

The Media Association Jamaica Limited (MAJ) thanks the Broadcasting Commission for the opportunity to share our thoughts and concerns regarding issues that we deem paramount in your deliberations over the next year. We ask that you consider this submission, in conjunction with the MAJ's earlier submissions to the Minister with responsibility for information with regard to proposed policy changes recommended by the Broadcasting Commission.

Digital Switch Over

The MAJ re-states its commitment to the Digital Switch Over process as being necessary and good for the sector.

The MAJ however wishes to re-open discussions on DSO in light of three critical factors:

1. There are concerns that the uncertainties with the ATSC 1.0, 2.0 and 3.0 standards could be hugely disadvantageous for broadcasters to adopt even by 2018 as it could lead to all existing digital TV sets not being backward compatible and still needing a set top box to receive service;
2. ATSC 2.0, if it is the only standard in the ATSC generation available in 2018, would impose serious restrictions on broadcasters' accessibility to wider digital television services. This would be accessible under ATSC ONLY through buying them from mobile, broadband and internet providers. This is a major difference from what obtains under other standards where these additional services are available in a digital standard;
3. It would mean that the licensing regime and services available to broadcasters are fewer and individually applied for and licensed, rather than being provided in a single license as is applicable under other standards;

4. The fragmentation in radio plus the cost of operating networks in radio has come down dramatically in digital operations, so switch over for radio needs to be considered now in Jamaica.

RE-TRANSMISSION RIGHTS

The MAJ again places on the table for full discussion and determination the matter of RETRANSMISSION RIGHTS for Free To Air television stations, on all licensed platforms in Jamaica, for the following reasons:

1. There is no inconsistency between the “must carry” rule and the recognition of the intellectual property rights of free-to-air broadcasters’ content (must carry does not mean free carry); the world over re-transmission rights are applicable, known and recognised - Intellectual Property Rights exist;

2. There is precedence for retransmission rights on a negotiated or stipulated fee basis all over the world, including Australia, Canada, England, the European Union, the United States of America and elsewhere – hundreds of millions of dollars are spent to acquire and to develop programming for FTA channels and much of the content is owned by the broadcaster, yet when used to garner audiences, secure subscription revenues or secure advertising/promotion benefits there is no recognition of that IP right. This is inconsistent, unfair and wrong.

ADVERTISING ON CABLE

3. The MAJ supports independent programme providers and subscriber television programme providers having the ability to seek and air local advertising on these platforms;

4. The MAJ opposes local advertising on foreign cable channels as it is well known that several

of these channels are not licensed, others are licensed but co-exist and packaged with “illegal” ones and so the combined “business” is not legitimate and cannot be so allowed/rewarded by turning a blind eye; most importantly – it is inconsistent with building a local cultural industry by failing to recognise and accept that there is intellectual property rights value in the content. Essentially to adopt this posture is to devalue or place no value on the intellectual property rights in local independent and TV stations’ productions, but place value in foreign producer’s content. It means we as an industry are prepared to recognise the value of foreign works but not our own!

SUBSTITUTE PROGRAMMING

5. The MAJ rejects proposals for substitute programming broadcasts on non-FTA platforms, for content which the FTA broadcaster has acquired the rights. If other platform operators wish to acquire rights from the legitimate rights holders of any material for the territory, they should make an offer and negotiate the terms or be required to abide by the law and not air that content. Further they should be required by regulation to place ACCURATE notices on their services describing what has happened and not ambiguous messages that could suggest wrong doing or malice on the part of the rights-holding broadcasters.

REGULATORY FEES

6. On two primary grounds, the MAJ is opposed to the introduction of a regulatory fee on broadcasters. The hundreds of millions of dollars in value that is provided to government each year in the form of “time allowed for government broadcast” is our consideration for regulatory fees and spectrum fees. The quantum in dollar value exceeds reasonable amounts levied for such fees elsewhere, but with a reasonable discount, broadcasters are satisfied.

Secondly, we are opposed to the introduction of any regulatory fee levelled as a percentage of gross revenues. It is grossly unfair and unjust that before one bill is paid, one staff members is paid, that there should be the setting aside of a share of a portion for regulation. When that is taken along with payroll taxes and corporation taxes it means broadcasters are charged at the top, in the middle and (if we survive) at the bottom-line of our business and are still expected to make sufficient funds to invest in training, development and technology advancement; plus be good corporate citizens giving support to CHIK-V, Ebola, HIV/AIDS, Violence Prevention, Missing Children, National Events, Cultural Events and so on.

NO CHANGE IN BROADCAST SPECTRUM

7. Broadcasters are against proposed changes to, and are worried that with the support of some regulators in the Caribbean and the ITU a powerful lobby to re-allocate spectrum in the UHF (470-690 MHz) range from broadcasters to mobile operators could happen in 2015.

Independent studies have shown that at UHF and C-Band levels the sharing of this spectrum with mobile operators has led to significant interference in broadcast signals. We are aware that at The Inter-American Telecommunications Commission (CITEL) Permanent Consultative Committee II Meeting in Mexico recently, Jamaica reserved its position. We urge regulators to support broadcasters and urge policy makers to vote against any change to the allocation of that spectrum. If this is not done, broadcasters' interests will again be sacrificed for the mobile industry.

HIGH SODIUM FOODS ADVERTISING 8. Broadcasters support a healthier population and have participated in numerous public awareness campaigns that promote different matters in the national interest. We are aware that the Ministry of Health has proposals to restrict the advertising of high sodium foods (HFS). In a society where this is ONLY what is affordable to many members of our society we agree that the problem needs to be tackled. However, we do not support restrictions on advertising; instead we suggest that guidelines and regulations are developed for such advertisers to do so more responsibly, for them to contribute some of their proceeds to assisting in the care of those who develop certain illnesses that MAY have been as a result of a high sodium diet, and that high sodium food producers be required to fund public education campaigns to assist people in eating right and making better choices. This is a far more enabling and holistic approach than to resort to the hammering of industries, including the media industry, with restrictions and penalties that will only drive the product users underground. We ask the regulator to adopt the approach recommended and to articulate this on behalf of the media sector, whenever you are engaged, especially since AGAIN the restriction will be placed on broadcasters but the advertising will be unstoppable on foreign channels on cable.

SUMMARY In summary therefore the MAJ on behalf of broadcasters is seeking your consideration, deliberation and support for:

- a. A review of the DSO decisions based on the new information at hand;
- b. A recognition of the legitimacy of retransmission rights for all broadcasters' content on all other platforms;
- c. A review and removal of proposals to allow advertising on foreign cable channels in Jamaica;
- d. A review and the removal of all proposals for regulatory changes to introduce substitute

programming provisions on subscriber television platforms when broadcasters own the licence or rights to the content;

e. A review and a removal of proposals for regulatory cash fees for content and spectrum regulation, as long as the provision of “time allowed for government broadcast” is retained in broadcast licenses;

f. No change in the UHF (470-690MHz) spectrum band reserved for broadcasters;

g. Support for broadcasters by recommending public education rather than restriction of advertising of High Sodium Foods in Jamaica.

Media Association Jamaica Limited

October 31, 2014