
A Policy and Strategy for Digital Broadcasting that meets General Interest Objectives

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BROADCASTING AUTHORITY
MALTA



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Executive Summary

On the 15th September 2007 the MCA and the BA jointly published a consultation document on broadcasting meeting General Interest Objectives (GIOs). The consultation period was spread over five months.

The consultation document was built around a number of fundamental principles that are seen to constitute the conceptual framework within which a GIO set-up should be modelled, and namely:

- The public's right to free-to-air viewership of GIO channels via unencrypted transmission;
- An adequate number of GIO broadcasters, balanced against minimal distortion of market mechanisms;
- Efficient use of spectrum;
- Sufficient frequency spectrum for GIO broadcasting such as to cater for future needs, on the basis of known (existing and foreseen) technology capabilities;
- The concept of GIO broadcasting to embrace both the public service broadcaster as well as a number of private broadcasters;
- The application for GIO status, by privately owned stations, on a voluntary basis;
- The award of GIO status only on the basis of stringent qualifying criteria;
- PBS as the 'de facto' public service broadcaster;
- The need for transition costs to be kept at manageable levels;
- Broadcasting to go beyond GIO's via the award of commercial licences.

These principles are confirmed as constituting the framework to this policy document.

In determining the nature and ownership of the network, the Government has taken in consideration the responses received. It is deemed that the most attractive option is the one which contemplates the setting up of a distinct GIO network.

Government has, moreover, taken cognisance of the fact that PBS is the only broadcaster that has an obligatory requirement to operate under a GIO remit. This makes PBS the ideal entity to organise and run the GIO multiplex. PBS will therefore be appointed as the network operator for broadcasting that meets GIOs.

As a result of this arrangement, there will be no need to enforce must carry obligations on terrestrial commercial networks. Such a course of action would result in an unnecessary duplication of transmission capacity.

The following are the other key features of the Policy direction that the Government has adopted with respect to broadcasting that meets GIO's:

- The GIO network will be required to carry up to six GIO TV stations.
- All transmissions on the GIO networks will be unencrypted and therefore viewable without the need for any subscription to a network operator and free of charge.
- The second frequency reserved for GIO use will be kept in reserve for the eventual transition of GIO stations to HDTV.

- The BA, with the technical assistance of the MCA, will provide the necessary oversight to the operation of the GIO network.
- On the drawing up of detailed criteria by the BA an eligibility test for broadcasters will be carried out, with right of first choice for existing analogue terrestrial.
- Vacant slot/s on the GIO network will subsequently be filled via a call for expressions of interest.

An implementation strategy has been drawn up on the basis of this policy direction.

The publication of this policy document denotes the start of a series of initiatives that will lead up to analogue turn-off, set for the end of December 2010. Such initiatives will include updating of the Broadcasting Act, the refinement of the high level GIO eligibility criteria, the setting up of the GIO network infrastructure, the selection of GIO stations and public information initiatives. These will pose quite an implementation challenge to all concerned.

1 Purpose

This Document represents Government's policy position and strategy relative to the assignment of Digital Terrestrial Frequencies reserved for broadcasting that meets General Interest Objectives (GIOs). The basis for this final position is the related consultation exercise carried out jointly by the Malta Communications Authority (MCA) and the Broadcasting Authority (BA), a synopsis of which can be seen in Appendix A.

2 Background

On the 15th September 2007 the MCA and the BA jointly published a consultation document on broadcasting meeting General Interest Objectives (GIOs). The consultation period was spread over three months, subsequently extended by a further two months at the express request of a number of broadcasters.

2.1 Consultation Highlights

The consultation document, in the form of a draft policy position, dealt with both content and transmission aspects. Essentially the document made proposals in relation to the following:

- a) the criteria that will be used to classify a broadcast as one meeting GIOs;
- b) the reservation of two internationally coordinated frequencies for GIO purposes (with possibly a third frequency being made available for assignment only following successful coordination with neighbouring countries);
- c) The reservation of one of the two available frequencies for Government use (PBS, ED22, other services) with the remaining frequency potentially carrying 4 GIO broadcasters;
- d) the process to be used by the Broadcasting Authority to allot spectrum capacity to the qualifying broadcasters;
- e) The assignment of GIO frequencies to GO with concomitant must-carry obligations, without charge to broadcasters;
- f) the conditions attached to the usage of these frequencies;
- g) The manner by which any 'must-carry' obligations would be applied across the different technology platforms.
- h) The need for GIO broadcasting to remain free to air in the Digital domain, just as it is in the existing analogue environment;
- i) Ancillary aspects such as the need to review the overall broadcasting policy and the necessity to unblock the impasse with Italy on the coordination of frequencies.

2.2 Consultation Feedback

At the end of the consultation period six submissions had been received from:

GO

Melita Cable

All existing analogue terrestrial broadcasters (joint response)

Mr. Joseph Muscat (MEP)

Eden Leisure Group

Projects in Motion

The MCA/BA also held one-to-one discussions with a number of respondents at their express request.

The following points capture the main feedback with respect to the consultation:

1. The criteria for classification of broadcasters meeting GIO have not, to any significant extent, been put in question.
2. On the proposed assignment of the GIO frequencies to GO for 'must carry' purposes, two respondents question the reservation of three frequencies for the purpose on the grounds of proportionality with the need to safeguard the general interest.
3. With the exception of one respondent there is overall agreement, on the need for GIO stations to be transmitted in unencrypted form (and therefore free to viewers on the terrestrial platform).
4. On the proposed assignment of the frequencies (reserved for GIO) to GO with an obligation for GO to carry for free, one respondent is contesting the requirement to carry broadcasters without remuneration. The respondent contends that this treatment would be discriminatory.
5. There is, overall, disagreement (albeit for different reasons) either with the proposed imposition of a must-carry obligation on GO, or with the conditions under which this is being proposed.

The issues raised in points 2, 4 and 5 merit further attention given that they constitute key elements of the draft policy put out for consultation. A careful study of the responses has led Government, with input from the two Authorities concerned, to review the original proposal. Whilst the policy proposal remains a feasible option in terms of a way forward, a viable alternative that also addresses, to the extent possible, the concerns of stakeholders, is preferred.

3 Way forward

It is premised that, set within a framework of fundamental principles, there exist various viable options for the setting up of a GIO network on the digital terrestrial platform, the two main models being:

1. Via the imposition of a must-carry obligation on the main commercial operator or
2. Via the setting up of an independent GIO network.

Given that this will be a wireless terrestrial platform with both networks transmitting on the same standards, viewer equipment will be able to receive the unencrypted transmissions from whichever network they emanate. Thus, for example, subscribers of a commercial network (such as GO) would still be able to watch, on the same set top box, free-to-air (unencrypted) transmissions emanating from the GIO network.

3.1 Fundamental Principles

A number of fundamental principles, that constitute the conceptual framework within which a GIO set-up should be modelled, have been articulated in the draft policy and remain unchanged.

These principles are:

- The public's right to free-to-air viewership of GIO channels via unencrypted transmission;
- An adequate number of GIO broadcasters, balanced against minimal distortion of market mechanisms;
- Efficient use of spectrum;
- Sufficient frequency spectrum for GIO broadcasting such as to cater for future needs, on the basis of known (existing and foreseen) technology capabilities;
- The concept of GIO broadcasting to embrace both the public service broadcaster as well as a number of private broadcasters;
- The application for GIO status, by privately owned stations, on a voluntary basis;
- The award of GIO status only on the basis of stringent qualifying criteria;
- PBS as the 'de facto' public service broadcaster;
- The need for transition costs to be kept at manageable levels;
- Broadcasting to go beyond GIO's via the award of commercial licences.

These fundamental principles, as articulated in the draft policy remain unchanged.

3.2 The GIO Network

On the basis of the responses received it is deemed that the most attractive option is the one which contemplates the setting up of a distinct GIO network.

In determining the nature and ownership of the network, the Government has taken in consideration the responses received and has moreover taken cognisance of the fact that PBS is the only broadcaster that has an obligatory requirement to operate under a GIO remit. This makes PBS the ideal entity to organise and run the GIO multiplex.

PBS will therefore be appointed as the network operator for broadcasting that meets GIOs. All broadcasts on the GIO network will be transmitted in unencrypted mode. The frequency assignment to PBS is therefore subject to these conditions. This arrangement will give broadcasters the integrity to operate from a distinct and dedicated network.

As a result of this arrangement, there will be no need to enforce must carry obligations on GO. Such a course of action would result in an unnecessary duplication of transmission capacity.

This new arrangement raises a number of related questions that are addressed in the subsequent section.

4 GIO Frequencies Allocation and Deployment

The indicated way forward - formed on the basis of feedback to the consultation exercise - coupled with developments over the past months¹, would indicate the need for a review of the intended utilisation of the frequencies reserved for the transmission of broadcast channels meeting GIOs.

In the 2005 'umbrella' policy and strategy, Government had committed three frequencies for the purpose of broadcasting that meets GIOs. The commitment was based on the availability of internationally coordinated frequencies – nineteen in all - available to Malta at the time. During the 2006 Regional Radio communications Conference (RRC06), the number of internationally coordinated frequencies was reduced to nine, meaning that Malta had to reconfirm its coordination agreements with neighbouring countries for the remaining ten frequencies.

Malta has consistently striven to resolve coordination issues with Italy with a view to regaining the number of frequencies available for local transmission. However, the process is turning out to be rather lengthy and a solution is not as yet in sight.

The GIO policy is therefore based on this new reality.

4.1 Number of frequencies allocated for purposes of broadcasting meeting GIOs

The extent of frequency spectrum reservation for potential GIO stations has, among others², to be seen in the context of available (coordinated) frequencies.

Two frequencies have been allocated for broadcasting meeting GIOs. The commissioning of a third frequency for GIO purposes should not take place until such time as changing conditions would militate in favour of a revision of the policy in this direction.

The following two frequencies are allocated for GIO broadcasting:

Channel 5 VHF
Channel 66 UHF

4.2 Timing for Deployment of GIO frequencies

Cost is a key consideration underlying the setting up and running of a GIO network. Whilst it is acknowledged that more economical permutations exist, the proposal to allot relatively generous frequency space to broadcasters has been based on the premise that in the event of a future transition to more bandwidth-

¹ Essentially a key variable is the difficult coordination exercise under way with neighbouring countries, foremost among which, Italy.

² A number of respondents to the consultation document questioned the eventual deployment of three frequencies, arguing that this may be in excess of the spirit of the Universal Service Directive. This point is subject to interpretation.

hungry HDTV, there would be sufficient space for GIO broadcasters to be able to make the transition.

Government deems this policy direction as holding good. The transition to HDTV is not a short term event and it is not feasible at this stage to declare HDTV as constituting a GIO, given that most of the viewing public is not in possession of HD-ready receiver equipment³.

The ideal compromise is seen in the gradual deployment of available GIO frequencies. Such a course of action would minimise costs on the GIO network whilst ensuring adequate capacity in future when HDTV eventually becomes a GIO standard.

One of the two channels indicated in 4.1 above⁴ will be assigned to PBS following conclusion of the necessary technical discussions. The second frequency will be held in reserve pending the introduction of HDTV as a mode of transmission that meets the general interest.

4.3 Number of potential GIO broadcasters

The number of potential broadcasters on the PBS-run network will be six. A six-broadcaster multiplex would ensure quality transmission of broadcasts that meet GIOs.

4.4 Reservation of frequency for HDTV

The second frequency will be held in reserve for eventual HDTV transmissions by GIO broadcasters. However, one needs to assess whether short-to medium-term use of the frequency can be made until such time as it is needed for the intended purpose.

Government will, on the advice of the MCA and the BA, explore available options before proceeding accordingly.

4.5 Oversight of the GIO network

The relationship between PBS as the network operator and the hosted GIO broadcasters will require an element of oversight. The Broadcasting Authority will play a key role regulating the relationship between the various players involved, in order to ensure seamless provision of GIO content to the public.

In regulating these relationships the BA can draw on the MCA's expertise in technical matters⁵ if such advisory assistance is required.

4.6 Eligibility for classification as a broadcaster meeting GIOs

³ Latest available statistics put the figure of Maltese households owning an HD-ready set at below 6%.

⁴ The exact frequency will be determined in the course of technical discussions between the MCA and parties concerned.

⁵ Such assistance is currently contemplated under Article 18 of the Broadcasting Act.

A set of eligibility criteria that the BA can utilise in the determination of candidates' eligibility to GIO may be seen at Section 6.

The detail, to which the eligibility criteria are articulated in this policy document, is to be considered as high level. It is understood that further 'drilling down' into detailed sub-criteria, as well as the setting up of effective performance measures, a selection process and the relative procedures, will be necessary.

Subject to bandwidth availability, broadcasters will have the option to choose whether they want to be classified as meeting GIOs or whether they want to be classified as a commercial channel. In this respect, the BA will revise its licensing framework in line with this new arrangement. Commercial channels will be subject to less stringent content regulation than GIO channels.

A new set of eligibility criteria for the classification of channels as meeting GIOs implies that all broadcasters, whether existing or prospective, need to be validated for eligibility against the detailed criteria should they opt to apply for GIO status.

Government wants to ensure that existing analogue broadcasters benefit from continuity in the transition from analogue to digital terrestrial broadcasting. At the same time, it is recognised that continued access to terrestrial frequency space on a GIO network is not an automatic right. This issue does not arise as a result of the technical aspects of transition from analogue to digital broadcasting but from the need for any direct assignment of broadcasting spectrum to be made on the basis of clearly defined criteria that respect the principles of transparency and proportionality.

Existing analogue free-to-air broadcasters (excepting PBS⁶) will, in the first instance, be requested to confirm whether they want to assume the role of broadcasters meeting GIOs in line with the revised criteria. However, this option can only be exercised subject to their agreeing to - and proving that they have the means to abide by - the new criteria that will be set and administered by the BA.

Calls for prospective GIO broadcasters to fill vacant slots on the GIO network will subsequently be made by the BA via a call for expressions of interest.

⁶ PBS, by virtue of its 'de facto' status of public service broadcaster has no option other than to be a broadcaster meeting GIOs.

5 Summary of Policy Direction

In summary the following are the key features of the Policy direction that the Government has adopted with respect to broadcasting that meets GIO:

- PBS, as the national Public Service Broadcaster, will set up a network composed of one frequency (multiplex) that will serve for broadcasting meeting GIOs.
- The GIO network will be required to carry up to six GIO TV stations.
- All transmissions on the GIO networks will be unencrypted and therefore viewable without the need for any subscription to a network operator and free of charge.
- The second frequency reserved for GIO use will be kept in reserve for the eventual transition of GIO stations to HDTV.
- Until such time as HDTV for GIOs is a reality the MCA and the BA will explore the feasibility of short to medium-term uses of the frequency held in reserve for the purpose.
- The BA, with the technical assistance of the MCA, will provide the necessary oversight to the operation of the GIO network.
- On the drawing up of detailed criteria by the BA an eligibility test for broadcasters will be carried out, with right of first choice for existing analogue terrestrial broadcasters.
- Vacant slot/s on the GIO network will subsequently be filled via a call for expressions of interest.
- The must-carry obligation on commercial Digital terrestrial networks (GO) will be dropped in the interests of spectrum efficiency.

An implementation strategy has been drawn up on the basis of this policy direction.

6 Implementation Strategy

The publication of this policy document denotes the start of a series of initiatives that will lead up to analogue turn-off, set for the end of December 2010. Such initiatives will include updating of the Broadcasting Act, the refinement of the high level GIO eligibility criteria, the setting up of the GIO network infrastructure, the selection of GIO stations and public information initiatives. These will pose quite an implementation challenge to all concerned.

6.1 General

The implementation strategy being considered will not affect current analogue transmissions, which will continue to be available on both the terrestrial and cable networks up to the Analogue Turnoff Date (ATO), currently established for the end of 2010. Any existing analogue broadcasting licences, which expire before ATO, will therefore be extended until this date, but not beyond.

Insofar as commercial broadcasting is concerned, the current legal framework can be utilised⁷. Any new commercial broadcasting licences to be issued by the Broadcasting Authority will be in respect of broadcast content only. Notwithstanding Article 40(1)⁸ of the Broadcasting Act, and in line with the direction put forward in this document, these licences would not be granted the right to be carried under a 'must carry' obligation. An exemption to the application of Article 40 will be required in respect of any commercial broadcast content licences (as opposed to GIO broadcaster licences) for free to air terrestrial broadcasts. Depending on the programme schedule an exemption from parts of article 13(2)⁹ may also be required. The contemplated changes are not necessarily exhaustive and further amendments may be necessary.

Initial transmission, via the terrestrial GIO network,¹⁰ of broadcast channels classified as meeting GIOs, will commence following the implementation of the following tasks:

- a) The drafting and enactment of the necessary updates to legislation to support the implementation of the identified policy measures.
- b) The introduction of a broadcast content licensing process that incorporates the digital environment via a technology-neutral approach.
- c) The notification of PBS as the digital terrestrial transmission network that will carry broadcast channels classified as meeting GIOs, and the award of the reserved frequency capacity for it to honour its obligation.
- d) The setting up of the necessary transmission capacity by the notified transmission network.

⁷ Two such licences have recently been issued.

⁸ Article 40 (1) of the Broadcasting Act states 'Any person licensed to operate a cable television system or any other system for the retransmission of a number of television broadcasting services to the public shall distribute over such system all television broadcasting services other than services devoted entirely to teleshopping, licensed in Malta and receivable terrestrially and free of charge by the general public in Malta.'

⁹ Article 13(2) of the Broadcasting Act states that it shall be the duty of the BA to satisfy itself that, so far as possible, the programmes broadcast by persons providing sound or television broadcasting services in Malta comply with a number of content requirements (see relevant provision).

¹⁰ All analogue terrestrial broadcasters are currently being transmitted in digital format but not on a 'free-to-air' basis.

- e) The drawing up of GIO selection criteria followed by the selection procedure.
- f) The endorsement of the conditions that will regulate the relationship between the PBS-managed GIO network and the GIO broadcasters.
- g) The drawing up and execution of a communications strategy to inform the public of the digital switchover.

These action items are not necessarily sequential. It is expected that in the interests of time, a sizeable element of parallel activity will take place. Neither are they to be considered as being exhaustive.

The Broadcasting Authority will licence broadcasters and will, upon their request, identify those broadcast channels that meet GIOs and allot them space on the reserved frequencies. The Broadcasting Authority will ensure that designated GIO broadcast channels abide by the obligations associated with such a designation.

The Broadcasting Authority will monitor the activities of PBS as the designated GIO network operator.

6.2 Legal Framework

6.2.1 Electronic communications sector

The regulatory framework applicable to the electronic communications sector was overhauled in 2004, with the enactment of ECRA, providing a technology neutral framework that caters for continued technological development. The ECRA, along with the related subsidiary legislation, is harmonised with the European Union framework for the sector and adequately regulates all the policy areas under consideration. No significant legislative changes are therefore required in support of the policy direction being put forward for consideration.

Another piece of legislation that is relevant to this topic is Legal Notice 167/2001, which is a remnant of the pre-2004 regulatory framework. A number of provisions of this Legal Notice have been retained insofar as they apply to broadcasting matters. Notable among these are those provisions relating to the licensing of Cable networks' own broadcast content (the term 'Cable networks' is taken to include terrestrial networks) and other related provisions. Regulation of broadcast content transmitted over cable networks falls under the Broadcasting Act. The repeal of the relevant provisions of LN167/2001 will serve to clarify the rights and obligations of network operators in their role as broadcasters, to the effect that these rights and obligations are aligned to those of all other broadcasters.

6.2.2 Broadcasting and audiovisual sector

The last major legislative change in the audiovisual sector came in 1991 with the introduction of the Broadcasting Act, which made provision for the liberalization of both radio and television services and opened the sector for private radio and television stations, including multi-channel cable television. The white paper that preceded the Act and the licensing regime established by the Act are based on a scenario that is characterised by the sole use of analogue transmission technology.

In February 2003 an expression of interest by the private sector to establish a multi-channel digital television service was received. In view of the fundamental changes that the new technology would introduce, Government embarked on the articulation of the Digital Broadcasting Policy. In consideration of the ATO date established therein, the Broadcasting Authority has not issued any further analogue television licences and both the National Broadcasting Plan published in

1991 and the Broadcasting Act need to be revised to address the realities of today's broadcasting environment.

6.2.2.1 National broadcasting plan

The general principles that form the basis of the National Broadcasting Plan continue to hold valid, however, an update of the plan with respect to television and radio broadcasting policy is now necessary. The following would need to be captured in a revised plan:

Television

- Pluralism in Maltese television will continue to be safeguarded.
- Broadcasts will be allowed on both cable and terrestrial networks and on any other network that may be established.
- Broadcast licences will be issued to the private sector for broadcast channels meeting GIOs and for commercial broadcasts.
- Licences for commercial broadcast content will be subject to the minimum of regulation¹¹ consistent with the public interest and as reflected in local legislation.
- Licences for broadcast channels qualifying as meeting GIOs will be subject to the minimum of regulation consistent with the public interest and as reflected in local legislation and to additional programme content obligations as part of their remit.
- The licence for the public service broadcaster will be subject to the minimum of regulation consistent with the public interest and as reflected in local legislation and to the conditions of the public service obligation contract.
- Digital capacity will be made available to the Broadcasting Authority for the carriage of broadcast channels designated by it as having a public service remit.
- The Broadcasting Authority will be responsible for allotting the bandwidth that will carry each licensed public service and GIO broadcast channel.
- Commercial broadcast content licence holders will need to obtain access to transmission capacity on licensed television networks. Stations will need to notify the Broadcasting Authority, in their TV licence application, with the details of the network operator and the transmission frequency, as may be relevant, as part of the licensing process.

Public service broadcasting media

- Malta's public service broadcasting media will now include:
 - a) PBS Ltd., with its television channel (TVM);
 - b) The educational television channel (Channel 22);
 - c) Radju Malta, Radju Parliament, Magic and the university run radio channel (Campus FM);

General interest broadcasting media

- This category is made up of private television stations that take on the obligation of broadcasting a quantum of programmes of general interest and that are considered by the National Broadcasting Policy to be part of the remit of a public service station.

¹¹ These will be consistent with the Audiovisual Media Services Directive

- These broadcasts will need to complement the PBS Ltd offering and play a substantial role in delivering all or part of the following:
 - a) quality programming across the full range of public tastes and interests;
 - b) programming of an educational and cultural nature;
 - c) news and current affairs programming; and
 - d) a comprehensive and accurate information service in the interests of a democratic and pluralistic society.
- Broadcasting licences issued by the Broadcasting Authority will establish the specific general interest obligations of each station.

6.2.2.2 Broadcasting Act

The following are the key sections of the Broadcasting Act that will need to be amended in order to implement the policy considerations being put forward:

Article 10 – Issue of broadcasting licences.

- To introduce a class of television broadcasting licences applicable to the public service broadcaster, namely a general interest broadcast content licence.
- To introduce two classes of television broadcasting licences applicable to private stations namely a General Interest Broadcast Content Licence and a Commercial Broadcast Content Licence.
- To enact regulations in respect of the application process for television broadcasting licences.
- To amend the provision that restricts the genre of a second station, that is owned by the same entity, to teleshopping. The new provision would allow for a higher number of TV stations. The new provision would apply to TV as well as to radio station ownership¹².

Article 11 – Considerations to guide Broadcasting Authority in the issuance of broadcasting licences.

- To revise the criteria for the assessment of applications for licences in order to take into account the two television licence categories and to remove references to the transmission infrastructure which will no longer form part of the broadcasting licence.

Article 13 - General provisions as to the provision of broadcasting services in Malta and regarding the Authority's duties in respect thereof.

- To take into consideration the two new classes of television broadcasting licences.

Article 18 - Broadcasting frequencies.

- To remove the reference to the assignment of a full frequency channel as part of the broadcasting licence.
- To require applicants for Commercial Broadcast Content Licences to notify details of the network operator, carrier frequency.
- To cater for the allotment of transmission capacity on a carrier frequency in respect of Public Service and GIO Television Broadcasting Licences.

¹² The BA is currently conducting a public consultation process on the possible extension of editorial control from the present maximum of two TV stations.

Article 23 - Submission of Programme Schedules for Authority's approval.

- A clause similar to the one that exempts radio services from the sub-articles (excluding sub-article 1) of this article will be introduced to exempt commercial broadcast content licence holders from requiring prior approval by the Broadcasting Authority for their programme schedule. Submission of the programme schedule to the Broadcasting Authority will, however, be required.

Article 40 - "Must Carry" obligations.

- To be removed given - the overlap with the must-carry provisions contained in the Electronic Communications legislation, as well as its obsolescence, in light of the change in criteria with respect to the establishment of must carry obligations.

First Schedule - Purposes for which provision is to be made in licences and contracts for the provision of broadcasting services.

- To be revised to cater for reduced regulation in respect of Commercial Broadcast Content Licences.
- To remove reference to transmission infrastructure and assigned frequencies from the broadcasting licence.

Second Schedule - National Broadcasting Plan.

- To be amended to reflect the proposals put forward under this Section.

6.3 Broadcast content licensing process

Private entities interested in obtaining a television broadcasting licence will be able to apply for either a Commercial Broadcast Content licence or a General Interest Broadcast Content licence.

6.3.1 Commercial broadcast content licences

There will be no limitations on the number of commercial licences¹³ that can be issued by the Broadcasting Authority. However, presently article 10(6)(a) of the Broadcasting Act establishes a maximum of two broadcast content licences that may be issued to the same entity¹⁴. Licences will be strictly in respect of content and will not include licensing of the transmission infrastructure. Entities will enter into commercial negotiations with authorised network operators or service providers in order to obtain access to transmission capacity. Applicants will be required to notify, to the Broadcasting Authority, the relevant details in respect of the network operator and the specific frequency on which the broadcast channel will be transmitted.

Applications will be assessed to determine that entities are in a position to establish and operate a viable station that can meet the requirements as established by law. The assessment will therefore take into consideration the economic potential and viability of the station, the genre and source of the production material as well as programme quality.

6.3.2 Broadcast licences with a public service remit

¹³ This is, nonetheless subject to the physical space that is available, at any point in time, on transmission networks.

¹⁴ The BA is currently conducting a public consultation process on the possible extension of editorial control from the present maximum of two TV stations.

One frequency will be allocated for the carriage of Public Service Broadcasts and other General Interest Broadcasts. A total of six stations will be carried on the frequency.

Public Broadcasting Services Ltd will operate the GIO network that will carry PBS and up to five GIO stations. Indicatively, PBS will carry the costs of the network set-up and operation less the additional capital and ongoing costs incurred as a result of PBS having to carry other broadcasters on its network.

The GIO stations can be both generalist and niche stations and will need to meet stringent requirements both in terms of programming quality as well as in terms of the specific general interest objectives that they fulfill. Only one General Interest Broadcast content licence will be issued to the same entity. An entity may however be issued with an additional Commercial Broadcast content licence¹⁵.

This arrangement is based on the premise that two frequencies are reserved for broadcasting that meets GIOs. One frequency will be made immediately available for the purpose. The second frequency will be reserved until such time as it is required in order to support the introduction of HDTV by GIO stations.

Stations will be expected to devote a significant portion of their programming time to programmes that qualify as being of general interest, that is, programmes that qualify as meeting Core Public Service Obligations (CPSOs) and Extended Public Service Obligations (EPSOs).

The National Broadcasting Policy establishes that the PBS is required to dedicate between 50 and 55% of its programming time to programmes of general interest. A broadcast channel qualifying as meeting GIOs will be required to devote not less than 35% of its programming time to programmes of general interest. The said policy will also have to be brought in line with the amendments regulating GIOs which will be made to the Broadcasting Act.

Generalist stations would need to provide a spectrum of programme content that cuts across the categories listed below. Stations that address a particular audience niche will also be considered particularly if they provide added value and as long as the content can be classified as one of general interest (for example, education) on the basis of distinct evaluation criteria.

The following are, inter alia, the evaluation criteria that are being considered:

1 General - quality programming across the full range of public tastes and interests.

- a) Financial allocation for programme generation;
- b) The range of subject matter. This would include:
 - i. programmes that focus on the island of Gozo and in particular that highlight Gozitan society, culture and way of life;
 - ii. programmes that have children as their principal audience;
 - iii. drama programmes in Maltese with preference being given to original drama in Maltese;
 - iv. programmes that focus on Maltese communities abroad.
- c) The number of new and innovative programmes;
- d) Target audience share;
- e) Measures such as subtitling, audio description and sign language¹⁶;
- f) The variety of production approaches to be used such as co-productions/out sourced productions/shared material; and

¹⁵ The number of commercial licences could exceed one, depending on the outcome of the BA consultation on media concentration referred to in earlier footnotes.

¹⁶ Further emphasis on this important aspect may be warranted when GIO criteria are being drawn up in detail.

2 Programming of an educational and cultural nature.

Amount and scheduling of programmes of an educational and/or cultural nature

a) Range of subjects covered;

Appropriate weighting will be given to content such as:

- i. educational programmes
- ii. programmes that enhance the public's knowledge and appreciation of the Maltese Islands' heritage and history;
- iii. programmes that enhance the public's knowledge and appreciation of the arts particularly Maltese arts;

b) Type and size of audience targeted;

c) Percentage of programmes produced with the collaboration of educational institutions;

d) Percentage of programmes and total production hours in the Maltese language; and

3 News and current affairs programming

a) Quality of the news policy adopted by the broadcast channel;

b) Sufficiency of news budget;

c) Comprehensiveness of news schedule;

d) Appropriate staffing to support the necessary news gathering, and the provision of in-depth analysis;

e) Arrangements for gathering international news; and

f) Amount and scheduling of current affairs programmes.

4 A comprehensive and accurate information service in the interests of a democratic and pluralistic society

a) Amount and scheduling of informative programmes;

b) Range of subjects covered;

Appropriate weighting will be given to:

- i. discussion programmes dealing, inter alia, with topics of a social, cultural, religious, educational, environmental, economic, industrial or political nature;
- ii. measures in support of the presentation of a wide range of diverse opinions or perspectives; and
- iii. measures in support of the presentation of public views.

Delivery of the programme schedule that constitutes the general interest obligation for each station will be a condition of licence.

The Broadcasting Authority will have the authority to refuse applications for General Interest Broadcast content licences where specific general interest objectives are adequately covered by already licensed stations even if transmission capacity is available.

The Broadcasting Authority will carry out an ongoing assessment of the programme schedules of General Interest stations to ensure that licence obligations continue to be met.

6.4 Must-Carry obligations

In light of the appointment of PBS as the GIO network, the following scenarios unfold with respect to 'must-carry' obligations on existing and potential platforms:

6.4.1 Must-Carry on terrestrial networks

The MCA will not impose must-carry obligations on the digital terrestrial commercial network. To do so would amount to unnecessary duplication, given that the viewers of that network can access the PBS-run network over the same set top box.

6.4.2 Must-Carry on Cable

Melita cable is the only Cable TV operator in Malta. It has a national network which reaches some 95% of households and a penetration in the region of 75% of households. Melita is currently obliged to carry broadcast channels in line with Art 40 of the Broadcasting Act. Under Regulation 51(1)¹⁷ of the ECNSR it is reasonable to assume that, it will continue to be considered as having a significant number of subscribers on its platform and the existing must-carry obligation will continue to apply, albeit under a different set of conditions.

In view of the one to one relationship between the operator and the household (given the cabling and converter required) and given that remuneration for carriage will not be required subscriber payment for the reception service will continue to be allowed. Must-carry channels will have to be on a reception / entry-level tier such that subscriber payment is kept to a minimum.

A must carry obligation therefore remains incumbent on Melita on both its analogue and digital network. However, as long as the analogue cable service continues to be provided to the public, the reception service need not be replicated on the digital cable platform. Should Melita close off its analogue service, the equivalent of the reception tier will need to be introduced on its digital service.

6.4.3 Must carry on other platforms

TV transmission services in Malta are currently provided over Cable and Digital Terrestrial networks. The provisions of Section 51(1) of the ECNSR, as well as other relevant provisions of the Maltese Electronic Communications legislation, will apply to any other platform that eventually provides TV transmission services in Malta.

¹⁷ Reg.51. of LN412/2004: (1) The Authority may impose reasonable "must carry" obligations for the transmission of specified radio and television broadcast channels and services, on undertakings providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts:

Provided that such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent, which obligations shall be reviewed by the Authority periodically:

7 Key stakeholders

The following entities are considered to have an active role to play in the implementation of this strategy:

- Public Broadcasting Services Ltd., as the Government owned company responsible for the provision of public broadcasting;
- Current terrestrial analogue broadcasters who will need to migrate to digital;
- The Office of the Prime Minister (OPM), as the Ministry responsible for the Broadcasting Authority;
- The Broadcasting Authority as the entity responsible for regulating sound and television broadcasting services and for issuing broadcasting licences;
- The Ministry for Information Technology and Communications (MITC) as the Ministry responsible for policy regarding the regulation of electronic communications networks and services;
- The Ministry for Education and Culture (MEDC) as the Ministry responsible for broadcasting policy and public service broadcasting;
- The Malta Communications Authority as the entity responsible to regulate electronic communications and manage spectrum.
- Network operators who will provide access to local commercial broadcast content licence holders.

8 Next steps

This document constitutes Government's formal policy position and concludes the first phase of the process. The focus will hereafter be on implementation. The following are the envisaged steps that need to be followed in the implementation process.

- Assignment of the GIO frequency to PBS should take place by Q1 2009 following the necessary technical discussions.
- PBS will initiate steps towards deployment of the network in Q1 2009. It is envisaged that the network deployment should be finalised by Q4 2009.¹⁸
- Legal drafting of the amendments to the Broadcasting Act will commence immediately with passage through parliament envisaged in the 2nd Quarter 2009.
- In parallel with the legal drafting the BA will refine and formalise the GIO selection criteria and the relative process.
- The GIO selection and allotment process will commence immediately after the legislative amendments, as well as the selection process, are in place.
- Initial transmission by GIO broadcasters on the PBS network¹⁹ will commence immediately after the selection process has been finalised. This is envisaged to take place in Q4 2009.
- A public information campaign will commence in Q2, 2009 and will run on till the Analogue Turn off Date, set at Q4, 2010.

¹⁸ The deployment timeframe is indicative and subject to discussion between PBS and the BA/MCA. However one would expect that PBS has the necessary experience and already-installed infrastructure to carry out deployment within a year.

¹⁹ PBS will not be subject to the selection process given that it is the Public Service Broadcaster. It will still be required to adhere to the set criteria.

Appendix A

Analysis of responses to Consultation on Broadcasting that meets General Interest Objectives

Introduction

This Appendix presents the highlights of the individual responses to the consultation document on Broadcasting that meets General Interest Objectives. The document was issued for consultation on the 15th of September 2007 with a three month timeframe, subsequently increased by an additional two months at the express request of a group of broadcasters.

At the end of the consultation period six responses had been received from:

- Mr. Joseph Muscat (MEP)
- GO
- Melita Cable
- PBS, Educ 22, One Productions, Media Link Communications, Smash TV (joint response)
- Projects in Motion
- Eden Leisure Group

The MCA/BA also held one-to-one discussions with GO, Melita and existing analogue free-to-air broadcasters (both individually and as a group) at their express request.

The table in the subsequent pages of this document highlights the responses received. The responses are organized by policy area and policy areas are, in turn, presented in the same sequence as they appear in the public consultation document. Details of individual respondents have been omitted and replaced by letters 'A' to 'F' (which do not reflect the sequence of respondents as listed above).

Whilst this document is essentially descriptive of the responses submitted explanatory notes have been inserted by the MCA/BA where it was felt that this would provide a clarification on the Authorities' position. The explanatory notes are the ones in italics.

The responses have been given due weight in the articulation of Government's final policy direction on the subject.

Respondent	Summary of Comments Received
GENERAL COMMENTS	
RESPONDENT (A)	<ul style="list-style-type: none"> • Submits that its tariffs are not subject to ex ante price control. • Submits that capacity restrictions should not be imposed. • Anticipates that a revised implementation timeline will be required and requests that this is provided. • <i>The implementation timelines are indicative and the envisaged timeframe will be known when a final policy statement is made by Government.</i>
RESPONDENT (C)	<ul style="list-style-type: none"> • Welcomes initiative to review existing broadcasting policies connected with GIOs. • Contends that many of the proposals are impracticable and that they do not make for a level playing field in platform competition.
RESPONDENT (D)	<ul style="list-style-type: none"> • Observes that the consultation does not comprehensively deal with radio. • <i>It is clarified in the consultation document that terrestrial radio does not present the same critical aspects as terrestrial TV, which involves the migration from analogue to digital, and a specific analogue turn-off date.</i>
RESPONDENT (E)	<ul style="list-style-type: none"> • Appreciates the efforts of the MCA and BA in the preparation of the document given the complexity of the communications scenario. • States that the issues raised need to be discussed in further detail.
POLICY AREA – CRITERIA TO CLASSIFY BROADCAST CONTENT AS GIO	
RESPONDENT (A)	<ul style="list-style-type: none"> • Contends that the GIOs which are likely to be most directly relevant to the must-carry obligation are culture, national language and pluralism.
RESPONDENT (C)	<ul style="list-style-type: none"> • States that it is not clear if criteria meet requirements of Article 31 of the EU's Universal Services Directive (USD). • States that in particular it is not immediately apparent that the criteria are objectively measurable in practice. • Highlights that the mere setting up of the objectives is not sufficient for award of must-carry status and clarifies that criteria must be measurable and that licencees must be subject to a yearly review to determine that criteria are being met. • <i>The consultation document contemplates the setting up of measures with respect to the criteria set and the carrying out of the necessary assessments with respect to GIO broadcasters.</i>
RESPONDENT (F)	<ul style="list-style-type: none"> • Enquires whether the policy intends to address and implement main accessibility issues such as subtitling, sign language and audio description as a General Interest Objective. • <i>Accessibility features are listed as an adjudication criterion (Under the</i>

	<i>heading 'General') for broadcasters meeting General Interest Objectives. Further emphasis on this aspect may be made when GIO criteria are being drawn up in detail, bearing in mind the need for any such requirements be balanced against costs borne by broadcasters.</i>
POLICY AREA – BROADCASTERS QUALIFYING FOR GIO STATUS	
RESPONDENT (A)	<ul style="list-style-type: none"> • States that must carry status should not be granted to national broadcasters which operate under a public remit as a matter of course and should only be afforded where the GIOs are explicitly mentioned as part of the public remit. • Submits that licensed terrestrial broadcast channels should not have a 'de facto' must-carry status. • Contends that only the public broadcasting services identified in National Broadcasting Plan qualify and agrees with the must-carry status granted to the public broadcaster. • Respondent is not against the notion of privately owned stations playing a role in the delivery of the GIOs but contends that the proposed 'all or part of ' a number of set criteria that qualify a station for GIOs allows for a relaxed application of the must-carry status and contends that must-carry channels should be limited to that absolutely necessary avoiding unnecessary duplication. • <i>The consultation document does not contemplate award of must carry status being granted to national broadcasters as a matter of course.</i>
RESPONDENT (C)	<ul style="list-style-type: none"> • Considers that the statement, to the effect that a public call for expressions of interest for a GIO licence will be issued, a contradiction with the statement that current broadcasters could qualify. • Submits that it is by no means a given that current licence holders meet the proposed criteria and makes specific reference to the 'comprehensive and accurate information service' criterion. • Submits that the parameters that allow the BA to refuse a GIO licence to other broadcasters that meet the criteria are not specified and neither is the limit on the number of such licence holders and this will have a direct weight on the must carry obligations. • Highlights that the USD requires a periodic review of the must-carry status and obligations and recommends that all the above points are developed in line with the principles of transparency, non-discrimination, proportionality and accountability. • <i>GIO status is voluntary for broadcasters other than PBS. Thus, a call for expressions of interest would be necessary. It is also stated in the consultation that the current analogue broadcasters' licence conditions is likely to qualify them for GIO status.</i> • <i>The limit to the licence holders, as proposed in the consultation document, is six, for the foreseeable future.</i>
RESPONDENT (E)	Respondent refers to existing analogue terrestrial broadcasters and Education 22 as 'GIO stations.'
POLICY AREA – PROPORTIONALITY	
RESPONDENT (A)	Contends that the reservation of three frequencies for broadcasting that meets GIOs is extravagant given that 6 to 8 standard digital TV channels can be transmitted on one TV channel.
RESPONDENT	Considers the reservation of three frequency channels for GIOs wasteful

(C)	use of frequency given that around eight broadcast channels can be accommodated in one frequency channel.
POLICY AREA – MUST CARRY/MUST OFFER OBLIGATIONS	
RESPONDENT (A)	<ul style="list-style-type: none"> • States that it is debatable whether any digital terrestrial network operator meets the 'Must Carry' criterion which requires that a 'significant number of end-users of such networks use them as the principal means to receive radio and television broadcasts'. • Argues that before imposition of 'must carry' the BA should ascertain if the operator truly falls under the 'significant' parameter. (Contends that subscribers can have two services and therefore digital terrestrial subscription numbers are not enough to justify the 'significant number of end users' criterion). • Argues that a must carry obligation should only be imposed on those operators that the BA ascertains as meeting the 'significant number of user' criteria. • Agrees to para 3.3.2., which establishes that 3 reserved frequencies will be assigned to network with significant users, only for purpose of carrying GIO's with transmission being unencrypted. • Agrees with the introduction of a must-offer obligation. • <i>The latest MCA bi-annual communications review listed the digital terrestrial platform network as having in excess of 25,000 subscribers.</i>
RESPONDENT (C)	<ul style="list-style-type: none"> • Agrees that must carry must be counter-balanced by must-offer obligations and that no fees should be levied in either direction. • Presumes that must-carry obligations apply to mobile and IPTV platforms and notes that the document does not discuss possible effects on investment decisions and competition. Contends that an in-depth examination must be made on these issues lest the policy proposals act as a disincentive to potential new or emerging market entrants. • <i>The consultation document qualifies 'must-carry' regulation of IPTV and other emerging platforms to the effect that it has to be in line with existing legislation. It is understood that once legislation also contemplates light-touch regulation on emerging technologies and services, this aspect will also be addressed, before any imposition comes into effect.</i>
POLICY AREA – LEVEL OF SERVICE (SPECIFICALLY BIT RATES)	
RESPONDENT (A)	<ul style="list-style-type: none"> • Contends that there is no legal basis on which the technical terms (minimum bit rates/quality) by which must-carry channels are to be retransmitted can be established.
RESPONDENT (C)	<ul style="list-style-type: none"> • Strongly believes that a minimum bit-rate allocation should not be mandated since it inherently implies inefficient spectrum utilisation. • Suggests instead the use of Subjective Video Quality Test methods.
POLICY AREA – COMPENSATION FOR SERVICES	
RESPONDENT (A)	<ul style="list-style-type: none"> • Contends that either the broadcasters or the State should compensate network operators for the transmission of must-carry channels and that a remuneration which is non-discriminatory, proportionate,

	<p>transparent and cost-based should be payable to the network operators.</p> <ul style="list-style-type: none"> Proposes that the remuneration should take into account network capacity required and possibly any lost profits. Agrees to continued application of the Copyright Act where no copyright fees are payable in respect of must-carry channels.
RESPONDENT (C)	<ul style="list-style-type: none"> Contends that the weighing of must carry provisions against the effect on competition should have been discussed in the Consultation and contends that the proposals put forward seriously distort the emerging competitive television transmission market. Contends that the consultation proposal puts the heavier regulatory onus on the smaller network. Disagrees with the arguments that the free to air concept can change according to platform and that basic tier pricing can be justified on one platform, but not on another.
POLICY AREA – MISCELLANEOUS TECHNICAL CONSIDERATIONS	
RESPONDENT (A)	<ul style="list-style-type: none"> Proposes that final document should make reference to EPGs and exclude EPGs from any must carry obligation.
RESPONDENT (C)	<ul style="list-style-type: none"> Gives a whole list of reasons why the VHF frequency cannot be used by respondent. Highlights an issue with respect to aerial installation at the consumer end in that current digital terrestrial installations are for UHF and not VHF.
POLICY AREA – BA/MCA ROLES	
RESPONDENT (A)	<ul style="list-style-type: none"> Agrees with the division of roles between MCA and BA as suggested by the Consultation. Agrees that LN167/2001 should be repealed.
POLICY AREA – CONTENT	
RESPONDENT (A)	<ul style="list-style-type: none"> Fails to see the rationale behind the restriction of the total number of broadcast channels that can fall under the same editorial responsibility. Submits that there is no justification for limiting to two the number of broadcast licences. Contends that an own-network promotional channel should not be considered as a programming service. Believes that multiple channels that transmit a time-shifted repeat programme should be considered as one channel. Opines that multiple Sports channels that transmit different sports events (eg football matches) in parallel should be considered as one single channel. Calls for a clear delineation of which of the BA circulars, decisions or directives are applicable to their payTV programming and which are not. <i>The BA has since issued a consultation document on the subject of editorial ownership, and is now proposing ownership of up to four TV channels under certain conditions. Other than this, an own-network promotional channel is not considered to be a programming service.</i>
POLICY AREA –BA LICENCES	

RESPONDENT (A)	<ul style="list-style-type: none"> States that the document does not provide comfort that niche channels such as Sports and movies will be guaranteed a broadcast licence. States that it is not clear what obligations would be in respect of a pay-per-view, video-on-demand or high definition channel. <i>One of the policy proposals in the document is for the creation of a licence category for commercial TV stations.</i>
RESPONDENT (C)	<ul style="list-style-type: none"> Contends that it should be the network operator's sole prerogative to shift a content channel from one multiplex to another. <i>No doubt this is the case for those channels that have been assigned on commercial terms to a network operator. As regards frequencies earmarked for broadcasting that meets GIOs it is the BA that decides which content channels are transmitted on these terrestrial frequencies.</i>
POLICY AREA – OTHER CONSIDERATIONS	
RESPONDENT (B)	<ul style="list-style-type: none"> Contends that the Maltese consumer has a right to continue accessing free of charge all national free-to-air channels that are currently accessible through the analogue system. <i>This is a key principle that is upheld in the consultation document.</i>
RESPONDENT (B)	<ul style="list-style-type: none"> States that anyone acquiring a digital receiver independently should have access to free-to-air channels free-of-charge. <i>It is assumed that this contention is being made with respect to digital terrestrial receive.</i>
RESPONDENT (B)	<ul style="list-style-type: none"> Contends that interoperability between the different platforms is needed to provide consumers with the freedom to switch between service providers. <i>The MCA is unaware that any solutions integrating all functionalities for both platforms in one box are currently available on the market. Meanwhile, competing retail offers by network operators have considerably lowered switching costs for consumers.</i>
RESPONDENT (C)	<ul style="list-style-type: none"> States that it is imperative that the delivery of content to a network's transmission facilities should be borne by the content provider and must comply with the network's interface specifications and protocols.
RESPONDENT (C)	<ul style="list-style-type: none"> Notes that the co-ordination with Italy is long overdue. Contends that Government must have a clear strategy with timeframes in this respect, which strategy should formally provide for unilateral measures as contemplated in the consultation.
RESPONDENT (E)	<ul style="list-style-type: none"> Raises as a point of concern the carriage of GIO broadcasters by a third-party network operator. Contends that alternative solutions should be explored and considered, including - but not limited to - GIO broadcasters collectively filling role of network operator. Urges the BA to consider the proposed carriage arrangements and to prevent situations that might compromise broadcasting in Malta. Hints at alternative solutions, such as a GIO-run network.
POLICY AREA – RADIO	
RESPONDENT (D)	<ul style="list-style-type: none"> Contends that licensing and monitoring fees require revision in the light of the different realities of the Digital radio market.

	<ul style="list-style-type: none">• Contends that the current moratorium on charging fees until 2009 does not offer a real incentive to early adopters, stating that it will take much longer than 2009 before digital sets present a positive commercial model.• Suggests that the fee structure kicks in once a target number of digital sets are on the market (proposed 250,000).• Proposes that the general Radio Station annual licence fee of LM2, 500 and annual monitoring fee of Lm5, 000 is excessive given the reduced reach and indirectly reduced advertising revenue and additional costs to be paid to the network operator.• Contends that the digital licence fee should be much lower than the current licensing structure under analogue while the monitoring fee should be removed.• Proposes that the reapplication fee as stipulated by the Digital Radio Broadcasting regulations should not apply and that reapplication should be required every eight years and not every four.
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