



**Public Consultation**

**On**

**CODE OF PRACTICE FOR THE  
REGULATION OF CONTENT SERVICES  
AND AUDIOVISUAL MEDIA SERVICES**

**Publication: 2 July 2013**

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## **1. INTRODUCTION**

### **1.1 Broadcasting and Community Standards**

- (1) Broadcasting plays a central role in people's lives. Surveys conducted by researchers, regulatory agencies, broadcasters and others reveal that people spend more time watching television than consuming any other form of broadcasting media. Radio also plays a pivotal role in everyday life: many people wake up to it and listen to it on their way to and from work; at times of national disasters and emergencies, radio is the main source of potentially lifesaving information. While the growth of the Internet is providing a complementary source of news, information and entertainment, the Internet does not yet match the ubiquity and impact of TV and radio broadcasting. As a consequence of their ubiquity and impact, radio and TV stations have the primary responsibility for ensuring that the material they broadcast reflects community values and standards.

### **1.2 Background history to Broadcasting and Content Regulation in the Turks and Caicos Islands**

- (2) The earliest broadcast reported from the Turks and Caicos was in the early 70's. The Cable and Wireless utility station there, VSI8, which transmitted on 4560KHz, had an unannounced broadcast transmission on Christmas Eve, 1970. Later in 1971 the station broadcast storm warnings during an August 1971 hurricane.<sup>1</sup> The station later developed into a community station, which broadcast local news and paid announcements.
- (3) Meanwhile the American Naval Base facility rebroadcast television programmes from the United States for their enjoyment, which also benefited the local community of Grand Turk. In Providenciales the local community benefited from the introduction of VSAT Television broadcast by Bob Cooper and others.<sup>2</sup>
- (4) In the early 2000's, though work was done to introduce legislation to regulate the broadcasting industry as part of the telecommunications sector, the legislation to regulate broadcasting did not come to fruition.
- (5) In 2013, the government of the Turks and Caicos Islands recognizing that the broadcasting industry remained unregulated approved a policy to govern broadcasting services in the same way as the telecommunications services. The government has now approved a draft Broadcasting Bill 2013 that will regulate broadcasting services, which includes a Code of Practice to deal with the content of broadcasting.
- (6) This consultation document seeks to get feedback from the industry and the community on the Code of Practice that will regulate the content of broadcasts.

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<sup>1</sup> Broadcasting on Short Waves, 1945 to Today, by Jerome S. Berg

<sup>2</sup> History of Television in Turks and Caicos Islands at <http://www.actci.com/index.php/history-of-tv-in-tci>

### **1.3 Structure the remainder of this document**

(7) The remainder of this document is structured as follows:

- Section 2 sets out the legal framework for content regulation in the Turks and Caicos Islands;
- Section 3 sets out the objectives of this public consultation and the process and timeframes for making submissions or comments;
- Section 4 sets out the draft Content Code

## **2. LEGAL FRAMEWORK FOR CONTENT REGULATION**

### **2.1 Content Regulation in the Turks and Caicos Islands**

- (8) The Broadcasting Bill 2013 introduces an entirely new regime for content regulation in the Turks and Caicos Islands. The purpose of content regulation is to ensure that the programmes that are broadcast reflect the values expected by members of the public in the Turks and Caicos Islands. Content regulation in its various manifestations includes: prohibitions or restrictions on certain kinds of programming (e.g., programmes covering explicit themes can only be shown after a certain time at night); rules that promote accuracy and fairness in news, current affairs and other types of factual programming; and information and tools that enable people to make informed choices about what they, and their families, watch and listen to.
- (9) The Broadcasting Bill 2013 gives the gives the Telecommunications Commission (“the Commission”) the responsibility to focus primarily on “audiovisual media services”, the definition of which encompasses traditional forms of broadcasting (i.e. radio and television programmes); “carriage services”, the definition of which encompasses encrypted services such as cable television; and also new forms of digital media (e.g., audiovisual content delivered online or to mobile devices).
- (10) The Commission’s duties and responsibilities regarding content regulation are, more specifically:
- (i) to issue Codes of Practice to be observed by licensees providing audiovisual media services in The Turks and Caicos Islands [s. 26 of the Broadcasting Bill 2013];
  - (ii) to determine complaints-handling procedures as part of the Codes, to enable members of the public to register complaints about programme content and for licensees to report to the Commission on such complaints [s. 27]; and
  - (iii) to delegate certain responsibilities to an industry group which would be tasked with developing the Codes of Practice and monitor compliance with such Codes [s. 28].
- (11) The Commission is also more generally empowered by s.25 of the Broadcasting Bill 2013 to address the regulation of other content services intended for reception by subscribers of carriage services or by broadcasting in the Turks and Caicos Islands, by the making a determination to effect such regulation.

### **2.2 Developing a Co-Regulatory System for the Turks and Caicos Islands**

- (12) Section 28(1) of the Broadcasting Bill 2013 grants the Commission “... the power to allow industry groups to develop, in consultation with the Commission and taking into account any relevant research conducted by the Commission, codes of practice that are applicable to the content provision operations of each of those sections of the industry and to monitor compliance with such codes”.

## 2.3 Requirements for New Standards

(13) The Broadcasting Bill 2013 provides a list of the kinds of standards that may be included in the Codes [s. 26(2)]. These standards cover a multitude of areas – which typically feature in broadcasting content Codes around the world – such as the protection of children, harm and offence, taste and decency, accuracy and fairness, political broadcasts, advertising and sponsorship, and guaranteed access to certain kinds of content and services (e.g. relating to national emergencies and disasters). The full list specified in the Bill is as follows:

- (a) methods of ensuring the protection of children from exposure to programme material which may be harmful to them;
- (b) promoting accuracy and fairness in news and current affairs programmes;
- (c) preventing the broadcasting of programmes that simulate news or events in a way that misleads or alarms the audience;
- (d) in the case of Codes of Practice developed for broadcasting –
  - (i) time devoted to advertising;
  - (ii) standards requiring advertisements to be distinguished from programme content;
  - (iii) the kinds of sponsorship announcements that may be broadcast;
  - (iv) the kinds of sponsorship announcements that particular kinds of programmes may carry;
- (e) captioning of programmes for the hearing impaired;
- (f) teletext and ancillary services;
- (g) party political broadcasts;
- (h) sports and national events broadcasting;
- (i) must carry regulations;
- (j) national emergency and disaster conditions.

(13) In developing Codes of Practice, the Broadcasting Bill 2013 also requires the following matters to be taken into account [s. 26(3)]:

- (a) the portrayal in programmes of –
  - (i) physical and psychological violence;
  - (ii) sexual conduct and nudity;
  - (iii) the use of drugs, including alcohol and tobacco;

(iv) matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;

(b) the use in programmes of offensive language.

## **2.4 The benefits of content regulation**

- (14) The primary purpose of the new system of content regulation is to empower the Turks and Caicos Islands public. The intention behind Part IV of the Broadcasting Bill 2013 is that the Codes of Practice should ensure that the nature of the programmes that people in the Turks and Caicos Islands watch or listen to match their expectations about what should, or should not, be broadcast (taking into account the time of day, where appropriate). Similarly, the complaints-handling process should enable the public to act when they see or hear any broadcast material that they believe is contrary to the Codes [s. 27(b)].
- (15) The Commission stresses that the Codes of Practice are not intended to create an overly censorious regime that restricts audience choice. To the contrary, we recognise that different kinds of audiences may want to watch or listen to different kinds of programming, and may have a range of views about what is, or is not, acceptable programming material. In order to be effective, the Codes must achieve a balance between satisfying the (sometimes conflicting) demands of different audiences whilst providing a minimum set of rules that provide adequate protection to all people, especially children. In particular, the Broadcasting Bill 2013 prohibits the Commission (or any person or body appointed by the Commission) from pre-censoring programmes ahead of their transmission [s. 29].
- (16) The Codes are also intended to provide definitive benefits to the broadcasting industry: a clear set of regulations that are applicable to all relevant broadcasters in the Turks and Caicos Islands helps to ensure a level playing field. This can lead to the promotion of competition and innovation in content services.
- (17) New digital technologies, and growing access to fast broadband services are having a profound impact on how media content is produced and distributed. Audiovisual content is increasingly being delivered via the Internet direct to people's television sets and to new kinds of devices such as smart-phones and tablet computers. As the range and form of content available on digital platforms expands, the boundaries between the kinds of content offered via different platforms begin to blur. For example, it is becoming increasingly common for TV programmes to be made available through catch-up services online, for radio programmes to be offered as podcasts or in real-time over the internet, for video clips to be viewed on mobile devices, and so on. The new model of content regulation, as reflected in the draft Code, is intended to be sufficiently flexible to reflect the impact of convergence on industry players and members of the public alike. As home-grown internet services are not yet sufficiently well developed in the Turks and Caicos Islands, a decision was made to focus the Codes on TV and radio for now. It is likely to be appropriate, in future reviews of the Codes, to consider extending them to online digital services over time.

### **3. OBJECTIVES OF THIS CONSULTATION**

#### **3.1 The purpose of this consultation**

- (18) This consultation document is issued in accordance with Part IV (Standards for Broadcasting and Content of Programming) of the Broadcasting Bill 2013.
- (19) The purpose of this consultation is to give members of the public, licensees, stakeholders and other interested parties an opportunity to comment on a draft Code of Practice and complaints-handling procedures that are to be observed by licensees providing audiovisual media services in the Turks and Caicos Islands ahead of the final publication of the Codes under s. 28(1) of the Broadcasting Bill 2013.
- (20) When the public consultation process is complete and the Commission is satisfied that the draft Code is fit-for-purpose and contains appropriate community safeguards based on the responses received from the public, broadcasters and other stakeholders, the Commission will issue the final Code and publish it online on its website.
- (21) The Commission recognises that a Code which addresses only audiovisual media services (as envisaged by section 26) may create an artificial distinction between providers who broadcast or distribute content which originates or is compiled in the Turks and Caicos Islands, and the significant majority of content available in the Islands which originates in pre-packaged form outside of the Islands. The Commission therefore proposes to exercise its power under s. 25 to regulate other content services which are intended for reception by subscribers of carriage services or by broadcasting in the Turks and Caicos Islands. The Code has therefore been drafted to be appropriate for both audiovisual media services, and content services generally, and the Commission will, during the process of consultation on the Code, initiate and carry out the process for the issuance of a determination applying the Code to all content services provided in the Turks and Caicos Islands.
- (22) Under the complaints-handling process developed by the Commission, which also forms part of this consultation, the Commission will monitor matters relating to compliance with the Code. Complaints about alleged breaches of the Code from the public, other broadcasters or non-broadcasting organisations must first be lodged with the broadcaster concerned who must endeavour to resolve such complaints. The Commission will also act as an independent adjudicator where complaints about matters relating to Code of Practice are not resolved between the complainant and the broadcaster concerned. Where the Commission finds a breach of the Code of Practice, the Commission will investigate the matter and may take enforcement action against the broadcaster to ensure future compliance.

### **3.2 How to respond to this consultation**

- (23) The Commission invites and welcomes comments and submissions from members of the public, licensees and other interested parties on this consultation document. Responses to the questions raised in the consultation should be submitted to the Commission by 4:30 PM on 30 July 2013. Persons may send their written responses or comments to the Commission, either:
- by hand, to the Commission's office at Business Solutions Complex
  - by mail to P.O. Box 203, Providenciales, Turks and Caicos Islands; or
  - by email, to [consultations@tcitelecommission.tc](mailto:consultations@tcitelecommission.tc)
- (24) The Commission reserves the right to make all responses available to the public by posting responses online on its website at [www.telecommission.tc](http://www.telecommission.tc). If a response is marked confidential, reasons should be given to facilitate evaluation by the Commission of the request for confidentiality. The Commission may publish or refrain from publishing any document or submission, at its sole discretion.
- (25) The Commission proposes to publish the results of this public consultation and the final version of the Codes of Practice online on its website by 13 August 2013.

#### **4. PROPOSED CODE OF PRACTICE FOR CONTENT REGULATION**

##### ***Outline of the Code of Practice***

Broadcasting is a fundamental form of exercise of the right to freedom of expression, from the perspective of both the person providing a content service and the person receiving that service. The former is exercising his or her right to hold opinions and to impart ideas and information without interference, and the latter has a right to receive the views so imparted. These rights are enshrined in the Constitution of the Turks and Caicos Islands, which also contains the important caveat that they may be limited by law to the extent reasonable in the interests of particular causes including defence, public safety, public order, public morality and public health. Freedom of expression may also be limited to protect the rights, reputations and freedoms of other persons, to protect confidences, and to maintain the authority and independence of the courts.

The Broadcasting Bill 2013 expressly contemplates such limitations through Codes of Practice binding on providers of audiovisual media services, to achieve aims consistent with the Constitution, as set out in s. 26 of the Broadcasting Bill 2013. The Broadcasting Bill 2013 also recognises through s. 25 that it may also be appropriate for the Commission, by determination, to regulate other content services (which are not audiovisual media services) intended for reception by subscribers of carriage services or by broadcasting in the Turks and Caicos Islands.<sup>3</sup> This Code of Practice for Content Regulation seeks to achieve those aims as well as others determined by the Commission in consultation with the industry to be in the best interests of the public in the Turks and Caicos Islands. The core values and concepts of content regulation are reflected in this Code of Practice, namely fairness, co-regulation, transparency and empowerment of the Turks and Caicos Islands people and are stated here to emphasize their importance.

The Code of Practice is divided into eleven (11) Parts. Each Part of the Code focuses on either interpretative or administrative issues of specific content related objectives identified as important to the development of a broadcasting sector, which serves to enhance and enrich the social fabric of the Turks and Caicos Islands. The objectives of each of Parts 1 to 11 of the Code are set out in greater detail below:

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<sup>3</sup> The term 'audiovisual media service' is defined in the Broadcasting Bill to refer to content services for which the Broadcasting Bill Licensee has "editorial control". This term therefore excludes, for example, the foreign produced channels delivered by pay television providers, which are covered by the wider term "content services" contemplated in section 25. The Commission intends to regulate the content provided on all content services.

## **Part 1 – Interpretation, Purpose and Applicability**

Part 1 sets out definitions, which aid interpretation of the provisions of the Code, and establishes the boundaries of the Code's applicability.

## **Part 2 – Operational and Technical Rules**

This Part of the Code contains Operational and Technical rules which generally underpin the more "content related" rules within the remainder of the Code. These rules ensure that licensees have in place appropriate systems and procedures to enable effective application of the principles and rules set out in the Code.

## **Part 3 – Underlying Principles for Broadcasting in the Turks and Caicos Islands**

This Part of the Code contains the underlying principles that the Code seeks to engender in Turks and Caicos Islands broadcasting. It includes positive rules designed to encourage broadcasters to offer certain kinds of subject matter of particular relevance to Turks and Caicos Islands audiences and importance to the development of Turks and Caicos Islands culture and society.

## **Part 4 – Harm and Offence**

Part 4 of the Code addresses various areas in which broadcast content has the potential to harm the public within the Turks and Caicos Islands either individually or collectively as a society, and seeks to put in place standards to protect against such harm. It includes issues such as preservation of law and order, harmful and offensive material, religious programming and contests and promotions.

## **Part 5 – Protection of Young Persons**

Part 5 of the Code is intended to ensure that licensees adopt responsible policies through scheduling, advisories and programme classifications so as to limit the exposure of children and young persons in various age ranges to potentially harmful or unsuitable broadcast material that is intended for, and acceptable only to, adult audiences.

## **Part 6 – Political Broadcasts and Political Advertisements**

This Part of the Code sets out the standards applicable to the broadcasting of political advertisements and election programmes arranged and paid for by potential candidates, actual candidates, political parties and other persons or entities outside of election periods and during the period preceding a parliamentary general election or bye-election, a referendum or a local government election.

## **Part 7 – Advertising and Sponsorships**

Part 7 of the Code is intended to ensure that advertisements and sponsorships are legal, decent and truthful and that they are presented with a sense of obligation to the consumer, whether they are directed at adults or at children, and to society.

## **Part 8 - News and Factual Programmes**

Part 8 of the Code is intended to ensure that news, current affairs and factual programmes are presented accurately and impartially; are presented fairly, having regard to the likely composition of the audience and, in particular, the presence of children; and that they take account of personal privacy. Coverage of controversial issues, including subjects that some people may find offensive, is encouraged provided the coverage is presented carefully, taking into account cultural differences in communities or localities throughout the Turks and Caicos Islands, where relevant.

## **Part 9 - Access Services**

This Part of the Code sets out the standards to encourage and ensure access by persons with hearing or visual impairments to content delivered via audiovisual media services, particularly where that content is of public significance as in the case of news and current affairs, and emergency information.

## **Part 10 – Complaints Handling Process**

Part 10 contains the procedures for complaints about matters addressed in the Code.

## **Part 11 – The Industry Group and Code Administration**

This Part of the Code contains the framework for the establishment of the Industry Group, the appointment and composition of its members of the Industry Group, its mandate and the process by which it will monitor compliance with the Code by licensees.

## ***Part 1: Interpretation, Purpose and Applicability***

This Part of the Code contains the definitions and interpretation of words and phrases used in the Code; the purpose of the Code and its regulatory framework under the Broadcasting Bill 2013; the persons to whom and situations in which the code applies; the circumstances under which non-compliance with the Code might be excused and the establishment of an on-going review process for the Code.

### **1.1 Definitions and Interpretation**

(1) Terms used in this Code shall have the following meanings:

**Access services** means services which make the content in audiovisual media services accessible to persons who are deaf, hard of hearing or visually impaired using facilities such as subtitles (closed or open captioning), described video, audio description and signing.

**Adult** means a person who has attained the age of eighteen (18) years.

**Advertisement** means any form of message or announcement made aurally or using text or images, of any duration broadcast by a licensee, whether in return for payment by an advertiser or not, or for self-promotional purposes of the licensee, and the whole or a substantial purpose of which involves the direct or indirect promotion of a programme, product, service, belief or course of action.

**Animation** includes:

- (a) computer-assisted animation (the technique of revising existing animated material using computer technology);
- (b) computer-generated animation (the technique of generating animated movement principally or wholly through digital image synthesis using computers and computer programs);
- (c) frame-by-frame animation (the process of filming or otherwise recording a series of poses of figures, objects or shapes, or drawings, each slightly displaced from the preceding pose, or of drawing them in sequence on successive frames of recording material, one or more frames at a time. When the film is projected or the recording is played, the rapid projection of the multiple images gives the illusion of movement); and
- (d) continuous action animation (the process of filming real figures, shapes or objects as they are manipulated using mechanical or other devices. When the film or recording is played, the rapid projection of the multiple images gives the illusion of movement. Examples of continuous action animation would include puppets controlled by a puppeteer and filmed continuously in real time, and pixilation animation using live action shots of real people in real locations, manipulated to achieve the effect of having actors jump, jerk or twitch as if they were being animated).

**Audio description** (also known as described video) refers to an additional narration track for blind and visually impaired consumers of visual media, such as television programmes and feature films, and consists of a narrator talking through the presentation, describing what is happening on the screen during the natural pauses in the audio, and sometimes during dialogue if deemed necessary.

**Audiovisual media service** has the meaning given in section 2 of the Broadcasting Bill 2013, namely a service for the provision of material with a view to its being comprised in signals conveyed by means of a network which is under the editorial responsibility of the service provider of that service and includes a Cable System.

**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** has the meaning given in section 2 of the Broadcasting Bill 2013, namely a transmission of programmes whether or not encrypted, by means of telecommunications, for reception by the public on free, pay or subscription or other basis, including sound, radio, television and other types of transmissions, such as those on appoint to multipoint basis.

**Broadcasting Bill 2013** means the Broadcasting Bill 2013.

**Broadcasting station** or **station** means a station equipped and used by a licensee to transmit or broadcast radio or television programmes to the general public.

**Cable system** means a facility located in the Turks and Caicos Islands that in whole or in part receives television broadcast signals transmitted within the Turks and Caicos Islands or outside the Turks and Caicos Islands, and diffuses secondary transmissions of such signals or programs by wires, cables or other communication channels to subscribing members of the public in the Turks and Caicos Islands who pay for such service.

**Candidate** means a candidate duly nominated for election.

**Carriage service** has the meaning given in s. 2 of the Broadcasting Bill 2013, namely any service consisting in whole or in part or the conveyance of signals by means of a network, except in so far as it is a content service, including the provision of ancillary services to the conveyance of signals and conditional access or other related services to enable a customer to access a content service and includes a cable system.

**Channel** means a range of frequencies (or, equivalently, wavelengths) assigned by the Commission for the operation of a particular radio station, television station or television channel on a carriage service, content service or audiovisual media service. It may also be used to refer to the station operating on a particular frequency.

**Children** refers to persons who have not yet attained the age of eighteen (18) years, and includes **younger children** (being persons who have not yet attained the age of twelve (12) years), and **older children** (being persons who have attained the age of twelve (12) years but have not yet attained the age of eighteen (18) years).

**Children's programme, younger children's programme and older children's programme** refer to programmes that are intended for or targeted at children, younger children and older children, respectively.

**Closed captioning** means text on a television screen representing speech and sound effects, synchronised as closely as possible to the television soundtrack, accessible at the option of the viewer using controls on his or her television received. For the purposes of this Code, close captioning shall be in the English language.

**Code** means this Code of Practice for the Regulation of Content Services and Audiovisual Media Services issued by the Commission under sections 25 and 26 of the Broadcasting Bill 2013.

**Commission** means the Commission established by the Telecommunications Ordinance.

**Communications Tribunal** has the meaning given in section 2 of the Broadcasting Bill 2013, namely the Communications Tribunal established pursuant to section 55 of the Telecommunications Ordinance.

**Content** means programming or advertising material.

**Content service** has the meaning given in section 2 of the Broadcasting Bill 2013, namely a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audiovisual media service and includes a cable system.

**Current affairs programme** means a programme the primary purpose of which is to provide interviews, analysis, commentary or discussion, including open-line or call-in discussion with the audience, about current issues.

**Editorial responsibility** means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services.

**Election** means a general election or a by-election.

**Election period** means:

- (a) for a general election, the period beginning with the date of the dissolution of the House of Assembly;

- (b) for a bye-election, the period beginning with the date of issuing the writ of the election;
- (c) In all cases, the election period ends with the close of the poll.

**Emergency broadcast** means a broadcast during and relating to an imminent or actual threat affecting a community or a locality within the Turks and Caicos Islands whereby life and/or property are at risk and which requires a significant and coordinated response by Governmental agencies, emergency services, or other essential service organisations.

**Factual programming** means programming for the purpose of presenting facts and information about a matter or matters of interest to the general public or to particular audiences.

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**Licensee** has the meaning given in section 2 of the Broadcasting Bill 2013, namely a person holding a valid licence.

**Network** has the meaning given in section 2 of the Broadcasting Bill 2013, namely—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electromagnetic energy, of signals of any description; and
- (b) such of the following as are used by the person providing the network and in association with it, for the conveyance of the signals —
  - (i) apparatus, equipment or facilities comprised in the network;
  - (ii) apparatus, equipment or facilities used for the switching or routing of the signals; and
  - (iii) software and stored data;

**News programme** means a broadcast programme solely or predominantly for the purpose of presenting new or recent factual information of local, national and international public interest.

**On-demand audiovisual media service** means a content service provided to allow the user to view programmes at the moment selected by the user at his or her individual request on the basis of a catalogue of programmes selected by the audiovisual media service provider and includes a cable system.

**Party political broadcast means** a broadcast transmission that has been edited by or on behalf of a political party.

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<sup>4</sup> Factual programmes may include the following genres: news, documentary, educational, magazine, discussion, review, talk/chat show, special interest (hobby, leisure interests, makeover, and how-to formats), history, archaeology, science, medicine, technology, consumer affairs, nature and wildlife, special events including commemorative events and royal events, 'reality' TV and other sub-genres (such as docudrama, docusoap and infotainment).

**Political advertisement** means any advertisement which is intended or calculated to advance the interests of any particular political party or candidate, for which advertisement the Licensee has received or is to receive, directly or indirectly, any money or other consideration.

**Political broadcast** means a programme that:

- (a) encourages or persuades, or appears to encourage or persuade, voters to vote, or not to vote, for a political party or the election of any person at an election; or
- (b) advocates support for, or opposes, a candidate or political party; or
- (c) takes a position on an issue with which a political party or candidate is associated; or
- (d) notifies the public of meetings of any kind held or to be held in connection with an election.

A political broadcast does not include the broadcast:

- (i) of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news that is not a party political broadcast;
- (ii) of the promotion of the sale of a book, by an election candidate for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;
- (iii) of the contents of a document broadcast by a person or a group to their members, employees or shareholders, as the case may be, that is not a party political broadcast; or
- (iv) by an individual, on a non-commercial basis on the Internet, of his or her personal political views.

**Political party** means a political party registered with the Integrity Commission of the Turks and Caicos Islands under the Political Activity Ordinance 2012.

**Programme** (and **programming**) means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by an audiovisual media service provider and whose form and content is comparable to the form and content of television broadcasting. The terms programme and programming do not include advertisements.

**Religious programme** means programming the focus of which is religious or spiritual belief, or which explores one or more of the following issues as a predominant theme in the programme:

- (i) a recognisable religious perspective forming a significant part of the overall narrative;
- (ii) an exploration of people's daily lives whose attitudes could be said to be informed by a religious background or tradition; or
- (iii) an exploration of people's perception of, and attitudes to, philosophies which address the significant life questions that affects them, demonstrating an approach that bears in mind a religious or spiritual faith/belief context.

**Series** means more than one programme dealing with the same or related issues, themes or characters broadcast by a licensee over a period of time determined by the licensee and aimed at the same or a similar audience.

**Signal** includes:-

(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus.

**Signing** is an access service comprising the provision of sign language interpretation of the audible content of television programming for persons who are deaf or hard of hearing, usually by superimposing the image of a person performing sign language over part of the television image of the programme being interpreted.

**Sponsorship** means any contribution made by a person or undertaking to the financing of broadcasting programmes or their distribution with a view to promoting the person's name, trade mark, image, activities or products.

**Subscriber** has the meaning given in section 2 of the Broadcasting Bill 2013, namely any customer of a licensee who is party to a contract with the licensee for the provision of networks or carriage services.

**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 any money or other consideration.

**Television broadcast** means an audiovisual media service provided by an audiovisual media services provider for simultaneous viewing of programmes on the basis of a programme schedule.

**Undertaking** means

- (a) a body corporate or partnership;
- (b) an unincorporated association; or
- (c) any person, carrying on a trade or business, with or without a view to profit.

**Telecommunications Ordinance** means the Telecommunications Ordinance.

**Watershed** means the period outside which material that is unsuitable for children cannot be broadcast. The watershed commences at 10:00 PM/22:00 hrs in the evening and ends at 5:00 AM/05:00 hrs on the following morning and, as a consequence, material that is unsuitable for children can only be broadcast during this period.

(2) In this Code, the word **context** includes (but is not limited to):

- (a) the overall editorial content of the programming;
- (b) the station or channel on which the material is broadcast;
- (c) the time of broadcast;
- (d) what other programmes are scheduled before and after the programme or programmes concerned;

- (e) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
  - (f) the likely size and composition of the potential audience and likely expectation of the audience;
  - (g) the extent to which the nature of the content has been brought to the attention of the potential audience (for example, by giving descriptive information either within the broadcast or in promotional material); and
  - (h) the effect of the material on viewers or listeners who may unexpectedly come across it.
- (3) For the purpose of interpreting the provisions of this Code:
- (a) headings and titles used in this Code are for reference purposes only and shall not affect its interpretation or construction;
  - (b) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
  - (c) use of the word 'include' or 'including' is to be construed as being without limitation;
  - (d) the definition of any terms or expressions in this Code shall extend to the grammatical variations and cognate expressions of such word or term;
  - (e) except where the context otherwise requires, words or expressions not specifically defined in Clause 1.1(1) above shall have the meaning assigned to them in the Broadcasting Bill 2013.
  - (f) references to "persons" shall include undertakings;
  - (g) words importing:
    - (i) the singular only shall include the plural and vice versa;
    - (ii) the whole of any word shall be treated as including a reference to any part of that word; and
    - (iii) any gender shall include all other genders.
- (4) Where there is any conflict between the provisions of this Code and the Broadcasting Bill 2013, the provisions of the Broadcasting Bill 2013 shall prevail.

## 1.2 Purpose of the Code

- (1) This Code has been developed in accordance with the requirements of sections 25, 26 and 27 of the Broadcasting Bill 2013.
- (2) This Code is intended to:
  - (a) ensure that licensees providing content services and audiovisual media services in the Turks and Caicos Islands have regard to prevailing community standards in broadcast material, while protecting the right of licensees to responsible freedom of speech;
  - (b) regulate content services intended for reception by subscribers of carriage services or by broadcasting to the public in the Turks and Caicos Islands;
  - (c) ensure that audiences in the Turks and Caicos Islands are assisted in making informed choices about the content that they and their children watch and listen to;

- (d) provide uniform, speedy and effective procedures for the handling of complaints from the public about programme content or compliance with the Code; and
- (e) provide a methodology for periodic public review of the relevance and effectiveness of the Code.

### 1.3 **Regulatory Framework**

- (1) The Code covers the matters expressly outlined in section 26(2) and (3) of the Broadcasting Bill 2013, and other content that is of concern to the community.
- (2) Section 26 of the Broadcasting Bill 2013 requires the Commission to issue codes of practice that are to be observed by licensees providing audiovisual media services in the Turks and Caicos Islands. This Code is issued pursuant to that power. The licences issued by the Commission impose a condition on each licensee in which the licensee undertakes to comply with the conditions of the licence, regulatory and other measures issued by the Commission, and the provisions of the Broadcasting Bill 2013. Licensees providing audiovisual media services in the Turks and Caicos Islands who do not comply with the Code may be subject to a range of penalties under the Broadcasting Bill 2013.
- (3) Section 25 of the Broadcasting Bill 2013 empowers the Commission, by determination to issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in the Turks and Caicos Islands. The Commission may, by determination, apply any or all of the provisions of this Code to other persons providing content services for reception by subscribers of carriage services or by broadcasting in the Turks and Caicos Islands, and on-demand audiovisual media services.

### 1.4 **Requirement to Comply with the Code**

- (1) Every licensee that provides audiovisual media services in the Turks and Caicos Islands must, in accordance with section 26(1) of the Broadcasting Bill 2013, comply with and observe the Code in respect of the content provided. Other licensees that provide content services, carriage services or on-demand audiovisual media services shall, pursuant to section 25 of the Broadcasting Bill 2013, comply with and observe the Code to such extent as they are required to do so by the Commission by determination.
- (2) A breach of the Code may be mitigated, and penalties avoided by the licensee, if the Licensee:
  - (a) can demonstrate to the Commission's satisfaction that the failure to comply with the Code was due to:
    - i. a reasonable mistake;
    - ii. reasonable reliance on information supplied by another person;

- iii. an act or failure to act of another person, or an accident or some other cause beyond the licensee's control, provided the licensee took reasonable precautions and exercised due diligence to avoid the act or failure to act of such other person; or
  - iv. an act or failure to act which, in all the circumstances, was clearly peripheral or incidental, and unlikely to offend or materially mislead the public, and
- (b) Promptly takes all reasonable steps to remedy the failure to comply, if capable of remedy.

(3) This Code does not apply to content which is delivered by licensees solely via the Internet, and which is available for access by any person situated within or outside the Turks and Caicos Islands via the Internet unless that content is targeted at persons within the Turks and Caicos Islands by virtue of it being promoted or advertised within the Turks and Caicos Islands.

#### 1.5 **Review of the Code**

The Commission will, in consultation with an Industry Group to be established by the Commission in accordance with section 28(1) of the Broadcasting Bill 2013 formally review the Code after it has been in effect for three (3) years. If, before the next review period, any substantive changes to the Code are needed, the Commission will, in consultation with the Industry Group, give all stakeholders an adequate opportunity to comment on any proposed changes to the Code.

#### 1.6 **Application of the Code to content delivered via Carriage Services, Content Services and On-Demand Audiovisual Media Services**

The provisions of Clause 2.4, Clauses 3.2 to 3.5, Clauses 4.3, 4.6 to 4.9 and 4.13 to 4.17 and Clauses 7.1 to 7.12 of this Code shall not apply to content delivered via a carriage service, a content service or an on-demand audio-visual media service to adult persons subscribing to the service who specifically select the content in question, provided that the licensee shall, so far as it is able to, take all reasonable steps to:

- (a) inform the adult subscriber through classifications and/or advisories as are required by Clauses 5.10 and 5.11 this Code of the nature of the programming;
- (b) ensure that an adequate parental control mechanism has been implemented in conjunction with the advisory and classification system and filtering technology set out in Clauses 5.10 and 5.11 of this Code, which enables adult subscribers to prevent access to unsuitable content by children; and
- (c) provide appropriate training, instructional materials, and assistance to subscribers regarding the use and operation of parental control mechanisms through filtering

technology, and guidelines for the maintenance of security from accidental or unsanctioned use by children.

**Question 1:**

Do you agree with the Commission's proposals in Part 1 of the draft Code of Practice regarding definitions and interpretation, purpose of the Code, the regulatory framework, compliance with the Code and review of the Code? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## ***Part 2: Operational and Technical Rules***

This Part of the Code contains Operational and Technical rules which generally underpin the more “content related” rules within the remainder of the Code, so as to ensure that licensees have in place appropriate systems and procedures to enable effective application of the principles and rules set out in the Code.

### ***Operational Rules***

#### **2.1 Programme Selection and Broadcast**

- (1) The licensee is responsible for ensuring compliance with this Code, whether pre-recorded or live, regardless of whether it has delegated such responsibility to its programming personnel or other agents as part of its day-to-day business.
- (2) The licensee’s discretion in selecting programmes must be exercised responsibly and in good taste. In particular, nothing should be selected for broadcasting that is:
  - (a) contrary to law, including the Broadcasting Bill 2013, the Telecommunications Ordinance and regulatory or other measures issued by the Commission; or
  - (b) contrary to this Code.

#### **2.2 Code to be made available to Licensee’s employees and agents**

Every licensee shall ensure that all of its employees and agents involved in any matter covered by this Code on the licensee’s behalf are provided with a copy and made aware of the provisions of this Code, which shall be readily available to such persons at all times.

#### **2.3 Contracts subject to the Code**

All contracts entered into by or on behalf of a licensee for the broadcasting of programming or advertisements shall be made subject to and comply with this Code.

### ***Technical Rules***

#### **2.4 Retention and Production of Station Recordings**

- (1) Every licensee shall make and maintain in an appropriate and commonly used format complete and accurate recordings of all material broadcast by the licensee.
- (2) The licensee must keep recordings made pursuant to this Clause for the longest of the following periods:

- (a) six (6) weeks starting on the day after the material was broadcast;
  - (b) if a complaint has been made to the licensee under Part 10 of this Code in relation to material contained in a broadcast – one (1) year from the date on which the complaint is resolved; or
  - (c) any longer period specified by the Commission in writing.
- (3) The licensee shall provide the Commission with access (i.e., the ability to listen to or view the recording at the licensee's place of business) to any recording made pursuant to this Clause or provide a copy to the Commission in a format requested by the Commission, within three (3) working days of its receipt of a written request from The Commission to do so.
- (4) If a person making a complaint under Part 10 of this Code considers that a recording made by a licensee under Clause 2.4(1) of this Code, and being held by the licensee under Clause 2.4(2) of this Code, is admissible in evidence in legal proceedings instituted, or proposed to be instituted, in a court, the person may give to the licensee a notice in writing informing the licensee that the recording may be required by the person giving the notice for the purposes of the legal proceedings.
- (5) If such a notice under Clause 2.4(4) of this Code is given to a Licensee in respect of a recording, the licensee must, subject to this Clause 2.4, retain the recording until the legal proceedings or the proposed legal proceedings to which the notice relates have been finally determined, and shall produce the recording pursuant to any court order requiring it to do so.
- (6) A Licensee must, without charge, make available to the Commission, upon request, any recording made by the licensee pursuant to Clause 2.5(1) of this Code that has been retained by the licensee (whether or not the licensee is, at the time of the request, under an obligation to retain the recording).

## **2.5 Station Identification**

- (1) Every Licensee shall cause each of its broadcasting stations to be identified to its audience as follows:
- (a) at frequent intervals during the course of transmissions, including those made for tests, adjustments or experiments, commencing at the beginning and concluding at the end of each transmission period of operation, otherwise at least four (4) times each day, one of which must be during each of the following time periods: 12:00 AM (midnight) to 6:00 AM, 6:01 AM to 12:00 PM (noon), 12:01 PM to 6:00 PM, and 6:01 PM to 12:00 AM (midnight); and
  - (b) preferably within the period from five minutes before to five minutes after the hour, at a natural break in programming. Licensees may make these announcements aurally (for radio) and visually (for television).

- (2) Official station identification shall consist of:
  - (a) the name of the licensee;
  - (b) the broadcasting station's radio frequency or channel number as stated on the station's licence; and
  - (c) the broadcasting station's call letters, call sign or station identification immediately followed by the community or communities specified in its licence as the station's territorial location.

## **2.6 Technical Standards**

- (1) All broadcasts must conform to any technical standards published by the Commission in accordance with section 31(2)(b) of the Broadcasting Bill 2013.
- (2) Any person or entity wishing to have content broadcast by a licensee may be required by the licensee to submit that content to the licensee concerned:
  - (a) in completed form, ready for broadcast (including a typed copy of the script, if required);
  - (b) up to ninety-six (96) hours before the time when that advertisement or programme is to be broadcast; and
  - (c) where relevant, pre-recorded and in a form and manner that complies with technical standards acceptable to that licensee.
- (3) Every licensee that intends to adopt technical standards as contemplated by Clause 2.6(2)(c) of this Code shall, by no later than 13 September 2013 and thereafter at least two months prior to the licensee making any changes thereto, submit such technical standards for the Commission's non-objection. The Commission may, if it considers a licensee's technical standards are unreasonable, direct that licensee in writing to amend its technical standards.
- (4) Every licensee to whom content has been submitted by any person or entity for broadcast shall be entitled to refuse to broadcast that content if it does not comply with the Commission's or the licensee's technical standards, this Code or any written law in the Turks and Caicos Islands.

## **2.7 Promotions, Previews and Trailers**

- (1) Any promotions of the licensee's programming must comply with the requirements for the watershed and the other rules in this Code during the time period in which such promotion is broadcast, regardless of the brevity of the promotion.
- (2) If, in the promotion for a programme, a licensee includes an advisory that the programme contains material which may seriously distress or seriously offend the audience, then that advisory must comply with the requirements of Clause 5.10 of this Code for the period in which it is broadcast.

- (3) Where a licensee broadcasts any preview or trailer, the licensee must ensure that such previews or trailers meet the same standards of scheduling and content that applies to all programming broadcast under this Code, and that, where applicable, such previews or trailers carry such classifications and/or advisories as are required by this Code.

**Question 2:**

Do you agree with the Commission's proposals in Part 2 of the draft Code of Practice regarding, operational and technical rules? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

### ***Part 3: Underlying Principles for Broadcasting in the Turks and Caicos Islands***

This Part of the Code contains the underlying principles that the Code seeks to engender in Turks and Caicos Islands Broadcasting. The Code also establishes positive encouragement for the inclusion of certain kinds of subject matter of particular relevance to Turks and Caicos Islands audiences and importance to the development of Turks and Caicos Islands culture and society.

#### **3.1 Standards of Taste and Decency**

- (1) Without limitation to the specific rules set out elsewhere in this Code, licensees shall in the selection, preparation and scheduling of programming for broadcast via any means of electronic communications, seek to provide content which is consistent with the standards of good taste and decency which are generally prevalent and accepted in Turks and Caicos Islands society.
- (2) Consistent with the principles set out above, licensees shall seek to avoid the broadcast of content which would be considered by the general public in the Turks and Caicos Islands to be harmful, abusive, offensive, discriminatory or otherwise contrary to the standards of taste and decency which generally obtain in Turks and Caicos Islands society.

#### ***Positive Rules***

#### **3.2 General Programming**

Recognising that the public has varied tastes in programming material, every Licensee is encouraged to ensure that, as far as possible, programmes with a Turks and Caicos Islands-based focus are broadcast on a regular basis, taking into account Turks and Caicos Islands interests and concerns and ensuring that such programmes conform to this Code.

#### **3.3 Community Activities and Diversity of Interests**

Every licensee is encouraged to broadcast programming that serves the diversity of interests within the Turks and Caicos Islands and different audiences within the Turks and Caicos Islands.

#### **3.4 Educational Content**

Licensees are encouraged to provide educational broadcasts to the extent practicable within their programming schedules to augment the educational and cultural influences of schools and other educational and cultural institutions in The Turks and Caicos Islands.

### **3.5 Turks and Caicos Islands Music**

Licensees who solely or primarily broadcast musical items are encouraged to include within their programmes music of the Turks and Caicos Islands.

**Question 3:**

Do you agree with the Commission's proposals in Part 3 of the draft Code of Practice regarding underlying principles and positive rules? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## **Part 4: Harm and Offence**

Part 4 of the Code addresses various areas in which broadcast content has the potential to harm the public within the Turks and Caicos Islands either individually or collectively as a society, and seeks to put in place standards to protect against such harm. It addresses issues such as preservation of law and order, harmful and offensive material, religious programming and contests and promotions.

### ***Preservation of Law And Order***

#### **4.1 Crime**

- (1) The following categories indicate material which is of a criminal nature that will invariably be unsuitable for broadcast:
  - (a) material which:
    - (i) is reasonably likely to encourage or incite the commission of a crime;
    - (ii) is reasonably likely to lead to public disorder;
    - (iii) threatens harm or evil;
    - (iv) presents detailed depiction of the use of illegal drugs, or instruction in or encouragement of illegal drug use;
    - (v) advocates or promotes hatred in any form (up to and including genocide) against, or vilifies, any person or identifiable group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
    - (vi) circulates or makes available false information regarding the outbreak of a deadly or contagious disease.
  - (b) descriptions or demonstrations of criminal techniques which:
    - (i) contain essential details that could enable the commission of a crime;
    - (ii) explain criminal techniques that might invite imitation;
    - (iii) prejudice the success of attempts to deal with, detect or prevent crime;
    - (iv) endanger the security of the Turks and Caicos Islands;
    - (v) amount to propaganda for war;
    - (vi) could endanger lives;
    - (vii) prejudice the success of attempts to deal with a hijacking or kidnapping.
  - (c) a programme which, when considered in all of its circumstances, falsely simulates news or events in such a way as to mislead or alarm the public.
- (2) Save for sub-Clauses 4.1(1)(a)(i), (ii), (iv), and 4.1(1)(b)(iii), (iv), (vi) and (vii), exceptions to the provisions of Clause 4.1(1) of this Code may be justifiable during the watershed in the context of programmes with a legitimate humorous, dramatic, satirical, cultural, religious or educational purpose or where the depiction or demonstration is non-explicit.
- (3) Care should be taken at all times when scheduling programmes containing material not listed in Clause 4.1(2) of this Code, bearing in mind the likely audience for the channel at that time. Particular care should be taken when scheduling such programmes in close proximity to the beginning or end of the watershed. Licensees are reminded to ensure that such programmes meet the same standards of scheduling and content that applies to all programming

broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.

***Harmful and Offensive Material***

**4.2 Malicious or Scandalous Allegations**

- (1) The licensee shall not broadcast information about any person or undertaking or any event which is incorrect, untrue or misleading, and which the licensee knew, ought to have known, or would have discovered through reasonable investigation, to be incorrect, untrue or misleading.
- (2) Where a licensee discovers that incorrect, untrue or misleading information has been broadcast, the licensee shall take steps immediately to broadcast a correction of the information, and shall broadcast an apology to any person about whom the incorrect or misleading information was broadcast. The licensee shall transmit the correction and apology at a time or times and in such a manner as is likely to reach as much as possible of the audience that would have seen or heard the original broadcast.
- (3) Where a third-party (for example, a caller on a call-in talk show) does not comply with the rules set out in this Code and such non-compliance is broadcast, the licensee shall promptly terminate the broadcast of such content and immediately during the programme or as soon as possible thereafter make an apology and correction.
- (4) Humorous or satirical programmes shall not be in breach of the rules contained in this Clause so long as the humorous or satirical intent is clear to any reasonable person. However, this Clause does not permit the use of threats toward any individual or group of persons.

**4.3 Human Rights, Exploitation, Diversity and Negative Portrayals**

- (1) Licensees shall ensure that their programming does not contain:
  - (a) abusive or unreasonably discriminatory material or comment; or
  - (b) the negative portrayal, degradation or exploitation of any person, based on matters of race, nationality, ethnicity, religion, age, gender, sexual preference, or physical or mental disability.
- (2) Negative portrayal can take many different forms, including (but not limited to) stereotyping, stigmatization and victimization, derision of myths, traditions or practices, degrading material, and exploitation.
- (3) Exceptions to the provisions of Clause 4.3(1) of this Code may be justifiable in the context of programmes with a legitimate historical, educational or news purpose

provided that the inclusion of such content is as limited as possible within the context of the particular programme.

#### **4.4 Sexual Content**

- (1) A licensee may not broadcast material which contains a scene or scenes, simulated or real, of any of the following:
  - (a) child pornography;
  - (b) bestiality;
  - (c) incest or rape;
  - (d) violent sexual conduct;
  - (e) explicit sexual conduct which violates the right to human dignity of any person in the sense that it advocates a particular form of hatred based on gender or which degrades a person or which constitutes incitement to cause harm;
  - (f) the infliction of or explicit effects of extreme violence which constitutes incitement to cause harm;
  - (g) the depiction of exploitative or non-consensual sexual relations as being desirable; or
  - (h) participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity by a person who is, or who is depicted as being, under the age of 18 years.
  
- (2) Save for the content described in Clause 4.4(1)(a), (b), (e) and (h), exceptions to the provisions of Clause 4.4(1) of this Code may be justifiable during the watershed in the context of programmes with a legitimate cultural, historical or educational purpose provided that the depiction or demonstration is as limited and non-explicit as possible having regard to the context, and that it does not present the conduct as being desirable or socially acceptable.
  
- (3) Care should be taken at all times when scheduling programmes containing material not listed in Clause 4.4(2) of this Code, bearing in mind the likely audience for the channel at that time. Particular care should be taken when scheduling such programmes outside or in close proximity to the beginning or end of the watershed. Licensees are reminded to ensure that any such programmes broadcast meet the same standards of scheduling and content that applies to all programming broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.

#### **4.5 Suicide and Self-Harm**

Methods of suicide and self-harm must not be included in programmes broadcast outside the watershed under any circumstances, and during the watershed except in exceptional circumstances where they are editorially or contextually justified.

#### 4.6 **Exorcism, the occult and the paranormal**

- (1) Licensees must treat demonstrations of exorcism, the occult, the paranormal, divination, or related practices that purport to be real (as opposed to entertainment) with due objectivity. In this context, “due objectivity” means duly striving (as far as possible or practicable) to reduce or eliminate biases, prejudices, or subjective evaluations by relying on and providing the audience with verifiable data.
- (2) Licensees are responsible for making clear to their audience if a demonstration of exorcism, the occult, the paranormal, divination, or related practices is for entertainment purposes.
- (3) Licensees are not permitted to broadcast demonstrations of exorcism, the occult, the paranormal, divination, or related practices (whether such demonstrations purport to be real or are for entertainment purposes) containing life-changing advice directed at individuals. In this context, “life-changing advice” includes direct advice upon which individuals could reasonably act or rely about health, finance, employment or relationships.

#### 4.7 **Hypnotic and other techniques, simulated news and photosensitive epilepsy**

- (1) When broadcasting material featuring demonstrations of hypnotic techniques, Licensees are responsible for preventing hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing directly into a camera.
- (2) In instances when licensees broadcast simulated news (for example, in drama or in documentaries), it must be presented in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news. In those circumstances, licensees must take reasonable measures to ensure that such programmes carry advisories at the start of the programme and, if necessary, after each advertising break, and such classifications as are required by this Code.
- (3) Licensees operating television stations must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow these rules, and where such licensees can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, (for example, in news reports), viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

#### 4.8 **Violence in all Programme Genres**

- (1) The following categories of violence indicate material that will invariably be unsuitable for television programmes:

- (a) sustained, relished or excessively detailed acts of violence;
  - (b) unduly bloody or horrific depictions;
  - (c) strong violence that has high impact or which is gratuitous or exploitative (“gratuitous” in this context means material which does not play an integral role in developing the plot, character or theme of the material as a whole);
- (2) Exceptions to the provisions of Clause 4.8(1) of this Code may be justifiable during the watershed in the context of programmes with a legitimate humorous, dramatic, satirical, cultural, religious, historical, medical or educational purpose provided that the representation is limited and non-explicit.
- (3) Care should be taken at all times when scheduling programmes containing material listed in Clause 4.8(2) of this Code, bearing in mind the likely audience for the channel at that time. Particular care should be taken when scheduling such programmes in close proximity to the beginning or end of the watershed. Licensees are reminded to ensure that any such programmes broadcast meet the same standards of scheduling and content that applies to all programming broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.

#### **4.9 Violence in News and Current Affairs Programming**

- (1) Within their news and current affairs programming, Licensees shall:
- (a) use appropriate editorial judgment in the reporting of, and the pictographic images of, violence, aggression or destruction;
  - (b) use caution in the selection of, and repetition of, video depicting violence;
  - (c) advise viewers in advance of showing scenes of extraordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing;
  - (d) exercise discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, that could disturb children and their families;
  - (e) exercise judgment during live coverage of domestic terrorist events or civil disorders, to ensure news coverage does not become a factor in inciting additional violence.
- (2) While licensees shall not exaggerate or exploit situations of aggression, conflict or confrontation, they shall be equally careful not to sanitize the reality of the human condition.

#### **4.10 Violence against women**

- (1) Licensees shall not broadcast programming material that sanctions, promotes or glamorises any aspect of violence against women.

- (2) Licensees shall ensure that women are not depicted as victims of violence unless the violence is integral to the subject of the report. Licensees shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

#### **4.11 Violence against Specific Groups**

- (1) Licensees shall not broadcast programming material that sanctions, promotes or glamorises violence based on race, nationality, ethnicity, religion, gender, sexual preference, age, or mental or physical disability.
- (2) Exceptions to the provisions of Clause 4.11(1) of this Code may be justifiable outside the watershed in the context of programmes with a legitimate humorous, dramatic, satirical, cultural, religious, historical, medical or educational purpose provided that the representation is limited and non-explicit.
- (3) Care should be taken at all times when scheduling programmes containing material listed in Clause 4.11(2) of this Code, bearing in mind the likely audience for the channel at that time. Particular care should be taken when scheduling such programmes in close proximity to the beginning or end of the watershed. Licensees are reminded to ensure that such programmes meet the same standards of scheduling and content that apply to all programming broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.

#### **4.12 Violence against Animals**

- (1) Licensees shall not broadcast programming material that sanctions, promotes or glamorises violence against animals. However, licensees shall not be restricted in the television broadcast of legally sanctioned sporting and other activities associated with animals. In such broadcasts, judgment shall be used in the selection of video and associated audio, particularly if the broadcast is outside of the watershed.
- (2) Exceptions to the provisions of Clause 4.12(1) of this Code may be justifiable outside the watershed in the context of programmes with a legitimate historical, medical or educational purpose or where the representation is non-explicit.
- (3) Care should be taken at all times when scheduling programmes containing material listed in Clause 4.12(2) of this Code, bearing in mind the likely audience for the channel at that time. Particular care should be taken when scheduling such programmes in close proximity to the beginning or end of the watershed. Licensees are reminded to ensure that such programmes meet the same standards of scheduling and content that applies to all programming broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.

### ***Religious Programming***

#### **4.13 Broadcasts of religious programming**

Licensees may make available opportunities for the purchase of airtime for religious programming available to the community. The general purpose of religious programming should be to promote the spiritual harmony and understanding of humanity and of administering broadly to the varied religious needs of the community. While it is understood that the religious freedom guaranteed to all persons in the Turks and Caicos Islands necessarily implies the right to question and disagree with alternate belief systems, a licensee must ensure that any religious programming, which is likely to reach persons of all creeds and races, shall not be used by the licensee or any person to convey attacks upon another race or religion.

#### **4.14 Solicitation of funds in religious programming**

Except for the customary announcement of the offering or collection during a church service, the solicitation of funds in any religious programme originating or recorded in the Turks and Caicos Islands must not exceed one (1) minute during every thirty (30) minutes of broadcast time.

#### **4.15 Identification of religious programming**

Where a particular religion or religious denomination is the subject, or one of the subjects, of a religious programme, licensees are responsible for making clear to the audience the identity of the religion and/or denomination under discussion through visual notices, and, where possible, verbal announcements, at the beginning and at other appropriate times during the broadcast.

### ***Contests and Promotions***

#### **4.16 Rules of Play**

- (1) All contests and promotions broadcast shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public disturbance and that any prizes offered or promises made are what they are represented to be. Competition prizes must be described accurately.
- (2) Licensees must draw up rules for a broadcast competition or vote which are clear and appropriately made known to the audience during the programme using clearly readable and/or audible information and should also direct the audience to websites where they can view and print such rules. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time of an invitation to participate.
- (3) Prizes aimed at children must be appropriate to the age range of both the target audience and the participants in the contest or promotion.
- (4) There must be no collusion of any kind between licensees and contestants, whether such collusion affects the outcome of the competition, or misleads the viewers or listeners in any way or not.

#### **4.17 Costs of Telephone Calls or Text Messages**

If during a programme or programme promotion, a licensee invites the audience to use a premium charge telephone service or a text message service to obtain information, register a view or vote on a matter or participate in a competition, the licensee must provide clearly readable or audible information about the cost of the call or the cost of the text message.

**Question 4:**

Do you agree with the Commission's proposals in Part 4 of the draft Code of Practice regarding Law and Order, Harmful and Offensive Content, and Religious programming? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## ***Part 5: Protection of Young Persons***

This Part of the Code is intended to ensure that licensees adopt responsible policies through scheduling, advisories and programme classifications so as to limit the exposure of children in various age ranges to potentially harmful or unsuitable broadcast material that is intended for, and acceptable to, adult audiences.

### **5.1 Scheduling of Programmes and Advertisements**

- (1) Licensees shall use appropriate scheduling to protect children from unsuitable material.
- (2) "Appropriate scheduling" should be judged according to:
  - (a) the nature of the content;
  - (b) the likely number and age range of children in the audience, taking into account the time of transmission, weekends and school holidays;
  - (c) the start time and finish time of the programme;
  - (d) the nature of the channel or station and the particular content; and
  - (e) the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.
- (3) Licensees must comply with the watershed, in that content that is of an adult nature, and which is therefore not suitable for children, should not be shown outside the watershed.

### **5.2 Offensive Language**

- (1) Licensees shall not broadcast offensive language that has obscene or vulgar connotations outside the watershed unless it is limited and justified by the context of the programme. In any event, licensees must avoid frequent broadcasts of offensive language outside the watershed.
- (2) Licensees shall not allow the use of offensive language during children's programmes or advertising directed at children.

### **5.3 Violence**

- (1) Programmes for younger children shall not contain realistic scenes of violence which minimize or gloss over the effects of violent acts. Any realistic depictions of violence shall portray in human terms the consequences of that violence to its victims and perpetrators.
- (2) Violence shall only be portrayed in non-animated programmes for younger children when it is essential to the development of character and plot.

- (3) Programmes for younger children shall deal carefully, not gratuitously, with themes that could threaten their sense of security.
- (4) Children's programmes on television shall so far as possible avoid themes that could invite children to imitate dangerous or harmful acts which they see on-screen. Where it is not possible to avoid such themes, licensees shall ensure that such the material is treated with care so as to minimise the risk of harm.
- (5) Description or demonstrations of criminal techniques which contain details that:
  - (a) Glamorise anti-social or illegal behaviour; or
  - (b) Show methods of inflicting pain or torture,shall not be broadcast outside the watershed.

#### 5.4 **Sexual themes**

- (1) Programmes which portray children in a sexual fashion, including the sexualisation of children through dress and behaviour, are not acceptable, except where justified in the context of a dramatic or factual programme dealing with the specific issue of sexuality, in which case the portrayal must be as limited as possible within the context of the particular programme and must in any event be sexually non-explicit.
- (2) Licensees shall ensure that programmes that take incest or child abuse as their topic or theme shall provide suitable warnings prior to airing and shall be appropriately scheduled. Licensees shall also provide information on relevant telephone help-lines provided by governmental or other specialist agencies. Licensees should treat material of this nature with the utmost care and sensitivity, bearing in mind the psychological effects it might have on child-victims.
- (3) Representations of sexual intercourse must not be broadcast outside the watershed unless there is a justifiable educational purpose. Any discussion or portrayal of sexual behaviour broadcast outside the watershed must be appropriately limited to the subject matter of the discussion or portrayal and sexually inexplicit.
- (4) Children should not be portrayed as sexually appealing or provocative and they should not be included in any portrayal that involves any form of sexual innuendo.

#### 5.5 **Nudity and pornography**

- (1) A Licensee may not broadcast material outside the watershed which contains:
  - (a) Full frontal nudity of any person;
  - (b) The bare breasts of female persons; or
  - (c) The pubic area of any person.
- (2) Pornography must not be broadcast at any time.

## 5.6 **Drugs, Alcohol, Solvents and Smoking**

The use of illegal drugs, the misuse of alcohol, solvent abuse and smoking must not be condoned, encouraged or glamorised in programmes broadcast outside the watershed.

## 5.7 **Participation of children in programmes and advertisements**

- (1) If a contributor to a programme or a participant in an advertisement is under eighteen (18) years of age, the licensee shall obtain consent or shall ensure that the producer of the programme or advertisement, or someone acting on behalf of the licensee or the producer has, as the case may be, first obtained consent to the contributor's or participant's participation in the programme or advertisement from a parent or guardian or other person of eighteen (18) or over in loco parentis to the contributor. In particular, licensees or producers should not ask persons under eighteen (18) years for his or her views on matters likely to be beyond their capacity to answer properly without such consent.
- (2) Children must not be caused unnecessary distress or anxiety by their involvement in programmes or advertisements.

## 5.8 **Children and crime**

- (1) Where children are accused or convicted of crimes, licensees shall avoid broadcasting the children's names and/or images.
- (2) In reporting certain kinds of crime, such as sexual assaults or incidents involving children, licensees must ensure that the degree of explicit detail is appropriately matched to the probable presence of children listening or viewing, having regard to the time period of the broadcast.
- (3) In reporting certain crimes, such as sexual assaults or incidents involving children, licensees must take into account the need for protection of the children involved. Steps should be taken to minimize psychological trauma to children.

## 5.9 **Application to content delivered via Carriage Service**

The provisions of Clauses 5.1 to 5.6 of this Code shall not apply to content delivered via a carriage service, provided that the licensee providing such services shall take all reasonable steps to:

- (a) inform the adult subscriber through classifications and/or advisories as are required by this Code of the nature of the programming and the fact that such programming may not comply with all provisions of this Code; and
- (b) ensure that an adequate parental control mechanism has been implemented in conjunction with the advisory and classification system set out in Clause 5.10 and 5.11 of this Code, which would enable adult subscribers to prevent access to unsuitable content by children; and

- (c) provide appropriate training, instructional materials, and assistance to subscribers regarding the use and operation of parental control mechanisms, and guidelines as to maintenance of security from accidental or unsanctioned use by minors.

#### 5.10 **Audience Advisories and Programme Classifications**

- (1) Warnings and advisories should be given when any radio or television programming includes broadcasts of mature subject matter or scenes with nudity, sexually explicit material, violence, coarse or offensive language, or other material which may cause offence. The rules in this Clause apply to all content but do not prejudice the limitations set out in other parts of this Code on the broadcast of any type of content.
- (2) Licensees shall warn or advise television viewers on screen in advance and at frequent intervals throughout the programme when broadcasting any content which:
  - (a) contains scenes of extraordinary violence; or
  - (b) includes graphic reporting on sensitive subject matters; or
  - (c) includes the personal views of presenters or reporter.
- (3) Where necessary, licensees shall also include an advisory or a warning that a programme contains material, which may seriously distress or seriously offend the audience and/or is unsuitable to children, and that advisory or warning must comply with every requirement in this Code for the time period in which it is broadcast.
- (4) Licensees shall appropriately classify programmes in accordance with Clauses 5.10 and 5.11 of this Code so that the programmes:
  - (a) do not deceive or disadvantage the audience; or
  - (b) are not presented in such a way as to cause panic, unwarranted alarm or undue distress to the audience.
- (5) Licensees shall, in addition to the advisories, required in sub-Clauses 5.10(1) and 5.10(2) of this Code, display the appropriate classification on-screen for the television programme being broadcast, in accordance with the classification system set out in Clause 5.11 of this Code.
- (6) A classification symbol of at least 32 television lines in height, in a readily legible typeface, must be displayed at the bottom right of the television screen for at least 3 seconds at the following times:
  - (a) as close as practicable to the programme's start;
  - (b) as soon as practicable after each break;
  - (c) in any promotion for the programme (except for radio or outdoor advertising).

- (7) Licensees shall maintain the following broadcasting standards in the preparation and presentation of content that subscribers pay a fee to receive:
- (a) Viewers shall be informed by regular and consistent advisories about programming broadcast (including classifications and warnings) and filtering technology.<sup>5</sup>
  - (b) Classifications shall be available for all programming except for advertisements.
  - (c) If available, classifications should be shown on-screen at the beginning of programmes and following any breaks for advertisements, be included in any electronic programme guides, in any relevant promotional material and in any accompanying printed guides where Licensees make such classifications available to the publishers of these printed guides.
  - (d) Visual warning and advisories should also be available. When used, verbal warnings should screen at the start of the programme, with accompanying text and also following any breaks for advertisements.
  - (e) Filtering technology shall be made available on the basis that subscribers elect to use it, provided that a subscriber is easily able to initiate use at any time through the television remote control or similar device.
- (8) A Licensee shall ensure, so far as it is able to, that programming broadcast or carried by it is classified for viewing or listening in accordance with this Code or under a comparable Code or regime in the country where the programming or broadcast originated.

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<sup>5</sup> *“Filtering technology” means electronic technology that gives subscribers the ability to set a classification threshold beyond which content can only be accessed by using a Personal Identification Number (PIN) or other key which the subscriber can keep confidential. It enables a subscriber to prevent other members of their household, particularly children, from accessing content that the subscriber does not wish them to view*

## 5.11 Television Programme Classification System

Rating	Description
<p><b>TV-Y</b> (all Children –This program is designed to be appropriate for all children.)</p>	<p>Whether animated or live-action, the themes and elements in this classification of programmes are specifically designed for a very young audience, including children from age two to six (2-6). This programme classification is not expected to frighten younger children.</p>
<p><b>TV-Y7</b> (This programme is designed for children age 7 and above.)</p>	<p>This programme classification may be more appropriate for children who have acquired the developmental skills needed to distinguish between make-believe and reality. Themes and elements in this programme classification may include mild fantasy or comedic violence, or may frighten children under the age of seven (7). Therefore, parents may wish to consider the suitability of this programme classification for their very young children.</p>
<p><b>TV-G</b> (General Audience -- Most parents would find this programme suitable for all ages.)</p>	<p>Although this rating does not signify a programme designed specifically for children, most parents may let younger children watch programmes in this classification unattended. It contains little or no violence, no strong language and little or no sexual dialogue or situations.</p>
<p><b>TV-PG</b> (Parental Guidance Suggested – This many parents may want to watch contains material that parent may find unsuitable for younger children.)</p>	<p>programme in this classification with their younger children. The theme itself may call for parental guidance and/or the programme contains one or more of the following: moderate violence (V), some sexual situations (S), infrequent coarse language (L), or some suggestive dialogue (D).</p>

**TV-14**

(Parents Strongly Cautioned -- This programme contains some material that many parents would find unsuitable for children less than 14 years of age.)

Parents are strongly urged to exercise greater care in monitoring programme in this classification and are cautioned against letting children under the age of fourteen (14) watch unattended. This programme classification contains one or more of the following: intense violence (V), intense sexual situations (S), strong coarse language (L), or intensely suggestive dialogue (D).

**TV-MA**

(Mature Audience Only -- This programme is specifically designed to be viewed by adults and therefore may be unsuitable for children under 18.)

This programme classification contains one or more of the following: graphic violence (V), explicit sexual activity (S), or crude indecent language (L).

**Question 5:**

Do you agree with the Commission's proposals in Part 5 of the draft Code of Practice regarding the protection of young persons and a television programme classification system? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## **Part 6: Political Broadcasts and Political Advertisements**

This Part of the Code sets out the standards applicable to the broadcasting of political advertisements and election programmes arranged and paid for by potential candidates, actual candidates, political parties and other persons or entities outside of election periods and during the period preceding a general election or bye-election. Licensees are required to disclose to the public the name and political affiliation of any paid political broadcast, and cannot broadcast any political material on polling day. Licensees broadcasting election opinion surveys must disclose whether the survey is based on recognised statistical data and must clearly distinguish factual information from opinion or advocacy. Licensees must strive to provide balanced coverage of parties, candidates and issues relevant to an election.

### **6.1 General**

- (1) The provisions of this Part of this Code shall apply to all political advertisements or political broadcasts produced by or on behalf of a candidate, an intending candidate, a political party or any other person or entity and/or broadcast by a licensee.
- (2) Robust debate, advocacy and the expression of political opinions are a desirable and essential part of a democratic society, and the broadcasting standards under this Code will be applied by the Commission in a manner which respects this context.

### **6.2 Broadcasts outside of election periods**

Up to midnight at the start of the first day of the election period, licensees may make available broadcasting time each day for purchase by intending candidates, political parties and any other person or entity for political advertisements and political broadcasts.

### **6.3 Broadcasts during election periods**

Up to midnight at the end of the day before polling day, licensees may make available broadcasting time each day for purchase by candidates, political parties and any other person or entity for political advertisements and political broadcasts.

### **6.4 Discrimination against candidates, political parties and others during election periods**

In making broadcasting time available to individual candidates, political parties, or any other person or entity for political advertisements and political broadcasts, licensees shall not discriminate against any candidate, or political party, person or entity, or make or give any preference to any candidate, or political party, person or entity, or subject any candidate, or political party, person or entity to any prejudice or bias.

**6.5 Definition of qualifying parties and candidates during election periods**

Up to midnight on the day before polling day, licensees may allocate broadcasting time during general elections and bye-elections for political advertisements or political broadcasts to candidates and political parties.

**6.6 Identification of political advertisements and political broadcasts**

Licensees shall clearly identify all political advertisements (where possible at the beginning and automatically at the end) and political broadcasts (at the beginning, periodically throughout and automatically at the end) as a political advertisement or political broadcast on behalf of a specified candidate, political party or other person or entity and clearly indicate that a specified candidate, political party or other person or entity has authorised and paid for the political advertisement or political broadcast.

**6.7 Prohibitions on polling day**

Licensees shall not be permitted to broadcast within any programmes the following to the public on any polling day until after the close of the poll:

- (a) discussion and analysis of election and referendum issues;
- (b) the result or purported result of the voting in a constituency, electoral district or all Island district before the close of all of the polling stations in that constituency, electoral district or all Island district;
- (c) the results of any opinion poll;
- (d) any political advertisements, political broadcasts or any other election programming produced by or on behalf of a candidate, political party or other person or entity.

**6.8 Subject matter of political advertisements and political broadcasts**

- (1) While a political advertisement or political broadcast may oppose a political party or candidate, it may not include material which defames or slanders a political party or candidate.
- (2) A political advertisement or political broadcast may not imitate an existing programme, format or identifiable personality in a manner which is likely to mislead the public, but exceptions to this rule may be justifiable for comedy, satire, parody or fiction purposes or where the representation is non-explicit. Further, licensees must ensure that such advertisements or programmes meet the same standards of scheduling and content that apply to all programming broadcast under this Code, and that, where applicable, such programmes carry such classifications and/or advisories as are required by this Code.
- (3) A political advertisement or political broadcast may not contain any material which may reasonably be anticipated to expose the licensee to legal liability.

- (4) Licensees shall not use or permit race, gender, ethnicity, nationality, religion, age, sexual preference, or physical or mental disability in political advertisements or political broadcasts as a basis for denigrating a person's political affiliation.
- (5) Notwithstanding that the content of a political advertisement or political broadcast is normally the responsibility of the relevant candidate or political party, Licensees are required to fully comply with the relevant provisions of this Code, as with any other programme or advertisement. Licensees should apply these rules in accordance with the relevant provisions of this Code.
- (6) Licensees broadcasting political advertisements and political broadcasts are encouraged to seek legal indemnities from candidates and political parties against defamation, copyright and similar legal risks.
- (7) Any use of House of Assembly video or audio recordings by a candidate or political party in a political advertisement, political broadcast or party political broadcast should abide by any rule of the House of Assembly on such use.  
A licensee accepting a political advertisement or political broadcast from a candidate, political party or other person or entity for broadcast shall satisfy itself that such advertisement or programme does not:
  - (a) contravene the provisions of this Code, the Constitution or any law then in effect in the Turks and Caicos Islands; or
  - (b) contain any material that is calculated, or that in the ordinary course of things is likely, to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.

## 6.9 **Factual Information and Opinion including Election Opinion Surveys**

- (1) A political advertisement or political broadcast may include debate, advocacy and opinion, but factual information should be clearly distinguishable from opinion or advocacy.
- (2) If, during an election period, a licensee broadcasts the results of an election opinion survey taken in the Turks and Caicos Islands which survey is based on recognised statistical methods, the licensee must aurally (for radio) and/or in audio-video format (for television) during the broadcast provide, at a minimum, an accurate summary of key methodological details of the following information together with the results of the survey. Alternatively, the licensee may broadcast all of the following information or the salient details of the following information together with the results of the survey:
  - (a) the name and address of the sponsor of the survey;
  - (b) the name and address of the person or organisation that conducted the survey;
  - (c) the date on which or the period during which the survey was conducted;
  - (d) information about the method used to collect the data from which the survey results are derived, including:
    - (i) the sampling method,

- (ii) the population from which the sample was drawn,
  - (iii) the size of the initial sample,
  - (iv) the number of individuals who were asked to participate in the survey and the numbers and respective percentages of them who participated in the survey, refused to participate in the survey, and were ineligible to participate in the survey,
  - (v) the dates and time of day of the interviews,
  - (vi) the method used to recalculate data to take into account in the survey the results of participants who expressed no opinion, were undecided or failed to respond to any or all of the survey questions, and
  - (vii) any weighting factors or normalization procedures used in deriving the results of the survey;
  - (e) the wording of the survey questions and, if applicable, the margins of error in respect of the data obtained; and
  - (f) the means by which a copy of the survey report may be obtained.
- (3) Licensees broadcasting the results of an election opinion survey pursuant to Clause 56.9(2) must make the complete results of the survey report available to the public either in print or online, or notify the public where they can obtain the complete survey report either in print or online, and the price (if any) for such printed copies.
- (4) A licensee may charge a reasonable fee for a copy of an election opinion survey report to persons requesting a copy of such report.
- (5) A licensee who broadcasts to the public the results of an election survey that is not based on recognised statistical methods during an election period must indicate to the public that the survey was not based on recognised statistical methods.

#### 6.10 Requirements for Balanced Reporting

- (1) If, during an election period:
- (a) the news or current affairs programming of any licensee extends to reporting on the topics of elections, candidates, political parties and issues relevant thereto, the licensee concerned must afford reasonable opportunities for the discussion of competing views and must treat all political parties equitably;
  - (b) any criticism is levelled against a candidate or political party in a particular programme of any licensee, the licensee concerned must afford such candidate or party a reasonable opportunity to respond to the criticism either immediately in the same programme or soon after at a corresponding time (e.g. in a subsequent edition of the same programme or series, or in a different programme that caters to a similar audience and is scheduled in the same time period as the original broadcast);
  - (c) a candidate takes part in a news or current affairs programme about his or her particular constituency or electoral district, or takes part in reports or discussions

about his or her constituency or electoral district, then the licensee also must offer each of the candidate's opponents a reasonable opportunity to also take part in such programme. However, if the candidate's opponents refuse or are unable to participate, the licensee may nevertheless go ahead with the news or current affairs programme, or constituency or electoral district reports and discussions.

- (2) Clause 6.10(1) of this Code does not apply to the contents of any election programme or political advertisement.
- (3) During the election period:
  - (a) Licensees broadcasting news or current affairs programmes shall ensure, in accordance with this Clause 6.10, that in the course of their reporting of the political campaigning and elections process the licensee provides a reasonable and balanced opportunity for all political parties and persons contesting a general or bye-elections to express their views, positions and opinions;
  - (b) when hosting political discussions or debates involving partisan speakers, licensees shall make clear to their audience throughout the programme the political nature of the programme and the specific partisan affiliations of the invited speakers; and
  - (c) Licensees must strictly maintain their impartiality in any report or discussion on an electoral district or all Island district.
- (4) In the course of their reporting of the political campaigning and elections process made after the close of nominations for general elections, licensees may broadcast a list of all candidates nominated for election, giving first names, surnames and the name of the political party they represent or, if they are nominated independently, the fact that they are an independent candidate. Licensees may also direct their audience to an appropriate website or other information source listing all candidates and providing the information set out above.
- (5) Where, during an election period, a candidate is taking part in any programme which is not a political broadcast, the licensee must not allow such candidate the opportunity to make comments about the constituency or the district in which she or he is standing for election when no other candidates for the same constituency or district will be given a similar opportunity.

#### **6.11 Appearances by Political Candidates**

- (1) During the election period, licensees shall not permit any person nominated as a candidate for election to be news presenters, interviewers, hosts or presenters of any type of programme broadcast by the licensee.
- (2) In exception to Clause 6.10(1)(a) of this Code, licensees may broadcast appearances by candidates in news or current affairs programmes where such appearances were planned or scheduled before the election period.

## 6.12 Retention of Records

Clause 6.6 of this Code shall apply to all political broadcasts and political advertisements. Licensees shall also retain a record of the name, address, and other identifying information of the person or entity purchasing the broadcast time and must give to the Commission any copies of the recordings and any other particulars of the person or entity purchasing the broadcast time that the Commission, by written notice, requires.

## 6.13 Technical Quality

- (1) Any candidate, political party or other person or entity purchasing broadcast time for a political broadcast or political advertisement shall, if required by a licensee, submit that political broadcast or political advertisement to the licensee concerned, pre-recorded and:
  - (a) in a form and manner that complies with technical standards acceptable to that licensee;
  - (b) in completed form, ready for broadcast (including a typed copy of the script, if required); and
  - (c) up to ninety-six (96) hours before the time when that election broadcast or political advertisement is to be transmitted.
- (2) Licensees shall not in any way edit or alter the content of any political broadcast or political advertisement, whether before or after it has been broadcast.

## 6.14 Complaints arising from rejection of a Political Broadcast or Advertisement

- (1) Every licensee receiving a political broadcast or political advertisement for broadcast shall be entitled to reject and refuse to broadcast that material if it does not comply with the Commission's or the Licensee's technical standards, this Code or any written law in the Turks and Caicos Islands. However, the parties may agree in writing that the licensee may make specific edits to the material in order that the material complies with such technical standards.
- (2) Any licensee who rejects any political broadcast or political advertisement submitted to it for broadcast (whether for technical or any other reason) shall, within twenty-four (24) hours of rejecting such submission:
  - (a) furnish the person, party or entity submitting the material concerned with written reasons for such rejection, and that person, party or entity shall be entitled to alter or edit the material and again submit it to the licensee at least twenty-four (24) hours before the time when it is to be transmitted;
  - (b) in the event of the licensee rejecting an altered or edited political broadcast or political advertisement submitted to the licensee in accordance with Clause 6.14(2)(a), notify the Commission at the same time as the licensee issues its written reasons of such rejection by furnishing the Commission with a copy of the written reasons given for that rejection.

- (3) Any person, party or entity whose election programme or political advertisement has been rejected by a licensee under Clause 6.14(1) may refer the matter to the Commission as an urgent complaint under Clause 10.9(21) of this Code.

**Question 6:**

Do you agree with the Commission's proposals in Part 6 of the draft Code of Practice regarding election broadcasts and advertising, other aspects of election broadcasts and political advertisements and operational matters in elections and political broadcasts? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## ***Part 7: Advertising and Sponsorships***

This Part of the Code is intended to ensure that advertisements and sponsorships are legal, decent, honest and truthful and that they are presented with a sense of obligation to the consumer, whether they are directed at adults or at children, and to society.

### **7.1 General Principles relating to Advertising**

- (1) Notwithstanding that the content of an advertisement is normally the responsibility of the relevant advertiser or its advertising agency, licensees are required to fully comply with the relevant provisions of this Code. Advertisers and advertising agencies should, having regard to Clause 2.3 of this Code, ensure that their advertisements comply with the rules in this Part of this Code and with all other relevant provisions of this Code.
- (2) All advertisements broadcast in the Turks and Caicos Islands must comply with the laws of the Islands and with this Code, and shall not promote any content, product, service, organisation or point of view which is contrary to any law of the Islands or this Code.
- (3) All advertisements should be prepared with a due sense of responsibility to consumers and society.
- (4) No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.
- (5) Licensees should ensure that there is no influence of any kind by advertisers or sponsors, or the perception of such influence, on the reporting of news or current affairs that would undermine the editorial independence of licensees.
- (6) Advertisements should avoid abusing the trust of the consumer, or exploiting the consumer's lack of knowledge.
- (7) Advertisements should not be presented in a format or style that conceals their commercial intent and surreptitious advertising is not allowed in any programme.
- (8) Advertisements should respect and reflect the principles of free and fair competition generally accepted in business.
- (9) Advertisements must comply with the rules contained in this Code in the

same way that this Code applies to other programming material. Such rules include compliance with the watershed, and any limitations on the matters which may be broadcast.

- (10) Advertisements should be clearly distinguishable by the public as such, whatever their form and whatever the medium used.
- (11) Animals should not be harmed in the making of advertisements.

## **7.2 Advertisements Directed at Children**

- (1) Licensees shall exercise special care and judgment when broadcasting advertisements which are directed at or are likely to influence children outside the watershed.
- (2) Advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in exposing them to mental, moral, physical or emotional harm.
- (3) Advertisements should not exploit the natural credulity of children or their lack of experience and should not strain their sense of loyalty to family, friends, animals, ethnicity, nationality, religion, race, gender, sexual preference, and others.
- (4) Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate. Advertisements, whether addressed to or likely to influence children or adults, must not implicitly or explicitly discredit safety guidelines established by governmental, health, safety, education and other agencies responsible for such matters.
- (5) Advertisements must not condone or encourage practices that are detrimental to children's health.
- (6) Advertisements must not condone or encourage bullying.
- (7) Licensees should also note the provisions of Part 5 of this Code in relation to advertisements directed at children, or in which children participate.

## **7.3 Sponsorship**

- (1) Licensees should clearly identify sponsorship credits in programmes that are sponsored.
- (2) Licensees may make references to sponsors in promotions or advertisements

for sponsored programmes but such references should be brief and secondary to the principal subject matter of the sponsored programme.

#### **7.4 Prices and Offers in Advertisements including Distance Selling**

- (1) Phrases such as “direct supply” or “wholesale prices” may only be used in advertisements where the advertiser is able to substantiate that the advertised prices are below retail prices.
- (2) Advertisements should be clear and unambiguous in the presentation of prices and offers, and should:
  - (a) include all necessary incidental costs;
  - (b) contain clear definitions of the full price against which offers are made;
  - (c) contain clear details of the time period for which any offers are valid.
- (3) Distance selling advertisements (which consist of advertisements on television or radio selling goods or services to consumers by placing orders through the internet, mail order, telephone or fax) should contain the name, address and telephone contact of the advertiser. Licensees should also keep the advertiser’s name, address and telephone contact on record for complaints-handling purposes.

#### **7.5 Alcohol**

- (1) Licensees shall not broadcast advertisements and sponsorships for alcohol during programmes directed towards children on radio, or outside the watershed period on television.
- (2) Licensees shall not broadcast advertisements and sponsorships that encourage the consumption of alcohol by persons under the legal age to purchase alcohol, especially by advertisements for alcohol:
  - (a) reflecting or being associated with youth culture; or
  - (b) showing adolescent or juvenile behaviour; or
  - (c) including a person or character whose example is likely to be followed by those aged under eighteen (18) years, or who has a strong appeal to those aged under eighteen (18).
- (3) Advertisements must not feature, imply, condone or encourage irresponsible or immoderate drinking of alcohol. This applies to both the amount of drink consumed and the way drinking of alcohol is portrayed.
- (4) Advertisements for alcohol should not:
  - (a) detract from the need for responsibility and moderation in consumption;
  - (b) imply that alcohol can contribute to an individual’s:

- (i) popularity or confidence,
- (ii) daring, toughness and aggression,
- (iii) social success or acceptance,
- (iv) sexual activity, sexual success or seduction; or
- (c) imply that the success of a social occasion depends on the presence or consumption of alcohol; or
- (d) imply that alcohol enhances personal qualities or attractiveness; or
- (e) imply that refusal of alcohol is a sign of weakness.

#### **7.6 Tobacco**

Advertisements or sponsorships promoting the consumption or use of tobacco or tobacco products shall not be broadcast.

#### **7.7 Prescription Drugs**

Advertisements and sponsorships for prescription drugs and medicines advertisements must comply with applicable laws and regulations in the Turks and Caicos Islands regarding health related products and services.

#### **7.8 Films and Video Games**

Advertisements or promotions for films and video games must be advertised during such time period as is appropriate under this Code and in accordance with the rating given to the film or video game.

#### **7.9 Gambling**

Advertisements or sponsorships pertaining to unlawful gambling, gaming, betting, bookmaking, lotteries or any similar activity or service shall not be broadcast.

#### **7.10 Sexual Services and Pornography**

(1) Advertisements and sponsorships promoting prostitution or any sexual services shall not be broadcast.

(2) Advertisements for pornography shall only be broadcast in accordance with the rules pertaining to pornographic content.

#### **7.11 Financial Products**

Advertisements promoting financial products and services, or organisations offering financial products or services, must comply with any regulations in the Turks and Caicos Islands applicable to the sale and offering of financial products and services.

**7.12 Food**

- (1) Nutrient, nutritional and health claims made in advertisements should be factual, and able to be substantiated by the advertiser.
- (2) Food and dietary products should not be presented in advertisements in a manner which would or is likely to encourage excessive or unhealthy consumption of such products.

**Question 7:**

Do you agree with the Commission's proposals in Part 7 of the draft Code of Practice regarding advertising, sponsorship and non-programming material? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## **Part 8: News and Factual Programmes**

This Part of the Code is intended to ensure that news, current affairs and factual programmes are presented accurately and impartially; are presented fairly, having regard to the likely composition of the audience and, in particular, the presence of children; and that they take account of personal privacy. Coverage of controversial issues, including subjects that some people may find offensive, is encouraged provided the coverage is presented carefully, taking into account cultural differences in communities or localities throughout the Turks and Caicos Islands where relevant.

### **8.1 Accuracy, objectivity and impartiality**

- (1) Licensees are required to ensure that the content of news, current affairs and other factual programmes, including matters which are of local, national or international public importance, matters relating to political or industrial controversy or matters relating to current public policy, are accurate, truthful, unbiased, and presented objectively and with due impartiality.
- (2) Views, facts and content dealing with controversial issues of public importance should be balanced, and must not be misrepresented or aim to mislead the audience. Where possible, adequate evidence should be included in the programmes to support the views that are being presented.
- (3) Licensees shall ensure that they have adequate evidence or information to support the accuracy of news, current affairs and factual programming produced by them.
- (4) When reporting statistics in news, current affairs and factual programmes, licensees shall present such statistics in a manner which accurately reflects the results and the source of the statistics must be stated.

### **8.2 Misrepresentation and False information**

- (1) Licensees shall not intentionally, through negligence, or otherwise depart from the facts, distort, exaggerate, misrepresent or make material omissions in the content of news, current affairs and other factual programmes or broadcast information that they know to be false or inaccurate.
- (2) Licensees shall be required to ensure that the editing of interviews or footage does not distort or misrepresent subjects or their views. Interviews may be edited provided that the meaning of the interview is not changed or misrepresented.

### 8.3 **Corrections**

Licensees shall acknowledge and publicly correct errors of fact at the earliest opportunity. Such corrections shall be appropriately scheduled in the same or a similar time period so as to reach an audience similar to the audience that originally received the misinformation.

### 8.4 **Comment**

- (1) Licensees shall be required to clearly distinguish the reporting and analysis of news, current affairs and factual information from commentary and opinion, including programmes that present authored views. Such authored views may include the opinions of a journalist, commentator or academic with professional expertise or a specialty in an area.
- (2) Licensees may present commentary and opinion, including personal views or authored programmes as part of their news, current affairs and factual programming, but the commentaries and opinions must carry such aural and/or written advisories as are required by this Code and must be kept distinct and apart from the licensee's news, current affairs and factual programmes.
- (3) Except in the case of political or special-interest opinion, the background details to the licensee's analysis, and opinion referred to in Clause 8.4(2) must be based, as appropriate, on the most reliable scientific data, available evidence, sound social concepts, or expert opinion.

### 8.5 **Disclosures**

- (1) Licensees shall make clear to the audience, through aural and/or written advisories as required by Clause 5.10 of this Code, that the personal views of presenters or reporters, which may call into question the impartiality of a programme, are actually commentaries by such presenters or reporters.
- (2) Subject to Clause 8.5(1) of this Code, presenters (including the presenters of "personal views" or "authored" programmes or items), reporters, and the hosts of discussion programmes may express their own views in news, current affairs and factual programmes on matters which are of local, national or international public importance, including matters relating to political or industrial controversy or matters relating to current public policy. However, subject to Clauses 8.1, 8.11, 8.18 and 8.20 of this Code, the licensee should provide an opportunity for alternative viewpoints to be adequately represented in the programme.

## 8.6 **Controversial events and issues**

- (1) Licensees are encouraged to cover controversial issues or events that carry elements of public interest, in recognition that healthy controversy is essential to the maintenance of democratic institutions. Subject to Clauses 8.1, 8.11 and 8.20 of this Code, licensees should ensure, so far as they are able, that for subjects of a controversial nature, all viewpoints represented in the programme are treated fairly and in a balanced manner and given appropriate airtime.
- (2) Licensees are responsible for ensuring that the coverage of controversial events and issues meet the same standards of scheduling that applies to all programming broadcast under this Code. Where necessary, the licensee is responsible for handling such programmes in a sensitive manner and for ensuring that it carries such classifications and/or advisories as are required by Clause 5.10 of this Code.
- (3) In exercising their discretion to cover controversial events and issues, licensees should take into consideration that because certain subject matter or issues may be offensive to some persons within the community, this is not a justification for excluding the subject matter or issues from coverage in a programme.

## 8.7 **Payments**

- (1) Licensees, any of their employees and independent producers of news broadcasts are prohibited from direct or indirect payment, promise of payment or payment in kind to:
  - (a) subjects or sources, including convicted or confessed criminals or any other person relating to his or her crime(s); or
  - (b) witnesses or any other person reasonably expected to testify as a witness in an active or likely and foreseeable criminal proceeding and whether dependent on the outcome of the trial or not; or
  - (c) convicted or confessed criminals and persons with a vested interest in the subject matter of a news report.
- (2) Neither a licensee, nor its agents or employees, shall accept financial compensation from anyone who seeks to influence news coverage. The licensee should take all reasonable steps to ensure compliance with this rule.

## 8.8 **Sources**

- (1) Licensees shall make every effort to ensure that news is attributed on the record.
- (2) Confidential sources should be used only if:
  - (a) it is clearly in the public interest to gather important information; or

- (b) it conveys important information; or
- (c) a person providing information might be harmed.

(3) Licensees should take special care to ensure the veracity of the information provided by such confidential sources.

#### 8.9 **Exceptions**

Exceptions to the rules in Clauses 8.1 to 8.6 of this Code shall be permitted for humour, satire, parody or fictional purposes, provided that it is clear that the programme is of a humorous, fictional or satirical nature, and is therefore not genuine news.

#### 8.10 **Fairness**

- (1) Licensees must avoid unjust or unfair treatment of individuals or organisations in programmes.
- (2) People and organisations taking part or referred to in programmes should be dealt with fairly. The participants should, except as required in the public interest, be informed of the nature of their participation. Licensees should respect the right of individuals to express their own opinions.

#### 8.11 **Privacy**

- (1) Licensees and the broadcast journalists that they employ shall respect the dignity, privacy and well-being of everyone with whom they deal, and will make every effort to ensure that news gathering and reporting do not unreasonably infringe privacy except when it is justified in the public interest.
- (2) Insofar as both news and comment are concerned, licensees shall exercise exceptional care and consideration in matters involving the dignity or private lives and private concerns of individuals, bearing in mind that the rights to dignity and privacy may be overridden by a legitimate public interest.

#### 8.12 **Personal details**

Licensees shall be required to avoid disclosing individuals' private details, such as the location of their home or family details, except where justified in the public interest.

#### 8.13 **Consent**

- (1) Exceptions to the rules in Clauses 8.12 shall only be permitted when it is justified in the public interest and only when made with the relevant individual's or organisation's consent.

- (2) Licensees may record telephone calls between employees of the licensee and another party only if the licensee has, from the outset of the call, identified themselves and their broadcasting station, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case). If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the licensee must obtain consent from the other party before broadcast, unless in the circumstances of the call the licensee reasonably believes it is not necessary to do so.

8.14 **Decency**

- (1) Licensees and the broadcast journalists that they employ shall treat people who are the subjects of news, current affairs or other factual programmes, or who are the sources of information for such programmes, with decency.
- (2) Disturbing or alarming material should only be broadcast when it is justified in the public interest.

8.15 **Sensitivity**

- (1) Licensees shall ensure that the content of news, current affairs and factual programmes are presented with sensitivity in the case of material likely to cause some distress to a substantial number of the audience, such as televised images of dead or seriously wounded people or animals, images or interviews with victims of traumatic incidents, or reporting on criminal activities of a traumatic nature. Such material should only be used when deemed editorially essential, and if so, sparingly, and have appropriate regard to the feelings of viewers and family members.
- (2) Licensees must use judgment and discretion in deciding the degree of graphic detail to be included in news, current affairs and factual programmes when children are likely to be watching. Warnings within such programmes should be used when appropriate.
- (3) Licensees must use special sensitivity when dealing with children and shall be sensitive to the depiction or involvement of children or vulnerable people. Particular sensitivity shall be shown to bereaved relatives, survivors and witnesses of traumatic incidents.
- (4) When dealing with the issue of violence, licensees should exercise particular care and discretion.
- (5) When reports on executions and assassinations are broadcast, the coverage should not be explicit, prolonged, or repeated gratuitously.
- (6) Warnings before the broadcast of material of a potentially sensitive or traumatic nature must be spoken, and should also appear on-screen for television when a

news, current affairs, or other factual programme includes material which in the Licensee's reasonable opinion has the potential to distress or offend a substantial part of the audience. The warning must precede the relevant report in a news or current affairs programme and precede the programme in other cases, particularly outside the watershed. Warnings must provide an adequate indication of the nature of the material, while avoiding details which may seriously distress or seriously offend viewers or listeners.

- (7) Licensees shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and sensitive audiences.
- (8) Licensees should ensure that journalists and other employees of Licensees strive to conduct themselves in a courteous and considerate manner when dealing with members of the public, keeping broadcast equipment as unobtrusive as possible, and also to prevent their presence from distorting the character or importance of events.

#### 8.16 **Deception**

Licensees are prohibited from obtaining information, audio or pictures through misrepresentation or deception (including surreptitious filming or recording) except when there is a public interest ground for doing so.

#### 8.17 **Right to reply**

- (1) Licensees shall offer individuals whose views are criticised in a news, current affairs or factual programme, or who are accused of wrongdoing or incompetence, a right to reply in the same programme.
- (2) If an individual makes no comment or refuses to appear in a broadcast and gives reasons for doing so, the licensee shall make clear the individual's stated reasons for doing so together with the fact of the refusal.

#### 8.18 **Covering violent situations**

Licensees reporting on violent situations or criminal activities must do so in a way that does not knowingly endanger lives, offer comfort and support or provide vital information to the perpetrator(s). Licensees must not contact either the victims or the perpetrators of a criminal activity or violent event during the course of the event for the purpose of conducting an interview in a manner which would interfere with police investigations or a peaceful resolution of the situation.

8.19 **Identification of individuals**

Licensees shall avoid unfairly singling out for identification individual persons or businesses when commenting on or criticising the behaviour of groups of persons or businesses, but it is not unfair for a licensee to correctly identify an individual person or business as part of that group if:

- (a) the licensee is reasonably satisfied that the individual person or business engages in the behaviour commented on or criticised; or
- (b) the licensee discloses to its audience that the individual person or business does not engage in the behaviour commented on or criticised.

8.20 **Identification of victims**

Licensees shall take all reasonable steps to ensure that murder or accident victims are not identified before their families have been notified by the police or other authorities.

8.21 **Fair trial**

Licensees shall ensure that the reporting of matters that are or may be before the courts do not interfere with the rights of individuals to a fair trial.

8.22 **Suicide**

Licensees shall exercise care and discretion when reporting on suicides or attempted suicides and shall avoid detailed descriptions of methods used when doing so.

8.23 **Broadcast of emergency messages**

- (1) Licensees shall broadcast emergency messages relating to hurricane warnings, floods, fires, national and local emergencies or disasters and other similar safety messages emanating from national or local government and national or local emergency service organisations free of charge.
- (2) Licensees are required to broadcast emergency messages in a timely and accurate manner. Licensees broadcasting such messages shall have clear internal procedures in place to ensure coordination with emergency or essential service organisations.
- (3) As a general guide, emergency or essential service organisations include Police, Fire, Ambulance, Water, Electricity, Port, Health and Disaster Management authorities. Licensees and appropriate emergency or essential service organisations should jointly identify, develop and maintain effective lines of communication.
- (4) Licensees should:
  - (a) consult with appropriate emergency and essential service organisations and implement internal procedures to ensure timely and accurate broadcast warnings and information supplied by such organisations relative to an existing or threatened emergency; and

(b) ensure a designated person is identified by the licensee as the contact officer during business and non-business hours for all matters relative to this Clause.

(5) It is recognised that compliance by licensees with the provisions of this Clause is dependent upon the co-operation of the emergency or essential services organisations. A licensee will not be regarded as being in breach of this Code if any emergency or essential service organisation declines or fails to respond to a licensee's request to consult or be provided with relevant information, and a licensee will not be responsible for inaccurate information provided by any emergency or essential service organisation.

#### 8.24 **Intellectual property**

(1) In the context of this Code, intellectual property means persons or undertakings who have been granted certain exclusive legal ownership rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs; and includes copyrights, trademarks, patents, industrial design rights and trade secrets.

(2) Under this Code, plagiarism is unacceptable. Licensees and the broadcast journalists employed by them shall be expected to honour the intellectual property of others, including video and audio materials.

#### 8.25 **Public service advertisements**

(1) Licensees are encouraged to broadcast free of charge public service advertisements (also known as community service announcements) that are advertisements providing publicity for governmental agencies and registered charitable or community service organisations that primarily inform and educate the public by changing public opinion and raising awareness for a problem (such as safe driving, obesity, smoking, fitness, education, gambling addiction, alcoholism, drug addiction or safe sex) rather than sell a product or service.

(2) Public service advertisements shall, at the discretion of the licensee, not exceed two (2) in any hour and their duration shall not exceed two (2) minutes at a time, such advertisements to be broadcast at times mutually agreed between the licensee and the organisation concerned.

(3) Licensees shall satisfy themselves that organisations applying for public service advertisements are genuine public sector organisation, or registered charities or community service organisations, and that such organisations can demonstrate to the licensee's satisfaction that they have the ability to cope with the response by the public to such advertisements

- (4) Services described in public service advertisements should be free or for a nominal charge only. Public service advertisements publicising commercial services are not acceptable.
- (5) Public service advertisements may be accepted from religious bodies for a nominal charge provided the services publicised are solely for needy, destitute or underprivileged members of the public. Proselytising is not permitted.
- (6) Licensees shall treat public service advertisements the same as any other advertisement and such advertisements are therefore subject to all relevant provisions of this Code.

**Question 8:**

Do you agree with the Commission's proposals in Part 8 of the draft Code of Practice regarding accuracy and impartiality, fairness and privacy, national emergencies and disasters, miscellaneous news and factual material in news and factual programmes? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## **Part 9: Access Services**

This Part of the Code sets out the broadcasting standards for the provision of access services for people with hearing or visual impairments.

### **9.1 Access Services in News and Current Affairs**

Licencees are encouraged to provide access services in their programming, including but not limited to news and current affairs television programmes.

### **9.2 Access Services in Emergency, Disaster and Safety Announcements**

(1) Licencees broadcasting emergency, disaster or safety announcements are required to provide the essential information visually on television (in open captioning, leaving sufficient time to write the details down) and spoken on television and radio. This should include relevant contact numbers for further information.

(2) Licencees should, as far as possible, use sign language as one of their preferred forms of communication when broadcasting emergency broadcasts, news and matters of national and international public importance on television.

### **9.3 Closed Captioning**

(1) Closed captioning (also known as subtitling) is English-language text on a television screen representing speech and sound effects that may not be audible to persons with hearing impairments, synchronised as closely as possible to the television soundtrack.

(2) Licencees should exercise due care in the presentation, lay-out, and non-speech information when broadcasting closed captioning, and must ensure that they have adequate procedures in place for monitoring the accuracy, speed and synchronisation of their closed captioned broadcasts.

(3) Closed captioning best practice guidelines which all licencees providing closed captioning are encouraged to adopt are as follows:

(a) **Presentation:** closed captioning should use the CEA-708 designated screen fonts for all closed captions. Closed captions on standard and high definition television services should use either the EIA-608 standard ('Line 21') standard developed by the Electronic Industries Alliance (EIA) or the CEA-708 standard developed by the Consumer Electronics Association (CEA) for closed captioning for National Television System Committee (NTSC) and Advanced Television Systems

Committee Inc. (ATSC) analogue and digital television broadcasts in the United States and Canada. The Commission also recommends that providers of audiovisual media services, carriage services content services and on-demand audiovisual media services adhere to the same equipment standards used to render closed captioning. Licensees and service providers are encouraged to use anti-aliasing techniques to help make the appearance of closed captions clearer. Closed captions should be placed within the 'safe caption area' of a 14:9 display and should normally occupy the bottom of the screen, except where they would obscure the speaker's mouth or other vital information or activity. It is particularly important to avoid obscuring the face, as this convey emotions and tone of voice, as well as being necessary for lip-reading;

- (b) **Pre-recorded and live closed captions/subtitles:** pre-prepared block closed captions is the best approach to providing accurate, easily legible and well-synchronised closed captioning and should be used for pre-recorded programmes. Recommended colours are white, yellow, cyan and green against a solid black background as these provide the best contrast. When scrolling closed captions need to be used, any scripted material should be used for advance preparation. In addition to achieving the highest possible levels of accuracy and synchronisation, live closed captioning should flow continuously and smoothly;
- (c) **Lay-out:** closed captions should normally comprise a single sentence occupying no more than two lines, unless three lines will not obscure the picture. If necessary, sentences should be broken or reformed into more than one sentence at natural linguistic breaks so that each caption forms an understandable segment. Where breaks occur, the split should be made in a way that makes clear that there is more to come. This can be achieved by ending the first caption with a conjunction, a colon or semi-colon as appropriate, or even a short run of dots. Line breaks within a word must be avoided;
- (d) **Non-speech information:** in addition to speech, closed captioning should clearly describe relevant non-speech information, such as the mood of any music playing and the words of songs if possible (using the # sign to precede and conclude music), louder speech (using capital letters), inaudible mutterings or incoherent shouts, etc. (which should be explained as such). Captions should be displayed horizontally in the direction of any sound effects, and where the source of speech is not immediately apparent the first caption should have a caption to label the source. Italics or punctuation marks may be used to indicate emphasis. Where long speechless pauses in programmes occur, an explanatory caption should be inserted. Different colours should be used to denote different speakers. Captions should be used to identify the source of off-screen/off-camera speech where this is not obvious

from the visible context;

- (e) **Synchronisation of speech and closed captioning:** the aim should be to synchronise speech and closed captioning as closely as possible. Caption appearance should coincide with speech onset and disappearance should coincide roughly with the end of the corresponding speech segment. If necessary, closed captioning may be edited conservatively if this is necessary to avoid long delays between speech and closed captioning;
  - (f) **Speed of closed captioning:** the speed should not normally exceed 160 to 180 words per minutes (wpm); closed captioning faster than 200 wpm would be difficult for many viewers to follow. Consideration may be given to displaying three lines of captioning rather than two, to allow a longer period for the subtitles to be read, provided that this does not obscure important parts of the picture. Slower speed and more heavily edited closed captioning are appropriate for young children, though care should be taken to ensure that these are accurate and grammatical, as children and parents use closed captioning in developing literacy skills;
  - (g) **Accuracy:** closed captioning users need to be able both to watch what is going on, and to read the captioning, therefore it is important that these are as accurate as possible so that viewers do not need to guess what is meant by an inaccurate caption; and
  - (h) **Publicity:** the word 'Subtitles' should be displayed legibly on the screen at the start of the programme.
- (4) Licensees providing closed captioning must ensure that the availability of closed-captioning for individual television programmes is clearly indicated in station and on-screen programme guides, programme promotions and at the start of any programme, and the licensee must provide information on closed captioning for inclusion in press advertising, where relevant.
- (5) Licensees must provide adequate advance warning to hearing-impaired viewers if scheduled closed captioning programmes cannot be broadcast. If technical problems prevent this warning being provided in closed captioned form, it must be given in open captioned form as soon as reasonably practicable before the programme begins.

#### 9.4 **Signing**

Signing best practice guidelines which all licensees providing signing are encouraged to adopt are as follows:

- (a) **Language:** English should be the default language for signed programmes. However, licensees may also use other forms of sign language where consultation with disability groups has indicated that this would be acceptable. So far as possible, interpretation and voice-overs of signed programmes should be synchronised with the original speech/sign language;
- (b) **Presentation:** signed programmes may be presented or interpreted into sign language. Signed programmes, whether presented or interpreted in sign language,

should be close captioned, to make it easier for people using both signing and closed captioning to understand and enjoy them;

- (c) **Signers:** sign language presenters, reporters and interpreters should be appropriately qualified, both to use sign language of native competency, and to communicate effectively through television. Some latitude is allowed for guests and interviewees, though broadcasters should ensure that they are understandable. The signer should use a style of interpretation and wear clothing that is appropriate to the style of the programme. It is important that signers' clothing allows them to be seen distinctly against the picture;
- (d) **Size of image:** the image of the signer superimposed upon the original programme should generally appear on the left side of the screen and occupy a space no smaller than one sixth of the picture size;
- (e) **Techniques:** the signer should use appropriate techniques to indicate whose speech he or she is interpreting, and to draw attention to significant sound effects (if any);
- (f) **Delivery:** different methods of delivery are permissible, provided that the provision of sign language complies with these rules, and it is available in a form that is accessible to all viewers who want it, without the need to purchase special equipment or services. For example, licensees may choose to use interactive services to provide a signed version of a programme simultaneously with an unsigned version, provided the interactive option is publicised at the beginning of the programme, is full-screen and complies with the standards set out in these rules. Licensees may also use 'closed' signing should this become feasible. However, the requirement for accessibility would preclude the use of Internet Protocol Television to provide signed programmes, unless viewers had the necessary equipment or were provided with it free-of-charge. In any case, licensees who wish to use new forms of delivery should first consult the Commission and groups representing persons with hearing or visual impairments.

#### 9.5 **Audio Description:**

- (1) Licensees are encouraged wherever possible, but not required, to provide audio description of their television programming.
- (2) Licensees providing audio description are required to:
  - (a) display a standard audio description video logo and broadcast an audio announcement indicating the presence of audio described video before the broadcast of each audio described programme;
  - (b) repeat the announcement and logo following each commercial break; and
  - (c) make information available regarding the audio described programmes that they will broadcast; and
- (3) Audio description best practice guidelines which all licensees providing audio description are encouraged to adopt are as follows:

- (a) **What to describe:** to the extent relevant to the storyline, audio description should describe characters, locations, time and circumstance, any sounds that are not readily identifiable, on-screen action, and on-screen information;
- (b) **What not to describe:** the description should only provide information about what can be seen on the screen. Information unavailable to the sighted viewer should not be added though discretion is always necessary. Generally, descriptions such as camera angles should not be used;
- (c) **When to describe:** audio description should not encroach on dialogue, important or complementary sound effects, or critical sound effects unless really necessary. Even then, audio description should only be used to impart relevant information when the dialogue or other sound is negligible, or to read closed captioning or on-screen captions. To differentiate between closed captioning and audio description, the describer should do this by either the use of their voice (for example, stating the obvious, 'He says in Haitian...' or 'A caption reads...') or a second voice. During opening titles and end credits, care should be taken to avoid clumsy overlaps with song lyrics. During songs, audio description should ideally pause where there is a reprise of the lyrics and where the lyrics are not relevant to the storyline;
- (d) **Language:** audio description provides a real-time commentary, so it should generally be in the present tense ('he sits'), the continuous present ('he is sitting') or the present participle ('Standing at the window, he lets out a deep sigh'), as appropriate. Variety is important, particularly with verbs. 'She scoots into the room' rather than the simple fact 'She enters the room' creates a clearer image for the viewer (a Thesaurus is always useful). Adverbs are useful shorthand to describing emotions and actions, but should not be subjective. Vocabulary should be matched to the genre of the programme, and should be accurate, easily understood, and succinct;
- (e) **Delivery:** delivery should be steady, unobtrusive and impersonal in style (but not monotonous), so that the personality and views of the describer do not colour the programme. Avoid terms such as 'we see'. However, it can be important to add emotion, excitement, lightness of touch at different points in different programmes to suit the mood and the plot development – the style should be matched to the genre of the programme. Diction should be clear and not hurried – every word should be clear, audible and timed carefully so that it does not overrun subsequent dialogue. The aim should be to enhance the enjoyment of a programme, not to distract from it;
- (f) **Balance:** judgement is needed in striking an appropriate balance between the amount of detail that is conveyed and the risk of overburdening the audience with detail and detracting from the enjoyment of the programme. Too much description, even where there is a lot of space for description, can make it difficult for viewers to absorb information. The programme should be allowed to 'breathe'. On the other hand, long gaps in the dialogue may need to be explained if the viewer is not to be left confused (for example, 'the cowboy rides across the prairie into the distance'). If a time slot available for audio description is short, it is better to focus on key moments and dynamics rather than to rush the description or fill every available moment. For example, it may be distracting in dance or fight scenes to describe every piece of action. A consistent approach is important: if a description starts out as detailed, it should not suddenly become limited;

- (g) **Describers:** describers should be chosen to fit the genre, the nature of the programme and the intended audience. Ideally, the same people should be used to describe a series of programmes, both to ensure a consistent style (for example, in terms of level of detail) and because the description forms a part of the programme for users;
- (h) **Children's programmes:** language and pace of delivery for children's television programmes need particular care, having regard to the age and background of the target audience, as well as feedback from children and their parents. A more intimate style may be appropriate than would be the case for programmes aimed at adults;
- (i) **Publicity:** periodic announcements should be made about programmes with audio description;
- (j) **Characters:** identifying and describing characters is vital to effective audio description. Key features should be identified as soon as practicable, to help identify the person in the listener's mind's eye and avoid the need for long-winded and confusing descriptions (for example, 'the tall man' or 'district attorney Lopez'). But the describer should not give the name away if the plot requires the character's identity to be revealed at a later date. When describing characters, aspects such as dress, physical characteristics, facial expression, body language, ethnicity and age may be significant. Describers should not shy away from using colours or describing a character as pretty, or handsome, where relevant to the story. Generally names (rather than 'he' or 'she') are used more often than in normal speech, so as to avoid confusing the audience, particularly when there are several people taking part in a dialogue;
- (k) **On-screen action:** wherever possible, the describer should try to describe at the same time as the action occurs. This is particularly important with regard to comic situations, where the audience, sighted and visually impaired, should be able to laugh at the same time. Where relevant, key back-references can be included. It may be necessary to set up the next scene during the current description;
- (l) **Settings:** when describing locations, the describer should try to cover scene changes where possible; the locations (including scene changes wherever possible); the time of day/season/date setting where appropriate; any sounds that are not readily identifiable; and on-screen information (for example, signs, hieroglyphics, open subtitles for foreign languages, captions, and opening and closing credits). The description should not censor what is on screen. However, it should not be necessary to use offensive language, unless (for example) when referring to content that is integral to understanding the programme, such as graffiti scrawled on a wall.

## 9.6 Duty to consult

Licensees are required to consult periodically with groups representing persons with hearing or visual impairments on issues such as the quality of access services, and the selection and scheduling of programs. To facilitate feedback from access service users, licensees should also provide contact details on their websites, including e-mail addresses, telephone and text phone numbers. Licensees should monitor and respond to this feedback.

9.7 **Annual Reports to THE COMMISSION on the volume of Access Services Programming**

Licensees are encouraged to provide The Commission, by 31<sup>st</sup> January in each calendar year, or upon request, with data on the volume of programmes for which they have provided each kind of access service during the preceding calendar year, grouped by genre such as news, factual programmes, current affairs programmes, dramas, comedies and so forth.

**Question 9:**

Do you agree with the Commission's proposals in Part 9 of the draft Code of Practice regarding the provision of access services by broadcasters for members of the audience who are visually and hearing impaired? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## **Part 10: Complaints Handling Process**

This Part of the Code covers the complaints-handling processes that Licensees are required to have in place. Licensees are required to establish complaints-handling procedures and to regularly promote these procedures to viewers and listeners. Members of the public may make an oral complaint in limited circumstances but must otherwise make complaints in writing to the relevant broadcaster up to 30 days after transmission of a programme. The Code sets time limits within which the broadcaster must respond to and resolve complaints, and provides a referral process to the Commission where the complaint is not satisfactorily resolved. Licensees are required to provide the Commission with quarterly status reports on complaints, and to maintain recordings of programmes on an on-going basis to allow complaints to be investigated.

### **10.1 Purpose of Complaints Handling Process**

- (1) This Part of the Code applies to any matter covered by the preceding rules in the Code that is the subject of a complaint to a licensee. Licensees must ensure that their relevant staff members are aware of the provisions of the Code, the importance of handling customer complaints professionally and the relevant procedures to follow when doing so.
- (2) The purpose of this Part of the Code is to ensure that Licensees:
  - (a) publicise the existence of the Code;
  - (b) develop adequate procedures for processing and resolving complaints from members of the public regarding breaches of the Code;
  - (c) publicise the procedures for handling complaints made by members of the public to Licensees regarding compliance with this Code;
  - (d) maintain adequate procedures for receiving oral complaints;
  - (e) advise complainants of their right to make a written complaint about material broadcast by a Licensee that allegedly breaches the Code;
  - (f) respond promptly to written complaints and make every reasonable effort to resolve such complaints; and
  - (g) report to the Commission on complaints made according to the procedures in Clause 10.11 of this Code.
- (3) Licensees must make appropriate internal arrangements to ensure that complaints are received and recorded by a responsible person within the licensee's organisation during normal business hours who will also function as a liaison with The Commission and the public on complaints-handling matters. Licensees shall within two (2) business days of designating or appointing such person or their replacement notify the Commission in writing of the name, position and contact information (i.e., telephone number, fax number, email address, other means of contact, etc.) of such person.

## 10.2 Scope of Complaints Handling Process

- (1) Any complaint against any programme, advertisement or other form of content covered by this Code must satisfy the following criteria:
  - (a) the complaint must first be submitted to a Licensee not more than thirty (30) calendar days after the date of the relevant broadcast;
  - (b) it must be in the form specified in Clause 10.2(4); and
  - (c) it must identify in sufficient detail:
    - (i) the subject matter of the content (including, if possible, the date and time of the broadcast, or, in the case of broadcast content distributed via the Internet pursuant to this Code, the website address of such content);
    - (ii) the nature of the complaint;
    - (iii) the broadcasting station's radio frequency, channel number, call letters, call-sign or station identification of the Licensee who is the subject of the complaint and
    - (iv) the identity of the complainant.
- (2) The requirements of Clause 10.2(1) do not apply to a complaint that:
  - (a) is submitted more than thirty (30) calendar days after the date of the relevant broadcast; or
  - (b) does not otherwise satisfy the requirements of Clause 10.2(1).
- (3) For greater clarity, a complaint need not refer to the Code nor specify any particular provision of the Code to which the complaint relates to satisfy Clause 10.2(1), but it must adequately identify the subject matter of the content and the nature of the complaint.
- (4) A Code Complaint is a complaint that satisfies Clause 10.2(1) and that is:
  - (a) made in writing by letter or fax by a person who signs the letter or fax and provides his or her name, e-mail or postal address and telephone contacts (if applicable) and sent by mail or delivered to the Licensee, or sent by fax to the licensee's main fax number; or
  - (b) (where the licensee has technological capacity) made by an online electronic complaint form or other relevant digital service or application offered by the licensee; or
  - (c) submitted by electronic mail ("e-mail").
- (5) Where, by reason of disability or distance, a complainant cannot lodge a complaint that satisfies the requirements of Clause 10.2(4), a telephoned complaint or a complaint on an audio cassette or on a computer disk in a common format will be a Code Complaint, provided that in each case it otherwise satisfies Clause 10.2(1).

### 10.3 **Publicising of the Code**

- (1) Licensees must regularly broadcast on-air information alerting members of the public to this Code and its complaints procedures, as follows:
  - (a) Licensees must broadcast such on-air announcements at least once each day of each calendar year between the hours of 7.00 AM/07.00 hours and 9.00 PM/21.00 hours. In the case of television broadcasting stations, where possible this information must also be broadcast using closed captioning or sign language and (where available) audio description.
  - (b) A reasonable proportion of such on-air announcements will also explain how the audience may obtain a copy of the Code.
- (2) Licensees shall by 30<sup>th</sup> January of each year submit to the Commission a certificate signed by an authorised officer of the licensee confirming that the licensee has during the preceding calendar year complied with Clauses 10.3(1) and (2) of this Code.
- (3) Licensees shall, if required to do so by notice in writing, provide the Commission with copies of their station logs or video and/or audio recordings of the on-air announcements made in compliance with Clause 10.3(1) of this Code for any period specified by the Commission up to thirty (30) calendar days prior to the date of the notice.
- (4) The Commission will, if requested to do so by a Licensee, provide the licensee with a template of the information that should be contained in the on-air announcements made under Clause 10.3(1) of this Code.

### 10.4 **Comments from Viewers or Listeners**

- (1) Licensees should welcome comments from viewers or listeners, whether submitted by telephone, letter, fax, e-mail, an online electronic complaint form or other relevant digital service or application offered by the licensee. Licensees should regard comments from viewers or listeners as valuable feedback on reactions to the licensee's service.
- (2) Licensees must ensure that the substance of comments from viewers or listeners is properly recorded, and that such comments are promptly brought to the attention of management. Licensees are encouraged to share such comments with relevant members of staff, such as programme commissioners and programme-makers.

## 10.5 **Oral Complaints and Advising Callers of the Code Complaint Procedure**

- (1) Licensees should, where feasible, seek to resolve a telephone complaint during the course of the telephone call. If the complaint cannot be resolved immediately, licensees must respond to the complaint in accordance with the procedures in Clause 10.5(2) of this Code.
- (2) In some instances, persons who telephone a licensee wishing to make a complaint relating to an alleged breach of the Code may be asked by the licensee to put their complaint in writing; for example, if it concerns a matter that is deemed by the licensee to be too complex to be dealt with in a telephone conversation. In such cases, the licensee should ask the complainant to submit a written complaint in accordance with the provisions of Clause 10.2(4) of this Code and also advise the complainant that:
  - (a) a written complaint may be made within thirty (30) calendar days of the particular broadcast; and
  - (b) that the licensee is obliged to respond in writing to that complaint.
- (3) If a complaint is made to a licensee by means of a telephone typewriter (or similar devices used to assist people who are deaf or hard of hearing), the licensee must treat it as an oral complaint under Clause 10.5(1) of this Code but, in these types of cases, the licensee must write to the complainant within ten (10) calendar days and advise the complainant of how to make a formal Code Complaint in accordance with the procedures set out in Clause 10.2(4) of this Code.

## 10.6 **Time Limits on Responses to Code Complaints**

- (1) Licensees shall within five (5) business days notify the complainant in writing of the receipt of a complaint made under this Code, which acknowledgement shall also notify the complainant of the case or complaint number assigned to the complaint and the time frames and processes that the licensee envisages are required to investigate and respond to the complaint.
- (2) Subject to Clause 10.7(1) of this Code, licensees must provide a substantive written response to the complainant regarding any Code Complaint that satisfies the requirements of Clause 10.2(1) of this Code.
- (3) Licensees must respond to Code Complaints as soon as practicable but in any event no later than thirty (30) calendar days after receiving the complaint.
- (4) If the content that is the subject of the Code Complaint was provided on broadcast relay by another licensee, or was otherwise the responsibility of another licensee, the licensee receiving the Code Complaint must refer the

Code Complaint to the relevant licensee within ten (10) calendar days of receiving the Code Complaint for written response direct to the complainant, and send a copy of such referral to the complainant. The second licensee will have thirty (30) calendar days from receiving the referred Code Complaint to provide a substantive response to the original Code Complainant.

- (5) In all cases where a Code Complaint complies with the requirements of Clause 10.2(1) of this Code (and does not fall within Clause 10.2(2)), the Licensee's substantive reply must also advise the complainant that the complainant may refer the matter to the Commission if the complainant is not satisfied with the licensee's response.
- (6) The licensee is under no obligation to respond to or record Code Complaints provided anonymously to the Licensee or not made in accordance with this Part of the Code. However, licensees are prohibited from disclosing on-air to the public the name of any complainant or the particulars of any complaint received by the Licensee except when directed to do so by the Commission or consequential to making an on-air apology to the complainant.

#### 10.7 **Resolution of Code Complaints**

- (1) Except where a Code Complaint is, in the reasonable opinion of the licensee, clearly frivolous, vexatious or an abuse of the Code process, licensees must conscientiously consider written Code Complaints and must promptly provide a substantive response in writing to Code Complaints within thirty (30) calendar days of the receipt of the complaint. If the licensee needs to investigate the complaint or obtain professional advice and a substantive response is not possible within thirty (30) calendar days, the licensee must, without delay, notify the complainant of the reason for the delay and, in any event, provide a final reply within forty calendar (40) days of receiving the Code Complaint.
- (2) Where the subject matter of a Code Complaint is, or has become, the subject of legal proceedings brought against a licensee by the complainant or an associated person, the licensee is not required to provide a substantive written response to the complainant.
- (3) If a licensee does not provide a substantive written response to a complainant regarding a matter raised by the complainant, the licensee must:
  - (a) acknowledge the Code Complaint in writing as soon as practicable, but in any event no longer than thirty (30) calendar days after receiving the complaint; and
  - (b) at the same time, inform the complainant that he or she has the right to refer the complaint to the Commission.

## 10.8 Responding to Subsequent Code Complaints or a Campaign of Code Complaints

- (1) If a person makes multiple Code Complaints about a programme or series, the licensee is only obliged to respond to the first complaint, unless the subsequent complaints raise new and distinct issues.
- (2) If a licensee receives a series of Code Complaints from a number of people or group of persons about the same broadcasts, the licensee may respond with a generic response on the issues, subject always to the obligation in Clause 10.8(1) to provide a substantive written response to all issues raised in the complaint.

## 10.9 Referral of Code Complaints to The Commission

- (1) This Clause outlines the Commission's procedures for the handling and resolution of Code Complaints (or for the conduct of its own investigations) about licensees' compliance with the content standards set out in this Code as required by sections 25, 26 and 28 of the Broadcasting Bill 2013. All complaints are important to the Commission as they help it to understand whether a licensee may be failing to comply with the applicable provisions of this Code in a particular case.
- (2) If the Commission considers that it is necessary to depart from these procedures in any material respect in a particular case for reasons of fairness and/or in order for the Commission to properly consider any complaint(s) or carry out an investigation, it shall write to the licensee concerned (and any other persons with sufficient interest) in advance setting out the nature and extent of its departure, its reasons for doing so and seeking the relevant parties' response.

### **Process for investigations and referral of complaints**

- (3) The Commission may launch investigations on its own initiative as well as investigate Code Complaints. The procedures in a Code Complaint-led investigation and in a Commission-initiated investigation are the same. Subject to the provisions of this Code, the Commission is not influenced by the race, religion, gender or political association, activities or beliefs or any other personal characteristics of the licensee or any other person who may be involved in the matter when deciding whether or not to initiate an investigation on its own motion.
- (4) Any person or undertaking who considers that a licensee has failed to comply with the standards under section 26 of the Broadcasting Bill 2013 as reflected in the provisions of this Code may make or refer a Code Complaint to the Commission under this Part of this Code.
- (5) In order to effect the timely resolution of Code Complaints, complainants should first follow the complaints submission procedure in Clause 10.2 of this Code before referring or making a complaint to the Commission.
- (6) Where a complainant submits a Code Complaint:

- (a) solely to the Commission but not to the licensee, the Commission will not consider the complaint but will instead direct the complainant to refer the complaint to the licensee in order to allow the licensee an opportunity to first resolve the complaint itself under the procedures in this Part of the Code;
  - (b) simultaneously to the licensee and to the Commission, the Commission will not consider the complaint until the licensee has first had an opportunity to resolve the complaint itself under the procedures in this Part of the Code.
  
- (7) Where a complainant has previously complained directly to the licensee, the complainant should wait to see if he/she is satisfied with the licensee's response (in accordance with the complaints procedures in Clauses 10.6 and 10.7 of this Code) before referring the complaint to the Commission.
  
- (8) If a complainant is not satisfied with the licensee's response to the Code Complaint as required by Clause 10.7 of this Code, the complainant may refer his/her complaint to the Commission (accompanied by the licensee's response) and should do so as soon as possible, and in any event within twenty-one (21) calendar days of the licensee's final response or determination.
  
- (9) If the complainant has not received a response to, or a determination of, his/her Code Complaint from the licensee within the relevant timeframes set out in Clause 10.6 of this Code, the complainant should submit the complaint to the Commission within twenty-one (21) calendar days of the timeframes fixed by the procedures in Clause 10.6 of this Code for the licensee to provide a response or determination of the Code Complaint.
  
- (10) Ordinarily, the Commission will not accept a complaint, which is made after the deadlines in Clause 10.9(8) or Clause 10.9(9) of this Code. Where a complaint is submitted to the Commission later than the twenty-one (21) calendar days specified in these Clauses, the complainant should explain why the complaint was not submitted earlier. The Commission will then consider all relevant factors (including the complainant's explanation for the delay in submitting the complaint and the limited time periods during which broadcasters are required to keep recordings) in deciding whether or not the Commission should investigate the complaint despite the delay in its submission.
  
- (11) All Code Complaints made or referred to the Commission should include sufficient detail about the content that is the subject of the complaint. Specifically, complaints should include:
  - (a) the name/title of the programme or advertisement complained about;
  - (b) the date and time of the programme or advertisement;
  - (c) the television channel or radio station on which it was broadcast;
  - (d) the nature of the complaint and (where possible) the particular parts of the programme or advertisement complained about;
  - (e) the complainant's full contact details (including e-mail address where appropriate);and

- (f) the date when the complainant submitted a Code Complaint to the relevant licensee; and
- (g) a copy of the licensee's response (if any) and the complainant's reasons for dissatisfaction with this response.

The inclusion of these details (or as many of them as possible) is very important. A failure to provide them may mean that the Commission is not able to properly investigate the complaint.

- (12) The Commission will log and acknowledge every complaint that it receives within five (5) working days. The Commission will itself carry out a process of initial assessment and investigation in accordance with Clauses 10.9(14) to 10.9(18) of this Code.
- (13) Unless a complainant specifically requests at the time a complaint is made referred to the Commission under this Clause that his/her name and contact details should remain confidential and provides the Commission with exceptional circumstances to justify the request, the Commission reserves the right to disclose this information to the licensee. If the complainant disagrees with the Commission's reasons for rejecting the request, the complainant may either withdraw the complaint or agree to the disclosure.
- (14) The Commission will first consider whether, on its face, a complaint raises any potentially substantive issues under this Code which warrant investigation by it for:
  - (a) any breach of this Code if the licensee has not provided an adequate response to the complainant; or
  - (b) any serious breach of this Code that may require some form of sanction, regardless of the licensee's initial response.
- (15) If the Commission considers that it should assess the matter further, it will normally at this stage ask the licensee for a recorded copy of the relevant programme or advertisement, which must be provided to the Commission within three (3) working days. It is not appropriate at this stage for the licensee to provide written representations.
- (16) Based on an initial assessment of any complaint(s) and a review of the relevant broadcast recording, the Commission will consider whether there may have been a breach of particular provisions of this Code that the Commission considers requires a response from the Licensee. If the Commission is not so satisfied, the Commission will decide not to investigate further and will publish its decision on its website.
- (17) The Commission aims to complete an initial assessment of all Code Complaints within fifteen (15) working days. However, the circumstances of individual cases can vary considerably and completion of an investigation may in some cases take longer.
- (18) If in any case where the Commission considers that it is necessary to obtain further information from the complainant(s), the licensee or persons with sufficient interest to ensure that it can fairly and properly prepare its preliminary determination, the

Commission may seek such information before preparing that preliminary determination.

- (19) If the Commission considers that there may have been a breach of particular provisions of this Code that the Commission considers requires a response from the licensee and any other persons with a sufficient interest in the matter, The Commission will issue a preliminary determination that will contain:
- (a) a summary of the complaint(s);
  - (b) a summary of the material parts of the programme/broadcast to which the complaint(s) relates;
  - (c) the particular provisions of this Code that the Commission considers are relevant and applicable to the complaint(s); and
  - (d) The Commission's preliminary assessment of whether any breaches of those provisions have occurred and the reasons for that assessment;
  - (e) give notice to the licensee and persons with a sufficient interest of the Commission's preliminary determination; and
  - (f) the specified period of not less than one (1) month, commencing on the day after which notice of the preliminary determination was given within which the licensee and persons with a sufficient interest have an opportunity to:
    - (i) make representations in response (and to provide any relevant material/evidence in support of their representations);  
if applicable, comply with obligations in the preliminary determination;
    - (iii) if applicable, remedy the consequences of contraventions notified in the preliminary determination; and
- (20) The Commission aims to complete those cases that it takes forward for investigation within sixty (60) working days after receipt or referral of a Code Complaint. However, the circumstances of individual cases can vary considerably and completion may in some cases take longer.

#### **Urgent Complaints and Interim Orders**

- (21) In cases of urgency due to the risk of serious and irreparable harm, any person, party or entity whose election programme or political advertisement has been rejected by a Licensee under Clause 6.14(1) of this Code, and any other person may refer the matter to The Commission as an urgent complaint under section 96 of the Broadcasting Bill 2013 and this Clause 10.9(21) of this Code.
- (22) Where the circumstances of the complaint so require, the Commission may, within forty-eight (48) hours of receiving the complaint, issue an interim order while it fully investigates the matter. The interim order will only address those actions or omissions that are likely to result in serious and irreparable damage.
- (23) Upon completion of its full investigation, the Commission will issue an order that either reinforces, changes or revokes the interim order.

## **Final decisions**

(24) After the Commission has received and considered the licensee's representations (and/or any representations from persons with sufficient interest) on its preliminary determination, it will make its final determination and inform the licensee.

(25) The final determination will be published on the Commission's website.

## **Disclosure and confidentiality requirements**

(26) Subject to any relevant obligations under the licence, the Broadcasting Bill 2013, this Code or any regulatory or other measures issued by the Commission, it is an essential part of the integrity of the Commission's processes that all parties concerned abide by all of The Commission's published rules and procedures. These require, for example, that parties to a Code Complaint should not disclose any correspondence, documents and other material concerning the Code Complaint during the course of the investigation. This requirement of nondisclosure does not limit what the Commission can publish in its final decision at the end of the investigation, although the Commission may withhold material it believes to be confidential, market sensitive or legally privileged or that it is under some other legal obligation to protect from disclosure. In such cases, the final decision will reflect that relevant material has been withheld and the reasons why.

(27) Parties (complainants, Licensees, the Commission and any persons with sufficient interest) may, unless otherwise indicated, make public the fact that a Code Complaint has been made or that the Commission is investigating a case. They may also use any information which is already in the public domain. However, all parties are subject to the requirement of non-disclosure in relation to all other material submitted and communications/correspondence entered into in relation to that complaint or case. Moreover, once a complaint has been made or the Commission has started investigating a case, no party should take any steps which could – whether intentionally or not – compromise, or risk compromising, a fair decision on the matter by the Commission or otherwise constitute, in the Commission's opinion, an abuse of process. Failure to follow these requirements may result in the Commission ceasing to consider the party's representations.

(28) Complainants and licensees should keep to the time limits specified in this Part of this Code. However, the Commission may consider it appropriate (in the interests of fairness and/or properly to carry out an investigation) to amend or adapt the time limits set out in this Part of this Code in a particular case. Any complainant or licensee seeking an extension to a time limit should explain in writing to the Commission why it believes it is appropriate.

## **Imposition of sanctions and penalties**

(29) Where the Commission determines, on conclusion of a Code Complaint investigation, that there has been a breach (or breaches) of the standards in section 26 of the Broadcasting Bill 2013 (as reflected in the relevant provisions in this Code), the Commission may consider that it

justifies consideration of a statutory or other sanction against the licensee. If so, the Commission will make that clear in its final determination (under Clause 10.9(22) of this Code).

- (30) The imposition of a sanction against a licensee is a serious matter. The Commission may, following due process, impose a sanction if it considers that a Licensee has seriously, deliberately, repeatedly, or recklessly breached a relevant requirement. This may include, for example, cases in which, in the Commission's view:
- (a) the licensee has committed a serious breach of a relevant provision of the Code which the Commission believes justifies imposition of a fine or other penalty against the licensee under section 33 of the Broadcasting Bill 2013;
  - (b) a licensee has failed to comply, either in a timely manner or at all, with any relevant requirement of this Code; and/or
  - (c) there are other reasons which make the taking of a specific measure against a Licensee appropriate.
- (31) The Commission will treat as a serious breach:
- (a) any breach of Clause 4.1(1)(a) and (b), Clause 4.3(1), Clause 5.2, Clause 5.5(1) or Clause 5.5(2) of this Code;
  - (b) any breach which the Commission considers is so severe as to amount to a wanton disregard by the licensee for the provisions of this Code by reason of the extent to which a licensee's conduct goes beyond the type of conduct which would otherwise be acceptable under this Code;
  - (c) any breach of the Code that also amounts to an offence contrary to any law of the Turks and Caicos Islands (other than the Broadcasting Bill 2013) and for which a sentence of imprisonment is prescribed as the punishment; or
  - (d) any breach or failure to comply with any regulatory or other measures issued by the Commission either in respect of compliance with this Code or issued under Part IV of the Broadcasting Bill 2013.
- (32) The possible sanctions available to the Commission include a decision to:
- (a) issue a direction to the licensee not to repeat a programme or advertisement;
  - (b) issue a direction to the licensee to broadcast a correction or a statement of the Commission's findings which may be required to be in such form, and to be included in programmes at such times, as the Commission may determine;
  - (c) impose a financial penalty under section 33 of the Broadcasting Bill 2013;
  - (d) suspend a licence under section 33 of the Broadcasting Bill 2013; and/or
  - (e) revoke a licence under section 33 of the Broadcasting Bill 2013.

## 10.10 Appeals

Any person (complainant, licensee, or any directly affected third party) dissatisfied with a decision of the Commission arising from a complaint made under this Code may appeal against such decision to the Communications Tribunal in accordance with the provision of s. 47(1) of the Broadcasting Bill 2013.

## 10.11 Licensee to Record and Report Code Complaints to the Commission

(1) Licensees must keep a written record of all Code Complaints received by them and such record of Code Complaints must include:

- (a) the date and time the complaint is received;
- (b) the name, e-mail or postal address and telephone contact information of the complainant;
- (c) the substance of the complaint;
- (d) the substance and date of the licensee's response(s),

and each such record of Code Complaints must be retained by the licensee for a period of three (3) years from the date of receipt of the complaint or until the complaint is satisfactorily resolved, whichever should first occur.

(2) Licensees must report to the Commission, within ten (10) calendar days of the end of the months of March, June, September and December in each calendar year, or upon request, the number and details of all Code Complaints, including for each Code Complaint:

- (a) the date received;
- (b) the date or dates of response;
- (c) details of any complaint upheld; and
- (d) details of any action taken by the Licensee.
- (e) These reports to the Commission should not include the name or any other identifying information of any complainant.

(3) The Commission will publish a quarterly summary of this information on its website as part of its industry complaints data.

- (4) Upon receipt of a Code Complaint made in accordance with Clause 10.2(1) of this Code (and does not fall within Clause 10.2(2)), the relevant licensee shall, in compliance with Clause 2.6 of this Code, secure recordings of the programme or broadcast to which the complaint relates.

**Question 10:**

Do you agree with the Commission's proposals in Part 10 of the draft Code of Practice regarding the complaints-handling process, monitoring compliance, reporting complaints and Code administration? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

## ***Part 11: Industry Group and Code Administration***

This Part of the Code contains a framework for the appointment of persons as members of an Industry Group, its mandate and how it will monitor compliance with the Code by licensees.

### **11.1 Functions and Role of the Industry Group**

- (1) An Industry Group is a co-regulatory body of the Commission with delegated and advisory responsibility for the content provision operations of each of the sections of the broadcasting industry in the Turks and Caicos Islands. It is established under section 28(1) of the Broadcasting Bill 2013.
- (2) The Commission will seek advice and recommendations from an Industry Group on any content-related aspects delegated to such Industry Group.
- (3) An Industry Group will serve as the Commission's primary advisory forum for the development of content regulation of television, radio and other forms of content provision, broadcasting quality and broadcasting standards. The Industry Group will be charged with understanding, analysing and representing the views and interests of the content provision operations of each section of the broadcasting industry in the Turks and Caicos Islands.
- (4) An Industry Group will examine issues with focus on all aspects of each section of the content provision operations of the broadcasting industry in the Turks and Caicos Islands and monitor the compliance of licensees with this Code and any other codes of practice applicable to content provision operations.
- (5) Industry Group members will consider content regulation issues in accordance with the requirements of section 26 of the Broadcasting Bill 2013.
- (6) Members will also monitor compliance with Codes of Practice issued by the Commission and will advise the Commission on other content-related issues including media literacy and public awareness.
- (7) The Commission will, in collaboration with an Industry Group, prepare a formal annual report about the activities of the Industry Group. That report will inform the content regulation-related sections of the Commission's Annual Report.
- (8) An Industry Group will be chaired by a member of the Commission and may have up to ten (10) members, appointed by the Commission for terms of three (3) years.

(10) The majority of the members of an Industry Group should have extensive broadcasting experience. Members should represent the interests and opinions of:

- (a) Licensees designated as Public Service Broadcasters;
- (b) Licensees providing content service intended for reception by subscribers of carriage services and on-demand audiovisual media services, including cable television service providers and direct-broadcast satellite television services;
- (c) Licensees operating private Turks and Caicos Islands television and radio broadcasting stations;
- (d) independent production companies;
- (e) the Ministry of Education;
- (f) Licensees providing dedicated internet video /television and radio/audio webcast programming services;
- (g) Licensees providing teletext services.

## 11.2 Code Administration

- (1) The Commission will meet as often as necessary but not less than once every six (6) months with any Industry Groups established under section 28 of the Broadcasting Bill 2013 to review the administration of the Code, the success of awareness-raising campaigns, challenges facing licensees in terms of compliance and sharing of best practice, and other issues arising from the complaints-handling procedures.
- (2) The role of the Industry Group will be assessed as part of the review of the administration of the Code, with a view to considering whether the Industry Group should play an on-going role in the development of Codes of Practice and of the complaints-handling process, and what that on-going role should be.
- (3) The Commission will publish as part of its Annual Report a report on Code administration by Licensees. This report will be available to the public and will contain the number and substance of Code Complaints received by licensees and by the Commission, details of each complaint upheld and of the action taken by licensees and by the Commission in each case.

### **Question 11:**

Do you have any further comments to make on the proposals in this consultation document that are not covered or raised by the other consultation questions?

## 5. LIST OF CONSULTATION QUESTIONS

**Question 1:**

Do you agree with the Commission's proposals in Part 1 of the draft Code of Practice regarding definitions and interpretation, purpose of the Code, the regulatory framework, compliance with the Code and review of the Code? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 2:**

Do you agree with the Commission's proposals in Part 2 of the draft Code of Practice regarding positive rules, operational and technical rules? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 3:**

Do you agree with the Commission's proposals in Part 3 of the draft Code of Practice regarding underlying principles and positive rules? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 4:**

Do you agree with the Commission's proposals in Part 4 of the draft Code of Practice regarding Law and Order, Harmful and Offensive Content, and Religious programming? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 5:**

Do you agree with the Commission's proposals in Part 5 of the draft Code of Practice regarding the protection of young persons and a television programme classification system? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 6:**

Do you agree with the Commission's proposals in Part 6 of the draft Code of Practice regarding election broadcasts and advertising, other aspects of election broadcasts and political advertisements and operational matters in elections, referendums and political broadcasts? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 7:**

Do you agree with the Commission's proposals in Part 7 of the draft Code of Practice regarding advertising, sponsorship and non-programming material? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 8:**

Do you agree with the Commission's proposals in Part 8 of the draft Code of Practice regarding accuracy and impartiality, fairness and privacy, national emergencies and disasters, miscellaneous news and factual material in news and factual programmes? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 9:**

Do you agree with the Commission's proposals in Part 9 of the draft Code of Practice regarding the provision of access services by broadcasters for members of the audience who are visually and hearing impaired? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 10:**

Do you agree with The Commission's proposals in Part 10 of the draft Code of Practice regarding the complaints-handling process, monitoring compliance, reporting complaints and Code administration? If not, why not? Should any other provisions be included in this Part of the Code or any removed?

**Question 11:**

Do you have any further comments to make on the proposals in this consultation document that are not covered or raised by the other consultation questions?