

**Observing the provisions of the Broadcasting Code  
in issuing broadcasting licenses  
following contests**

*Case Study*

**Introduction**

On February 26, 2008, the Broadcasting Coordinating Council (BCC) adopted *Decision no.17 on announcing the contest for using radio frequencies and TV channels* (published in Monitorul Oficial al Republicii Moldova no.57-60 of 21.03.2008).

49 broadcasters consequently applied, from which 11 – to renew their licenses, 25 – to expand their coverage area and 13 – to set up new entities.

On May 7 and 8, 2008, the frequency contest took place.

On June 3, 2008, Monitorul Oficial al Republicii Moldova published *the BCC Decision no. 47 of 07.05.2008 on the results of the contest for using radio frequencies and TV channels, announced through BCC Decision no.17 of 26 February 2008.*

The Table below presents the results of that contest.

Radio Frequencies				TV Channels			
Applicants	Number of requested frequencies	Winners	Number of granted frequencies	Applicants	Number of requested channels	Winners	Number of granted channels
Antena C	7	Antena C	6	NIT	12	NIT	12
Radio 10	8	Radio 10	5	Euro TV Chişinău	8	Euro TV Chişinău	8
City FM	1	City FM	1	VDT	11	VDT	8
Radio Media	1	Radio Media	1	Sor-TV	2	Sor-TV	2
Magic FM	7	Magic FM	1	Elita	4	Elita	2
Radio 21	2	Radio 21	1	Studio-L	1	Studio-L	1
Radio Plai	6	Radio Plai	1	Aiîn-Aciîc	1	Aiîn-Aciîc	1
Vocea Basarabiei	8			Bas TV	1	Bas TV	1
Vzrosloie Radio.Şanson	8			TV 6 Bălţi	1	TV 6 Bălţi	1
Radio 7	5			Impuls TV	1	Impuls TV	1
Noroc	5			Media TV	1	Media TV	1
Radio Sulac	4			Gagauziya Radio Televizionu	4	Gagauziya Radio Televizionu	4
Radio Poli Disc/				TV Dixi	18		
Russkoie Radio	3			Pro TV Chişinău	7		
Scăpărici	3			AN Flor TV	1		
Hit FM	3			TV Prim	1		
Radio.MD	2			Muzica TV	1		
Ploaia de Argint	2						
RFF FM	2						
Pro FM Chişinău	2						
Adevărat FM/BEST FM	2						
Radio Moldova	1						
Fresh FM	1						
Radio Nova	1						
Radio Mingir	1						
Busuioc	1						
Autoradio/Avtoradio	1						
NRG	1						
Love Radio/Radio Iubirea	1						
101,3 FM	1						
Lady FM	1						
M Radio	1						
Umor şi Piper	1						

## Findings

In the process of unfolding the contest to issue broadcasting licenses, the BCC is obliged to observe the provisions of the following acts:

### **Broadcasting Code**

- in accordance with *The Strategy of covering the national territory with broadcasting services (2007-2010)*, wording and adopting the announcement regarding the contest of available frequencies, which should also contain **the requirements concerning program services** (*art.23 para.(6) let.c*);
- insuring the awareness of the concept of program services proposed and of the information about the participants in the contest (*art.23 para.(7)*);
- designating, **on the basis of motivated decision** (*art.40 para.(4)*), the winners of the contest following the objective and impartial consideration of the applicants' offers (*art.23 para.(9)*), according to the criteria of *art.23 para.(3)*;
- encouraging free competition, insuring a balanced ratio between the program services offered by national broadcasters and the ones offered by local and regional broadcasters, insuring the transparency of broadcasters and own activity (*art.41 para.(1) let.b, f) and g*).

### **The Regulation on the procedure and conditions of issuing broadcasting licenses and re-transmission authorizations**

- the announcement on holding the contest will contain the following data: the conditions (including the list of documents to join the contest) and the deadline for lodging applications; the radio frequencies (groups of frequencies) and TV channels (groups of channels) with their parameters ... ; the requirements as to program services; the license validity term; the amount of the state tax to be paid for the license; the selection criteria (*art 6. para.(3)*);
- the application and participation documents are kept within the file of the license holder (*art. 9 para.(3)*);
- on the expiration of license, the radio frequencies and the TV channels are put up for a new contest (*art.9*).

### **The Petitioning Law of the Republic of Moldova**

- petition means any application, request, proposal, notification addressed to entitled bodies (*art.4 para.(1)*);
- the secretariat works related to considering petitions is done according to the mode established by the Government (*art.22*).

### **The Government's Decision on Instructions on secretariat works related to petitions**

- the petitions, the copies of the answers to them and the documents on examining the petitions, and the documents on the discussions with petitioners are established in files in accordance with the file list approved of by the respective body (*p.27*);
- the files with those petitions and documents are kept 3 years (*p.30*).

In drafting and adopting *Decision no.17 on announcing the contest for using radio frequencies and TV channels*, in accordance with *art.23 para.(6) let.c* of the Broadcasting Code, the BCC was to clearly establish the requirements as to program services to be broadcast on the bidden frequencies. In *The Strategy of covering the national territory with broadcasting services (2007-2010)* the BCC established certain priorities in developing broadcasting, as: creating at least 5 national TV networks and 6 national radio networks, from which at least 2 national TV networks (a public one and a private one) and 2 national radio networks (public-private) specialized in news and current affairs; granting a good part of the national frequencies and networks for different programs – for youth, women, students, farmers; culture, music, fashion, sport, technology, etc. (*Chapter II, p.2.2., The Principle of*

*Chances Equality of program consumers*). These provisions of the *Strategy* once again stress the need to develop clear and public requirements concerning the appreciation of program services on the basis of which the bidden frequencies and channels are to be granted. Or, in our opinion, copying art.23, para.(3) from the Broadcasting Code as art. 3 of *Decision 17* is but the BCC shirking from developing the requirements as to the program services for the radio frequencies and TV channels (especially for the available ones). Thus, neither the bidders, nor the public were informed on the destination of the frequencies announced for the contest: to prolong the license holder's activity, to create new program services, to expand the existent networks or to create new networks.

Through *Decision no.17 on announcing the contest for using radio frequencies and TV channels*, contrary to art.15 of *Regulation on the procedure and conditions of issuing broadcasting licenses and re-transmission authorizations*, frequencies were put up for contest before the expiration of licenses. E.g.: frequency **102.7 MHz – Chişinău** was owned by Hit Radio SRL till June 7, 2008. Moreover, through *Decision no. 47 of 07.05.2008 on the results of the contest for using radio frequencies and TV channels, announced through BCC Decision no.17 of 26 February 2008*, the BCC issued a license for this frequency to Social Media SRL – the founder of Magic FM, neglecting the priority right the former holder enjoyed under the law. Worth to remark is that changing the destination of the frequency was not announced in the requirements for program services and was not reasoned through public explanations and motivations at the BCC's sittings.

Lacking clear and transparent criteria of assessing the program services and of selecting applicants, on the basis of which the radio frequencies and the TV channels would be granted, room is made for arbitrary decisions unexplainable to the public, as there would be not granting frequencies to asserted broadcasters on the media market as Vocea Basarabiei, Pro FM, Radio Noroc, Radio 21, Pro TV Chişinău, Muzica TV, in the conditions in which, other absolutely unknown stations as Radio 10 and VDT got 5 frequencies from 8 requested, respectively: 8 channels from 11 requested. Suspicious is the fact that certain broadcasters (as Antena C, NIT TV), the activity of which generated objections on behalf of the BCC before the Contest, anyway got what they asked for: Antena C – 6 frequencies from 7 and NIT – 12 from 12.

The lack of requirements towards program services and of assessment criteria does not spare the BCC from observing other provisions of the Broadcasting Code. As the law encourages the free competition, insuring a balanced ratio between the program services offered to the public, unexplainable is the decision to grant an applicant (Euro TV) 8 channels from 8 requested and to another applicant (Pro TV) – none from 7 requested. In all the mentioned cases, but also in the ones presented in the table above, the only reason known to the public was : *“following public debates and in accordance with the results of the voting, the winner is ...”* Such “an argument” cannot remove the suspicions and puzzlement of the public, even in the case of a fair decision of the BCC.

Thus, the monitors find that the BCC repeatedly adopts decisions **without arguing them**, breaching art.40 para.(4) of the Broadcasting Code. The reasoning of the decision, in our opinion, would mean a public presentation of the results of a comparative analysis, made by every BCC member, of the way in which the files match the requirements for requested program services when announcing the contest; of the concepts presented; of business plans; of the participation quotas in other broadcasters. These and other qualities of the participating dossiers were to be examined on the basis of selection criteria in accordance with the law.

## **Conclusions, recommendations, suggestions**

### **Conclusions**

1. The contest unfolded as the BCC did not expressly develop the requirements for the program services for the bidden radio frequencies and TV channels, as the law provides.
2. The applicants' dossiers were assessed without clear, exact, measurable selection criteria, that the BCC was obliged by law to develop and make public.
3. The BCC decision on the results of the contest does not contain reasons upheld by persuasive arguments and explanations justifying the results of the vote.
4. Further non-observing some exact provisions of the Broadcasting Code by the way of unfolding the contest and of making decisions arises the suspicion and puzzlement of applicants, public opinion,

program consumers, affects the BCC's image as an autonomous public authority responsible for the application and observance of the Broadcasting Code, and as a representative and guarantor of the public interest in broadcasting.

### **Recommendations**

1. The BCC is to draft and publish, every time in a separate decision, ***the requirements towards the program services for the bidden radio frequencies and TV channels*** in full concordance with the law and with the provisions of *The Strategy of covering the national territory with broadcasting services (2007-2010)*.

2. The BCC is to draft and publish ***the criteria of assessing dossiers and selecting applicants***, including the minimum-maximum percentage of fulfilling the conditions in respecting every criterion.

3. The BCC is to draft a **methodology of assessing the files** of participants transparently establishing the principles and criteria of reasoning the adopted decisions (the Broadcasting Code requires that the BCC decisions shall be reasoned.)

### **Suggestions**

The BCC, in its capacity of a public authority and of an exponent of the public interest in broadcasting, could:

- on the eve of announcing the frequency contest, organize public consultations and hearings to elaborate the content of the announcement;
- on the eve of the contest proper, perform preliminary assessments of the applicants' dossiers with the participation of the civil society (NGOs, experts, representatives of program consumers);
- organize separate contests to distribute available frequencies and frequencies become available.

Such actions would contribute:

- to a more exact and profound assessment of the situation in the area;
- to testing the public's reaction as to the BCC's own options ;
- to a complex assessment of the applicants' offers;
- to the BCC obtaining harmony between the needs of the consuming public and the offers of applicants for available radio frequencies and TV channels.

### **Note:**

In monitoring the unfolding of the contest of May 7, 2008 and, especially, after publishing its results, the project monitors could not enter into the possession of the files of all applicants for corroboration. Those files were important for comparative analysis and for gathering empirical data needed to assess the state of things. In this situation, the case study narrowed its research subject. Thus, the case study could not outline the justice or the injustice of the BCC's decisions. It has only stated the faulty character of the procedure of organizing and unfolding the frequency contest.