



MEMORANDUM

25 April 2005

The New TMC License: An Explanatory Summary

The TMC has begun a process of issuing a new license to all current radio and television broadcasters.

The new license does not impose any new operating or economic burden on broadcasters. However, we believe that you will find that the new license is clearer, more comprehensive and more professional than the existing TMC license.

I. Why a New TMC License?

This is part of our preparation for the transition to a permanent Kosovo regulatory agency operating according to best European practice – the Independent Media Commission.

A healthy and viable media sector in the Kosovo economy requires, in part, that broadcasters clearly know their rights and obligations. A license should clearly and comprehensively define the rules and regulations that apply to radio and television stations in their day-to-day operations.

We have carefully reviewed the existing TMC license text. It contains many deficiencies that weaken the ability of the TMC to regulate broadcasting in accordance with best European practices. These deficiencies also work to the disadvantage of broadcasters.

Specifically:

- Since 2000, TMC has issued at least three different and inconsistent license texts. This means that not all broadcasters are subject to the same legal requirements. This is inconsistent with the rule of law.
- There are differences in translation between some of license texts in English and in Albanian.
- The license texts contain contradictions and ambiguities that make them difficult to interpret and apply. In one respect the licenses contradict UNMIK Regulation 2000/36, which renders the licenses invalid in this respect.
- The texts are poorly organized, with unnumbered paragraphs, which makes them unnecessarily difficult to understand and remember.

- Most important, the licenses do not address a number of important regulatory matters.

We consider it essential to clarify and professionalize our licenses as soon as possible, so that the future Independent Media Commission will have a firm, clear legal basis for its regulatory operations.

For these reasons, we have prepared a new TMC license.

II. Overview: The New License

The old TMC licenses consisted (in principle) of two parts: General Terms and Conditions that set out rules applicable to all broadcasters; and Technical Standards, Terms and References, which specify the technical parameters – such as frequency, location of transmitter, antenna characteristics – for each individual station. In reality, many broadcasters never received this second document.

The new TMC license consists of five parts:

1. **A Certificate of License:** A single sheet, suitable for displaying on a wall, affirming that the broadcaster holds a TMC license.
2. **Part 1 – General Terms and Conditions of License:** A revised version of the existing license terms applicable to all broadcasters.
3. **Part 2 – Technical Terms and Conditions of License:** A detailed table setting out approved power levels, precise location and characteristics of antennas and other operating conditions specific to each station. Part 2 also specifies ownership of the station and any other additional terms and conditions of its license.
4. **Part 3: Licensed Program Format:** A brief summary of the program format and components for which a TMC license is granted. Significant changes in program format will require TMC approval to ensure that a station will continue to serve the particular public interest for which a license was granted in the first place.
5. **Part 4: Mapped License Area:** A computer-generated topographic map showing a station's licensed coverage area.

In addition, broadcasters will be asked to complete a form called “Declaration of Ownership,” to clarify the ownership status of each Licensee.

III. Explanations

Following is an explanatory commentary for each part of the new license.

A. Part 1 – General Terms and Conditions: Basic regulations applicable to all broadcasters.

1.0 Definitions: Existing TMC licenses contain no definitions of key legal terms. Definitions are important for clarity.

2.0 Grant of License: The old TMC licenses say nothing about the length of validity.

3.0 Compliance: This section sets out the legal framework of this license, including basic conditions with which a broadcaster and the TMC must comply.

3.1: Adapted from existing licenses.

3.2: Adapted from existing licenses.

3.3: Adds a provision requiring broadcasters to promptly comply with lawful TMC directions, including the elimination of interference caused by the Licensee.

3.4: Adds a provision that requires broadcasters to carry emergency information and other public service messages deemed essential to the public interest by the Office of the Prime Minister or SRSG.

3.5: Adds a requirement that broadcasters provide access to their facilities for purposes of inspection by TMC in the event of a regulatory issue.

3.6: Adds a requirement that any broadcaster receiving support from public funds provide an annual report on how those funds were spent. The accuracy of such reports must be subject to verification by the broadcast regulator.

3.7: Adds a provision that makes explicit in TMC licenses that the Broadcast Code of Conduct applies to all programming that a station airs, whether or not the broadcaster produces it or obtains it from other sources.

3.8: Strengthens a provision in existing TMC licenses that TMC will provide a full and fair opportunity to a broadcaster to respond to any allegation of violation of TMC rules.

3.9: Clarifies existing provisions in TMC licenses.

4.0 Operating Provisions: This section sets out regulatory requirements for day-to-day operations of radio and TV stations.

4.1: Copyright provisions are unchanged from existing licenses.

4.2: Archiving requirements are unchanged from existing licenses, except to clarify that recordings may be kept in digital format.

4.3: Clarifies what information Licensees must provide to TMC when it changes. Notification about program outages is required only for full-day outages, not a half-day as in existing licenses. A provision is added requiring broadcasters to notify TMC of any changes in the status of owners or the Licensee that might result in disqualification for a license under TMC's rules on Qualifications for a License (attached separately.)

4.4: Extends to 90 days (from 45 in existing licenses) the period in which a new license, or an amendment to a license, must be put into effect.

4.5: Clarifies that licenses are granted for 24 hour use of a frequency, and that actual use may be as little as six hours a day between 06:00 and 24:00.

4.6: Adds a provision that explicitly allows broadcasters to contract with third party organizations (such as KTTN) to operate their transmitters but clarifies that all rights and responsibilities of license are retained by Licensee.

4.7: Clarifies differing requirements for station identification by radio and TV stations.

4.8: Adds provisions to protect health and safety of employees and the public.

4.9: Adds a provision clarifying that frequent or prolonged programming outages may result in revocation of license. This provision is not intended to apply to causes such as interruptions in the supply of electricity (See Section 8) but is intended to address problems of stations that for internal reasons are unable to make consistent use of a public resource – a licensed frequency.

4.10: Clarifies an obsolete reference in existing licenses to an expected license fee in 2001.

4.11: Introduces a new requirement, set out in Part 3 of the new licenses, to broadcast a program format that generally complies with the program a broadcaster proposed in its license application, and for which TMC originally granted a license. This section, and Part 3, applies UNMIK Regulation 2000/36, Section 2.3, which requires the TMC to take public interest into account in granting licenses. It follows, and thus needs to be made explicit in the license, that the station must then serve the public interest for which it was granted a license in the first place. This requirement does allow for significant changes in program format with prior approval by TMC.

5.0 Use and Transferability of License: This section clarifies the nature of a TMC license and the conditions under which transfer of ownership of a station may or may not be approved by the TMC.

5.1: Makes clear that a license is a conditional contract that allows a broadcaster to use, but not to own or sell, a frequency, which is a public resource.

5.2: Clarifies provisions of existing licenses requiring prior TMC approval of any significant change of ownership. Includes changes in licensees registered as private share companies and NGOs.

5.3: Clarifies existing licenses to prevent broadcasters from retaining nominal ownership of a station while turning over effective control of the station to an unlicensed third party.

5.4: Links the validity of licenses to a station's continued ability to qualify for a license in the first place, under TMC's rules on Qualifications for a License (attached.) These rules define the ownership of a station and set certain conditions for qualification or disqualification for a license. In certain circumstances clearly affecting the public interest, TMC may require that the transfer of ownership of a license be considered at a public hearing, or that the license be subject to a public tender.

5.5: Clarifies that a TMC frequency license is not property subject to bankruptcy proceedings or inheritance in the event of an individual licensee's death.

6.0 Amendment of License: This section clarifies how broadcasters may request amendment of their licenses, and provides limited authority to the TMC to initiate a change in a license to “ensure orderly management of the frequency spectrum.”

7.0 Sanctions for Breach of TMC License and Regulations: This section clarifies sanctions issues and ambiguities that have arisen in existing licenses.

7.1 States the sanctions that currently apply to broadcasters under UNMIK Regulation 2000/36.

7.2 Incorporates and clarifies provisions in existing licenses in the event TMC seizes equipment.

7.3 Repeats provisions in existing licenses, except that a provision to convene a Media Appeals Board session on 24 hours notice is eliminated as impractical and unnecessary. (This situation has not arisen.)

8.0 Force Majeure: Adds a provision in which TMC will take appropriate account of force majeure – severe circumstances beyond the control of a broadcasters – in assessing any failure to comply with the license.

8.1: Lists the kind of serious circumstances under which broadcasters will not be held accountable for interruption of programming or an ability otherwise to comply with its license.

8.2: Makes clear that any future obligation to pay a license fee continues despite circumstances that may temporarily take a station off the air. (The license fee is intended to reflect the cost of reserving a frequency for a broadcaster’s use. The frequency will be reserved as long as the fee is paid.) Nor will minor equipment breakdowns be held to excuse compliance with the license, including the requirement to keep a 21-day archive of all programming.

9.0 Language: Adds a provision noting that in any disagreement about translation of the license, the English-language version will prevail.

B. Part 2 of the TMC License: Technical Terms and Conditions

Part 2 is a table of 27 categories of information that define the specific technical terms and conditions of each station’s operation. One Part-2 document is issued for each transmitter operated by a broadcaster.

This document specifies which items a station may change without prior approval from the TMC (such as studio address or telephone number), providing it notifies the TMC within 5 working days of the change.

Part 2 also specifies which items a station may not change without prior approval of the TMC.

Section 27 contains additional specific conditions of a station’s license, including a summary of ownership of the licensee (if not an individual) and any other specific conditions.

C. Part 3 of the TMC License: Program Format

Part 3 is a table of programming types (public service, entertainment) and program sources (self-produced, outside commercial and rebroadcast) and the approximate proportions of the total broadcast program which they constitute. These are expected to conform in general with the program structure proposed in a broadcaster's license application.

The broadcaster is required to obtain approval for major changes (not minor or temporary changes) in program structure and format. The purpose of this requirement is to ensure that a broadcaster adheres to the broad general format and structure of the program upon which the grant of License and the use of frequency spectrum is based – and thus that the public interest that led to the award of a license in the first place will continue to be served.

TMC is not interested in small or temporary changes in programming. The requirements of Part 3 are intended to ensure that the program that a Licensee actually broadcasts generally conforms with the structure and the content of the program described in the Licensee's application.

D. Part 4 of the TMC License: Mapped License Area

Part 4 is a digital image of a topographic map of the part of Kosovo which the Licensee is authorized to cover. The map will be produced by TMC as part of its frequency management operations. TMC will look favorably on requests from broadcasters to improve signal coverage within their licensed or "mapped" coverage area.

E. Qualifications for License: (Rule 2005/1)

In consultation with broadcasters, the TMC has developed a clear and comprehensive set of qualifications for a License that conform with best European practice.

There is a need to clarify the minimum qualifications for a broadcast license and to make clear which factors may disqualify an applicant from receiving a license. These qualifications also define ownership more clearly than in the past.

In the event that a station owner (and license holder) is found not to be qualified under these rules – for example, by reason of election to public office – TMC will allow sufficient time to transfer ownership of a station within the terms of this rule so as to prevent or minimize disruption of station operations.

This rule is not intended to deprive stations of their current licenses but merely to set clear minimum standards.

[end]

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