ICT 2018 - 1 - Determination – Radio Broadcasting Licence Template



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A. Introduction

- 1. The Utility Regulation and Competition Office (the '*Office*' or '*OfReg*') is the independent regulator established by **section 4 (1)** of the Utility Regulation and Competition Law (the '*URC Law*') for the electricity, information and communications technology ('*ICT*), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
- 2. Prior to the coming into force of the URC Law, and the creation of OfReg on 16 January 2017, the ICT Sector was regulated by the Information and Communications Technology Authority (the 'Authority') which was established in 2002 under the Information and Communications Technology Authority Law to, among others, determine and regulate the ICT services and ICT networks which are required to be licenced. Radio broadcasters have been among the earliest persons licensed by the Authority. For example, Radio Cayman, Hurley's Entertainment Corporation and the International College of the Cayman Islands ('ICCI) were first licensed under the Information and Communications Technology Authority Law 2002 on 11 December 2003.¹
- Section 23 (2) of the Information and Communications Technology Law (2017 Revision) (the 'ICT Law')² requires the Office to specify, "by notice published in the Gazette", the ICT services and ICT networks which are required to be licensed. The Section 23 (2) Notice includes a Type F ICT Network Licence for Broadcast Networks and Type 8 ICT Services Licence for Sound Broadcasting.
- 4. At the present time, the Office has licensed 8 entities and the annual turnover of the FM radio broadcasting sector stood at some CI\$ 4 million for the 2016 calendar year.³
- 5. The Office notes that the terms and conditions of the ICT licences issued to CI Conference of Seventh-Day Adventists ('CICSDA'), Radio Cayman, Hurley's Entertainment Corporation, ICCI, dms

¹ See <u>http://www.icta.ofreg.ky/licences</u>

² Section 23 (2) in the ICT Law is unchanged from the Information and Communications Technology Authority Law, 2002. However the "Notice" arising out of this section, was updated after consultation and published in the Gazette, Issue No.24/2017 on 20th November 2017

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http://www.icta.ofreg.ky/upimages/commonfiles/1496085645CaymanIslandsICTstatisticsQ12017. pdf

Broadcasting Ltd, Interactive Broadcasting and Media Ltd., Grace Broadcasting Ltd., and Spread the Word International Ministries Ltd. ('Spread the Word') (collectively, the 'Radio Broadcasters' and 'radio broadcasting licences' as applicable) are, in many respects, the same as those of the ICT licences first issued in 2003. The licensing history of the Radio Broadcasters is set out in APPENDIX 1 to this Determination.

6. The Office considers that the ICT Sector, including the radio broadcasting sector, has changed materially since 2003; for example, the technology over which the radio content is broadcast now includes digital transmissions and the Internet, and that it is necessary to update the terms and conditions of the licences issued to the Radio Broadcasters to ensure they remain fit for purpose.

B. Legal Framework

- 7. In making this Determination, the Office is guided by its statutory remit, in particular as set out in the URC Law and ICT Law, each where applicable. The Office notes in this regard the following provisions.
- 8. **Section 6** of the URC Law states in part:

(2) In performing its functions under this Law or any other Law, the Office may –

[...] administrative (d) make determinations, decisions, orders and regulations; [...] grant, modify and revoke authorizations; (i) [...] (n) issue, suspend, vary or revoke licences, permits and exemptions; [...] (\mathbf{y}) define relevant markets, assess the competitiveness of relevant markets and identifv sectoral providers that have significant market power in such markets; adopt remedies to deter anti-competitive (Z) conduct by sectoral providers in any relevant market: [...]

(dd) conduct public consultations; [...]



(1) Prior to issuing an administrative determination which, in the reasonable opinion of the Office, is of public significance, and subject to specific procedures under sectoral legislation, the Office shall –

- (a) issue the proposed determination in the form of a draft administrative determination;
- (b) allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination; and
- (c) give due consideration to those comments with a view to determining what administrative determination (if any) should be issued.

[...]

(4) Where the Office intends to issue an administrative determination, the Office shall –

- (a) give written notice of that intention, to any person with sufficient interest or likely to be affected by the proposed determination; and
- (b) afford that person an opportunity to make written representations to show cause why the Office ought not to make such a determination.
- 10. **Section 9** of the ICT Law states in part:

(1) Subject to this Law, the Office has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Law.

(2) For the purposes of this section, the Office shall -

 [...]
(c) issue licences authorising the use of specified portions of the electromagnetic spectrum, including those used on any ship, aircraft, vessel or other floating or airborne (d) institute procedures for ensuring the compliance by licensees with any obligations regarding the use of the electromagnetic spectrum,

(3) Without prejudice to subsections (1) and (2), the principal functions of the Office are-

- [...]
- (ba) to encourage the maintenance of a sufficient plurality of providers of different television and radio services;
- (bb) to promote the application, in case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive or harmful material in such services;
- [...]
- (e) to license and regulate ICT services and ICT networks as specified in this Law and the Electronic Transactions Law (2003 Revision);
- [...]
- 11. Section 23 of the ICT Law states in part:

(1) The Office may grant licences in accordance with this [ICT Law].

(2) Subject to subsections (3) and (3A), the Office, by notice published in the Gazette, shall specify the ICT services and ICT networks that are required to be licensed.

[...]

- (6) A licence may specify-
 - (a) the operations which the licensee may undertake under that licence; and
 - (b) the conditions to which the licensee is subject, including but not limited to pricing, service standards, Universal Service provision, infrastructure sharing, interconnection and spectrum utilisation. [Emphasis added]



(1) A person who wishes to apply for a licence or the renewal of a licence shall, in accordance with a procedure determined by the Office submit an application for consideration by the Office, and the application shall be in the prescribed form and accompanied by such fees as may be determined by the Office.

(2) The Office may, where necessary, before granting or renewing a licence under this section, take into account the [matters as listed therein];

13. **Section 28** of the ICT Law states:

A licence –

- (a) shall be for the period specified in the licence and shall not be granted for a period longer than twenty years; [...]
- 14. **Section 29** of the ICT Law states:

(1) Where an application for renewal of a licence under section 26 is made, the Office may refuse to renew that licence if the licensee is or has engaged in conduct that materially contravenes this Law or any regulations.

(2) Where the Office has reasonable grounds for not renewing a licence under subsection (1), it shall inform the licensee by written notice as soon as practicable of its intention not to renew the licence.

(3) A licensee referred to under subsection (2) shall have thirty days from the date of service of the said notice to make written submissions to the Office in respect of the refusal.

(4) The Office shall consider any written submissions made under subsection (3), and shall inform the licensee within seven days of the receipt of the submission of its decision on the matter.

15. **Part 5** (sections 55 to 57) of the ICT Law establishes duties and obligations in respect of "*local programming*" (defined in **section 2** of the

ICT Law to mean "sound or television broadcasting content made available in the Islands, by a licensee, without subscription, and includes things such as advertisements and announcements").

55. It shall be the duty of a licensee to ensure that local programming broadcast by the licensee –

- (a) protects persons under the age of eighteen;
- (b) includes nothing which
 - (i) offends against good taste or decency;
 - (ii) is likely to encourage or incite to commit a crime or lead to disorder;
 - (iii) is likely to be offensive to public feelings; and
 - *(iv) is an offensive representation of, or reference to, a person (living or deceased); and*
- (c) presents with due accuracy and impartiality any news broadcast.

56. (1) It shall be the duty of the Office to set, review and revise, such standards for the content of such broadcasts as appear to it best calculated to secure the standards specified in section 55.

(2) The standards set by the Office shall be contained in one or more published codes and, in setting or revising the codes, the Office may consult with such persons as it sees fit.

(3) In setting or revising standards, the Office may consult with such persons as it sees fit and shall have regard to -

- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
- (b) the likely size and composition of the potential audience for programmes included in local programming generally, or in local programming of a particular description;
- (c) the likely expectation of the audience as to the nature of a local programme's content and the extent to which the nature of that

content can be brought to the attention of potential members of the audience; and

(d) the likelihood of persons who are unaware of the nature of a local programme's content being unintentionally exposed, by their own actions, to that content.

(4) The Office shall ensure that the standards in force under these Regulations include –

- (a) minimum standards applicable to all local programmes; and
- (b) such other standards applicable to particular descriptions of local programmes as appear to the Office to be appropriate for securing the standards' objectives.

57. (1) A licensee shall retain a recording of the local programming in a viewable and accessible form for a period of twenty-eight days after its broadcast.

(2) For the purpose of maintaining supervision of local programming, the Office may make and use recordings of those programmes or any part of them and such use shall be deemed not to infringe any intellectual property rights in that programming.

(3) Nothing in this Law shall be construed as requiring the Office to view or listen to local programmes in advance of their being included in local programming services.

(4) The Office may issue guidelines as to the duties of licensees under sections 55, 56 and subsection (1) of this section.

C. ICT 2017 – 3 – Consultation

16. On 18 October 2017 the Office published ICT 2017 – 3 – Consultation in which the Office proposed a number of modifications to the current radio broadcasting ICT licence template, which is to be offered to the Radio Broadcasters pursuant to a forthcoming licence renewal application process. The proposed amendments to the previous licence template were set out as underlines/strike-throughs in the document at Appendix 1 to ICT 2017 – 3 – Consultation and were further described within the



consultation document. The radio broadcasting ICT licence template draft determination was attached as Appendix 2 to ICT 2017 – 3 – Consultation.

- 17. The Office then asked the questions for consultation as set out in **APPENDIX 2** to this Determination and invited all interested parties to submit their comments, with supporting evidence, on any or all of them.
- 18. The Office received <u>no</u> comments on **ICT 2017 3 Consultation**.

D. Office's Determinations

- 19. Subsequent to the closing of **ICT 2017 3 Consultation**, the Office has made minor changes to the radio broadcasting licence template. Specifically:
 - in Condition 3.2, third line, the word "*licence*" has been capitalised, to now read "*Licence*" (noting it is a defined term);
 - the "*and*" at the end of Condition 4.10 (b) has been moved to the end of Condition 4.10 (c) (noting it is an inclusive list);
 - in Condition 5.2, penultimate line, the word "*Regulations*" is no longer capitalised, and now reads "*regulations*" (as it is not defined in the Licence); and,
 - in Annex 2, clause 3.1, second line, the words (the "**Authorised Frequency Fee**") are inserted between "*fee*" and "*as*" (to clarify that that clause is a reference to such a fee).
- 20. The Office considers that the aforementioned changes are either typographical or clarificatory in nature and have no material impact to the ICT 2017 3 Consultation or this Determination outcomes, and therefore would not change the position of any party if they were to have been included in the ICT 2017 3 Consultation.
- 21. In light of the foregoing, and for the reasons set out in the ICT 2017 3 Consultation, the Office determines that it will adopt the radio broadcasting licence template as proposed in ICT 2017 3 Consultation and appended as Appendix 2 to that consultation document, to also include the minor changes referenced in paragraph 19 above.



- 22. A copy of the final radio broadcasting licence template is appended to this Determination as **APPENDIX 3** and will be published on the Office's website at <u>www.ofreg.ky</u>.
- 23. The Office also determines to extend all current radio broadcasting licences to 31 May 2018 in order to facilitate the relicensing process.

E. Radio Broadcasting Licensing - Next Steps

- 24. Pursuant to **section 26 (1)** of the ICT Law, the Office intends to commence the radio broadcasting relicensing exercise in **March 2018**, and expects all such licensing applications to be received by the Office **no later than 13 April 2018**, such applications to be in the format as set out in the Broadcasting Licence application form at http://www.ofreg.ky/ict/application-forms.
- 25. Once the relicensing application has been received by the Office, including the cleared application fees,⁴ the Office will contact the particular Licensee to discuss its application: in particular, in relation to the: ICT Services and ICT Networks to be provided; level of Caymanian participation; rollout and coverage; frequencies, power and transmitters to be used.

⁴ <u>http://www.icta.ofreg.ky/application-fees</u>

Appendix 1

Radio Broadcasting Licensing History

1. The entities currently licensed to operate Type F Broadcast Networks and provide Type 8 Sound Broadcasting Services are:

No. Name

- 23 CI Conference of Seventh-Day Adventists ('CICSDA');
- R1 Radio Cayman;
- R2 Hurley's Entertainment Corporation;
- R3 International College of the Cayman Islands ('**ICCI**');
- R4 dms Broadcasting Ltd;
- R11 Interactive Broadcasting and Media Ltd.;
- R12 Grace Broadcasting Ltd.; and,
- R13 Spread the Word International Ministries Ltd.
- On 6 March 2008, a consolidated ICT licence was issued to CICSDA,⁵ which included a Type 8 Sound Broadcasting ICT Service licence for a term from 15 June 2006 to 20 September 2011.⁶
- 3. On **28 February 2009**, the ICT licence issued to Radio Cayman was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on **28 February 2014**.⁷
- 4. On the same date, the ICT licence issued to Hurley's Entertainment Corporation was renewed, which included a Type F Broadcast Network

⁵ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417648919.pdf</u>

⁶ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1 1417648940.pdf</u>

⁷ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417645398.pdf</u>



ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on **28 February 2014**.⁸

- On the same date, the ICT licence issued to ICCI was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term ending on 28 February 2014.⁹
- On 8 October 2009, the ICT licence issued to dms Broadcasting Ltd. was renewed, which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a fiveyear term from 15 September 2009 to 15 September 2014.¹⁰
- On 5 May 2011, an ICT licence was issued to Interactive Broadcasting and Media Ltd., which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a fiveyear term from 6 May 2011 to 5 May 2016.¹¹
- On 5 October 2011, an ICT licence was issued to Grace Broadcasting Ltd., which included a Type F Broadcast Network ICT Network licence and a Type 8 Sound Broadcasting ICT Service licence for a five-year term from 6 October 2011 to 5 October 2016.¹²
- 9. On **3 October 2013**, Annex 2 of the Radio Broadcasters' licences (apart from Spread the Word) was amended, amending the definitions of "*Annual Turnover*", "*Audited Financial Statements*" and "*Quarterly Turnover*."¹³

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2 1417645106.pdf ICCI - <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1 1417644474.pdf</u> Interactive Broadcasting Media -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment1 1417650012.pdf Grace Broadcasting Ltd -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment3 1417650231.pdf

⁸ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417645069.pdf</u>

⁹ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417644454.pdf</u>

¹⁰ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417647399.pdf</u>

¹¹ <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417649995.pdf</u>

¹² <u>http://www.icta.ofreg.ky/upimages/licencedocument/ViewLicencedocument_1417650173.pdf</u>

¹³ Radio Cayman -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2 1417645420.pdf, dms Broadcasting Ltd -

http://www.icta.ofreg.ky/upimages/licencedocument/ViewAmendment2 1417647426.pdf, Hurley's Entertainment Corporation -

- 10. On **11 February 2014**, the Authority wrote separately to each of **Radio Cayman**, **Hurley's Entertainment Corporation**, **ICCI**, **and dms Broadcasting Ltd**., noting that their Type F and Type 8 ICT licences were due to expire shortly. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them, following which it would invite applications for renewal of FM broadcasting licences pursuant to section 26 of the ICTA Law. In order to allow sufficient time to complete the process, the Authority extended the duration of those licensees' Type F and Type 8 ICT licences until **31 December 2014**.
- 11. On **12 February 2014**, the Authority wrote to **CICSDA**, noting that CICSDA's Type 8 ICT licence had expired on 20 September 2011 and that CICSDA was in the process of applying to the Authority to renew that licence. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them, following which it would consider CICSDA's application for renewal of its Type 8 licence. In order to allow sufficient time to complete the process, the Authority granted CICSDA a short-term Type 8 ICT licence until **31 December 2014**.
- 12. On **5 December 2014**, the Authority wrote separately to each of **Radio Cayman**, **Hurley's Entertainment Corporation**, **ICCI**, and **dms Broadcasting Ltd**., noting that the duration of their Type F and Type 8 ICT licences had been extended until **31 December 2014**. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended the duration of those licensees' Type F and Type 8 ICT licences until **31 July 2015**.
- 13. On **5 December 2014**, the Authority wrote to **CICSDA**, noting that CICSDA had been granted a short-term Type 8 ICT licence until **31 December 2014**. The Authority further noted that that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended CICSDA's short-term Type 8 ICT licence until **31 July 2015**.
- 14. On **29 July 2015**, the Authority wrote separately to each of **Radio Cayman, Hurley's Entertainment Corporation, ICCI,** and **dms Broadcasting Ltd.**, noting that duration of their Type F and Type 8 ICT licences had been extended until **31 July 2015**. The Authority further noted that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended the



duration of those licensees' Type F and Type 8 ICT licences until **31 December 2015**.

- 15. On **29 July 2015**, the Authority wrote to **CICSDA**, noting that CICSDA had been granted a short-term Type 8 ICT licence until **31 July 2015**. The Authority further noted that that it was reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order to allow sufficient time to complete the process, the Authority extended CICSDA's short-term Type 8 ICT licence until **31 December 2015**.
- 16. On **15 December 2015**, the Authority wrote separately to each of **Radio Cayman, Hurley's Entertainment Corporation, ICCI,** and **dms Broadcasting Ltd.**, noting that the duration of their Type F and Type 8 ICT licences had been extended until **31 December 2015**. The Authority further noted that the C.I. Government intended to set-up a Utilities Regulator which would have statutory responsibility for the regulation of the ICT, water, electricity and petroleum industries and that new legislation was being drafted that would bring the regulation of the four different sectors under the one regulatory body. The Authority noted that it had been reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order for the Authority to do this within the context of the proposed utilities regulatory framework, the Authority extended the duration of those licensees' current Type F and Type 8 ICT licences until **31 December 2016**.
- 17. On **15 December 2015**, the Authority wrote to **CICSDA**, noting that the duration of CICSDA's Type 8 ICT service licence had been extended until **31 December 2015**. The Authority further noted that the C.I. Government intended to set-up a Utilities Regulator which would have statutory responsibility for the regulation of the ICT, water, electricity and petroleum industries and that new legislation was being drafted that will bring the regulation of the four different sectors under the one regulatory body. The Authority noted that it had been reviewing the FM broadcasting licence conditions with a view to updating them prior to the next licensing process. In order for the Authority to do this within the context of the proposed utilities regulatory framework, the Authority extended the duration of CICSDA's current Type 8 ICT licence until **31 December 2016**.
- 18. By letter dated **30 December 2016**, the Authority advised all Radio Broadcasters (including those whose licence terms were extended until 31 December 2016) that the legislation to establish a new utilities regulator and to bring the regulation of the ICT, water, electricity and petroleum industries under the one regulatory body, had been Gazetted and was due to commence the next month.



- 20. On **21 April 2017**, the Office issued a short-term ICT licence to **Spread the Word**, which included a Type F Broadcast Network ICT network licence and a Type 8 Sound Broadcasting ICT service licence. Consistent with the Authority's 30 December 2016 notice to the other Radio Broadcasters, the ICT licence was issued for a term ending on **30 September 2017**.¹⁴
- 21. On **18 October 2017**, by paragraph 29 of **ICT 2017 3 Consultation**, the Office informed all Radio Broadcasters informing them that their licences had been extended until **28 February 2018**, in order to provide the Office with the necessary time to complete the radio broadcasting relicensing exercise.

¹⁴ <u>http://www.icta.ofreg.ky/upimages/licencedocument/SpreadtheWordInternationalMinistriesT-</u> <u>AVoice97.7Licence-signed 1496270522.pdf</u>

Appendix 2

Consultation Questions

QUESTION 1: Provide your views on the proposed changes to the radio broadcasting licence template.

QUESTION 2: Are there other aspects of the radio broadcasting licence template which should be amended? If yes, provide the proposed amendments as well as a detailed explanation of the changes and the reasons for the changes, and documents in support, if applicable.

QUESTION 3: Provide your views on any other matters you consider relevant to this Consultation.

Appendix 3

Radio Broadcasting Licence Template