



**CONTENT REGULATION:  
INTERIM CODE OF PRACTICE FOR  
BROADCASTING CONTENT**

**ECS 10/2010**

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**UTILITIES REGULATION & COMPETITION AUTHORITY**

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# 1. Introduction

1. This document is issued in accordance with Part IX (Content Regulation) of the Communications Act, 2009 (“Comms Act”). The Comms Act creates a new regime for content regulation in The Bahamas, based on the adoption of Codes of Practice (“Codes”) covering television and radio programmes (and potentially online and mobile services).
2. The Comms Act requires URCA to issue Codes of Practice, and to develop complaints-handling procedures, for content. In general, content regulation seeks to ensure that programmes reflect the standards expected by members of the public, through a combination of: prohibitions or restrictions on certain kinds of programming; rules that promote accuracy and fairness in news, current affairs and other factual programming; and information and tools that enable people to make informed choices about what they, and their families, watch and listen to. Codes, specifically broadcasting content and advertising codes, tend to cover issues such as the duration and scheduling of broadcasts, time devoted to advertising, accuracy and fairness in news broadcasts and rules that specify how certain subjects should be treated.
3. The content Rules issued pursuant to section 18 of the Broadcasting Act (now repealed) included special provisions relating to broadcasting content. The Minister was permitted to make rules “to control the character of any and all programmes broadcast or televised by the Corporation [i.e., the Broadcasting Corporation of The Bahamas] or any other person” [s.18(1)(a)] and “to determine the proportion of time which may be devoted to advertising in any programme and to control the character of such advertising” [s. 18(1)(b)]. Rules were subsequently set out in subsidiary legislation. The Broadcasting Rules, 1992 included a set of rules governing the content of broadcasts on services provided by ZNS (Part II). The Broadcasting (Licensing) Rules, 1993 created a new set of rules, similar in many respects to the 1992 Rules, that applied to any licensed broadcasting station in The Bahamas (s. 25).
4. Sections 11, 18 and 21 of the Broadcasting Act and its subsidiary legislation – including those Rules relating to broadcasting content – were repealed by s. 120(1) of the Comms Act.
5. The Comms Act gives URCA powers to delegate to industry groups the development of Codes of Practice and the monitoring of compliance with the Codes. On 3 February 2010, URCA published a public consultation document (ECS 02/2010) setting out its proposals to exercise those powers of delegation by establishing an industry Working Group to develop new Codes. The public consultation closed on 12 March and URCA intends to publish a Statement of Results document during the second quarter of 2010 on the responses to the consultation. Following completion of the consultation, the Working Group would be expected to take approximately 3-4 months to complete its task. URCA expects to be able to publish the new Codes and complaints-handling procedures in September 2010 or soon thereafter. As such, the final version of the Codes will not be published for some time.
6. In order to ensure that content rules relating to broadcasts are in force during the period before the new Codes are formally promulgated, URCA is now publishing an Interim Code that specifically covers broadcasting content, which will come into effect immediately and remain in force until the new content Codes are published. The substantive provisions in this Interim Code are based on the Broadcasting Rules 1992 and the Broadcasting (Licensing) Rules 1993, modified to reflect the new Comms Act environment and the powers of enforcement that are now vested in URCA. The Interim Code, therefore, specifies a new complaints-handling procedure, responsibility for the implementation of which is shared between broadcasters and URCA.
7. This Code accompanies the Interim Code of Practice for Political Broadcasts that was issued by URCA in January 2010.
8. The Interim Code is set out in full in Section 3 of this document.

## 2. Approach taken for Interim Code

9. The Interim Code set out in this document is intended to cover all forms of broadcasting content except political broadcasts which are covered separately by the Interim Code of Practice for Political Broadcasts (ECS 01/2010).
10. The new Codes of Practice to be published later in the year will benefit from a detailed review process taking into account international best practice, to ensure that they are fit-for-purpose. As deliberations on the new Codes have not yet begun, the Interim Code is explicitly based on the corresponding Rules (the Broadcasting Rules, 1992 and the Broadcasting (Licensing) Rules, 1993) regarding programming, news broadcasts, advertising and other forms of broadcasting content that were formerly in place.
11. This Code applies to programming broadcast on radio and television stations that are licensed in The Bahamas, and operated and controlled by Bahamian entities. Conversely, this Code does not apply to radio stations or TV channels that originate overseas (the content of which is therefore governed by their own domestic regulatory regimes). Responsibility for compliance with the Code rests with broadcasters in The Bahamas who determine the editorial content of the relevant TV channels or radio stations operated and controlled by them. Licensees in The Bahamas are responsible for ensuring compliance with the Interim Code for all programming on the TV channels and radio stations that they operate, including their own productions, acquired programmes and programmes made by persons or organisations that have purchased airtime.
12. A number of amendments to the Rules were made to ensure they are fully compatible with the provisions in the Comms Act and to make provision for content over which a broadcaster in The Bahamas has editorial responsibility and control. These are set out in Table 1.

**Table 1: Major amendments to Code and/or to ensure compatibility with the Comms Act**

Amendment to Code	Reason for amendment
Inclusion of definitions of “advertisement” and “surreptitious advertising”	This clarifies the distinction between “paid” advertising and “product placement” – i.e. payment to a broadcaster or producer to feature a product or service in a programme. This is intended to address concerns that consumers might not always be aware of instances of product placement in programmes, and might object to such attempts to influence their buying behaviour.
Control of programmes - Removal of references to the need for the general manager of ZNS to give “approval” to material content and live talent broadcasts	<p>This addresses any concern that “approval” could have been interpreted as enabling ZNS (or other broadcasters) to seek to censor material content and live talent broadcasts: s. 56 of the Comms Act stipulates that neither URCA nor any person or body appointed by URCA, may censor programmes before they are transmitted.</p> <p>To the extent to which “approval” in the former Rules was intended to refer to the responsibility of broadcasters to ensure material that they transmitted was compliant with the regulations, this is currently a requirement on them through the Comms Act; s. 53(1) thereof requires relevant licensees to observe Codes of Practice that URCA issues, such as the Interim Code of Practice for Political Broadcasts.</p> <p>Also see “Contracts subject to Codes” below.</p>

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Amendment to Code	Reason for amendment
Advertising time allowed per programme and restrictions on advertising content or programmes	<p>This seeks to reduce disparities in the proportion of time devoted to advertising in programmes on individual channels. For channels that originate overseas, this is determined by the regulatory regime in the country of origin of the individual channel. This Code seeks to apply broadly similar rules to Bahamian channels.</p> <p>Similar considerations arose in connection with deleting references to “advertising magazines”. This type of programming has largely been replaced by “infomercials” (i.e., a television commercial (paid programming) that offers a product for direct sale to consumers via response through the worldwide web, by telephone, or by mail). “Infomercial” programming is usually available on individual channels carried over a cable television network and the proportion of advertising time might be determined by the regulatory regime in the channel’s country of origin.</p>
Emergency messages	<p>This addresses changes brought about as a result of the opening of the airwaves to additional licensed broadcast entities aside from just ZNS.</p>
Records to be kept	<p>Section 58 of the Comms Act allows URCA to issue regulations relating to the procedures acceptable to URCA for the retention in sound and vision of any content to which Part IX of the Act applies. This provision assists both the licensee and URCA in discharging their responsibilities in the event of a complaint or litigation. To the extent that the licensee was required to keep “slow tapes” of all broadcasts, for at least 30 days, the licensee is now required to keep “taped recordings” which would include recordings of programmes retained on video tapes, CD-ROMs, DVD and other media for a period of at least 120 days.</p>
Duty of licensees in relation to news broadcasts	<p>This addresses any concerns that might have arisen from a disparity in the treatment of news broadcasts made by a licensee having editorial responsibility for the content of such news broadcasts and news broadcasts on TV channels that originate overseas (the editorial control of which is determined by the regulatory regime in the country of origin of the news broadcast).</p>
Contracts subject to Codes	<p>This addresses the situation where a licensee enters into a contract to carry live or other programming and makes the licensee editorially responsible for the content of such programming. In that case, the content of the programme is subject to the Codes, including the Interim Code of Practice for Political Broadcasts and non-compliance could make the licensee liable, under section 59 of the Comms Act, to pay a fine to URCA under section 109 of the Act.</p> <p>For these and other reasons, it is imperative that licensees ensure that their contracts with content providers of live and other programming are made subject to the Codes.</p>
Removal of elements of the Rules that dealt with operational details	<p>Levels of operational detail that are best left to the management of the individual broadcasters have been deleted, consistent with the guidelines for regulation in the Comms Act (s. 5), which emphasise that regulation should be efficient and proportionate, and only introduced where necessary.</p>

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<b>Amendment to Code</b>	<b>Reason for amendment</b>
Inclusion of new complaints- handling mechanism as part of the Interim Code	Section 54 of the Comms Act requires URCA to determine complaints-handling procedures alongside any Code of Practice that it issues.

13. URCA has specified a two-stage procedure for complaints-handling (set out in Clause 18 of the Interim Code):
- Broadcasters that are responsible for compliance with the Code will be expected to ensure they have procedures in place to handle complaints in the first instance.
  - Any unresolved complaints will be escalated for consideration by URCA, with broadcasters obliged to give effect to any instructions issued by URCA.
14. The Interim Code of Practice for broadcasting content is set out below.

## **3. Interim Code of Practice for Broadcasting Content**

### **1. Citation**

This Code is issued in accordance with Part IX (Content Regulation) of the Communications Act, 2009. It may be cited as the Interim Code of Practice for Broadcasting Content, 2010.

### **2. Commencement**

This Code comes into effect immediately and will remain in force until new Codes of Practice for Broadcasting Content are published by URCA.

## **PART I**

### **PRELIMINARY**

### **3. Interpretation**

(1) In this Code –

**“ammunition”** has the same meaning as defined in section 2 of the Firearms Act (Ch. 213);

**“advertisement”** means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural person or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes;

**“authorised officer”** refers to the general manager or chief executive officer of the licensee, or any person authorised by that person on matters relating to compliance with this Code;

**“broadcasting station”** or **“station”** means any premises used in connection with broadcasting;

**“firearms”** has the same meaning as defined in section 2 of the Firearms Act (Ch. 213);

**“Interim Code of Practice for Political Broadcasts”** means the Interim Code of Practice for Political Broadcasts (ECS 01/2010) issued by URCA on 19<sup>th</sup> January 2010;

**“international regulations”** means any rules and regulations of any international regulatory body or the provisions of any international Convention to which The Bahamas is a party;

**“political broadcast”** means a broadcast whether by television or radio designed to promote or reduce the popularity of a political party or a candidate for an election;

**“spirits”** has the same meaning as defined in section 2 of the Liquor Licences Act (Ch.372);

**“surreptitious advertising”** means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the licensee to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

(2) For the purpose of interpreting this Code of Practice, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in the Communications Act, 2009.

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### **4. Application**

The provisions of Part II of this Code shall apply to any programme or advertisement broadcast by any broadcasting station operated by a licensee.

## **PART II**

### **GENERAL PROVISIONS**

#### **5. Control of programmes**

(1) Subject to the provisions of clause 18, the material content of all programmes that are under the editorial responsibility of the licensee providing such programmes shall at all times be subject to the provisions of this Code and the Interim Code of Practice for Political Broadcasts.

(2) Where advertisements are under the editorial responsibility of the licensee, no advertisement for spirits or tobacco products shall be accepted for broadcast, but advertisements may be accepted for beer and wines.

(3) In no case, whether the full air time rate has been paid or not, shall any solicitation for funds be made in any religious programme produced or recorded in The Bahamas, except the customary announcement of the offering during a church service.

#### **6. Advertising time allowed per programme**

(1) Advertisements under the editorial responsibility of the licensee shall be readily recognisable as such. The licensee shall ensure that programmes under its editorial responsibility do not include surreptitious advertising.

(2) The proportion of time which may be devoted to advertising in any one programme under the editorial responsibility of the licensee providing such programme shall be as follows –

- (a) eighteen (18) minutes in any one hour programme;
- (b) nine (9) minutes in a half hour programme;
- (c) four (4) minutes in a quarter hour programme.

#### **7. Contracts for air time**

Air time may be sold only by staff members or official sales representatives of the licensee as appointed by the licensee.

#### **8. Re-sale of air time**

It shall not be permissible for any person who has purchased air time to sell or transfer the benefit of the same or any portion of the same for the purposes of political broadcasting.

#### **9. Emergency messages**

(1) Emergency messages may be accepted for broadcast.

(2) The fee fixed in the schedule of rates of the licensee shall be payable for each emergency message, provided that in the case of messages concerning illness or death the messages may be accepted free of charge.

(3) Public emergency broadcasts and broadcasts regarding missing vessels or aircraft shall be made free of charge.



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### **10. Station identification**

(1) Every licensee shall cause each broadcasting station operated by him to be identified at intervals provided by international regulations, and for this purpose shall at all times cause to be kept upon the station in studios from which broadcasts may originate a reliable clock set to local time.

(2) The radio frequencies or television channels on which the station is licensed to operate shall be stated at least twice in every twenty-four hour period, one of those times being required to be between 5:00 a.m. and 7:00 p.m.

### **11. Records to be kept**

(1) Every licensee shall cause to be kept such records as may be necessary to enable URCA, if it desires so to do, readily to ascertain –

- (a) the day and time at which each station identification was made;
- (b) the title of each broadcast programme;
- (c) the time at which each broadcast programme commenced and ended;
- (d) whether any form of electro-mechanical reproduction was used in the course of any broadcast and the nature of this reproduction;
- (e) in relation to any talk or speech broadcast by the licensee –
  - (i) the name of the speaker;
  - (ii) any organisation under whose auspices the talk or speech was given; and
  - (iii) if the speech was made on behalf of any political party with a view to promoting the election to any public or municipal office of any person, the name of such political party or the political affiliations, if any, of such persons as the case may be;
- (f) the duration of each advertisement or other announcement or any other matter and the time at which it was broadcast;
- (g) the name of the sponsor of any announcement or other matter;
- (h) the time and duration of any interruption of a broadcast and the reasons for such interruption.

(2) Key letters and abbreviations may be used for the purpose of making any record of the nature referred to in paragraph (1) if the meaning of such key letters or abbreviations is clearly set out in the document containing such record or in some other document readily available for inspection at the time when the documents containing such records are inspected.

(3) In addition to the records required to be kept under paragraph (1) the licensee shall also keep taped recordings of all broadcasts for at least one hundred and twenty (120) days or a longer period when so required by URCA.

(4) The originals of all records required to be kept under this clause shall be available to URCA at the broadcasting station of the licensee and may be required by URCA by notice in writing and shall be available for inspection at any reasonable time by any person authorised by URCA in writing to carry out

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such inspection; but URCA shall give notice in writing at least twenty-four hours before any such inspection.

### **12. Matters not permitted to be broadcast**

A licensee providing programmes which are under the editorial responsibility of the licensee shall not permit to be broadcast from any broadcasting station operated by the licensee –

- (a) any matter in contravention of any written law, including but not limited to any advertisement in relation to any drug, patent medicine or similar article;
- (b) any statement or comment upon the race, colour, creed, religion or sex of any person or persons which is abusive or derogatory except where such references are objectively reported and are contained in news reports, and programmes on matters of public interest;
- (c) any malicious, scandalous or defamatory matter;
- (d) any obscene, indecent or profane matter;
- (e) any advertising matter which the licensee or an authorised officer knows or has reasonable cause to believe to be in whole or in part false or deceptive;
- (f) any news or matter which in the knowledge of the licensee or of any employee or agent of the licensee who is concerned in its collection, editing, publication or printing, is false or misleading;
- (g) any matter which describes offensively any function or symptomatic results of disturbance of the human body or relief in such disturbance through the use of any appliance or medicament;
- (h) any offensive description of mutilated disfigurement of the human form;
- (i) any matter concerning colleges, schools, institutions or agencies which offer as an inducement for enrolment as a student or client thereof promises of employment;
- (j) any matter advertising any matrimonial agency;
- (k) any matter which supports the claim of any living person to any ability to foretell the future or to analyze the character of any other person by supernatural or psychic means or to the successful practice of astrology, numerology, obeah, occultism, palm reading, mind reading, fortune telling, phrenology or any other such business or design;
- (l) any matter which is likely to incite violence or crime or lead to a breach of the peace;
- (m) any description of violence which offends against good taste, decency, or public feeling;
- (n) any matter advertising any firearms or ammunition;
- (o) any matter advertising any tip sheets or other publications for the purpose of giving odds or promoting betting.

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### **13. Duty of licensees in relation to programmes**

It shall be the duty of every licensee operating a broadcasting station to ensure to the satisfaction of URCA that –

- (a) as far as possible, programmes with a Bahamian flavour are developed and broadcast on a regular basis, Bahamian interests and concerns being taken into account; and
- (b) programmes conform to this Code and to the Interim Code of Practice for Political Broadcasts.

### **14. Duty of licensees in relation to news broadcasts**

It shall be the duty of every licensee in relation to all news broadcasts which are made by the licensee under the editorial responsibility of the licensee providing such news broadcasts –

- (a) to regard the fundamental purpose of such broadcasts as being to present objectively facts concerning what is happening throughout The Bahamas and in countries overseas; and
- (b) to ensure so far as may be practicable that –
  - (i) news broadcasts are presented with fairness, accuracy and good taste; and
  - (ii) news is selected and presented in a manner to ensure that it is factual and free from bias and not prejudiced by the opinions of the licensee or of any person concerned in its preparation or transmission or, as in the case of sponsored news broadcasts, of the sponsors thereof.

### **15. Cancellation of broadcasts**

It shall be permissible for an authorised officer to cancel broadcast time or to substitute another period to accommodate broadcasts of national interest or importance.

### **16. Codes to be available**

A copy of these codes shall be posted in a conspicuous place on the licensed premises of the licensee and shall be readily available at all times.

### **17. Contracts subject to Codes**

All contracts for broadcasting entered into by or on behalf of the licensee, where the material content of a programme is under the editorial responsibility of the licensee providing such programme, shall be subject to these Codes and to the Interim Code of Practice for Political Broadcasts.

### **18. Appeal**

(1) Any person aggrieved by any decision made by a licensee in respect of any matter provided for in this Code may make a complaint in the first instance to the authorised officer of the relevant licensee in respect of the grievance up to thirty (30) days after the incident creating the grievance.

(2) If the complainant does not receive a response that addresses the grievance within thirty (30) days of submitting the grievance, or if the complainant is dissatisfied with the response, the complainant may bring the grievance to the attention of the Chief Executive Officer of URCA.

(3) URCA may, after consideration of the complaint, give as soon as practicable to the authorised officer of the relevant licensee such instructions as URCA sees fit.

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(4) The authorised officer of the relevant licensee shall give effect to any instructions issued by URCA under paragraph (3).