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Policy paper

“Community media in Ukraine:
A spectrum for development”

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Community media in Ukraine: A spectrum for development

Introduction

This policy paper on community media in Ukraine has been prepared within the framework of the project 'Freedom of Media in Ukraine' under the Joint CoE/EU Eastern Partnership Programme Co-operation Framework (PCF) Programme¹. Its purpose is to contribute to strengthening freedom of expression and media reform in Ukraine and in particular to inform a strategy for promoting and supporting the development of community media.

Measures aimed at enhancing the diversity of the media are one of the practical means of guaranteeing the right to freedom of expression². Media diversity means not only plurality of content and a diversity of media owners, but also includes the diversity of types of media outlet. Alongside traditional models of public service and private commercial broadcasting, community media has emerged as a 'third tier' of media development, and is recognised as having a specific contribution to make in strengthening the freedom of expression³.

This paper examines the concept of community media and its development in an international context, illustrated by examples of good practice. It assesses the prospects for community media in Ukraine considering the social, political and economic context. It reviews the international standards for community media which guide policy-makers, legislators and regulatory bodies. Drawing on comparative European experiences it recommends a strategy for implementation of community media in Ukraine.

1. The concept and development of community media in Europe

While varying in nature according to their country and local contexts, community media can be generally characterised as media operating on the basis of civil society organisation and public participation. They are distinct from public service broadcasting in being independent of public authorities, including local authorities, and founded through voluntary association. Unlike private commercial media they operate for social purpose and not for private profit.

Community media provide communities with access to information and voice, facilitating community-level debate and discussion, information and knowledge sharing and input into public decision making. The emergence of community media is often associated with wider political change particular the deepening of democracy and the strengthening of civil society. Where they have been established it has been recognised that community media can play a specific and crucial role in encouraging public participation, giving voice to disenfranchised groups and contributing both to cultural expression and social cohesion⁴.

Community media have emerged in all regions of the world as social movements and community-based organisations have sought to voice their issues, concerns, cultures and languages. The first stirrings of the modern community media movement can be traced back

¹ For further information, see <http://www.coe.int/en/web/kyiv/freedom-of-media-in-ukraine>

² Council of Europe, Recommendation (2007)2 on Media Pluralism and Diversity of Media Content

³ Council of Europe, Declaration of the Committee of Ministers on the Role of Community Media in Promoting Social Cohesion and Intercultural Dialogue, adopted by the Committee of Ministers on 7 February 2009

⁴ See, for example: P Lewis, Promoting Social Cohesion: The Role of Community Media (Council of Europe, 2008); S Buckley, Community Media: A Good Practice Handbook (UNESCO, 2011)

to the 1940s in the Americas with the setting up of miners' radio stations in Bolivia's tin mining communities, educational radios promoting social development in Colombia, and the first generation of listener-supported non-commercial radio stations in the United States.

Community media in Europe is more recent. While print-based community media have a longer history, broadcasting in Europe remained dominated by the public service broadcasting model in Western Europe, until the growth of private broadcasting in the 1980s, and by state broadcasting in Eastern Europe, until the end of the Soviet era in 1991.

According to a review by Community Media Forum Europe (CMFE), by January 2012 there were 2237 community radio stations and 521 community TV channels in Europe of which the vast majority were in the European Union⁵. Of 28 European Union member states, community broadcasting was reported as present in 23 of them. Outside of the European Union only the countries of former Yugoslavia - Bosnia and Herzegovina, Macedonia and Serbia – reported the presence of community radio or television. In numerical terms community media are most prolific in Denmark, France, Italy, Netherlands and the UK.

The early movement for community broadcasting in Western Europe was driven by the emergence of unlicensed FM broadcasting, as has been the history in Italy and France, with regulatory frameworks following later. In other cases community broadcasting has commenced first on a trial basis, as in Denmark, Netherlands and the United Kingdom.

In 1976, Italy opened its airwaves, after the Supreme Court declared the state monopoly to be illegal. This led to rapid and unregulated growth in private commercial and community broadcasting, until the Mammi Law of 1990 introduced a system of broadcasting regulation⁶. Deregulation of broadcasting in Italy has led to a high level of private media concentration.

France adopted a regulatory model for private and community broadcasting in 1982 in response to widespread unlicensed broadcasting. The *Conseil supérieur de l'audiovisuel* later established five categories of licence. 'Category A' licences are for *radios associatives* which must be registered as not-for-profit associations under France's 1901 law on associations and must limit their advertising revenue to not more than 20 per cent of total income⁷. There are over 600 *radios associatives* in France serving urban and rural communities.

Community broadcasting in Denmark dates back to early experiments with local cable TV in the 1970s and a more comprehensive trial starting in 1983 when the first non-commercial local FM radio services (*ikke-kommercielle lokale radio-stationer*) were licensed. Community radio was put on a permanent footing in 1986, later extended to community television in 1987. Community broadcasting in Denmark benefits from a portion of the funding for public service broadcasting, administered by the Independent Radio and Television Board⁸.

Netherlands has a well-established community broadcasting sector dating back to the first experimental channels from 1983 and regulated by the Media Authority since 1988. In the Netherlands community broadcasting is known as local broadcasting (*lokale omroep*) and is considered to be part of the public service broadcasting sector. Local broadcasters in the

⁵ Community Media Forum Europe, First Mapping of Community Media in Europe (CMFE 2012) [ONLINE] Available at <http://cmfe.eu/?p=772>

⁶ Legge 6 agosto 1990, n. 223 'Legge Mammi', disciplina il sistema radiotelevisivo pubblico e privato

⁷ Conseil supérieur de l'audiovisuel, Communiqué 34, 29 August 1989

⁸ P Jauert and O Prehn, The Danish Subsidy Scheme for Non-Commercial Local Stations (Javnost, 2003 Vol 10, No 1) [ONLINE] Available at <http://www.javnost-thepublic.org/article/2003/1/5/>

Netherlands are independent of public authorities but must have a governing body that is representative of the main social, cultural, religious and political movements in the locality.

Community broadcasting in the UK commenced with local cable radio and TV in the 1970s, unlicensed radio in the 1980s and event-based broadcasting in the 1990s. Following the change of government in 1997 and a successful pilot scheme⁹ new legislation to provide for community radio was introduced in 2004¹⁰. As of 2016 there were 239 licensed community radio stations on air¹¹. No organisation may control more than one licence and not more than 50 per cent of revenue may come from advertising and programme sponsorship.

The growth of community media in Western Europe resulted from a combination of social, economic and political factors. Economic liberalisation and the growth of private commercial media have brought pressure to reduce the dominance of state and publicly-owned media. New technologies have greatly lowered the entry costs, first with the growth of FM radio and later with the internet. From a vibrant civil society, especially in countries with a long democratic history, have emerged practical initiatives and media reform campaigns. Policy and law making has brought an end to media monopolies and support for media pluralism.

In the countries of the former Eastern Bloc community media has been slower to emerge than in Western Europe. Hungary was the exception, led by Tilos Radio which commenced as an unlicensed station in 1991. There has been legal recognition and support for a category of not-for-profit broadcaster in Hungary since 1996¹², however the law changed in 2010 and community broadcasting services are no longer defined by a not-for-profit characteristic¹³.

Limited examples of community media exist in Czech Republic, Estonia, Lithuania, Poland and Romania. A review of community media in Central and Eastern Europe by Doliwa and Rankovic¹⁴ suggests a number of obstacles to community media development including a lack of political will, low levels of awareness, a weak civil society, limited public funding and allocation of much of the broadcast spectrum to private commercial and public media.

2. Prospects for community media in Ukraine

Many of the obstacles to community media development which Doliwa and Rankovic identify elsewhere are also found in Ukraine, including low levels of awareness and a relatively under-developed civil society even though the country is considered a leader within the post-Soviet space. With the growth of private commercial broadcasting in Ukraine much of the available broadcasting spectrum has been allocated although there are also new opportunities which are discussed further below. The challenges for media development generally are heightened by the impact of the deep recession in 2015 on all parts of the economy and the continuing conflict in Donbass. The economic conditions tend to reinforce a protectionist attitude among some private commercial broadcasters who are reluctant to cede audiences and revenue to new entrants. The conflict has led to legitimate concerns about the misuse of broadcasting for propagandist content and hate speech.

⁹ A Everitt, *New Voices: An Evaluation of 15 Access Radio Pilots* (Radio Authority, 2013)

¹⁰ The Community Radio Order 2004

¹¹ Ofcom, *Communications Market Report 2016* [ONLINE] Available at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr16/>

¹² Act I of 1996 on Radio and Television Broadcasting

¹³ Act CLXXXV of 2010 On Media Services and Mass Media

¹⁴ U Doliwa and L Rankovic, *Time for Community Media in Central and Eastern Europe*, *Central European Journal of Communication* 2014 Vol 1, pp 18-33

Despite these challenges, Ukraine has also made remarkable progress on media law reform, particularly since 2014. This has included strengthened access to public information, the end of State and local authority ownership in the press, and the commencement of a process to transform national and regional public media into a new public service broadcaster¹⁵. The addition of community media to the broadcasting landscape would be a further important signal of the transformation of Ukraine towards a more open and participatory democracy.

2.1 Social and political context

Ukraine has undergone enormous upheavals since it returned to independence in 1991 yet the political system remains overcentralized, a legacy of the Soviet era, while the rapid economic liberalisation of the 1990s has contributed to the emergence of excessive corruption at all levels of society. Both the Orange Revolution of 2004 and the Euromaidan of 2013 to 2014 brought into the street public demands for a deeper political renewal. The growth of civic activism in Ukraine has been a key driver for democratic transition. Reform-minded actors have called for increased political accountability, greater transparency, an end to monopolies and corruption, strengthened rule of law and decentralisation.

Media law reform and media development form part of a broader reform agenda in Ukraine and can contribute to these goals, but are also linked, for political decision makers, to the harmonisation of Ukrainian legislation with the *acquis* and standards of the European Union including in the area of freedom of expression and the regulation of audio-visual services.

The Ukrainian Parliamentary Committee on Freedom of Speech and Information Policy has adopted a broad strategy for the development of Ukrainian media law in line with European standards which includes a commitment to the development of community media as a third sector, alongside commercial and public media, and for it to replace the existing model of government and local authority control over local radio and TV broadcasters.¹⁶

For community media to take root in Ukraine this strategy must not only be translated into media law and implemented through licensing and regulation but also complemented by awareness raising and capacity building among civil society actors at the local level.

2.2 Current media landscape

According to the State Register of broadcasters and programme service providers there were 27 national TV companies, 76 regional TV companies and 366 local TV companies at the beginning of 2015. Radio broadcasting consisted of 13 national companies, 52 regional companies and 452 local broadcasters. Some companies hold more than one licence. Of 1563 broadcasting licences, 36 were held by state companies, 298 were the property of municipal authorities, and 1229 were held by private and other operators.¹⁷

¹⁵ The Law of Ukraine 'On Public Television and Radio Broadcasting of Ukraine' (Vidomosti Verkhovnoi Rady Ukrainy, 2014, No. 27, p. 904)

¹⁶ Strategy for the Development of Ukrainian Legislation on the Freedom of Speech and Media in line with European Standards, Ukrainian Parliamentary Committee for Freedom of Speech and Information Policy, Adopted on 27 January 2016 [ONLINE] Available at http://komsvobslova.rada.gov.ua/komsvobslova/control/uk/publish/article?art_id=53577

¹⁷ National Council of Ukraine for Television and Radio [ONLINE] Available at <http://nrada.gov.ua>

Despite the apparently large number of channels and licences, private media ownership is dominated by a small number of wealthy businessmen with interests in politics and other industries. Five major media groups control most of the national TV companies. Most of the 'local' private FM radio broadcasters are part of national networks with shared branding and programming but a local advertising sales operation. Local TV is somewhat more diverse but largely confined to the analogue cable platform due to the high costs of carriage on satellite and digital terrestrial. Zeonbud is the monopoly provider for digital terrestrial TV having been awarded the licence to operate four multiplex channels through an opaque process.¹⁸

State owned radio and television services are being brought together in 2016 into one national public service broadcasting organisation with a network of regional offices. Local authority owned municipal radio and TV channels suffer from poor audience reach, outdated infrastructure, lack of political support and a Soviet era model of functioning, typically as the public communications arm of the municipality or the local mayor's office.

There is little immediate scope to develop community television due to the lack of analogue frequencies, delays in the timetable for digital switchover and political concerns about the monopoly position of Zeonbud. The broadcasting regulator is however exploring the conditions for developing a fifth multiplex that could carry local and regional channels.

The FM radio platform is a more relevant opportunity for community media. While much of the available FM spectrum has been allocated to private radio networks there remain some unused frequencies even in the largest cities and outside of the major urban areas, spectrum scarcity is less of a problem. Furthermore large parts of the frequency resource for FM radio are currently occupied by VHF analogue TV, including in Kyiv and other major cities. The transition to digital terrestrial TV should lead to analogue TV channels being switched off in the medium term, releasing capacity for many more FM radio channels. The future release of this spectrum presents an opportunity to greatly increase the diversity of radio broadcasting and community radio, in particular, could be among the new services.

2.3 Media law and regulation

International observers describe the constitutional and legal framework for media in Ukraine as being among the most progressive in Eastern Europe¹⁹ although there are significant challenges in translating media law reform into real world implementation.

Article 34 of the Constitution of Ukraine guarantees the right to freedom of thought and speech, and to the free expression of views and beliefs, while according to Article 15, censorship is prohibited. Broadcasting is regulated by the National Council of Ukraine for Television and Radio, an independent regulatory body established since 1997²⁰.

Some residual media law functions including the power to prepare draft media legislation rest with the separate State Committee for Television and Radio Broadcasting of Ukraine.

The framework for regulation of broadcasting is in the 2006 Law on Television and Radio Broadcasting which structures the broadcast landscape and sets out the licensing process. It defines community broadcasting organisations [громадські телерадіоорганізації] as:

¹⁸ Freedom of the Press 2016: Ukraine (Freedom House, 2016)

¹⁹ Freedom of the Press 2016: Ukraine (Freedom House, 2016)

²⁰ The Law of Ukraine 'On the National Council of Ukraine for Television and Radio' (Vidomosti Verkhovnoi Rady Ukrainy, 1997, No. 48, p. 296)

*broadcasting organisations which under the law are non-profit organizations established to meet the information needs of territorial communities*²¹

This is a somewhat narrow definition as it does not allow for communities of interest.

Further detail on the category of community broadcasting is provided in Article 18:

1. Community broadcasting organisations are created by physical and/or legal entities to meet the information needs of communities in a manner determined by this Law, the Civil Code of Ukraine, the Economic Code of Ukraine and the Law of Ukraine "On Citizens' Associations".

2. Community broadcasting organizations have no right to do business and carry only non-profit activity.

*3. Community broadcasting organizations have the status of non-profit organizations.*²²

The second paragraph is overly restrictive since 'non-profit' should not prevent the sale of services and other revenue generating activities that can contribute to sustainability.

In addition to the category of community broadcasting organisations there is a category of municipal broadcasting organisations [комунальні телерадіоорганізації] defined as:

*established by local government with the participation of the territorial community in accordance with the law for broadcasting organisations, where at least half of the stock or shares of the authorised capital are in municipal ownership*²³

According to the provisions of Article 16:

1. Municipal broadcasting organisations are created for territorial communities

*2. The establishment and funding of municipal broadcasting organisations is undertaken by the corresponding local municipal authority*²⁴

Despite the existence of the category of community broadcasting organisation in Article 18, there is no specific provision elsewhere in the legislation to differentiate the process of licensing and regulation of this sector from private commercial and other broadcasters.

In July 2015 the State Committee for Television and Radio Broadcasting of Ukraine published a draft Law on the introduction of community broadcasting which was based closely on the application of the regulatory framework for public service broadcasting²⁵. This draft law was

²¹ The Law of Ukraine on Television and Radio Broadcasting (Vidomosti Verkhovnoi Rady Ukrainy, 2006, No. 18, p. 155), Article 1

²² The Law of Ukraine on Television and Radio Broadcasting, Article 18

²³ The Law of Ukraine on Television and Radio Broadcasting, Article 1

²⁴ The Law of Ukraine on Television and Radio Broadcasting, Article 16

²⁵ State Committee for Television and Radio Broadcasting of Ukraine, Draft Law of Ukraine 'On amendments to certain Laws of Ukraine on the introduction of community broadcasting according to the principles of public service broadcasting', 10 July 2015

rejected by the National Council in a decision published on 7 July 2016²⁶ on the grounds that it was in conflict with the Law of 2006. The State Committee has also published a draft Law on Audio Visual Services although this does not contain provision for community media²⁷.

In the meantime the National Council is working on its own version of a draft law on community broadcasting as well as a comprehensive draft Law on Audio Visual Services to replace the Law of 2016. The latter may also include a section on community broadcasting.

3. Principles and standards for community media law and regulation

The growth of community media in Europe and internationally has been accompanied by increasing recognition of this media sector in international declarations and standards on freedom of expression. International associations including the World Association of Community Radio Broadcasters (AMARC)²⁸ and Community Media Forum Europe²⁹ have contributed to this effort through research, advocacy and policy dialogue, engaging with international and intergovernmental bodies and supporting country-level campaigns.

Among the key references is a set of 14 Principles for a Democratic Legislation on Community Broadcasting³⁰ developed through extensive stakeholder consultation, adopted by AMARC on 3 May 2008, and later endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in his 2010 Annual Report to the UN Human Rights Council:

It is recommended that States establish a legal framework that recognizes and regulates community-based communication within the framework of the 14 principles presented in this report and that a fair balance be struck in terms of frequency allocation among community-based media, commercial media and public-sector or State media.³¹

The principles broadly cover three categories which relate to international standards and good practice for the licensing and development of community broadcasting: recognition and differentiation, access and regulation, and funding and sustainability. Similar issues are also found in comparative studies into community media policy, law and regulation.³²

3.1 Recognition and differentiation

The emergence of community broadcasting as a distinct 'third' sector meriting recognition in international standards on freedom of expression and media pluralism is articulated in the

²⁶ National Council for Television and Radio Broadcasting, Decision number 1516 on the draft Law of Ukraine "On Amendments to Some Laws of Ukraine on the introduction of community broadcasting according to the principles of public service broadcasting" received from the State Committee for Television and Radio Broadcasting of Ukraine, 7 July 2016

²⁷ State Committee for Television and Radio Broadcasting of Ukraine, Draft Law of Ukraine "On amendments to the Law of Ukraine 'On Television and Radio Broadcasting'", 4 December 2015

²⁸ For more information see <http://www.amarc.org>

²⁹ For more information see <http://www.cmfe.eu>

³⁰ Principles for a Democratic Legislation on Community Broadcasting (AMARC, 2008) [ONLINE] Available at [http://www.globalmediapolicy.net/sites/default/files/Principles_Community_Broadcasting_Legislation\(1\).pdf](http://www.globalmediapolicy.net/sites/default/files/Principles_Community_Broadcasting_Legislation(1).pdf)

³¹ UN Special Rapporteur on Freedom of Opinion and Expression, 2010 Annual Report to the UN Human Rights Council, para. 122

³² S Buckley, K Duer, T Mendel and S O'Siochru, *Broadcasting Voice and Accountability: a Public Interest approach to Policy, Law and Regulation* (World Bank/University of Michigan Press, 2008); T Mendel, *Tuning into Development: International Comparative Survey of Community Broadcasting Regulation* (UNESCO, 2013)

African Charter on Broadcasting, adopted in 2001 at the UNESCO-sponsored international Windhoek+10 conference to mark World Press Freedom Day, after a decade of political reform and democratisation that swept across Africa as well as Eastern Europe.

*The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community.*³³

This 'three-tier' model for assuring media pluralism is also to be found in the European Parliament Resolution of 2008 on Community Media in Europe, which:

*Advises Member States, without causing detriment to traditional media, to give legal recognition to community media as a distinct group alongside commercial and public media where such recognition is still lacking.*³⁴

The Council of Europe Declaration of 2009 on the role of community media in promoting social cohesion and intercultural dialogue similarly, in its preamble:

*Recognises community media as a distinct media sector, alongside public service and private commercial media and, in this connection, highlights the necessity to examine the question of how to adapt legal frameworks which would enable the recognition and the development of community media and the proper performance of their social functions.*³⁵

The recognition of community media as a third sector requires a definition to set out the distinguishing characteristics of this sector. There is no single authoritative definition but international standards broadly share a requirement that community media have a social purpose, not for profit status, independence of political and private economic interests, provisions for public access and participation, and service to their community, whether this is geographic or of special interest. The AMARC Principles, referred to above, state:

*Community radio and television are private entities with public objectives. They are managed by various types of non-profit social organisations. Their fundamental characteristic is the participation of the community in ownership as well as programming, management, operation, financing and evaluation. They are independent and non-governmental media that are not dependent on or part of political parties or private firms.*³⁶

The Declaration of the Committee of Ministers of the Council of Europe of 2009 has a comprehensive definition that includes independence from 'religious institutions':

Noting that community media, taking the form of broadcasting and/or other electronic media projects, as well as print format, may share to a greater or lesser extent some of the following characteristics: independence from

³³ African Charter on Broadcasting, Adopted on 5 May 2001, Windhoek, Part I, para. 1

³⁴ European Parliament Resolution on Community Media in Europe, A6-0263/08, 25 September 2008, para 15

³⁵ Council of Europe, Declaration of the Committee of Ministers on the Role of Community Media in Promoting Social Cohesion and Intercultural Dialogue, 2009, para. (i)

³⁶ Principles for a Democratic Legislation on Community Broadcasting (AMARC 2008), para. 3

*government, commercial and religious institutions and political parties; a not-for-profit nature; voluntary participation of members of civil society in the devising and management of programmes; activities aiming at social gain and community benefit; ownership by and accountability to the communities of place and/ or of interest which they serve; commitment to inclusive and intercultural practices.*³⁷

3.2 Access and regulation

The differentiation of community media as a distinct sector provides a legal and policy basis for assuring specific arrangements for access to essential technical resources (frequencies and platforms) including appropriate reach and visibility for the target audience. It also provides the foundation for regulatory arrangements that can be designed to protect the character of the service and to assure its distinctive contribution to the media landscape.

Access to frequencies and platforms is of particular importance and this is recognised by the UN Human Rights Committee in its 2011 General Comment on freedom of expression, an authoritative interpretation of obligations under the International Covenant on Civil and Political Rights, to which Ukraine is a State party. The General Comment notes:

*Licensing regimes for broadcasting via media with limited capacity, such as audio-visual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters.*³⁸

The European Parliament Resolution of 2008 is clear the requirement for access by community media applies to television and radio spectrum, analogue and digital:

*Calls on Member States to make television and radio frequency spectrum available, both analogue and digital, bearing in mind that the service provided by community media is not to be assessed in terms of opportunity cost or justification of the cost of spectrum allocation but rather in the social value it represents.*³⁹

The Declaration of the Committee of Ministers of the Council of Europe of 2009 also highlights the importance of access to both analogue and digital frequencies:

*Draws attention to the desirability of allocating to community media, to the extent possible, a sufficient number of frequencies, both in analogue and digital environments, and ensuring that community broadcasting media are not disadvantaged after the transition to the digital environment.*⁴⁰

In a Joint Declaration on media diversity, the international special mandates on freedom of expression address the question of access and note that this may include not only access to frequencies but also 'must-carry' rules, interoperability, and access to support services:

³⁷ Council of Europe, Declaration of the Committee of Ministers on the Role of Community Media in Promoting Social Cohesion and Intercultural Dialogue, 2009, preamble

³⁸ UN Human Rights Committee, General Comment No. 34, 12 September 2011, para. 39

³⁹ European Parliament Resolution on Community Media in Europe, A6-0263/08, 25 September 2008, para 19

⁴⁰ Council of Europe, Declaration of the Committee of Ministers on the Role of Community Media in Promoting Social Cohesion and Intercultural Dialogue, 2009, para (ii)

Different types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms. Specific measures to promote diversity may include reservation of adequate frequencies for different types of broadcasters, must-carry rules, a requirement that both distribution and reception technologies are complementary and/or interoperable, including across national frontiers, and non-discriminatory access to support services, such as electronic programme guides.⁴¹

In the face of growing importance of multi-channel distribution platforms such as cable, satellite and digital terrestrial TV, community media should not be excluded by cost or afforded less prominence to their audience than private or public service broadcasters.

In most countries, including Ukraine, community media are free to establish on the internet but access to limited resources such as spectrum and channels is normally managed through a licensing regime. The licensing of broadcast services and programme distribution services should be undertaken by an independent regulatory body with a duty to operate in the public interest and to assure fair and equitable access to different types of broadcaster.

The UN Human Rights Committee states, in the General Comment referred to above:

States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant.⁴²

Licensing of community broadcasting, where necessary, should be appropriate to the characteristics of the sector and should not place it in competition with private commercial broadcasters. Application procedures should be straightforward and low cost or free of charge. Selection criteria should be published and designed to assure that proposals meet the definition of community media, respond to the interests of the target community, and are likely to deliver social value and to be sustainable for the duration of the licence.

3.3 Funding and sustainability

Community media are forms of social enterprise. They seek to build an economic model of sustainability in order to achieve success in the pursuit of their social objectives. Models of economic sustainability for community media are diverse but there are some characteristics commonly found in the most durable organisations. These include support from within the target community – donations, membership schemes, fundraising events, payment for small announcements, charges for the provision of services. They include mobilising support from external sources such as public development agencies and non-governmental organisations,

⁴¹ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 12 December 2007

⁴² UN Human Rights Committee, General Comment No. 34, 12 September 2011, para. 39

by offering a platform for social communication and public engagement. They also include an ability to control costs and to operate on low margins often relying on volunteers.⁴³

Not all community media carry advertising or commercial sponsorship but many do. Where advertising and sponsorship is permitted it is sometimes accompanied by regulatory restrictions such as the number of advertising minutes allowed per hour, or the quantity of advertising as a percentage of total revenue. Restrictions on commercial revenue should be designed only to protect the character of the service and not undermine its viability. The AMARC Principles for a Democratic Legislation on Community Broadcasting state:

Organized communities and non-profit groups that provide community broadcasting services have the right to assure their economic sustainability, independence and development, through resources such as donations, sponsorships, commercial and public advertising and other legitimate means. All of these will be entirely reinvested for the functioning of the station and the achievement of its goals. Any limitations imposed on the amount of time or quantity of advertising must be reasonable and non-discriminatory. Community media should present accounts to the community, making their financial management transparent and public.⁴⁴

In countries where law and regulation supports community media, public funding is sometimes also in place to support sustainability and social value. European countries that provide public funding support for community media include Austria, Belgium, Denmark, Ireland, France, Germany, Netherlands and the United Kingdom⁴⁵. In addition community media benefit in many cases from reduced costs or exemption from licensing fees.

4. Recommendations for a community media strategy in Ukraine

4.1 Legal and regulatory arrangements

- Community media should be provided for in law as a distinct category of broadcasting services (radio or TV) that are established by registered not-for-profit organisations.
- There should be no a priori limit on their territorial coverage or their location
- Application for a licence to operate a community broadcasting service should be a separate process to those in place for private commercial and public service media.
- Licences should be awarded on a fair, open and competitive basis
- An applicant for a licence to operate a community broadcasting service should be required to demonstrate that it is independent of any political, religious or private commercial organisation and that no person or entity that is prohibited from holding a broadcasting licence in Ukraine is able to exercise control over the applicant
- In making an application for a licence to operate a community broadcasting service the applicant should be able to demonstrate that it meets the following requirements:
 - its proposals are designed to serve a particular territorial community or community of interest and will add to the diversity of services available;
 - its proposals responds to the informational, educational, cultural and linguistic interests of the community served including minority interests;
 - its proposals demonstrate evidence of community demand and support (for example petitions, letters in support, surveys and focus group results);

⁴³ S Buckley, Community Media: A Good Practice Handbook (UNESCO, 2011)

⁴⁴ Principles for a Democratic Legislation on Community Broadcasting (AMARC 2008), para. 12

⁴⁵ Community Media Forum Europe, First Mapping of Community Media in Europe (CMFE 2012)

- its proposals demonstrate plans for public access and participation in the operation of the service and accountability to the community served; and
 - its proposals are likely to be sustainable for the duration of the licence
- No one organisation should be able to hold more than one community media licence to operate on the same platform but they may hold separate licences to operate a similar service on both radio and television and/or on both analogue and digital
- Community broadcasting services should be permitted to carry advertising with no greater restrictions than those that currently apply to commercial broadcasting
- General content regulation for community broadcasting should not be more onerous than that which applies to commercial broadcasting but should include a requirement that news and current affairs is based on fair and accurate reporting and during election periods there should be no favouritism towards particular parties or candidates
- The legal provisions for the regulation of community media should replace the current legal provisions for both community broadcasting and municipal broadcasting in the Law of 2006 and should be included as a chapter in the new Law on Audio Visual Services or as a separate Law on Community Media including amendment to existing legislation
- In advance of the adoption of new legislation on community broadcasting, the National Council should consider operating within its powers under existing legislation to licence a range and diversity of FM community radio broadcasting services on a trial basis

4.2 Technical aspects including frequencies and channels

- Technical planning for community radio should not place a priori limits on transmission power but for services covering a limited geographical area one frequency assignment per service with an effective radiated power of 100-500W will normally be adequate
- A sufficient number of the remaining frequencies currently available in the FM radio band (97.5 – 108 MHz) should be reserved for community radio broadcasting
- Planning for future use of those parts of the FM band to be vacated by analogue television after digital switchover should include frequencies for community radio
- Part of at least one of the digital television multiplexes should be reserved for local community television services in the future including a 'must carry' requirement and guaranteed first page prominence on the digital TV electronic programme guide

4.3 Measures to assure the sustainability of the sector

- Local municipal authorities should be permitted to provide financial support to community broadcasting provided this is transparent, offered on a fair and competitive basis to all community broadcasting services in their administrative territory, and is provided for a fixed duration without interference in the independence of the service
- Support should be provided to facilitate the conversion of existing municipal broadcasting services into independent community broadcasting services
- Consideration should be given to the establishment of a national fund to support community media that would support operating costs and local news reporting
- There should be no licence fee charges for community broadcasting services
- Access for community media to multi-channel distribution platforms such as digital terrestrial television should be at no or low cost as a multiplex licence condition
- Support should be provided for training and capacity building to develop the production, journalistic, technical and management skills required for community broadcasting

4.4 Implementation including timescale and phasing

- Short term – next 12 months
 - Investment should continue to raise awareness and understanding of community media particularly among local civil society organisations
 - A trial broadcasting scheme should commence with a range of FM community radio broadcasting services – territorial, community of interest, ex municipal
 - The National Council should undertake economic modelling for community media and evaluate the feasibility of creating a statutory funding mechanism
 - A toolkit should be developed for the legal and operational conversion of existing municipal radio and television into community broadcasting services
 - Public and stakeholder consultation should be completed on the draft Law on Audio Visual Services and a Bill should be tabled in the Parliament
 - Frequency planning should be undertaken for the short and medium term
- Medium term – next 3 years
 - The trial broadcasting scheme for FM community radio should be evaluated and lessons learned for future licensing and regulation by the National Council
 - Following the approval of the new Law on Audio Visual Services, the National Council should commence a managed roll out of community radio licences
 - FM frequencies should be reserved for community broadcasting in the VHF spectrum that is freed up by switchover to digital terrestrial television
 - Feasibility planning should commence for a tier of community television channels to be carried on the digital terrestrial television platform