GOVERNMENT OF ANGUILLA

THE NATIONAL BROADCASTING POLICY
FOR ANGUILLA

Prepared by the
Ministry of Infrastructure, Communications, Utilities and Housing (MICUH)
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FOREWORD

On behalf of the Government of Anguilla, I am pleased to present to the national community, the National Policy on Broadcasting for Anguilla. This is the first policy produced for the development of the Broadcasting Industry in this country.

The Policy is the product of consultation with the some main stakeholders in the industry, other Government Ministries and interested parties. Views were sought, contributions made and most serious and diligent consideration given to all opinions and perspectives presented. There were several attempts at producing a policy document for the broadcasting industry before a draft was finally available. It is therefore a long awaited document.

The Government recognizes the invaluable contribution already made by the broadcast industry to the development of our nation. This Policy is intended to ensure an even greater contribution by this sector to our nation’s well-being. It aims to create a framework for greater creativity, entrepreneurial activity, responsibility, modernization and capacity to face the challenges of competition and change in the sector.

A major foundation of this Policy is our constitutionally guaranteed freedom of expression, and by extension, freedom of the press and of the media. At the same time the policy reinforces the need for the broadcasting sector to ensure that it does not abuse these freedoms. It recognizes the indispensable role of competition and private enterprise for the growth of the industry. It also supports the attainment and maintenance of the highest standards of quality, fairness and objectivity. Most importantly, the policy underscores the need, in our plural society, for the expeditious development and application of law to deal with any attempt to incite ethnic tensions and divisiveness by the Broadcast Sector.

On the very important question of local content in commercial broadcasting, the Government in the first instance shall pursue with the Broadcasting Industry, a voluntarily imposed quota for the airing of local products on the country’s radio and television stations. At the same time, the Government recognizes its duty to provide very significant opportunities for development and preservation of local culture through broadcasting. We shall do this through the Public Broadcasting Service, which Government is taking steps to develop.

No geographic location in Anguilla should be underserved by services that are national in scope.

This policy provides the minimum adequate basis for moving the industry forward. However, we recognize that quick and constant change is now a main characteristic of this sector. The Government therefore intends to continuously review this Policy and make the necessary adjustments and modifications to it so as to keep the industry in step with developments both at home and abroad. In other words, the policy framework for this sector will be as dynamic as the industry, which it seeks to develop and regulate.
Following the development of this policy will be the preparation of a drafting brief and the drafting of Broadcasting Legislation centered around this policy. Finally, we will establish a Regulatory Body to provide governance and regulate the broadcasting industry.

This policy must also provide for considerations for the harmonization with the telecommunications legislation to cater for:

1) The interaction with broadcasting as a separate entity, which is affected by modern developments in both the broadcasting and telecommunications industries such as Next Generation Networks (NGNs), convergence, and other modern development trends impacting upon the broadcasting industry, such as wireless and IP-based digital delivery. (Note: NGNs are IP-based telecommunications networks that allow for the transport of integrated services combining voice, video, image and text across a single network.)

2) The impacts of the modern developments and advancements in the industry and the best practices of the international community whilst at the same time balancing those factors against the norms, traditions, culture and heritage of the regional and local environment.

Whilst today’s national broadcasting has to content with such forces as international best practices and modern market trends such as convergence, digitization and content re-purposing, that does not negate broadcasting’s traditional obligatory responsibilities of: nation building and democracy development; providing community and state broadcasting services; public service broadcasting; etc,. The regulatory environment in which national broadcasting operates plays a vital role in preserving the national, cultural and heritage norms of a country. A balance must always be sought between media as ‘public good’ and media as ‘commercial enterprise’.

It is against this backdrop that a National Broadcasting Policy must be developed and must be enshrined in legislation to preserve those elements of national heritage, tradition and culture, whilst at the same time be forward-looking enough to allow the country to develop and advance technologically to keep abreast with the rest of the world.

The National Broadcasting Policy for Anguilla should cover both the technical and non technical aspects of broadcasting.

I therefore invite your feedback both in writing or on the Government’s website at – www.gov.ai This is the first step in a process of ongoing dialogue with interested stakeholders on how this sector should evolve.

Honourable Evan Gumbs
Minister of Infrastructure, Communications, Utilities and Housing (MICUH)

May 2013
1.0 BACKGROUND

1.1 The Broadcasting Industry in Anguilla has grown in a completely unregulated fashion. It has been influenced by the unique cultural norms and traditions of Anguilla as well as by trends in the regional and global environment. Before 1980, it was an industry operating under several constraints and limitations, with one radio station. The Internet was not yet available in Anguilla and there was no satellite or cable television.

1.2 Domestic, social and political evolution, globalization and liberalization; the international communications revolution and; the opening up of the broadcasting sector in the late nineties have since impacted significantly and positively on the broadcast industry of Anguilla. This however, did not come without challenges as the sector was unregulated. There are now one television satellite channel, twelve FM broadcast radio stations, one Cable company, two AM broadcast radio channels, one short wave radio broadcast channel, one pending application for a free-to-air wireless television station, and another pending application for an internet based television station operating for the patronage of 14,000 people. Liberalization however, came without a true policy framework.

1.3 Meanwhile, global communications have improved and expanded tremendously. The Internet is now indispensable and is transforming education, business and personal interactions. Convergence and digitalization are transforming the telecommunications environment and the way we conduct business. Speed, efficiency and the virtual disappearance of borders characterize communications at the start of the new century.

1.4 Governments all over the world have a constant challenge in terms of managing and regulating the sector.

2.0 OBJECTIVE

2.1 The objective of this Policy is to create the environment for the development of a fully modernized and dynamic broadcasting sector and to ensure that the sector contributes to the economic, social and cultural development of our nation.

2.2 The Government acknowledges the very positive contribution that has already been made by the Broadcasting Sector to the development of Anguilla.

3.0 GOALS

3.1 The policy should be based on the assumptions that viewers and listeners use broadcasting both as consumers and as citizens, for information and entertainment, and for a variety of other purposes. The most important policy goals for broadcasting in a democratic society are to ensure that broadcasting is:
3.1.1 Accountable to citizens.

3.1.2 Pluralistic; to ensure that a tyranny of the majority does not exclude minority views.

3.1.3 Responsive to consumers' changing needs and desires; so that producers and other elites do not 'capture' organisations and thus ensure that viewer and listener preferences, rather than producer elites, determine outcomes.

3.1.4 Economically viable and uses scarce resources efficiently and ensures that provision is matched to the ability to pay of the societies served.

3.1.5 Reflect the linguistic and cultural differences of consumers.

3.1.6 Reinforce social solidarity.

3.1.7 Provide a universal service (tv).

3.2 Such goals are often mutually antagonistic. Broadcasting Policy is often, therefore, a matter of trading off the (partial) achievement of one (or more) goal against the (partial) neglect of another(s). Therefore the model outlined below represents only one possible equilibrium of compromise between rivaling goals.

4.0 ACCOUNTABILITY

4.1 Accountability is required to give citizens control over an important source of information which they require to make informed political choices. Political accountability presumes accountability to an elected authority. Thus establishing a relationship of political accountability between broadcaster and citizens could most easily be contrived by making broadcasting the responsibility of an elected government. However, governments are given to using power to disadvantage political opponents and to circulate information advantageous to incumbents and disadvantageous to aspirants. Thus, for an enduring democratic process to be established, measures are required to ensure that power to control broadcasting is not monopolised by a single centre of political authority, even if elected. Hence the requirement for pluralism in the control, and organisation, of broadcasting.

4.2 The principles of political accountability and pluralism can be reconciled, for example, by making broadcasting accountable to more than one community structure - such as by making other community bodies (which together are representative of the whole community), such as trades unions, employers associations, co-operatives, women's organisations, churches, etc., the watchdog of broadcasting.

5.0 ECONOMIC VIABILITY

5.1 A broadcasting system must be economically viable. Several factors affect viability, prominent among these are:

5.1.1 notably the cost of providing services;
5.1.2 the ability of consumers to pay for services (whether directly or via the taxation system); and

5.1.3 the number and type of services provided.

5.2 Radio is less costly than television, analogue television is less costly than digital and, and digital television is less costly than HD digital. Own country production is likely to be considerably more costly than programmes purchased on the international market and a programme mix which includes high proportions of programmes such as drama and documentary will be more costly than a programme mix which emphasizes sport, game shows and music.

5.3 The cost of service provision will also reflect the level of incentives to producers to use resources efficiently which in turn is related to the extent to which competition between service providers (whether providers of services to consumers or to the producers of the services destined for final consumption) can be established. How much and what kind of television a particular market can afford will be constrained by all these interacting factors.

6.0 CULTURAL DIFFERENCES AND PREFERENCES OF CONSUMERS

6.1 Broadcasting audience research generally suggests that television audiences in most countries prefer television programming which emanates from their own country. However, this preference for domestic production is not unconditional. There is a point at which preferences cross over from endogenous to exogenous programming.

6.2 To construct a programme schedule which is equally attractive to viewers using local programming is likely to be more costly. Therefore a broadcasting policy must consider the desired equilibrium between audience satisfaction, local programming and cost. Whilst local programming is generally considered by policy makers to be preferable to foreign programming, it should be recognized that foreign programming does confer benefits beyond that of a generally high benefit cost relationship.

6.3 The presence of foreign programming in a radio or television schedule may not only provide an increase in the diversity (serving the pluralism goal) and quality of a broadcasting service but may also lead to innovation by native producers and productive adaptation of foreign models for local production.

7.0 CONTENT

7.1 The Constitution of Anguilla guarantees freedom of expression, and by extension, freedom of the Press and Media. This Broadcast Policy supports and endorses these freedoms.

7.2 The government does not propose to dictate content in broadcasting. The plurality of voices and views must compete, and high standards of substance, variety and persuasion shall determine the success or failure of private endeavour in the commercialized broadcasting sector.
7.3 The Anguillian Society is built on universally accepted standards of decency and
quality. These find expression in both societal norms and the laws of the country,
both of which have always sought to ensure that freedom of speech does not mean
the licence to be offensive or destructive and to jeopardize fairness and privacy.
This Broadcasting Policy supports these norms and the full implementation of law
for the benefit of both the citizenry and the broadcast industry. To this end, the
Government will however, encourage the formation of watchdog bodies and
industry-led groups that will assist in monitoring content.

7.4 Anguilla is a plural society. The government will not tolerate any incitement to
racial animosity, ethnic divisiveness or lewd and lascivious conduct emanating
over the airwaves of Anguilla from the broadcast industry and will rely on the law
to deal expeditiously with any such violations. As the Broadcasting Law has not
yet been enacted, MICUH will be directly responsible for content administration
and has the right under this Policy to review the content of a broadcasting station
operating in Anguilla and approve or disallow any such content if it deems it
contrary to the tenets of this Policy.

7.5 Much argument has taken place regarding a mandatory percentage for local content
in the commercial broadcasting sector. The Government is of the view that it is
contrary to both the Country’s Constitution and the tenets of free enterprise to
legislate content for the broadcast industry. Besides, such a move could be
counterproductive, since it could engender complacency and consequential
mediocrity. Local output in all fields, including culture, must develop the resilience
for the tough competitive environment of the modern world.

7.6 Government is very conscious of its responsibility to foster the development of the
local culture and entertainment industry. It also recognizes the acute challenges to
local artists posed by the overwhelming presence of foreign products in the sector.
It will enter into dialogue with the Broadcasting Industry to decide on a voluntarily
imposed quota for local content on the television and radio stations of the country.
Government proposes to provide significant exposure and development for local
culture through the development of a Public Broadcasting Service.

7.7 Advertising is an important and substantial part of content in commercial
broadcasting and shall be subject to the expectations and obligations outlined in
this broadcast policy and to the laws of Anguilla.

7.8 Broadcasters shall operate within the law and must respect the rights of the
individual as enshrined in the Constitution of Anguilla and protected by the laws of
the land.

8.0 COMPETITION AND THE MARKET PLACE

8.1 The Government sees competition as key to the development of the sector and to
the provision of choice for the consumer.

8.2 The market will determine the level and nature of competition in the sector.

8.3 Government will take the necessary steps to ensure that the citizens of Anguilla
have access to a wide variety of high-quality services in this sector. Furthermore, it
is the intention of Government to ensure the award of the right mix of community, commercial and public licenses so that all groups in the country will be served and none under-served.

8.4 All competitors in the market place shall be treated equally. The Government shall not favor any one competitor over the other and shall create conditions of a level playing field for all competitors. This shall include but not be limited to the areas of universal service coverage, incentives; and technical and non-technical interference.

8.5 Government shall promote the development of a system that will allow for a more stringent classification of National, Community and Public Broadcast systems.

8.6 The number of Broadcasting Systems that will be permitted to operate in Anguilla shall be determined, inter alia, by the availability of Spectrum.

9.0 SPECTRUM

9.1 The Broadcast RF Spectrum is a finite national resource. Discipline and prudent management are required to enable the maximum and most efficient utilization of this resource by the broadcast industry.

9.2 A deadline period shall be imposed from the date of issue of a licence from an applicant to establish and operate the broadcast system for which the licence has been granted. At the expiration of the deadline, the licence shall be revoked and the assigned frequency/spectrum returned to the Regulatory Body.

9.3 Broadcasters who having been granted a licence to operate a broadcast station and has been operating the station but have gone off the air shall be given a period of time to return to on-air broadcasting. Failure to resume broadcasting within that time shall result in licence being revoked and the frequency/spectrum being returned to the Regulatory Body.

9.4 A plan for the allocation of broadcast spectrum shall be finalized and made public.

10.0 PUBLIC BROADCASTING SERVICE

10.1 Anguilla is a developing, plural society and there is the need for a developmental dimension to broadcasting. The Government will seek to make its contribution through the development and promotion of the Public Broadcasting Service.

10.2 The Public Broadcasting Service must serve the interests of all the people of Anguilla. It shall be characterized by objectivity, trustworthiness and transparency and shall be an instrument for the positive, social and cultural evolution, and enrichment of Anguilla.

10.3 The development of local programming shall be a major part of the mandate of the Public Broadcasting Service. It must face the challenge of competition with other players in the information market place for audience attention.
10.4 Spectrum shall be reserved within the FM Broadcast Band Plan for the provision of the Public Broadcasting Service.

11.0 THE INTERNET

11.1 The Government recognizes the challenges posed by the Internet in the formulation of its Broadcasting Policy. In this regard, the Internet transcends all national boundaries and is accessible via diverse technologies. As the Internet evolves and new issues arise, the Government shall develop and/or revise its Policy, as necessary, to ensure that its overall societal and economic objectives are met.

11.2 The Government shall develop effective mechanisms on an on-going basis to deal with matters such as: the promotion of a rating and filtering system to help users control Internet exposure in the home; illegal material on the Internet; and intellectual property rights.

11.3 This Policy recognises the primacy of parental guidance and supervision in the use of the Internet by children. The Government shall endeavour to ensure the easy availability of software and hardware tools to assist parents in the supervision of their children.

12.0 NON-COMMERCIAL ORGANISATIONS

12.1 Anguilla is a plural society where religious, cultural and other non-governmental organizations play a critical role in the quality of national life. Freedom of worship and association are guaranteed by the Constitution. This Policy fully recognizes and supports this.

12.2 However, mindful of the scarcity and consequent economic value of the RF Spectrum, the Government prefers that non-commercial organizations access airtime through individual arrangements with commercial stations.

13.0 CABLE TELEVISION, DIRECT-TO-HOME SATELLITE TELEVISION, AND OTHER TELEVISION AND VIDEO AND ENTERTAINMENT SERVICES

13.1 The Government views as unacceptable the existence of monopolies in this or any other area of the broadcasting sector.

13.2 In order to introduce competition to this sub-sector the government shall work towards offering additional licence(s) for both wired and wireless services to the public.

13.3 In the event that a monopoly were to persist in any segment of this sub-sector, government shall have the right and/or consider the option of bringing rates in these segment(s) under the purview of the Regulatory Authority or Authority with oversight.

13.4 Cable, Direct-to-Home Satellite TV operators, and operators of other television and video and entertainment services shall be required to make available devices
which will give subscribers the option to block access to channels and programming which their subscribers consider unsuitable for viewing.

14.0 OWNERSHIP

14.1 The Government welcomes both local and foreign private investment in the Broadcasting industry. While it may be desirable from a national standpoint, for the local private sector to have ownership control of the industry, it is contrary to international best practices and obligations to deny foreign investors opportunity in this sector. There are significant advantages to be had from foreign capital inflows into the industry, including, inter alia: expansion; quality enhancement; infusion and transfer of technology; capacity building; and promotion of the national interest at the global level.

14.2 Government is firmly of the opinion that multinational and/or foreign companies, especially in the utility and communication business doing business in Anguilla should be encouraged to make available to belongers of Anguilla, a portion of the company stock. This Broadcasting Policy supports and endorses this view.

14.3 Legislation will be drafted that requires approval from the Authority having oversight (in this case the Ministry of Infrastructure, Communications, Utilities and Housing, MICUH) for any change in corporate structure and or shareholding in any Broadcasting company registered and conducting business in Anguilla.

14.4 Whilst the Government is firmly committed to the play of market forces in the industry, the national interest demands that Government be opposed both to monopolistic control and abuse of dominance in this and other sectors of the economy.

15.0 CONSUMER PROTECTION

15.1 The Government has the main responsibility to protect the interests of the consumer in this or any other industry. In the first instance, the Government shall call on the industry to present an effective Broadcast Code of Practice for delivery of services with effective means of redress when service standards are not met. Should the Broadcast Industry fail to meet the challenge, the Government will then pursue an effective regime for consumer protection through an appropriate institutional framework supported by adequate legislation.

15.2 The Government will encourage the Broadcast Industry to take account of the special circumstances of persons with disabilities.

15.3 The Government recognizes that open and competitive markets also offer consumer protection regarding, inter alia, quality of service, pricing and choice.

15.4 Legislation does not currently exist to govern and regulate the industry. It is Government’s intention to develop such legislation using this Policy document as its primary resource to prepare the drafting brief. The resulting legislation will then be used as necessary, being either augmented or strengthened, from time to time, to
protect, inter alia, national security and the interest of the consumer. In the interim, this Policy along with Executive Council’s decrees will fill that role.

16.0 MERGERS AND ACQUISITIONS

16.1 Under this Policy requests for mergers and/or acquisitions within the broadcasting industry must be made to the MICUH.

16.2 A formal application in writing must be filed with MICUH requesting and detailing the proposed acquisition or merger. MICUH will, after conducting due diligence and other relevant checks render its decision on the proposed acquisition or merger.

17.0 REGULATORY AND INSTITUTIONAL FRAMEWORK

17.1 The convergence of telecommunications, broadcasting and information technologies does seem to necessitate the creation of a single regulatory body to achieve cohesion in policy formulation and execution and to avoid potentially unnecessary and confusing duplication that could result from separate regulatory structures if not properly administered and co-ordinated. At present, the two have been functioning as separate entities and with careful management can do for some time yet. However, the Policy recognizes that at some point in the future this will have to be critically reviewed to determine when and if it might be appropriate to consider such a merger.

When the new Broadcasting Legislation is developed, The Broadcasting Act and Regulations made thereunder, when fully proclaimed shall be the main legislation governing the Broadcasting Industry.

17.2 The Regulatory Body for all matters pertaining to the Broadcasting Industry shall be the Ministry of Infrastructure, Communications, Utilities and Housing (MICUH). The Regulatory Body shall ensure transparency in all matters pertaining to the licensing process. It shall develop and make public, a detailed licensing procedure to include, inter alia, criteria for the soliciting and evaluation of licence applications as well as the availability of all broadcast frequencies.

17.3 MICUH shall have the right under this Policy to request technical, financial and operational information and data about any broadcasting company operating in Anguilla, from time to time, and the company has the obligation to provide such information and data; which must be provided within 14 working days from the date of request or a reasonable time period as may be determined by MICUH.

17.4 In addition, under this Policy MICUH is granted the right to seek from, and any company operating in Anguilla and providing broadcasting services or wishing to provide such services in Anguilla, has the obligation to provide, other types of industry information, general and/or specific, that MICUH may require to allow it to discharge its duties under this Policy such as: what other types of products and services the company intends to provide in the future. Any and all such services must first be approved by MICUH.
17.5 In furtherance of this Broadcast Policy, the role of the government in conjunction with the Regulatory Body, the Regulatory Authority, the Authority having oversight, which for the time being is MICUH, shall include:

17.5.1 The administration of this Policy;

17.5.2 Facilitating the growth of the domestic broadcast industry;

17.5.3 Ensuring that the country is adequately compensated for the market value of the concessions/licences awarded in respect of broadcasting;

17.5.4 Formulating the strategic direction of the Public Broadcasting Service;

17.5.5 Developing, in consultation with the Regulatory Body, a National Broadcasting Spectrum Policy;

17.5.6 Ensuring the adherence of government’s commitment to international conventions, treaties and agreements;

17.5.7 Protecting consumers;

17.5.8 Administering and enforcing broadcast regulations (when enacted);

17.5.9 Monitoring of broadcasting services to ensure compliance with legal and policy obligations;

17.5.10 Preparing and implementing criteria for the licensing of different categories of the broadcast services;

17.5.11 Making recommendations to the Minister for the granting and renewing of broadcast licences/concessions;

17.5.12 Collecting appropriate fees;

17.5.13 Monitoring the broadcasting sector to ensure compliance with licence conditions, relevant laws and regulations;

17.5.14 Formulation of a Broadcast Code, approved by the House of Assembly after consultation with stakeholders; and

17.5.15 Setting of penalties for breaches and compliance failures.

18.0 LEGISLATION

18.1 This Government recognizes the need for the enactment of legislation to support the principles, goals, and objectives outlined in this Policy document.
19.0 CONCLUSION

19.1 The industry is currently undergoing the biggest change in television broadcasting since the introduction of colour and government must facilitate this change by providing the environment for the smooth transition from the old analogue system to the high-definition digital/video broadcasting through the digital switchover.

19.2 The Government recognises that the Broadcasting Sector is dynamic and ever changing as technological innovation results in obsolescence much faster than ever before. This Broadcast Policy will come under review as the environment dictates to ensure that the industry in Anguilla is in step with national, regional, and international developments and best practices in the sector.

19.3 In the final analysis, the Government wishes, ultimately, to encourage the culture of self-regulation in this sector.

19.4 This Broadcast Policy supports that objective.

14 May 2013