

Interim Leased Channel Policy

AN INITIATIVE TO SUPPORT DIVERSE LOCAL CONTENT
PROGRAMMING ON TELEVISION

MINISTRY OF TRANSPORT & REGULATORY AFFAIRS

Background

The Bermuda Government started a multi-phased initiative to review telecommunications regulatory reform in 2009. The initial review process was limited to electronic communications services such as telephony, data communications and subscription audiovisual services, whilst preserving the pre-existing legal and regulatory regime applicable to over-the-air broadcasting for an interim period. That first phase of the reform initiative culminated in the enactment of the Regulatory Authority Act 2011, the Electronic Communications Act 2011 and the establishment of the Regulatory Authority.

In early 2017, the Government commenced a review of its existing policies and legislation relating to free-to-air broadcasting (both radio and television) in the broader context of the evolving audiovisual media services sector. This is a continuation of the telecommunications regulatory reform initiative. The purpose is to develop forward-looking policy, leading to legislation, for the broadcasting sector.

Digital convergence has increasingly blurred the distinctions between electronic communications and broadcasting. This calls for a converged regulatory regime which reflects international best practices and better meets the needs of the people of Bermuda. This policy review also provides the opportunity to take a fresh look at many long-established policies related to audiovisual content.

A public consultation document on broadcasting reform is being prepared now which will seek the views and input of stakeholders and the public.

However, recognising the Government's commitment to promoting the creation, production and distribution of local Bermudian content on television, one aspect of broadcasting policy is being considered in advance of full broadcasting reform: the Cable Television Leased Channel Policy.

To support the growth and development of content that is local, diverse and of high-quality, the Minister of Transport & Regulatory Reform proposes a relaxation of the restriction in the Leased Channel Policy which prevents independent producers of local content, who lease cable channels, from inserting local advertising into their feed. This relaxation would give independent producers access to a source of funds currently unavailable to them.

It is intended to be an interim measure as the Government considers, and consults with the public on, the future of broadcasting in Bermuda.

Cable Television Leased Channel Policy (Interim)

1. Interim Policy

This Interim Policy is made by the Minister responsible for telecommunications (“the Minister”) in accordance with the **Cable Television Service Regulations 1987**, and the **Subscription Radio Service Regulations 2003** (together “the Regulations”). The Cable Television Leased Channel Policy dated 27 November 2008 (“the 2008 Policy”) shall remain in effect, except as amended by this Interim Policy.

2. Revision History

Date	Revision No.	Change	Ref
27 Nov 2008	1.0	New Policy	W.G.F.
8 Jul 2015	2.0	Extension of Policy	W.G.F.
xx xxx 2018	3.0	Interim Policy	A.R.P.

3. Applicability

3.1 This Interim Policy shall be effective until revoked or superseded by subsequent policy or legislative amendment.

4. Purpose

4.1 The 2008 Policy prohibits a Cable Television Service Provider (“cable operators”) from *“insert[ing] any advertising matter into programmes transmitted over a non-origination cablecasting channel without the consent in writing of the Minister”*: Cable Television Service Regulations 1987. The 2008 Policy enables cable operators to lease up to ten channels, but provides at paragraph 4.4 that *“Cable Television Service Providers are not permitted, and [may] not permit, the insertion of advertising matter on leased channels.”*

4.2 The purpose of this Interim Policy is to permit independent producers of local content who lease cable channels from Cable Television Service Providers to insert local advertising in the programmes on leased channels, with the goal of stimulating the creation, production and distribution by Bermudians of local programming that reflects life in Bermuda.

5. Interim Policy Statement

- 5.1 The procedure for the application to the Minister seeking authorisation to lease a channel shall be the procedure set out in paragraph 11 of the 2008 Policy and shall include compliance with paragraph 5.3 of the Interim Policy where the independent producer of local content seeks to insert advertising material in the channel's programming.
- 5.2 The Minister may be assisted by an Advisory Committee designated in accordance with section 61(4) of the Bermuda Constitution. During the effectiveness of the Interim Policy, or until further direction of the Minister, the advisory body shall be the Broadcast Commission. Subject to appropriate confidentiality measures, the Broadcast Commission shall review applications for permission to lease a channel and shall review compliance with paragraph 5.3 of the Interim Policy, and provide an assessment to the Minister. The Broadcast Commission shall gather data for the purposes of compliance with conditions attached to permission granted by the Minister.
- 5.3 Independent producers deemed by the Minister most likely to meet local content requirements may be designated by the Minister as Qualified Bermudian Independent Producers ("**QBIP**") in accordance with the following criteria to be assessed by the Broadcast Commission:
- (a) experience in, or demonstrated capability for, creating and distributing quality Bermudian content;
 - (b) financial capacity and business plan;
 - (c) quality, quantity, and diversity of proposed local content programming in which to insert local advertising;
 - (d) percentage of Bermudian ownership, management and employment;
 - (e) willingness to undertake to carry a minimum amount of non-duplicative, diverse, high-quality, local content on its leased channel;
 - (f) ability to provide local content that comprises the greater of 25 hours per week or 80 percent of total content, between 800am and 1200am, on the leased channel, which can be achieved through:
 - i. up to 40 percent of this requirement being "repeats" of qualifying programming previously carried on the channel; and
 - ii. an additional 20 percent of this requirement being "first Bermuda release" of programming about, or originating in, the Caribbean region;
 - (g) the production company shall not be owned or controlled by the Government;
 - (h) the production company shall not hold a broadcasting license in Bermuda or a license to provide electronic communications services that it uses to provide subscription television services in Bermuda;

- (i) no entity that holds a broadcasting license in Bermuda or a license to provide electronic communications services that it uses to provide subscription television services in Bermuda shall have an ownership interest in the production company; and,
 - (j) no person who has an ownership interest in, or the ability to exercise effective control over, the operations of the production company may be a managerial employee or owner, or the immediate relative of a managerial employee or owner, of an entity that holds a broadcasting license in Bermuda or a license to provide electronic communications services that it uses to provide subscription television services in Bermuda.
- 5.4 Content is local if the programme, in whole or in significant part, is about the culture, economy, history, politics, sports or environment of Bermuda.
- 5.5 QBIPs shall be permitted to insert local advertising in programming distributed on leased channels and shall be subject to the same restrictions applicable to television broadcasters. Advertising shall be limited to fourteen (14) minutes per hour.
- 5.6 After giving 'due consideration' to the recommendation of the Broadcast Commission, the Minister may authorise an applicant to lease a channel to a QBIP (the sub-lessor). The Minister shall publicly state whether he has accepted the Broadcast Commission's recommendation.
- 5.7 The authorisation of the Minister may be granted for not more than three (3) years on an interim basis and may be subject to conditions relating to the criteria set out in paragraph 5.3 of this Interim Policy.
- 5.8 The Minister may withdraw and cancel the authorisation for a Cable Television Service Provider to lease a channel to a designated QBIP if the Minister is of the view that the QBIP is not in compliance with the conditions upon which the authorisation was granted.
- 5.9 Before taking action, the Minister shall notify the Cable Television Service Provider and QBIP that the QBIP is breach, provide the QBIP with reasonable opportunity to cure the breach, and provide an opportunity for comment.
- 5.10 The Minister may unilaterally modify the rights granted to the QBIP.
- 5.11 The Minister may suspend or terminate the authorisation for breach of any condition attached to the authorisation.

6. Contacts

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Telephone:

Email:

The Hon. Walter H. Roban, MP
Minister of Transport & Regulatory Affairs

Dated:

Ministry of Transport & Regulatory Affairs

SAMPLE DRAFT LETTER OF PERMISSION

Cable Television Service Provider

Address line 1

Address line 2

Address line 3

Dear XX

Re: Authorisation of Leased Channels to [QBIP]

I hereby authorize the leased access of one cable channel on your cable television system to [QBIP] in accordance with section 7 of the Cable Television Service Regulations 1987 and subject to the attached conditions.

Regards,

Hon. Walter H. Roban, MP
Minister of Transport & Regulatory Affairs

Sample Draft [QBIP] Leased Channel Authorisation

Authorisation for the Sub-letting of [Cable Television Service Provider] Channel to [QBIP]

Pursuant to section 7 of the Cable Television Service Regulations 1987 and in accordance with the Cable Television Leased Channel Policy dated 27 November 2008 and the Interim Leased Channel Policy dated xx May 2018, the Minister hereby authorises [Cable Television Service Provider (CTSP)] to lease one cable channel on its system to [QBIP] for the sole purpose of [purposes of QBIP as outlined in the application] in accordance with the terms and conditions outlined below.

Terms and Conditions

1. Channel Usage

- 1.1 [QBIP] shall file with the Senior Manager, Regulatory Affairs upon issue and in advance of usage any channel assignment made by [CTSP] on its behalf.

2. Commercial Advertising

- 2.1 "Commercial advertising" shall have the meaning: "any matter of a promotional character not intended primarily for the information, instruction or entertainment of listeners and viewers but made for the purpose of drawing public attention to the merits of goods, services, facilities, causes or events, broadcast at the request of any person, whether upon payment or otherwise, but does not include announcements transmitted at the request of a Government Department or Board, nor a party political broadcast nor a spot broadcast within the meaning of the Political Broadcasting Directions 1980."

- 2.2 [QBIP] may cablecast commercial advertising on the leased channel subject to the following conditions:

2.2.1 between the hours of 8.00AM and 12.00AM, as measured on a weekly basis, the greater of 25 hours or eighty percent (80%) of total content programming on the leased channel shall be local content; and,

2.2.2 [the local content shall be diverse with not more than xx% falling within the each of the categories of sports, [religion?] or infomercials, and not less than xx%

falling within each of the categories of artistic and cultural, children's, education, documentary and news programming.]

3. Political Broadcasting

3.1 [QBIP] shall not cablecast any material deemed to be of a Political nature the subject of which is designed to promote the interests or views of:

3.1.1 a political party, a political organization, a person or a group of persons which is not recognised as a party or organization;

3.1.2 a member of the Legislature in that capacity; or,

3.1.3 a candidate without equal time being given to promote contrary interests or views.

4. Soliciting Funds

4.1 [QBIP] shall not cablecast any programme that solicits funds directly from members of the public unless it is made by a Charitable Organisation that is registered under the Charities Act 2014 and the Organisation has the express permission in writing of the Broadcasting Commissioners to do so.

5. News Programmes

5.1 [QBIP] shall ensure that the reporting of news and public affairs shall be factual and presented without local political bias.

6. Programme Ratings

6.1 [QBIP] shall ensure that the content of its cablecast programmes shall be rated and fall in any one of the following categories:

6.1.1 "A" Artistic

6.1.2 "D" Documentaries

6.1.3 "E" Educational

6.1.4 "N" News programme

6.1.5 "G" Programme for general viewing

7. Record of Programming

7.1 [QBIP] shall maintain a daily record of all programmes and other matter cablecast by it for a period of [3] years

7.2 [QBIP] shall publish [e-publication?] weekly, prior to cablecasting, a schedule of all programmes.

7.3 [QBIP] shall keep a recording of all cablecast programmes for a minimum of thirty (30) days.

7.4 [QBIP] shall, on demand, furnish Broadcast Commissioner or the Regulatory Affairs Section with a copy of any record detailed in clause 7.3

8. Station Identification

8.1 [QBIP] shall ensure that station identification shall be made visually and aurally:

8.1.1 at the beginning and ending of each time of operation; and

8.1.2 hourly, as close to the hour as is feasible, at a natural break in programme offerings.

8.2 Official station identification shall consist of the name of the channel followed by the word "Bermuda" and the cable channel number.

9. Copyright

9.1 [QBIP] shall not broadcast any programme that is an infringement of any copyright belonging to, or benefiting, any third party.

10. Termination

10.1 Failure of the sub-lessor to comply with any part of these operating guidelines shall result in the immediate revocation of this lease channel authorisation.

The Hon. Walter H. Roban, MP
Minister of Transport & Regulatory Affairs

Dated:

Send responses to Acting Director of Telecommunications:

Jeane Nikolai (jnikolai@gov.bm).