

Official journal "Dz.U." No 5, item 41, as further amended

**REGULATION  
OF THE NATIONAL BROADCASTING COUNCIL**

of January 4, 2007

**concerning the contents of an application for awarding a broadcasting licence and detailed procedures for awarding and revoking broadcasting licences to transmit and retransmit radio and television programme services.**

Pursuant to Article 37 paragraph 4 of the Broadcasting Act of December 29, 1992 (Official Journal "Dz.U." of 2004, No. 253, item 2531 as further amended), it is hereby ordered as follows:

**§ 1.**

This Regulation lays down:

- 1) detailed procedures for:
  - a) awarding a broadcasting licence to transmit radio or television programme services by terrestrial diffusion,
  - b) awarding a broadcasting licence to transmit radio or television programme services by satellite,
  - c) awarding a broadcasting licence to transmit radio or television programme services by cable,
  - d) awarding a broadcasting licence for wireless retransmission of radio or television programme services that does not require reservation of frequency,
  - e) changing the broadcasting licence referred to in letter a by extending it to cover another transmitter,
  - f) changing the broadcasting licence referred to in letter c by extending it to cover another cable network,
  - g) awarding a broadcasting licence for a successive period,
  - h) revoking a broadcasting licence;
- 2) particulars and documents contained in applications in proceedings referred to in point 1 letters a to g;
- 3) standard official forms used in proceedings referred to in point 1 letters a to f.

**§ 2.**

Any reference in this Regulation to:

- 1) "Act" shall be construed as a reference to the Broadcasting Act of December 29, 1992;
- 2) "announcement" shall be construed as a reference to the announcement of the Chairman of the National Broadcasting Council concerning availability of broadcasting licences, referred

to in Article 34 paragraph 1 of the Act;

- 3) "National Council" shall be construed as a reference to the National Broadcasting Council;
- 4) "Chairman of the National Council" shall be construed as a reference to the Chairman of the National Broadcasting Council.

### **§ 3.**

An application in proceedings referred to in § 1 point 1 letters a to f shall comprise official forms and attached documents.

### **§ 4.**

The following standard forms are hereby established:

- 1) a standard form „Information on an entity”, attached as Schedule No. 1 hereto;
- 2) a standard form "Programming information – transmission of a radio programme service by terrestrial diffusion or by satellite”, attached as Schedule No. 2 hereto;
- 3) a standard form "Programming information - transmission of a television programme service by terrestrial diffusion or by satellite”, attached as Schedule No. 3 hereto;
- 4) a standard form "Programming information - transmission of a programme service by cable”, attached as Schedule No. 4 hereto;
- 5) a standard form "Economic and financial information - retransmission or transmission of a programme service by terrestrial diffusion or by satellite”, attached as Schedule No. 5 hereto;
- 6) a standard form " Economic and financial information - transmission of a programme service by cable”, attached as Schedule No. 6 hereto;
- 7) a standard form "Technical information - transmission of a programme service by terrestrial diffusion”, attached as Schedule No. 7 hereto;
- 8) a standard form "Technical information - retransmission or transmission of a programme service by satellite”, attached as Schedule No. 8 hereto;
- 9) a standard form "Technical information - transmission of a programme service by cable”, attached as Schedule No. 9 hereto;
- 10) a standard form „Extension of a broadcasting licence - transmission of a programme service by terrestrial diffusion”, attached as Schedule No. 10 hereto;
- 11) a standard form „Extension of a broadcasting licence - transmission of a programme service by cable”, attached as Schedule No. 11 hereto.

### **§ 5.**

An application for awarding a broadcasting licence to transmit a radio programme service by terrestrial diffusion shall comprise the forms set forth in § 4 points 1, 2, 5, 7 and shall contain the following documents:

- 1) determining the legal status of an applicant:
  - a) in case of a legal person which is a commercial company – statutes or articles of association of the company along with all amendments,

- b) in case of a legal person other than a commercial company – a founding deed of such person, statutes,
  - c) in case of a church legal person or religious association – a proper document specifying its legal status;
- 2) a copy of an entry in a relevant register or a certificate on an entry in the register of businesses indicating that the applicant is entitled to run business activity in the area covered by the application;
- 3) in case of a legal person – personal data of members of the managing, supervising and controlling bodies, including their nationality and permanent residence;
- 4) in case of a legal person which is a commercial company – data concerning shareholders:
- a) a list of shareholders with an indication of their shareholding and type of share preference,
  - b) information on shares held in other companies and membership in governing bodies of other companies or on interest held in other business entities,
  - c) in case of natural persons – their nationality and permanent residence,
  - d) in case of legal persons – their seat, and if a natural person holds more than 10% of shares in the applicant company - personal data of members of the managing, supervising and controlling bodies of such legal person;
- 5) a declaration on fulfilment of obligations arising from exercise of copyright or neighbouring rights;
- 6) economic and financial documents concerning the applicant:
- a) balance sheets and profit & loss accounts for the last two calendar years – in case of entities preparing balance sheets, otherwise – annual tax settlements for the last two years, along with a proof confirming receipt thereof by the revenue office or certified by an auditor, or together with a postal receipt as a proof of mailing thereof to the revenue office,
  - b) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office,
  - c) a certificate on absence of arrears in payment of contributions issued by the Social Insurance Institution,
  - d) an up-to-date certificate from the bank on deposited funds, account turnover for the last year, credit score, debt, if any, and legal form of security, as well as fixed-term deposits,
  - e) an up-to-date list of major creditors and debtors, stating the amount of debt and claim,
  - f) in case of a legal person – confirmation of payment of capital and valuation of in-kind contributions prepared by authorized experts, documenting possible changes not contained in the last up-to-date copy of an entry in the National Court Register,
  - g) documented information on technical facilities, if possessed, in particular an excerpt from the fixed assets register covering technical equipment, deeds of ownership, lease contracts, purchase invoices;
- 7) economic and financial documents concerning shareholders who hold more than 10% of shares in the share capital of the applicant commercial company:
- a) balance sheets and profit & loss accounts for the last two calendar years – in case of

- entities preparing balance sheets, otherwise – annual tax settlements for the last two years, along with a proof confirming receipt thereof by the revenue office or certified by an auditor, or together with a postal receipt as a proof of mailing thereof to the revenue office,
- b) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office,
  - c) a certificate on absence of arrears in payment of contributions issued by the Social Insurance Institution,
  - d) an up-to-date certificate from the bank on deposited funds, account turnover for the last year, credit score, debt, if any, and legal form of security, as well as fixed-term deposits,
  - e) an up-to-date list of major creditors and debtors, stating the amount of debt and claim,
- 8) assumptions for a three-year financial plan:
- a) a description of the method of calculation planned revenues,
  - b) a description of the method of calculation of planned costs,
  - c) an investment plan concerning the planned undertaking, including specification of types of equipment, its value, period of investment implementation, including an assessment of the licence fee;
- 8a) specification of sources of financing of the planned undertaking:
- a) in case of financing with equity – with an indication whether the capital will originate from a financial surplus, planned increase of the share capital or planned additional payments to equity,
  - b) in case of financing with credit facilities and loans – with an indication of terms of repayment and interest rate;
- 9) documents confirming the sources of financing of the planned undertaking;
- 10) a map with location of the transmitter;
- 11) preliminary consent of the owner of the facility or local authorities;
- 12) a description of owned, leased or planned technical facilities, including transmission, production and reporting equipment, computer hardware and software, equipment for broadcasting and sending the programme service as well as telecommunications equipment;
- 13) a description of development plans.

## **§ 6.**

An application for awarding a broadcasting licence to transmit a television programme service by terrestrial diffusion shall comprise the forms set forth in § 4 points 1, 3, 5, 7 and shall contain the documents set forth in § 5.

## **§ 7.**

An application for awarding a broadcasting licence to transmit a radio programme service by satellite shall comprise the forms set forth in § 4 points 1, 2, 5, 8, and shall contain the documents set forth in § 5 points 1 to 5, point 6 letters a–d, f and g, points 8 - 9, 12 and 13, as well as:

- 1) a preliminary contract or a letter of intent for rental of a transponder;
- 2) a preliminary contract with an operator of a signal sending station.

#### **§ 8.**

An application for awarding a broadcasting licence to transmit a television programme service by satellite shall comprise the forms set forth in § 4 points 1, 3, 5, 8 and shall contain the documents set forth in § 7.

#### **§ 9.**

An application for awarding a broadcasting licence to transmit radio or television programme services by cable shall comprise the forms set forth in § 4 points 1, 4, 6, 9, and shall contain the documents set forth in § 5 points 1 to 5, as well as:

- 1) programme service guidelines following from the tasks set forth in Article 1 paragraph 1 of the Act and planned method of their implementation;
- 2) the anticipated weekly programme service framework in the first year of broadcasting along with a description and specification of classes of individual programmes, with an indication of time of their broadcast and duration;
- 3) in case of a thematic programme service – an indication which programmes are classified by the broadcaster as falling within the “theme” and projected percentage share of programmes forming the theme in the weekly transmission time of the programme service - minimum 70% of the weekly transmission time;
- 4) documented information on possessed funds, related to the subject matter of the application;
- 5) documented information of equity share in other business entities;
- 6) the balance sheet and the profit & loss account for the last calendar year – while in case of entities not obligated to prepare the balance sheet – the profit & loss account of pursued business activity for the last year;
- 7) a certificate from the bank keeping the main current account of the applicant, specifying the amount of deposited funds and credit score of the applicant;
- 8) a certificate on absence of arrears in payment of contributions issued by the Social Insurance Institution;
- 9) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office;
- 10) a description of owned, leased or planned technical facilities, including transmission, production and reporting equipment, computer hardware and software, equipment for broadcasting and sending the programme service as well as telecommunications equipment;
- 11) a document confirming a possibility to use the requested cable network – confirmation of an intention to execute a contract for provision of transmission services by a cable network operator or a certified copy of a contract for provision of such services;
- 12) a description of development plans.

#### **§ 10.**

An application for awarding a broadcasting licence for wireless retransmission of radio or television programme services that does not require reservation of frequency shall comprise the forms set forth in § 4 points 1, 5, 8 and shall contain the documents set forth in § 5 points 1 to 9, § 7 points 1 and 2, as well as:

- 1) a list of programme services that the applicant intends to retransmit;
- 2) documents indicating that retransmission of the programme service will not breach the rights of the broadcaster of the programme service;
- 3) a description of owned, leased or planned technical facilities.

### **§ 11.**

An application for changing a broadcasting licence referred to in §1 point 1 letter a by extending it to cover another transmitter shall comprise the form set forth in § 4 point 10 and shall contain the documents set forth in § 5 point 5 and points 10–13, as well as:

- 1) economic and financial documents concerning the applicant:
  - a) balance sheets and profit & loss accounts for the last calendar year – in case of entities preparing balance sheets, otherwise – an annual tax settlement for the last calendar year, along with a proof confirming receipt thereof by the revenue office or certified by an auditor, or together with a postal receipt as a proof of mailing thereof to the revenue office,
  - b) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office,
  - c) a certificate on absence of arrears in payment of contributions issued by the Social Insurance Institution,
  - d) an up-to-date certificate from the bank on deposited funds, account turnover for the last year, credit score, debt, if any, and legal form of security, as well as fixed-term deposits,
  - e) an up-to-date list of major creditors and debtors, stating the amount of debt and claim,
  - f) in case of a legal person – confirmation of payment of capital and valuation of in-kind contributions prepared by authorized experts, documenting possible changes not contained in the last up-to-date copy of an entry in the National Court Register,
  - g) documented information on technical facilities, if possessed, in particular an excerpt from the fixed assets register covering technical equipment, deeds of ownership, lease contracts, purchase invoices;
- 2) economic and financial documents concerning shareholders of the applicant commercial company that are involved in financing the extension of activities:
  - a) balance sheets and profit & loss accounts for the last calendar year – in case of entities preparing balance sheets, otherwise – an annual tax settlement for the last calendar year, along with a proof confirming receipt thereof by the revenue office or certified by an auditor, or together with a postal receipt as a proof of mailing thereof to the revenue office,
  - b) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office,
  - c) a certificate on absence of arrears in payment of contributions issued by the Social

Insurance Institution,

- d) an up-to-date certificate from the bank on deposited funds, account turnover for the last year, credit score, debt, if any, and legal form of security, as well as fixed-term deposits,
  - e) an up-to-date list of major creditors and debtors, stating the amount of debt and claim,
- 3) economic and financial guidelines for the requested extension, comprising:
- a) specification of expected additional annual revenue from the planned expansion of the coverage area,
  - b) specification of additional annual costs necessary to be incurred in connection with the planned expansion of coverage area,
  - c) an investment plan concerning the requested extension of activities, with a specification of types of equipment, its value, period of investment implementation, including the licence fee;
- 4) specification of sources of financing of the requested extension of pursued activities – expenditure for implementation of the investment plan and costs of initial activities:
- a) in case of financing with equity – with an indication whether the capital will originate from a financial surplus, planned increase of the share capital or planned additional payments to equity,
  - b) in case of financing with credit facilities and loans – with an indication of terms of repayment and interest rate;
- 5) documents confirming the sources of financing of the planned undertaking.

## **§ 12.**

An application for changing the broadcasting licence referred to in §1 point 1 letter c by extending it to cover another cable network shall comprise the form set forth in § 4 point 11 and shall contain the following documents:

- 1) a certificate on absence of arrears in payment of contributions issued by the Social Insurance Institution,
- 2) a certificate of clean tax record and on absence of any writs of execution issued by the revenue office,
- 3) a certificate from the bank keeping the main current account, specifying the amount of deposited funds and credit score of the applicant,
- 4) a document confirming a possibility to use the requested cable network – confirmation of an intention to execute a contract for provision of transmission services by a cable network operator or a certified copy of a contract for provision of such services,
- 5) presentation of technical facilities allowing to broadcast the programme service by new networks.

## **§ 13.**

An application for awarding a broadcasting licence for a successive period referred to in Article 35a paragraph 1 of the Act shall indicate the broadcasting licence which is to expire.

**§ 14.**

1. The applicant which is a foreign person referred to in Article 35 paragraph 3 of the Act shall submit counterparts of the documents referred to in § 5 to 12 issued in the country of the applicant's seat or permanent residence.
2. If the country of a foreign person's seat or permanent residence does not issue the documents referred to in subparagraph 1, these documents shall be replaced with a document containing a declaration made before a notary, competent judicial or administrative body.
3. Provisions of subparagraphs 1 and 2 shall apply to the documents of foreign persons, enclosed with the application filed by an applicant other than a foreign person.

**§ 15.**

1. The documents shall be filed in originals or in copies certified for conformity with the original by a notary, legal counsel or attorney.
2. The documents shall contain data as at the date of filing the application and be issued not earlier than 3 months before the date of filing thereof.
3. Documents drawn up in a foreign language shall be filed along with a certified translation into the Polish language.

**§ 16.**

Applications in proceedings referred to in § 1 point 1 letters a and e shall be filed in connection with the announcement.

**§ 17.**

1. Applications in proceedings referred to in § 1 point 1 letters a and e shall be left unconsidered if:
  - 1) the application is filed after the time-limit set forth in the announcement;
  - 2) the application does not comply with the terms set forth in the announcement concerning the subject matter of proceedings, definition of nature of the programme service or technical conditions.
2. The list of applicants referred to in Article 34 paragraph 2 of the Act shall contain also information on entities whose applications have been left unconsidered for reasons referred to in subparagraph 1.

**§ 18.**

1. During the proceedings the applicant shall immediately notify the Chairman of the National Council of changes in the state of facts or legal status stipulated in the application.
2. In the proceedings referred to in § 1 point 1 letters a and e, changes of the application with regard to the section containing programming information as well as economic and financial information, set forth in § 4 point 5, § 5 points 8 and 8a as well as § 11 points 3 and 4, made in the course of proceedings shall not be taken into account, if the proceedings involve

consideration of applications filed by more than one applicant.

3. Submission of documents or provision of information that were missing on the application on the date of filing thereof shall also be deemed as the change referred to in subparagraph 2.

### **§ 19.**

If in proceedings referred to in § 1 point 1 letters a and e, it follows from an assessment of applications expressed in a resolution of the National Council that a broadcasting licence may be awarded to more than one entity or that a broadcasting licence of more than one entity may be changed, the Chairman of the National Council shall order the tender referred to in the Freedom of Business Activity Act of July 2, 2004 (official journal "Dz.U." No. 173, item 1807, as further amended).

### **§ 20.**

1. In proceedings referred to in § 1 point 1 letters a to g, the Chairman of the National Council shall pass the resolution of the National Council to the President of the Office of Electronic Communications requesting the President's opinion as regards the scope set forth in Article 37 paragraph 1 subparagraph 3 of the Act.
2. The Chairman of the National Council shall issue a final decision in proceedings referred to in § 1 point 1 letters a to g, once the decision of the President of the Office of Electronic Communications issued pursuant to Article 37 paragraph 3 of the Act has become legally valid or been accepted by the applicant.

### **§ 21.**

In case of an ineffective lapse of the time-limit referred to in Article 35a paragraph 1 of the Act for filing an application for awarding a broadcasting licence to transmit radio or television programme services by terrestrial diffusion for a successive period, the Chairman of the Broadcasting Council forthwith shall announce availability of broadcasting licences within the scope of the broadcasting licence that is to expire.

### **§ 22.**

1. In case proceedings referred to in §1 point 1 letter h are initiated, the Chairman of the National Council shall address a request referred to in Article 38 paragraph 1 subparagraphs 3 and 4 of the Act to the broadcaster.
2. The Chairman of the National Council shall make public information on initiation of proceedings to revoke a broadcasting licence and on revocation of a broadcasting licence, by posting such information in the Public Information Bulletin and on the website of the National Council.

### **§ 23.**

Regulations in force to date shall apply to the proceedings referred to in § 1 point 1 that have been initiated and have not been resolved by the date of entry into force of this Regulation.

### **§ 24.**

The Regulation shall come into force on the date of its promulgation.