁷⁰ However, under the repealed Independent Broadcasting Authority Act of South Africa No. 93 of 1993, one of the objectives of the Authority was to establish a human resource capacity in policy development. As alluded to in the previous chapter, ICASA now performs the roles of the previous authorities and therefore has taken over this role.⁷¹ Given the speed of technological developments in the broadcasting industry, it is advantageous for a body regulating a industry like broadcasting to have some power to pass policy related to broadcasting. However, the current position is that the Executive is the one that has power to make policy. Therefore, it is recommended that amendments be made to include that will allow the IBA can be given powers to make recommendations in area of broadcasting.

4.3.4 Maintain current regulatory model

From the discussion in chapter two there are two main options for countries to decide on the most suitable structure for regulatory bodies for communications technologies in view of convergence. One option is to have one regulatory authority in charge of all sectors of communication in order to, amongst others, streamline licensing processes, to manage the frequency spectrum efficiently and speed up technological development. The other is to have separate authorities for broadcasting and telecommunications to enable countries to focus on the development of their broadcasting industry and a framework for its

⁷⁰ Constitution of Zambia Act, Cap. 1, art 50

⁷¹ Independent Communications Authority of South Africa Act No. 13 of 2000, s. 4 (1)

regulation and to avoid telecommunication interests taking precedence over broadcasting interests.

Scholars, have argued that simple regulatory principles can help to avoid costly pitfalls.

These include;

- a) the need to co-ordinate the regulation of the broadcasting and telecommunications market where interests overlap;
- b) the need to broaden access and choice for the majority in broadcasting and information services through the most cost effective means which offer the lowest reception costs to the consumer.
- c) the need to test new technologies and services against their impact upon policy goal of universal access to broadcasting, telecommunications and information services
- d) the need to counterbalance international broadcasting services distributed from the satellite with a range of readily accessible domestic broadcasting services which have a high degree of local content and which reflect cultural diversity of citizens;
- e) The need for regional cooperation in the development or adoption of uniform standards for broadcasting telecommunications hardware so that the market and the public are protected against dumping of multiple standards redundant or obsolete technologies and to take advantages of economies of scale; and

- f) The need for regional co-operation to avoid content dumping also known by the term information subsidy⁷²

For purposes of this discussion (a) becomes a relevant consideration where broadcast and telecommunications need not necessarily converge, but merely that there be co ordination of the two sectors where there are overlaps. It was earlier alluded to that Zambia has not yet tested the uncharted waters of independent broadcasting, therefore with this in mind, it may not be in the best interest of the industry to move to a converged regulator. It is recommended that such an approach be followed for the time being.

However, it should be noted that the National Information and Communication Technology policy document of 2005, proposes to have the (ICT) sector brought under an autonomous regulator to ensure a smooth transition to full convergence. The ICT policy document envisages the transformation of the existing regulators in the communications sector into a converged regulatory agency and recommends the repeal or amendment of the Telecommunications Act, the Radiocommunications Act⁷³, and the Independent Broadcasting Authority Act, 2002. It is important to be mindful that countries like South Africa went through the stages of having an independent regulator before venturing into a converged regulator. Much as it is understandable that technological developments are moving very fast, a country like Zambia should be mindful of the pace at which major changes in regulation take place. Furthermore, it has been argued that one weaknesses of having a converged regulation is that some issues of broadcasting relating to education can be overshadowed. This is based on the premise that the distinctive regulatory aspects

⁷²P. Matibini, The Struggle for Media Law Reforms in Zambia. (Lusaka: Media Institute Southern Africa 2007)

⁷³ Cap. 169 of the Laws of Zambia

of broadcasting require distinctive regulatory agency for broadcasting even in a technologically-converging digital environment.

Therefore, in view of the above, it is recommended that the current regulatory framework be maintained. However, the Radiocommunications Act should be amended to add provisions so that the scope of technical supervision by the CA under the radiocommunications Act include computer networks for internet broadcasting.

The recommendations given above are ideal taking into account the level at which the regulatory development have reached in Zambia. Questions regarding regulatory classification and treatment of the internet remain unanswered as governments and in most Southern African countries, including Zambia, continue to consider and debate them. The challenge facing regulators is to create an ideal market structure and regulatory environment that will stand the taste of time. However, it is important that individual levels of development should guide the approach taken by each country.

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APPENDIX

MIBS/BLS 4

REPUBLIC OF ZAMBIA MINISTRY OF INFORMATION AND BROADCASTING SERVICES BROADCASTING STATION CONSTRUCTION PERMIT AND LICENCE

Subject to the provision of..... BROADCASTING..... Act of 19.66.....,
Rules and Regulations set forth in this permit, authority is hereby granted to construct (build) an FM
Broadcasting Station located and described as follows:

Name..... UNIVERSITY OF ZAMBIA RADIO STATION.....

Authorised assignment..... FM BROADCASTING.....

1. Frequency..... 91.5 MHZ.....

2. Transmitter output power..... 05 WATTS.....

3. Effective radiated power..... 05 WATTS.....

4. Antenna height above ground (metres).....

5. Hours of operation..... 24 HOURS.....

6. Station Location..... LUSAKA.....

7. Studio location (if applicable)..... LUSAKA.....

8. Location of antenna and supporting structure:

North latitude 15 ° ' 26 "

West longitude 28 ° ' 22 "

9. Transmitter location..... LUSAKA.....

10. Transmitter(s) Type.....

11. Aviation obstruction markings..... RED LIGHT.....

12. Additional/Special Conditions.....

13. Date of required commencement of construction..... 09 MAY 2000.....

14. Date of required completion of construction..... 08 NOVEMBER 2001.....

This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Ministry may allow unless completion is prevented by causes not under the control of the permit holder/licence, such as natural disasters that prevent completion of construction.

Note also that this is a permit to construct and licence to test once construction is substantially completed as authorised.

Ref No. MIBS/104/4/3.....

Call sign... UNZA. RADIO.....

Date... 09/05/2000.....

REPUBLIC OF ZAMBIA
OFFICE OF THE MINISTER OF
INFORMATION AND BROADCASTING

9 MAY 2000

Ministry of Information and Broadcasting Services

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