

## A Post-Soviet Perspective on Licensing Television and Radio

by *Andrei Richter*

### EDITORIAL

What broadcasters shall and shall not do is the very content of their broadcasting licences. In other words, broadcasting licences exist in order to implement broadcasting rules and policies. They ensure that the manifold and often diverging interests of the general public and the broadcasting industry concerning broadcasters' use of frequencies are taken into consideration and brought into balance. In an even wider context, the legal framework for granting licences should also be based on the individual's interests such as privacy and human dignity and it should foster the goals of Article 10 ECHR.

Broadcasting licences are, however, not only suited to pursuing honourable purposes. In as much as they serve to achieve adherence with justified legal requirements they might be misused to block the provision of services that don't match the interests of the government controlling the licensing authority. In that sense, broadcasting licences are like keys to the right of freedom of expression. It is therefore crucial who administers them and how.

This *IRIS plus* gives an overview of the different legal frameworks for licensing broadcasting in countries of the former Soviet Union, which all share the experience of a relatively recent launching of licensing systems.

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**Susanne Nikoltchev**

*IRIS Coordinator*

*Head of the Department for Legal Information  
European Audiovisual Observatory*

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76 ALLEE DE LA ROBERTSAU • F-67000 STRASBOURG  
TEL. +33 (0)3 88 14 44 00 • FAX +33 (0)3 88 14 44 19  
<http://www.obs.coe.int>  
e-mail: [obs@obs.coe.int](mailto:obs@obs.coe.int)

# A Post-Soviet Perspective on Licensing Television and Radio

**Andrei Richter**  
Moscow Media Law  
and Policy Center (MMLPC)

## 1. Introduction

In the Russian Federation the practice of licensing broadcasters began very recently. On 14 July 1990, President Mikhail Gorbachev issued a decree entitled "On Democratisation and Development of Television and Radio Broadcasting in the USSR".<sup>1</sup> It gave Councils of People's Deputies (or Soviets) at all levels and public organisations the right to open television and radio facilities and studios and formulated the need for legislation on television and radio broadcasting. This decree and the government resolution that followed provided the legal basis for the country's first non-state television and radio programmes.<sup>2</sup>

As with the introduction of media registration by the USSR statute "On the press and other mass media"<sup>3</sup> at about the same time, licensing television and radio could be viewed as a curtailment of the freedom of mass information because not all applications to broadcast are granted. However, given the letter and spirit of international agreements<sup>4</sup> and having studied how broadcasters around the world operate in practice, our opinion is that the opposite applies – in a democratic state licensing *per se* does not obstruct this freedom and, moreover, can and should promote it.

It is in the public interest to allocate frequencies to those who offer the optimum service. Licensing can also ensure that broadcasters comply with defined social objectives, for example to protect minors and guarantee diversity in politics and information. Therefore, there is a need for the sector to be properly regulated, not only to uphold this freedom but also to balance it against other legitimate rights and interests.

It is within this context that we shall examine the licensing process in all post-Soviet states (Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan).

## 2. Types of Licenses

Broadcast licensing generally has a dual nature in these countries, in that nearly everywhere two licences must be obtained: one (to use a frequency for broadcasting) from the state body that administers communications (usually the communications ministry), and another (to actually disseminate television and radio programmes) from the licensing authority.

The communications licence (sometimes called "technical") is secondary to the broadcasting licence in all post-Soviet states and, on receipt of the latter, is issued more or less automatically. However, it should be noted that some states are visibly tightening this process. An example of this is the Belarusian president's decision in the summer of 2006 to dissolve the State Commission for Radio Frequencies (SCRF) at the Ministry of Communications and Information Technology and reconstitute it under the Belarusian Security Council. This decision was taken "in the interests of rationalising the system for state regulation of the allocation and use of radio frequency resources". Even prior to dissolution, the SCRF was headed by a deputy state secretary from the Security Council and included representatives of the Armed Forces' general staff, the State Control Committee, Interior Ministry, State Security Committee (KGB), Emer-

gencies Ministry, State Defence Industry Commission, and the State Border Guards Committee. It also had as one of its members a presidential aide - the head of the presidential administration's main directorate for ideology.

The situation in Armenia and Tajikistan, where the broadcasting laws require a third licence to produce television and radio programmes, is surely one of diminishing freedom of mass information because it involves even more bureaucratic hassle.

But this aside, the licensing of the actual dissemination of television and radio programming remains the primary factor in regulating the audiovisual media across the post-Soviet landscape. In most of the countries in this study (Azerbaijan, Armenia, Georgia, Latvia, Lithuania, Moldova, Tajikistan, Ukraine and Estonia), licensing is governed by national statutes on television and radio broadcasting. Ukraine and Armenia even define the aims and composition of their regulatory and licensing authorities in their national constitutions. Other countries in this study define the procedure through presidential decrees and government resolutions.

## 3. Formation and Functions of the Licensing Authority

Now let us look at how the post-Soviet countries' licensing authorities are constituted and on what principles they operate. To what extent are they governed by the public interest and freedom of information as they allocate frequencies and oversee adherence to licence terms? We shall study the procedure in which these authorities are formed; the requirements placed on their members, their terms of office and security of tenure; their powers; how open their work is; how they are funded; and how accountable they are to the public.

*Lietuvos radio ir televizijos komisija*, the Radio and Television Commission of **Lithuania**, is an independent body that reports to the *Seimas* (parliament). It regulates, licenses and controls commercial broadcasters. It also plays a role in formulating state policy on the audiovisual media.<sup>5</sup> Its 13 members are appointed as follows: one by the president, three by parliament after nomination by its education, science and culture committee, and one member each is appointed by the Artists', Cinematographers', Composers', Writers', Theatres' and Journalists' Unions, the Society of Journalists, the Bishops' Conference and the Periodical Publishers' Association. The term of office for each member is not more than two terms of office of the appointing state institution or the double continuous term of powers of the appointing organisation's management body. Members of the Commission may not be members of parliament, the government, the Council of the National Radio and Television,<sup>6</sup> or a senior civil servant; they and their families are barred from holding shares in broadcasting companies, and they are also barred from any form of employment with broadcasters. They elect their chairman by a simple majority for a two-year term.

The Commission is funded by a monthly levy on all broadcasters that earn money from advertising (apart from the public company LRT), set at 0.8 per cent of their income from advertising and other commercial activities to do with transmission and (or) retransmission.<sup>7</sup>

The Commission's chairman delivers an annual report to a plenary session of the *Seimas*, including on its financial activities. The report is published in the official journal.

In two countries (Latvia and Moldova), the licensing authority is appointed solely by parliament.

*Nacionālā radio un televīzijas*, the National Radio and Television Council (NRTC) of **Latvia** is required by the Law on Radio and Television<sup>8</sup> to be an "independent institution – a fully autonomous institution, which shall represent the interests of the public in the field of electronic mass media and supervise the latter so that in their operations the constitution, this law and other laws be observed", and is also required to ensure freedom of speech and information. The Council is formed by the *Saeima* (parliament), which according to its own rules of procedure elects the Council's nine members. The NRTC regulates the entire broadcasting sector: it superintends both private and public service broadcasters and licenses commercial broadcasting. This is bound to cause conflicts in its work between the interests of public and private broadcasters, which might be why the Latvian parliament is looking at ways of constructing a new regulatory body for public service television and radio. This body, the Public Broadcasting Council, would take over the role of regulating public service broadcasters (with the Ministry of Culture apparently to license and oversee the private sector). Exactly how the new Council will be established is unknown. The members of the existing NRTC are appointed by parliament for a four-year term, so it consists entirely of nominees from the political parties represented in parliament. Among the demands made of the Council's members, we shall note a ban on simultaneous membership of parliament or the cabinet of ministers, on any position in the leading bodies of political organisations (parties), or on engaging in any other paid activity without the Council's consent. According to Latvian researchers, the Council's regulatory function is made more difficult by a number of issues, especially its lack of legal sanctions and the presence of controversial (and unconstitutional) curbs on foreign-language broadcasts.<sup>9</sup> The Council reports to the media the outcomes of its meetings and all decisions taken, and supplies copies of those decisions to broadcasters and other organisations with which it deals. The Council is funded by the state and publishes a yearly report on its financial and other activities in the official gazette.

As in Latvia, **Moldova's** Coordinating Council of the Audiovisual regulates the entire broadcasting sector including the public service company. Its functions include the following:<sup>10</sup>

- to oversee commercial broadcasters' compliance with licence terms and legislation;
- to that end, to monitor periodically, when it deems necessary and in response to complaints, the content of programmes proposed by providers and distributors;
- to approve broadcasters' codes of conduct;
- to define the procedure in which commercial broadcasters provide airtime for parliamentary and local government elections;
- to define the terms, criteria and procedure for licensing broadcasters and the procedure for permission to retransmit;
- to issue licenses for broadcasting and permits for retransmission.

In one country, **Ukraine**, the broadcasting authority is formed equally by parliament and president and has probably the most detailed rules of procedure of any post-Soviet state. The National Broadcasting Council is constituted under the broadcasting statute and is the state body licensing and overseeing broadcasters. It is also responsible for drawing up and implementing the state's policy on licensing broadcasters. The procedure for forming it and also its powers are laid down in the statute "On the National Broadcasting Council" (1997)<sup>11</sup> and it gets a special mention in Ukraine's 1996 constitution (Articles 85 and 106).<sup>12</sup> It comprises eight members, of whom four

are appointed by the *Verkhovna Rada* (parliament) and four by the president, and they elect their chairman and deputy chairman from among themselves by a secret ballot. Members have to be Ukrainian citizens with higher education and at least five years' experience (in particular, of a scientific or teaching nature) in journalism, law, broadcasting, management, academia or the arts, have a command of the state language and have been resident in Ukraine for ten years. During their term in office they may not occupy any other position, including voluntary, in state or non-state bodies, organisations or establishments or businesses, be a member of parliament, be in receipt of any remuneration or one-off royalties for any other work apart from research, teaching or creative (this exception does not apply to research or creative work in broadcasting). They must relinquish any post as founders or co-founders of television or radio organisations or any share of ownership therein. For all that, they are autonomous and may not be removed from office by the president or parliament.

The National Broadcasting Council's powers are extraordinarily wide. As part of its supervisory remit it must ensure the following:

- compliance by broadcasters and programme providers with broadcasting legislation;
- compliance by licence holders with legislation on advertising and sponsorship in broadcasting;
- compliance by licence holders with the specific procedure in law for broadcasting during election campaigns and referenda;
- compliance with broadcasting technology requirements;
- compliance by broadcasters with Ukraine's laws on cinematography;
- compliance by broadcasters with Ukraine's laws on the proportion of domestically produced output and on the use of languages;
- compliance by broadcasters with legal requirements on the extent of foreign ownership;
- compliance by broadcasters with legal requirements on public morality;
- imposition of sanctions within its powers for breaches of Ukrainian law;
- official monitoring of broadcast output.

The National Broadcasting Council's regulatory remit is:

- to license broadcasters;
- to license programme providers;
- to play a role in drafting and approving Ukraine's National Chart for Distribution of Radio and Television Frequencies and Radio Frequency Utilisation Plan with regard to those frequencies allocated to television and radio;
- to draw up the terms for use and selection of users of radio frequencies allocated to television and radio;
- to ensure and promote competition between broadcasters of all forms of ownership as required by law, to create an environment preventing removal, limitation or distortion of competition in broadcast news;
- to maintain Ukraine's State Register of Broadcasters.

As regards the organisation and development of broadcasting, the National Broadcasting Council has the following powers:

- to play a role in drafting and implementing state policy on broadcasting;
- to draw up and approve the Development Plan for the national broadcast news sector;
- to monitor the state of affairs in broadcasting in Ukraine;
- to rule on the establishment and development of broadcast channels and networks that entail use of radio frequency resources;
- to determine the technology development procedure for multi-channel television networks entailing use of radio frequency resources, and the procedure for tenders for the technology development, maintenance and operation of such networks;



- to commission findings on the electromagnetic compatibility of radio-electronic broadcasting systems;
- to promote Ukrainian broadcasters' integration into the global information arena and to ensure their operation to international standards;
- to aggregate the implementation in practice of broadcasting legislation, and play a role in drafting proposals to improve the legislation;
- to collaborate with international organisations and other countries' state authorities and nongovernmental organisations for broadcasting;
- to define the procedure for documenting, accounting and retention by broadcasters of copies (recordings) of broadcast output, and for temporary storage and a broadcast archive as required by Ukrainian legislation;
- to establish and maintain the State Television and Radio Archive as required by law.

The Council is funded by the state, delivers an annual report on its activities, publishes that report by 1 February of the subsequent year and sends it to parliament and the president.

In the **Caucasus states**, the licensing authorities are exclusively presidential appointments.

**Georgia's** communications and post statute of 1999<sup>13</sup> set up a National Regulatory Commission for Communications and Post, which oversees and licenses the broadcasting sector. In theory, the Commission is a public entity and a standing and independent state body not subordinate to any state authority. Yet all three of its members are appointed to their six-year terms of office by the president.

The Commission's members and their close relatives may not have any direct or indirect proprietary or financial interest in a licence holder or be in receipt of any income or other benefit from an existing or applicant licence holder, or hold any position in any commercial undertaking of a licence holder.

The Commission's primary functions are:

1. to determine the conditions for licensing and also, following the procedure required by law, to issue, renew, suspend and revoke licences;
2. to certify and standardise means of communication;
3. to determine and allocate the radio frequency spectrum in conjunction with the Ministry of Transport and Communications and other interested agencies;
4. to allocate radio frequencies;
5. to promote a competitive environment;
6. to rule within its remit on disputes between licence holders and also between them and consumers;
7. to oversee compliance with communications licences and impose penalties for non-compliance as required by law.

The Commission compiles a yearly report on its activities, which it submits to the president, parliament and Ministry of Transport and Communications and places in the public domain. It is funded from the licence fees.

**Azerbaijan's** licensing authority was set up in 2003, the year following the enactment of a broadcasting statute<sup>14</sup> and the approval by the country's president of the standing orders of the National Radio and Television Council (NRTC).<sup>15</sup> The president appoints its members, who may not be prematurely removed, for a term of office of two, four or six years. NRTC members may not be in the employ of the executive authorities or judiciary or engage in any paid activities apart from teaching, creative work or religion.

The NRTC's remit is to:

- prepare and implement an integrated development blueprint for television and radio;
- define technology and quality standards and norms for broadcasting;
- hold competitions for and issue broadcasting licences;
- oversee the use of broadcasting technologies and rational use of frequencies;
- ensure post-watershed transmission of programmes potentially harmful or disturbing to minors;
- prevent promotion of terrorism, gratuitous violence, national or racial or religious discrimination; and oversee distribution of advertising and compliance with broadcasting law.

Among the members of the NRTC's first convocation were an employee at the state broadcaster's finance department, a former director of the *Azerkniga* publishing amalgamation, an employee of the newspaper *Azerbaijan*, a lawyer from the *Ruh* public Committee for Protection of Journalists, and a history teacher from Baku's Slavonic University. This line-up of the NRTC elected the head of the socio-political department at the president's executive office as chairman for a six-year term.

The pro-government press at the time claimed that "yet another institution of a democratic society" had been established. Newspapers reported that "in order to safeguard the NRTC's independence, its members have been given a number of important guarantees. For example, they may not be removed from office until expiry of their term ... Despite being funded by the state, the NRTC is independent in its work."<sup>16</sup> Opposition journalists, however, pointed out that "when the draft broadcasting statute was being debated at the National Assembly, doubts were cast on the Council's ability to be independent. In the first draft, members would be appointed by the president in consultation with parliament. It had been expected that they would be nominated by public organisations and other bodies after broad debate of the candidates, but the president's office insisted that the relevant clauses be removed. This means that it has become, completely and in its entirety, a means for the presidency to control television and radio. Objections against this were sent to a variety of international organisations. Dismay about the new statute was voiced by Council of Europe Secretary General Walter Schwimmer, OSCE Representative on Freedom of the Media Freimut Duve and numerous nongovernmental organisations engaged in this field."<sup>17</sup> The issue remained unresolved and President Heydar Aliyev had his way.

**Armenia's** National Commission on Television and Radio is an independent state body whose activities are governed primarily by broadcasting legislation<sup>18</sup> and its own rules of procedure. It comprises nine members, who are all appointed by the president for a six-year term<sup>19</sup> and elect their chairman and his deputy from among themselves. Members have to be citizens of Armenia with substantial experience of journalism, broadcasting, technology, culture, the arts, science or law, be of higher education and have a command of the Armenian language. Places on the Commission may not be taken by members of political parties' governing bodies, public service or commercial broadcasting executives or anyone who has a contractual relationship with a broadcaster or is a founder and (or) owner or co-owner (shareholder or investor) of a broadcaster. The chairman and his deputy may not combine their offices with other paid work apart from teaching, scholarly or creative.

The Commission's remit extends only to licensing and overseeing commercial broadcasters:

- it allocates frequencies and issues licences;
- it monitors programme-making and technologies for compliance

- with existing standards and licence terms;
- it can suspend a broadcaster pending a court ruling on breach of the broadcasting statute;
- it can revoke a licence in a range of circumstances prescribed by the broadcasting statute.

The National Commission is funded by the state, and reports annually on its activities and finances to the National Assembly. It also publishes these reports in the press.

In the remaining eight countries – **Belarus, Russian Federation, Kazakhstan**, all the **Central Asia states** and **Estonia** – licensing is carried out by a governmental body (usually advised by a commission at the relevant ministry) or by a government cross-departmental commission. A typical example of the latter is **Uzbekistan**, where the "Interdepartmental Coordinating Commission for the improvement and increasing the effectiveness of information activities and data transmission at the Cabinet of Ministers of the Republic of Uzbekistan" comprises representatives of the Communications and Information Agency, Interior Ministry, National Security Council and Press Agency (all of them government bodies), plus a single journalist.<sup>20</sup>

These authorities have a variety of names – the government Committee for Television and Radio in **Tajikistan**, the Committee for Information and Archives of the Ministry of Culture and Information in **Kazakhstan**, or the Ministry of Culture in **Estonia**. But their essence remains the same, in that the members of the body that chooses the winning bidders for licences are appointed by the government. Their terms of office and the criteria for their selection, appointment and removal are not defined and the criteria for awarding licences are vague, their work is not transparent and public, they are funded by the state, and they are not required to – and often do not – account for their work to the public or parliament.

In all 15 countries of the region, these authorities issue licences and endeavour to ensure that broadcasters observe the terms of their licences and the law. In many countries, they also play a role in formulating national policy and standards for broadcasting, represent their country internationally,<sup>21</sup> examine complaints including from the viewing and listening public, and so forth.

#### 4. Licensing Criteria and Procedures

The criteria that a licensing authority applies in choosing the winning bids in a competitive process are an important indication of whether the interests of society and freedom of mass information are being served.

The statutes governing these authorities vary in terms of the quantity and precision of their criteria. **Estonia's** Broadcasting Act<sup>22</sup> stands out for being the briefest, requiring a licence to be awarded to the applicant that submits the best proposal (Article 40 paragraph 4 second option). In **Latvia**, the sole statutory criterion is that preference should go to the bidder "whose general programming concept is oriented towards a wider public demand" (Article 12 (3) of the Law on Radio and Television). In **Azerbaijan**, when the terms of a competition are being drawn up "the interests of viewers, listeners and the state should be taken into account", and in **Kazakhstan** the Rules for competition for terrestrial broadcasting rights of 2002 favour "the best creative, technological and financial proposals".

In the **Russian Federation**, the successful bidder in a competition is that which offers the best combined broadcasting, technological and financial model. But by precisely which criteria a broadcasting model is adjudged to be the best is difficult to say.<sup>23</sup> Furthermore, in the overwhelming majority of cases, the national

licensing body (currently *Rossvyazokhrankultury*, the Federal Service on Supervision in the Sphere of Mass Communications, Telecommunications and Protection of Cultural Heritage<sup>24</sup>) has called competitions without specifying any particular target market for broadcasting models ("free broadcasting concept"). This practice was highlighted in 2002 by Prof. Mikhail Fedotov, who posed a reasonable question: "This de-facto means the sale of frequencies, since all competitions are run on free-concept lines. So what, then, is the state's policy on licensing broadcasters?"<sup>25</sup>

Article 25 of **Ukraine's** broadcasting statute<sup>26</sup> contains three criteria that the National Council should apply when selecting the winner in a competitive bidding process: greatest likelihood of compliance with the terms of the competition; intent to transmit socially important programming (news, socio-political, children's etc) and to meet the information needs of national minorities and ensure freedom of speech; superior financial, professional and technological resources.

The National Commission in **Armenia** shall take into account four criteria to award licences: programming made in-house; programming made in Armenia; the applicant's technological and financial resources; the professional training of the bidder's personnel.

The Republican Commission for Television and Radio in **Belarus** shall apply even more criteria when choosing successful bidders:

- viability of the creative blueprint and the main technological and financial parameters;
- spare capacity on the airwaves;
- viability of the business model, including the bidder's financial resources;
- starting date for provision of service and its development prospects;
- bidders' competence (past experience in similar lines of business).

In **Lithuania**, the Law on Provision of Information to the Public<sup>27</sup> requires the Radio and Television Commission to prefer applicants that promise creativity and cultural originality, to provide information and education and to present information correctly and impartially, to respect human dignity and privacy, to shield minors against potential physical, mental and moral harm from information in the public domain, and to broadcast to areas not yet served by other stations.

In **Moldova**, the successful applicant is that whose programming and technology resources best meet the public need and the licence terms. Preference is given to broadcasters seeking a licence to transmit programmes made in-house or in Moldova. Prior to 2006 the criteria also included encouragement of pluralism of opinion, competition, creativity, independence and objectivity in broadcasting.

In **Uzbekistan**, the successful applicant is that which offers the best creative, technological and business proposals that comply with media and communications legislation, the licence terms and also the conditions laid down in the Regulations on the Licensing of Telecommunications.<sup>28</sup> Bids should be evaluated in the light of:

- the amount of own programming to be broadcast, transmission times (daily, 24-hour), the ratio of languages within output, planned amount of airtime in the state language;
- the variety of methods and means of transmitting information (teletext, language dubbing of soundtracks, etc);
- the use of modern studio and transmission technologies;
- commitment to make and disseminate (transmit) television and radio programmes in high-quality sound and picture definition;
- commitment to extend broadcasting to remote areas;
- the economic technicalities (sources of funding and their reliability, revenues and spending);

- the target audience for the proposed programming and the ratio of genres;
- the level of professional training of journalistic and technical personnel;
- the ratio between own production and rebroadcasts;
- an applicant's possession of an existing broadcasting network.

An important provision is that if two or more bidders in a competitive process submit proposals that equally meet requirements, then preference goes to the one offering the most money for the licence.

In **Kyrgyzstan**, the licensing body considers the amount of an applicant's own programming, transmission timing (daily, 24-hour), opportunities for carrying additional information, its transmission technologies and equipment and how they are to be used, commitment to extend broadcasting to remote areas; possession of an existing broadcasting network, economic (financial) resources, and the level of professional training of journalistic and technical personnel.

If a licensing authority is to be independent, it should conduct its work transparently. Open meetings with records available to the public and (or) journalists are a central feature of society's control over the decisions taken by such an important body. We note that in **Ukraine**, sessions of the National Broadcasting Council are open and that there is no statutory provision for a closed session. In **Armenia, Georgia, Latvia** and **Lithuania** the law requires the licensing body to convene in public, although they may be held behind closed doors to avoid disclosure of information deemed in law to be secret (or as in Lithuania, where necessary in order to protect the privacy or property of a person). In addition, in **Georgia** and **Lithuania** rulings and resolutions – including those reached at closed sessions – should be published in the official journal. All resolutions, decisions, instructions, records and other documents of the Commission should be open to perusal by the public.

The legislation of other post-Soviet countries makes no provision for transparency. The maximum degree of openness here is the opportunity for licence applicants or their representatives to be present during evaluation of bids in a competition. In this context it is hardly surprising that the heads of several diplomatic missions and organisations including the European Commission, the Council of Europe and the Organisation for Security and Cooperation in Europe have voiced concern at the licensing procedure in **Moldova** and have directly stated that “allocation of licences and frequencies should be transparent and fair in order to dispel any doubts regarding political considerations or commercial bias”. They recalled that “Moldova has assumed commitments to create and maintain the appropriate legislative framework to guarantee freedom of expression and the media in line with European standards and Council of Europe and OSCE recommendations, and also to ensure transparency in the relationship between the authorities and the media in line with Council of Europe recommendations. Transparency in the decision-making process for allocating frequencies and awarding licences, the lack of which was criticised in 2004 by the OSCE Representative on Freedom of the Media, is a direct part of those commitments.”<sup>29</sup>

## 5. Duration and Renewal of Licences

It seems that most nowhere in the world is the right to use a given frequency for television or radio (or indeed other purposes) granted indefinitely. The existing, limited, electromagnetic spectrum means that not everyone who wants to put their programmes on the air can do so, either now or in the future. Accordingly, and given that radio frequencies use the airspace that belongs to the people (or the state), the rights to operate on them are temporary.

If we compare licence durations, we see that the longest ones for national broadcasters are in **Lithuania** (where the amended Civil Code provides for an unlimited (an open-ended) license;<sup>30</sup> as we have found, the licensing process is the most independent from the state) and **Georgia**. Licences are usually issued for between three and seven years, and in some countries for longer if heavy investment is required, for example, in satellite broadcasting.

It is not surprising, therefore, that in those countries where it will be difficult to remedy uncertainties in the licensing procedure, the industry is pushing for existing licences to at least be extended – but without any great success. For example, the president of the Russian Federation's National Broadcasters Association, Eduard Sagalayev, has often called for precise and transparent licensing rules and regards the introduction of longer licence terms as a primary aim. Sagalayev advocates a ten year licence, believing that five years is not long enough to achieve any kind of commercial success in the media business.<sup>31</sup>

The duration of a licence would not of course be so important were its renewal not tied up with excessive or vague requirements.

A study of the highly varied rules for renewal of licences in the post-Soviet states shows the following results, in rising order of strictness. **Lithuania** has no procedures for renewal as the Civil Code provides for an “open-ended licence”. In **Latvia**, an existing broadcaster has a preferential right to licence renewal if in the preceding year there have been no court rulings against it for breaking the broadcasting statute. **Azerbaijan** will not renew a licence if a broadcaster has committed multiple breaches of the law and despite warnings from the appropriate state body failed to remedy them, or if it has had multiple fines or other penalties imposed. **Ukraine** can withhold renewal if a broadcaster has breached the terms of its existing licence or the law. The offences should be confirmed in rulings and sanctions by the National Broadcasting Council and not have been overturned in the correct legal procedure, or by court rulings. In **Moldova**, a licence is renewed if its terms have been observed for its entire duration and there have been no breaches of broadcasting laws. A broadcaster, in order to renew its licence in **Belarus**, must not only have complied with media laws and the programming concept that it proposed but also the rules in its licence to use radio frequencies. A licence will not be automatically renewed in **Georgia** if the holder has been penalised for breaking the law or the (not yet adopted) Code of Conduct, and also if it has failed to comply with a ruling by the licensing authority or has broken the terms of the licence. In **Tajikistan**, a broadcaster “that has not committed offences in its activities” has a “preferential right” to licence renewal. When a licence is up for renewal, consumer opinion on the quality of programming and also public needs are taken into account. In **Uzbekistan**, licences are renewed in the same procedure as the initial application. **Armenia** does not renew licences at all, which is one of the most controversial aspects of its national broadcasting legislation.

## 6. Practice of Licensing

The way in which the licensing authorities operate is bound to leave many unhappy at the choice of successful bidders in competitions. But if we examine the complaints, we discover a definite trend – a reduction in political and news broadcasting in favour of entertainment. In **Moldova**, this was the conclusion reached by a conference of experts on journalism and freedom of expression, which stated that the Coordinating Council of the Audiovisual, which issues licences and comprises representatives of the ruling party, has a habit of turning away politically “questionable” broadcasters.<sup>32</sup> In **Georgia**, local observers speak of the National Regulatory Commission for Communications and Post applying sanctions selectively, and of dual standards. The case of the *Lomsia-TV* regional broad-



caster has been cited in this regard. It was refused a licence renewal although another broadcaster (*Rustavi-2*, which is close to the authorities) was allowed to stay on the air despite having committed similar offences.<sup>33</sup> Numerous licence refusals have been recorded in **Tajikistan**, including under the pretext that “commercial radio is an invention of world imperialism”.<sup>34</sup>

But the greatest criticism has been directed at **Armenia’s** National Commission on Television and Radio, especially for its treatment of the A1+ television station. The only channel available nationwide and in the capital and not influenced by the authorities (according to the Yerevan Press Club), it was first refused a licence in a competition held on 2 April 2002. This led to accusations, from the Armenian Union of Journalists, the Yerevan Press Club, the Internews non-state organisation and the US embassy, that the rules for choosing the winner had been broken. The Council of Europe called on the authorities to urgently amend the broadcasting laws in line with its recommendations.<sup>35</sup> Criticism grew so intense that the Foreign Ministry stepped in to defend the licensing authority, saying: “We feel it necessary to point out that the competition for frequency 37, as for other frequencies, was called in line with the Statute ‘On television and radio’,<sup>[36]</sup> which was drafted with input from all television companies, passed by an overwhelming majority in the National Assembly including all influential political forces in the country, and subsequently was the subject of a favourable report by the appropriate department of the Council of Europe.”<sup>37</sup>

One might accept this argument, but in the years since then A1+ has bid in twelve competitions and has been turned down every time. Journalists have concluded that regardless of the merits of A1+’s bids in the competitions, and regardless of whether its finances are sound, the Commission is determined to keep it off the air.<sup>38</sup>

## 7. Restrictions on Licenses for Foreigners

Licensing has to do with the regulation of foreign ownership within the national media. A number of countries – including in the West – limit foreign ownership in order to protect their national sources of information against political influence from abroad and to protect domestic businesses against the power of transnational corporations. Of all types of mass media, the one that enjoys special protection against foreign expansionism is the most influential and accessible – television.

Other CIS countries took their cue from the Russian media statute<sup>39</sup> (and its Article 7 on founders) and legislated to ban the establishment of media outlets by non-resident foreign nationals or stateless persons. At present, this ban remains in force (apart from in the **Russian Federation**), in **Azerbaijan** (unless a foreign national is permanently domiciled there and then only under an interstate treaty) and in **Belarus**. Foreign corporate entities and individuals are banned outright from establishing media in **Kyrgyzstan**, **Latvia**, **Tajikistan** (which also bans stateless persons), **Turkmenistan** and **Ukraine** (in the case of broadcasting). **Kazakhstan** and **Moldova** prohibit foreigners from being editors-in-chief.

A number of countries have used media ownership clauses to impose restrictions on foreign nationals. In **Kazakhstan**, foreign corporate entities and individuals and also stateless persons may not directly or indirectly own, utilise, dispose of or manage more than 20 per cent of a company that owns a media outlet or is active in the media business.<sup>40</sup> **Lithuania** only allows foreigners to be “public information producers or disseminators” if they set up their own business or a subsidiary for that purpose in the country. **Uzbekistan** precludes businesses with more than 30 per cent foreign ownership from establishing media outlets, and **Azerbaijan** restricts the amount of money that foreigners can put in the media.

Similar restrictions apply to possession by foreigners of broadcasting licences in **Azerbaijan**, **Armenia**, **Georgia**, **Latvia**, the **Russian Federation** and others. For example, **Georgia’s** Communications and Post statute (1999) rules out licences for:

- a) authorities of foreign states and their proxies;
- b) foreign nationals and stateless persons and their proxies;
- c) bodies incorporated under foreign legislation, their representative offices or subsidiaries;
- d) bodies incorporated under Georgian legislation and more than 50 per cent owned by the entities mentioned in b) and c) above.

In the meantime the restrictions on setting up and owning television and radio stations inexplicably vanished when **Moldova** revised its broadcasting legislation in 2006. Interestingly, similar caps on foreign ownership of broadcasters (30 per cent) disappeared when **Ukraine** rewrote its broadcasting statute, also in the same year.

Finally, another restriction in the series is the post-Soviet countries’ imposition of quotas on airtime given to foreign-made programmes.

However, practice in the post-Soviet countries shows that foreign companies and individuals actually enjoy much greater freedom than the law allows with regards running and owning media outlets.<sup>41</sup> This issue is handled by state authorities with a sideways glance at the law but more often with political and economic expediency in mind. “Expediency” in this context means investment in the entertainment and politically neutral media and activities that do not impinge on crucial aspects of the state’s information security. Examples of this are the numerous western cable and satellite channels now widely available in post-Soviet countries without licensing or formally establishing themselves there. Another example is the Russian channel *Ren-TV*, which mostly runs entertainment and partly belongs to the German company RTL.

## 8. Concluding Remarks

If broadcasters are to be licensed and the airwaves monitored in the interests of all society, then it is important that the authority doing this should be independent from the state and formed in a way that takes account of public opinion. Our study shows that the body that most complies with these criteria in the post-Soviet landscape is the Radio and Television Commission of **Lithuania**.

As to the licensing criteria, we can categorise post-Soviet practice as “technological” (**Belarus**, **Kyrgyzstan**, **Russian Federation**, **Uzbekistan**), “social” (**Latvia**, **Lithuania**, **Ukraine**) and “national” (**Armenia**, **Moldova**). The technological principle judges companies by their ability to start up a broadcasting operation and reliably operate it; the social principle places more emphasis on the interests of the public; and the national principle favours those that seek to broadcast their own in-house output or programming made within the country. The foregoing shows that these criteria do not always have a clear, unambiguous and detailed definition in regulatory instruments. This opens the way for subjectivity and for political or economic pressure on the licensing body.

Apart from the criteria for choosing who should have frequencies, overseeing how broadcasters use their right to occupy them, and ensuring independence for the licensing body, the duration of the licence and the conditions for its renewal are also significant. A short licence not only hampers a broadcaster from recouping its initial investment but also, if there is uncertainty over its extension or renewal, makes that broadcaster excessively dependent on the licensing body. Bearing in mind that the licensing bodies in most post-Soviet countries are dependent on the state authorities, that



the licensing criteria are vague and that the law gives no preference to existing broadcasters, a short licence leads to commercial broadcasters becoming dependent on the ruling circles' political considerations. Short licences are detrimental not only to broadcasters' business interests but also, and more importantly, to the development of freedom of mass information. This is not only because of the dependence, just mentioned, of broadcasters on the state. Long-term planning and heavy investment in making and buying programmes creates a stable relationship with the viewing public. To maintain that relationship of trust, the broadcaster strives to meet demand as best it can, primarily by developing information and ideological diversity

and highly professional journalism. From the above, we can conclude that licence duration, which would seem to be a technical issue, is actually closely linked to the development of freedom of mass information in the broadcasting sector.

In most countries under this study a broadcaster must avoid breaking the law and the terms of its licence (which usually require it not to break the law anyway) in order to automatically renew that licence. However, the procedure for recording offences is not always clearly laid down and, in addition, some countries rule out renewal in the event of breaches of licensing authority rulings or even of a code of ethics.

- 1) Указ Президента Союза Советских Социалистических Республик о демократизации и развитии телевидения и радиовещания в СССР от 14 июля 1990 года N 357.
- 2) See, e.g., Anna Kachkaeva and Andrei G. Richter. The Emergence of Non-State TV in the Ukraine, Canadian Journal of Communication, 4, Vol. 17 (1992).
- 3) Закон СССР "О печати и других средствах массовой информации" от 12 июня 1990 года N 1556.
- 4) See, e.g., Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector.
- 5) See *Visuomenės Informavimo Istatymas* (Law on Provision of Information to the Public) of 2 July 1996 No. I-1418 (Revised version on 11 July 2006 – No X-752), available in English at <http://www.rtk.lt/en/static.php?strid=27410&>; see also Jurgita Iešmantaitė, [LT] New Version of the Act on Provision of Information to the Public into Force, in IRIS 2006-9: 16, <http://merlin.obs.coe.int/iris/2006/9/article25.en.html>
- 6) *Lietuvos radijo ir televizijos taryba*, the Council of the National Radio and Broadcasting, is the governing body of the public service broadcaster LRT.
- 7) Other sources, such as funds received for examining licence applications and change of licence conditions, payments for provided services, support funds, publishing activities, might be used as well.
- 8) See Radio and Television Law of 24 August 1995, *Latvijas Vēstnesis* (Official Gazette), 137 (420), 8 September 1995, as last amended on 16 December 2004, available in English at <http://www.ttc.lv/index.php?&id=10&tid=50&l=EN&seid=down&itid=13711>
- 9) *Television across Europe: regulation, policy and independence. Monitoring Reports. Summary.* – Budapest, N.Y., 2005. P. 265.
- 10) See Audiovisual Code of the Republic of Moldova, available in English at: <http://www.cca.md/Audiovisual%20Code.doc>
- 11) See Закон України Про Національну раду України з питань телебачення і радіомовлення (Відомості Верховної Ради (ВВР), 1997, N 48, ст.296 ) {з змінами, внесеними згідно із Законами N 134-XIV ( 134-14 ) від 30.09.98, ВВР, 1998, N 45, ст.272 N 998-XIV ( 998-14 ) від 16.07.99, ВВР, 1999, N 41, ст.373 N 1709-III ( 1709-14 ) від 11.05.2000, ВВР, 2000, N 32, ст.257 N 2680-III ( 2680-14 ) від 13.09.2001, ВВР, 2002, N 2, ст.5 N 762-IV ( 762-15 ) від 15.05.2003, ВВР, 2003, N 30, ст.247 } { В редакції Закону N 2461-IV ( 2461-15 ) від 03.03.2005, ВВР, 2005, N 16, ст.265 } { із змінами, внесеними згідно із Законом N 3317-IV ( 3317-15 ) від 12.01.2006, ВВР, 2006, N 18, ст.155 } at <http://zakon1.rada.gov.ua/>
- 12) See Конституція України (Відомості Верховної Ради (ВВР), 1996, N 30, ст. 141 ) at <http://zakon1.rada.gov.ua/>
- 13) See Закон Грузии "О связи и почте" (в ред. законов от 28.06.2000 N°430-ІІс, 13.12.2000 N°686-вс, 23.05.2001 N°884-ІІс, 7.05.2002 N°1388-ІІс, 28.03.2003 N°2036-ІІс) <http://www.medialaw.ru/exussrlaw/l/ge/telecom.htm>
- 14) See Закон Азербайджанской Республики о телерадиовещании от 5 октября 2002 г. N°794 <http://www.medialaw.ru/exussrlaw/l/az/tv.htm>
- 15) The statute does not speak on the National Council in a direct way, it mentions a "corresponding state authority" that was later established and staffed by the decree of the president of Azerbaijan.
- 16) Создан Национальный совет телевидения и радио // Наш век (Баку) 24 January 2003. Source: <http://nashvek.media-az.com/56/news.html>
- 17) Sabirguzu Zh. О новом органе надзора над телерадиоинформацией (Интервью с Директором Института прав средств массовой информации Рашидом Гаджили) // Новое время (Баку), 25 января 2003 г. января 2003 г.
- 18) See Закон Республики Армения "Регламент Национальной комиссии по телевидению и радио" от 11 января 2002 года N°ЗР-293 <http://www.medialaw.ru/exussrlaw/l/am/tv-radio-com.htm>
- 19) In November 2005 the new edition of the constitution was adopted. It says that one half of the now eight members of the National Commission shall be elected by the National Assembly, and the other shall be appointed by the President of Armenia. At the same time, according to the transitional provisions, acting members of the National Commission remain until their term expires. After that the National Assembly and the President take turns in filling the vacancies. Thus the ratio of 50/50 can be achieved only in several years.
- 20) Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia. – Washington, 2005. P. 226, 240, 254, 268.
- 21) E.g., licensing bodies of the Baltic states, Moldova, and Ukraine joined the European Platform for Regulating Authorities (EPRA), which provides a forum for informal discussion and exchange of views between its members, currently 49 regulatory authorities in the broadcasting field from 41 European countries.
- 22) See Broadcasting Act (*Ringhäälinguseadus*) of 19 May 1994, RT I 1994,42,680, as last amended on 21 December 2006, available in English at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>
- 23) According to lawyer Sergey Pyankov, "this issue has been one of the most acute problems since unclear criteria for selection of the winner to a large extent lead to the non-transparent character of the competitions which contradicts the standards of the Civil Code of the Russian Federation". See: Лицензирование телерадиовещания в Российской Федерации на конкурсной основе: актуальные вопросы теории и практики // Законодательство и практика масс-медиа, №11, 2005 г.
- 24) Dmitry Golovanov, [RU] Emergence of the Super Authority in the Broadcasting Sector, in IRIS 2007-7: 18, available at <http://merlin.obs.coe.int/iris/2007/7/article30.en.html>
- 25) Fedotov M.A. Право массовой информации в Российской Федерации. – М., 2002. С. 210.
- 26) See Закон Украины "О телевидении и радиовещании" (Ведомости Верховной Рады Украины, 1994 г., N°10, ст. 43; 1995 г., N°13, ст. 85; 1996 г., N°5, ст. 18; 1997 г., N°15, ст. 115; 1998 г., N°2, ст. 6, N°34, ст. 233, N°49, ст. 302; 1999 г., N°41, ст. 373; 2000 г., N°27, ст. 213, N°32, ст. 257, в редакции Закона N°3317-IV от 12 января 2006 года, ВВР, 2006 г., N°18, ст. 155) <http://www.medialaw.ru/exussrlaw/l/ua/broadcast.htm>
- 27) See above at endnote 5 and also the Lietuvos Radijo Ir Televizijos Komisija Sprendimas Dėl Transliavimo Ir Retransliavimo Veiklos Licencijavimo Taisyklių Patvirtinimo, 2006 m. gruodžio 13 d. Nr. 112 (RTCL Decision on the approval of the Rules on Licensing of Broadcasting and Re-Broadcasting Activities of 13 December 2006), available at: [http://www.rtk.lt/lt/catalog\\_item.php?strid=27110&id=29532](http://www.rtk.lt/lt/catalog_item.php?strid=27110&id=29532) see further Jurgita Iešmantaitė, [LT] New Rules on Licensing of Broadcasting and Re-broadcasting Activities Adopted, in RIS 2007-3: 16, available at: <http://merlin.obs.coe.int/iris/2007/3/article24.en.html>
- 28) See Положение о лицензировании деятельности в сфере телекоммуникаций (Приложение N 2 к Постановлению КМ РУз от 22.11.2000 г. N 458) с изменениями, внесенными Постановлением КМ РУз от 23.09.2002 г. N 328, Постановлением КМ РУз от 27.09.2003 г. N 413, Постановлением КМ РУз от 05.07.2005 г. N 155, Постановлением КМ РУз от 16.08.2005 г. N 200 <http://www.bir.uz/law/obj1134723580/obj1135138206/obj1135589431/obj1135589530/obj1135659227.txt>
- 29) Praporshchik Maria. Представители ряда дипломатических миссий и организаций считают, что в Молдове нет прозрачности при выдаче лицензий на право вещания и при распределении вещательных частот, Report of the Centre of Journalism in Extreme Situations of the Union of Journalists of Russia of 10 November 2005. (CJES) des russischen Journalistenverbandes vom 10. November 2005.
- 30) The Civil Code of the Republic of Lithuania is available in English at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=245495](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=245495)
- 31) Независимая газета, 3 марта 2006.
- 32) Media Sustainability Index 2004. The Development of Sustainable Independent Media in Europe and Eurasia. – Washington, 2005. P. 177
- 33) Ibid. P. 144.
- 34) Ibrovov Dzh. Правовые основы и практика лицензирования телерадиовещания в республике Таджикистан. Report of the Centre of Journalism in Extreme Situations of the Union of Journalists of Russia of 16 September 2003 ([www.cjes.ru](http://www.cjes.ru))
- 35) See: Resolution of the Parliamentary Assembly of the Council of Europe 1304 (2002) Honouring of obligations and commitments by Armenia: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/eres1304.htm>
- 36) See Закон Республики Армения "О телевидении и радио" (с изменениями и дополнениями, внесенными Законами Республики Армения от 20 февраля 2001 года, от 6 октября 2001 года, от 29 октября 2001 года, от 21 ноября 2001 года) <http://www.medialaw.ru/exussrlaw/l/am/broadcast.htm>
- 37) Еженедельный бюллетень Ереванского пресс-клуба за 30 марта – 5 апреля 2002 г. и за 10-16 февраля 2006 г. (находится в Интернете на сайте [www.urc.am](http://www.urc.am)).
- 38) Israëlian A. "A1+" в двенадцатый раз не предоставили эфир // Аравот (Ереван). 26 мая 2006 г.
- 39) See Закон Российской Федерации "О средствах массовой информации" от 27 декабря 1991 года N°2124-1 (в ред. Федерального закона от 16.10.2006 N°160-ФЗ), [http://www.medialaw.ru/laws/russian\\_laws/txt/2.htm](http://www.medialaw.ru/laws/russian_laws/txt/2.htm)
- 40) Interestingly that a similar norm is found in the statute "On national security" (1998).
- 41) See, e.g., Сборник аналитических докладов по современному состоянию законодательства о СМИ в странах СНГ и Прибалтики. М., 2004. С. 18.