

On the basis of Article 8 Paragraph 1 Item 1) and Article 7 Paragraph 2 of the Broadcasting Law ("Official Gazette of RS", nos. 42/02, 97/04, 76/05 and 79/05) at its session of 29 November 2005, the Council of the Republic Broadcasting Agency adopted

STRATEGY OF BROADCASTING DEVELOPMENT IN THE REPUBLIC OF SERBIA UNTIL 2013

I. INTRODUCTION

The strategy of broadcasting development in the Republic of Serbia covers 10 main areas:

1. *Assessment of the current situation.* The drafting of the Strategy of Broadcasting Development in the Republic of Serbia (hereinafter: Strategy) was based on the existing situation in the Republic in this area which is unregulated with regard to the use of frequencies by broadcasters without appropriate licences and burdened by problems inherited from the past. There is an excessive number of broadcasters on the air. A large number of broadcasters do not comply with the basic legal provisions. Many of them never obtained any broadcasting license. The RTS has not been transformed into public broadcasting service institutions.
2. *Transformation of the Public Enterprise Radio Television Serbia (hereinafter: RTS).* The RTS transformation now has a clear schedule because the Law on the Amendments to the Broadcasting Law have been adopted, clearly laying down that deadline (30 April 2006). The RTS transformation has three basic aspects: implementation of legal procedures (adoption of “the separation of assets“ of the RTS between the broadcasting institutions of Serbia and Vojvodina, appointment of boards of directors and programme boards; appointment of heads of public broadcasting institutions); resolution of the issues of financing the public service institutions (subscription fee collection); and programme transformation based on specific legal obligations of the public service.

3. *Number and type of broadcasters.* Since the number of networks intended for the public service institutions is set by the Broadcasting Law (hereinafter: the Law), this item refers to the assessment of the number of national, regional and local stations. The Republic Broadcasting Agency (hereinafter: RBA) estimates that in Serbian analogue broadcasting there can be no more than five commercial TV broadcasters with national coverage, up to forty regional televisions and up to 160 local TV broadcasters. As regards radio as a medium, in analogue terrestrial broadcasting the operation of four to five broadcasters with national coverage is possible, as well as of up to fifty regional radio stations and up to 390 local radios. The number of local stations that will have the status of civil sector stations will be determined by the public tender, because there is practically no experience with this form of broadcasting in Serbia. The Strategy points out that the number of broadcasters is limited by natural resources and technical possibilities - number of available channels, while the Law prescribes that public tenders must be organised as soon as conditions are created based on the Radio Frequency Assignment Plan. The Strategy points to the need to take care of the development of local broadcasting in Vojvodina due to the specificity of its ethnic composition, which significantly affects the possibility of issuing provincial commercial broadcasting licenses.
4. *Privatisation of electronic media founded by local self-governments.* Electronic media whose founders are local self-governments (municipalities or towns) are particularly sensitive to political pressures because their managements are appointed by local self-government bodies. Since there are many stations of this type in Serbia (according to the current records: as many as 113), it is necessary to conduct their privatisation as soon as possible. With its enactments (recommendations and binding instructions) the RBA will attempt to stimulate and accelerate the process of privatisation of local community stations. The licence will be revoked from those stations which are issued a licence by the RBA in the meantime, but fail to complete the privatisation process by the end of 2007.
5. *Commercial broadcasting.* In view of the provisions of the Law, the RBA defined the basic standards on the basis of which licences will be granted, without accepting an obligation that it is their final list. The standards can be

divided into six formal minimum requirements of eliminatory nature and four substantive criteria governing the RBA Council's decision-making on licences. The formal requirements are the following: technical minimum, organisational minimum, programme minimum, economic minimum, transparency of ownership structure and finance and non-existence of disallowed media concentration. The criteria are classified as quantitative (ratings and financial performance) and qualitative (programme quality and "station's track record"). The level of broadcasting fee will be initially set according to the coverage areas and the potential number of viewers/listeners. In view of the fact that Article 50 paragraph 1 item 4 of the Law prescribes explicitly that advertisement for the public tender for broadcasting licences must also include "the level of annual fee for the acquired right to broadcast programme and the level of annual fee for the use of radio frequencies based on the issued broadcasting station licence" and the fact that it is impossible to know in advance which and what kind of stations will be issued broadcasting licences, the RBA will, in accordance with the criteria referred to in Article 66 paragraph 4 of the Law, decide whether it is necessary, after the expiry of the six month period, for which the fees are paid in advance in accordance with the Law, to adjust the fees, i.e. whether there are any legal or substantive grounds to set a different level of fee for different broadcasters with the same coverage area.

6. *Cable and satellite systems.* The RBA believes that the Telecommunications Agency plays a primary role in this area and that the issuance of licences for cable broadcasting of individual programmes which cannot be viewed/heard freely in the territory of Serbia, which is within the area of competence of the RBA, can be put on the agenda only after the previous systemic regulation of this area. Then it will be known who is authorised to perform this activity. Until then the RBA will record programmes for which Cable Distributive System (hereinafter: CDS) operators need to obtain a licence.
7. *Digital broadcasting.* The RBA will foster the fastest possible transition to the digital broadcasting method. Although according to the Law (Article 78), the public broadcasting service is the only entity legally obliged to "implement the plans of transition to new digital technologies", the RBA will advocate

providing access to experimental digital channels to all the interested broadcasters.

8. *Supervision over the operation of broadcasters.* All national broadcasters will be under constant supervision, while the others will be supervised according to the schedule prepared by the Agency. The subject of supervision will be the following: compliance with minimum programme criteria, compliance with advertising provisions, compliance with copyright and other rights and compliance with the provisions on media concentration. The public service institutions will be under a special regime, because they have special obligations according to the Law.
9. *Unified transmission system.* The situation in this area as well is chaotic because transmitters of commercial broadcasters were placed without any plan or compliance with legislation or technical standards. On the other hand, the RTS transmission system was devastated by the NATO bombardment. For that reason the RBA believes that a creation of a unified transmission system, based on the renewed RTS transmission infrastructure would contribute of the regularisation of the situation in broadcasting.
10. *RBA activities on the improvement of the current legislation.* The RBA will initiate those amendments to the Law that will make the Law more efficient and clear. The basic principles on which it is based will not be disputed. The RBA Council will launch all its initiatives publicly. The fact that the Law does not state which body is responsible for the direct implementation of the RBA's decisions is perceived as the largest problem in this area, as is the multitude of weak solutions in the area of the level of fines and mechanisms for punishing radio-pirates and others violating the Law.

II. BASIC DIRECTIONS OF BROADCASTING DEVELOPMENT IN THE REPUBLIC OF SERBIA

1. Assessment of the existing situation

The Strategy of Broadcasting Development (hereinafter: the Strategy) is a document that determines the main directions of development in the broadcasting area as an area of the greatest importance for public information of the citizens of Serbia. The Strategy is based on the Constitutional Charter of the SU Serbia and Montenegro (Article 10), Constitution of Serbia (Article 46), Broadcasting Law, Telecommunications Law and Public Information Law, as well as international treaties and conventions, such as the Universal Declaration of Human Rights (Article 19), European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10), European Convention on Cross-Border Television, as well as recommendations of the Council of Europe referring to the freedom of information and electronic media. The document is a result of cooperation with the Republic Telecommunications Agency, consultations with the RTS representatives, broadcasters' associations, journalist associations, as well as the exchange of opinions with the representatives of relevant European and international organisations. Such wide exchange of opinions is a result of an urgent need to regulate the unregulated situation in broadcasting in accordance with new technical and social circumstances and international obligations and standards.

The main goals of the Strategy should be reached within eight years, which is the length of the period of validity of individual broadcasting licence.

Proceeding from the need for a comprehensive regulation of the broadcasting system in the Republic of Serbia, the RBA Council concluded that the Strategy should include the following issues:

- 1) assessment of the existing situation
- 2) RTS transformation into public broadcasting service institutions
- 3) determination of the number and type of broadcasters
- 4) need for privatisation of electronic media the founders of which are local self-governments
- 5) commercial broadcasting
- 6) cable and satellite systems

- 7) digital broadcasting
- 8) supervision over the operation of broadcasters
- 9) unified transmission system
- 10) RBA activities on the improvement of the current legislation.

Pursuant to Article 3 of the Law, the Strategy is based on the following principles:

- 1) freedom, professionalism and independence of broadcasting public media
- 2) rational and efficient use of radio frequency spectrum as a limited natural resource
- 3) prohibition of any form of censorship and/or influence on the operation of broadcasting public media, guaranteeing their independence, independence of their editorial boards and journalists
- 4) full promotion of civil rights and liberties, and in particular freedom of expression and pluralism of opinions
- 5) implementation of internationally recognised norms and principles referring to the area of broadcasting, in particular regarding the respect of human rights in this area
- 6) exercise and protection of rights of national minorities and ethnic communities to information in their own language and fostering of own culture and identity (Article 5 of the Law on Public Information)
- 7) objectivity, prohibition of discrimination and publicity of the procedure of issuing broadcasting licences
- 8) fostering the development of broadcasting and creativity in the area of radio and television in the Republic of Serbia.

In the area of the Republic of Serbia there have been no proper tenders for issuing licences for commercial radio and TV stations in the last 15 years. Primarily due to the lack of political will to regulate this area according to the standards prevailing in Europe, in this area legal vacuum was created and chaos produced. The general lack of regulation of the broadcasting sector resulted in the fact that many broadcasters operate under programme and technical criteria which are below any

professional minimum. A consequence of such situation is the excessive number of radio and television stations with poor technical quality of broadcasting and low-quality programme contents. In the meantime most broadcasters lost a habit of paying basic legal obligations such as the fees for copyright and related rights or broadcasting fees. For that reason the process of regulation of the broadcasting area will inevitably be lengthy and followed by resistance and lack of understanding from different sides.

On the basis of public invitation and data obtained from the competent services of the Ministry for Capital Investment (telecommunications sector) the Agency recorded a total of 755 broadcasters – of which 543 exclusively radio stations, 73 exclusively TV stations and 139 stations broadcasting both radio and TV programme. Since a large number of these stations have a sizeable number of networked transmitters, the number of currently active locations/frequencies (transmitters) in Serbia is larger. Because of the overly saturated air, especially in larger towns, congestion and mutual signal interference occur, especially as regards radio programmes. A large number of broadcasters never obtained an operating licence from any body. Although in July 2002 Article 119 of the Law practically ordered a moratorium on the existing situation in broadcasting, a large number of broadcasters placed new transmitters even after this deadline, although the licences for broadcasting programme and owning a radio station have not been issued since then, and a large number of completely new stations (as many as 221 of 775!) appeared. Almost all large broadcasters set up their networks based on the existence of current political will, not based on current regulations, which means that radio piracy in Serbia is common practice and not an exception to the rule.

The delay in the RTS transformation into the republic and provincial public broadcasting service institution caused complications not only in the manner of financing of that company (and future institutions) but also in the determination of the Radio Frequency Assignment Plan whose existence is a prerequisite for the announcement of tender for the awarding of broadcasting licences. The Broadcasting Law (Article 84 Paragraph 3) provides for the Broadcasting Institution of Serbia broadcasting its television programme on two networks (VHF/UHF band), which does not correspond to the current situation where the RTS broadcasts its programmes on three networks in these bands. This means that the third RTS TV network (the current Third Channel) occupies a large radio frequency space intended to be the subject of tender for awarding broadcasting licences. There is also a "surplus" radio network

(Radio 101), which causes similar problems. A particular problem is also Radio Nis, one of the oldest stations in the Republic, operating within the RTS system. No legal solution has been envisaged for the surplus of transmission equipment (transmitters in attractive locations) which will arise after the harmonisation of work of the public broadcasting service institutions with the Law and the interruption of broadcasting on the networks which under the Law do not belong to public services. The Government of Serbia must also find a solution for the status of employees in the RTS who worked in RTV Pristina until 1999.

An inherited problem is the so-called “Radio Television Yugoslavia“ consisting of one FM (VHF) radio (“YU Radio“), one VHF/UHF TV network (“YU INFO“ channel) and system of short wave (HF) transmitters intended for programme broadcasting abroad (former “Radio Yugoslavia“). This institution is a legal successor of Radio Yugoslavia, radio station which, in the period of the existence of the SFRY, had a role to spread propaganda of this state’s policy abroad on short wave (HF) frequencies. The enactments of the State Union accessible to the RBA, or the broadcasting laws of the Republic of Serbia and the Republic of Montenegro do not provide for this institution, but it still operates. The fate of transmission short wave (HF) installations of Radio Yugoslavia is also uncertain as they are not even located in the territory of the State Union, but in the neighbouring Bosnia and Herzegovina. Admittedly, Article 84 Paragraph 1 of the Law also states that “... the broadcasting institution of Serbia broadcasts program outside the territory of the Republic on HF frequency areas“, but fails to explain in more detail which types of programmes and who they are intended for, i.e. whether the future broadcasting institution of Serbia should take over the work of Radio Yugoslavia or something else. In any case, broadcasting on short waves (HF frequency area) is a legitimate right of each state. Still, this type of activity is generally financed from the budget, even when (as in the case of BBC) it is formally conducted within the public broadcasting service institutions. Regarding the reconstruction of medium-wave transmitters (MF band) and the future of short-wave broadcasting (HF band), the RBA position is that the facilities of this purpose should be reconstructed or constructed with the application of adequate digital standards.

A special problem is the privatisation of the media founded by local communities, the so-called municipal and town stations. This process has not been initiated yet, while the deadline for its completion will expire at the end of 2007

(Article 96 of the Law). Since the influence of local authorities on the editorial and personnel policy of these radio stations is obvious and since there are as many as 113 stations of this type, it is clear that this is a problem of strategic importance.

The existence of interest groups which, based on fully vested interest, in a continuous and organised manner attempt to obstruct the efforts towards the regulation of the situation in broadcasting is a natural consequence of a general lack of regulation of the broadcasting area. The RBA has so far shown a great degree of immunity against different forms of pressures, which is part of its legal obligation, but also the policy which the RBA Council will consistently implement.

Finally, the Law has shortcomings and lacks of clarity which contributed to the delay of its implementation, although over three years have passed since its adoption.

2. The RTS transformation into public broadcasting services

2.1. Schedule of legally prescribed activities

It is of the utmost importance for the Government of Serbia, in cooperation with the Executive Council of AP Vojvodina and RTS, to do the work of composing the “division of assets“ of JP “Radio Television Serbia“, which should be followed by the formation of public broadcasting institutions of Serbia and Vojvodina. Only after the completion of the RTS asset division to assets of two public broadcasting institutions the RBA Council may initiate the procedure of the appointment of boards of directors of the public broadcasting institutions of Serbia and Vojvodina.

The Draft Statute of the RBA provides for the public procedure of appointment of board of directors of the republic and provincial broadcasting institution. Based on a public advertisement, the newly appointed boards will appoint managers on all levels of both institutions. At the same time, the RBA will initiate in a timely manner the appointment of programme boards, and propose to the National Assembly of the Republic of Serbia and the Assembly of the AP Vojvodina 12 members (2/3 of the membership) of programme boards of both public broadcasting institutions. The RBA will ensure that the programme boards are appointed at the same time as the managers of the republic and provincial public broadcasting service, in order to ensure wide public influence on the definition of editorial concept of the public broadcasting service, as stipulated by the Law.

This is where the legal mandate of the RBA in the RTS transformation into public broadcasting service institutions formally ends. The Boards of Directors, general managers, and managers of the public broadcasting institutions of Serbia and Vojvodina, each in cooperation with his Programme Board, will independently, in accordance with the Law, establish the editorial concept and programme schedule of both institutions. The RBA will recommend to the new managements of public broadcasting services to organise a public debate on the programme concept of the public service which implies the participation of all social groups for whom the existence of the public broadcasting service is of vital importance. Furthermore, the RBA considers that the programmes of new public broadcasting service institutions should establish a permanent link with the viewers/listeners, so that the adjustment of the current programme schedule would always be possible and based on the authentically presented needs of the citizens of Serbia. For that reason the RBA will insist on the creation of the programme concept of the public service institutions that fully guarantees the fulfilment of special obligations of the public services prescribed by Articles 77-79 of the Law. According to the letter of the Law, programmes produced and broadcast within the public broadcasting service are of general interest and comprise “programmes with news/current affairs, cultural, artistic, educational, religious, scientific, children’s, entertainment, sports and other contents, ensuring the fulfilment of the needs of citizens and other subjects and exercise of their rights in the area of broadcasting“.

2.2 Public service financing

Parallel with the transformation of RTS into the public broadcasting institutions of Serbia and Vojvodina, it is necessary to resolve the issues of their financing, in accordance with the Law (Article 80). The manner of funds distribution obtained from subscription fee is prescribed by Article 83 of the Law.

A separate issue are the RTS's debts. Since the Law provides for the termination of this company's operation and establishment of two completely new broadcasting institutions (of Serbia and Vojvodina), a "clean start", or the zero opening balance must be guaranteed to them. This paragraph is fully in accordance with the opinion of the European Broadcasting Union experts.

There can be no so-called public service without public sources of income. The amendments to the Broadcasting Law adopted by the Republic National Assembly in August 2005 created a possibility of efficient collection of the RTV subscription. Doubts regarding how the Electric Power Industry of Serbia should perform its legal obligation of subscription fee collection – by delivering the bill or actual collection of the determined amount of the RTV subscription fee – has no legal grounds. The Law clearly states that the Electric Power Industry of Serbia *collects* the fee, with efficient collection necessarily implying the system of integrated and unified collection for expended electricity and legally prescribed RTV subscription fee, without the issuance of separate (“double”) bills

3. Number and type of broadcasters in the Republic of Serbia

The use of air for all radio frequencies and users is regulated by the Law in Telecommunications, international treaties and technical standards. For the area of broadcasting the use of air is also specified by the provisions of the Law. Two basic documents are derived from all these documents: Radio Frequency Allocation Plan and Radio Frequency Assignment Plan. The RBA must bear in mind that neither of the previously mentioned documents falls within its jurisdiction, although the Agency has a legal obligation to establish by this Strategy, in cooperation with the Telecommunications Agency “the number and type of broadcasters in the Republic of Serbia“ (Article 9 of the Law). It is quite clear that the number of active radio and TV transmitters on the air is determined by the basic technical requirement that those transmitters must not cause the so-called harmful interference, neither domestically nor internationally. For that reason radio frequencies are defined as a “limited natural resource“.

3.1. Number of broadcasting public service networks

As regards the number of programmes broadcast by the public broadcasting service institutions of Serbia and Vojvodina, the legal provisions (Article 84 of the Law) are quite clear. The broadcasting institution of Serbia broadcasts radio programme on three networks in MF band (medium waves) and three networks in VHF band (UKT or FM radio), and television programme on two networks in

VHF/UHF band. The public broadcasting service institution of the autonomous province broadcasts radio programme on two networks in MF band and three networks in VHF band, and TV programme on two networks in VHF/UHF band. The RBA will insist on consistent compliance with these legal provisions, in particular in view of the fact that a larger number of networks has already been allocated for the needs of the public services than it is common in Europe, creating considerable problems in the preparation of a realistic Radio Frequency Assignment Plan.

3.2. Number of broadcasting networks of commercial broadcasters

As it has already been pointed out, the situation in commercial broadcasting is quite chaotic. The data at the disposal of the RBA clearly show that in a large number of cases broadcasters (mostly illegally) “occupy“ a channel/frequency they use 24 hours a day, although they realistically have much less produced and/or broadcast programme. For that reason, for the purpose of rational use of radio frequencies as a limited natural resource, the RBA will particularly encourage broadcasters to use jointly the same transmitter network (*time-sharing*) at all levels, under the conditions provided by Article 48 of the Law.

Prior to the determination of the number and type of necessary broadcasters in the Republic of Serbia, the RBA organised wide consultations with the stakeholders - broadcasters, professional associations and organisations and relevant international organisations. The RBA also established two working groups that assisted the RBA Council in the drafting of this Strategy - the group that dealt with the general aspects of problematic situation in the broadcasting sector and a specific (technical) committee whose task was to explain the existing Draft Radio Frequency Assignment Plan to all interested parties, i.e. to examine the number of possible frequencies/locations and radio and/or TV networks that would be the subject of the public tender. The initial idea supported by all the participants in the consultations was that the maximum possible space in the air at all levels should be provided for commercial broadcasting. Proceeding from that point, on the basis of international standards, technical possibilities and restrictions, estimated public interest and needs in the Republic of Serbia, specific needs of broadcasters, and proceeding from the existing situation, the RBA shall believe that in analogue broadcasting in Serbia there can be no more than five commercial TV programmes with national coverage, up to

forty regional televisions and up to 160 local TV broadcasters. As regards radio as a medium, in the analogue terrestrial broadcasting four to five commercial radio programmes can operate at the national area, up to fifty regional radio stations and up to 390 local radios. In Serbia programme is broadcast by a number of broadcasters that drastically exceeds the level permitted by legislation and technical standards. This fact in itself speaks about the large interest of numerous candidates in obtaining all types of licences. On the other hand, viewers and listeners wish to have the maximum number of easily accessible programmes, which is demonstrated by the technical and business expansion of cable distribution systems that offer a much larger number of programmes than the one that can be found anywhere in Serbia on the air at the same time (CDS operators also offer legally permitted satellite and local programmes). Therefore, the RBA believes that the proposed (in the technical sense: maximum) number of broadcasters at all levels is in accordance with the free market principles, with the position that healthy competition can only result in the quality programmes of domestic broadcasters, but also the interest of the viewers.

In the AP Vojvodina the situation is particularly complex because as many as four TV networks are reserved for the programmes of public broadcasting institutions of Serbia and Vojvodina, significantly reducing the room on the air intended for commercial broadcasting. The situation is similar in VHF (UKT, FM) frequencies intended for radio programmes. The specific terrain configuration presents a special difficulty, additionally reducing the number of available frequencies/locations in the territory of Vojvodina. Whether it is technically possible to allocate a commercial TV network for the whole territory of Vojvodina which would not jeopardise or prevent normal operation of other broadcasters will be demonstrated by the Radio Frequency Assignment Plan. According to the preliminary technical data, in view of mutual obligations that the State Union Serbia and Montenegro has towards Croatia, Hungary and Romania, in Vojvodina it is not possible to issue more than one licence for commercial television that would cover the entire province as the desired service area. This fact would put the broadcaster that is issued such a licence in a privileged (almost monopolistic) position relative to other broadcasters in Vojvodina. Even the issuance of one licence for covering the entire territory of Vojvodina would significantly reduce the technically possible number of regional and local broadcasters. This consequence must certainly be borne in mind in view of the specific ethnic composition of Vojvodina. Individual ethnic communities are certainly

more interested in the existence of specific local stations (most probably with the status of civil sector stations) than in the existence of one or two provincial commercial broadcasters that would destroy local and regional broadcasting in Vojvodina. On the other hand, Article 47 of the Law does provide for the existence of commercial stations at the provincial level. A possible reconciliation of these two requirements lies in the permitted networking (up to three hours a day) of several interested broadcasters or timesharing of one provincial commercial network.

3.3. Framework broadcasting areas in the Republic of Serbia

Since the Law does not define the concept of region, nor does this concept exist in the legal system of the Republic of Serbia, after the consultations with the Republic Telecommunications Agency and experts, the RBA Council prepared a preliminary and framework map of the broadcasting areas of the Republic of Serbia, complying with technical, demographic, cultural and geographic criteria. The RBA Council has defined *nine broadcasting areas*: Belgrade, Central, Novi Sad, South, Banat, Mačva, East, West and Raška areas. The concept “broadcasting area“ is an auxiliary technical instrument used for classifying and grouping geographically close service zones intended for regional stations and does not present a “region“ in the legal sense. Any station broadcasting its programme in the territory of two or more municipalities within one defined broadcasting area and covering with signal 60% of population in its service area will be considered “regional“ for the purposes of this Strategy. Concrete service zones of individual regional stations will be determined based on the Radio Frequency Assignment Plan adopted within a legally prescribed procedure.

In accordance with the Broadcasting Law and the Telecommunications Law within the defined coverage areas it will be allowed to place transmitters for additional coverage if the RBA assesses that such a request is justified and if the Telecommunications Agency assesses that the placement of additional transmitters is technically feasible.

The "flowing over" of signal from one area to another, or from one region to another, which is, in some cases, an inevitable consequence of geographical conditions and technical parameters of transmitters, will be tolerated only if the

broadcaster observes the conditions from the licence for the radio station issued by the Board of Directors of the Republic Telecommunications Agency.

3.4. Local broadcasters and civil sector stations

Within the meaning of this Strategy, a local broadcaster will be deemed any station broadcasting its programme from one location/frequency (transmitter) and covering 60% of the population in the given local service area. Currently there are 585 of them, and it is estimated that their number must be reduced considerably, with a significant raising of the existing programme and technical standards of local broadcasting.

Within the meaning of this Strategy, commercial stations are deemed radio and television stations (companies registered for programme production and broadcasting) founded by private capital or those privatised in the procedure of sale of socially-owned/state-owned capital at auction sales or within tenders, which are financed solely by income generated on the market. Commercial stations are free and independent in selecting their programme concepts, and if, on the basis of their concept, they obtain a broadcasting licence, they are obliged to implement such concept. The programme concept that a station submits as part of tender documentation will be deemed an integral part of the broadcasting licence.

In accordance with Article 95 Paragraph 1 of the Law, those stations that satisfy specific interests of particular social groups and civil organisations will be deemed civil-sector stations. Within that context, the RBA will try to enable them, where there is interest and concentration of such groups and organisations, to use local radio frequency space primarily in the form of same frequency time sharing. In this, priority will be given to those groups and organisations that proved themselves in affirmative action regarding human and minority rights and civil liberties and that operate in a wider interest of all potential users of such programmes in local community. This relates particularly to various ethnic groups, organisations of citizens with special needs, cultural and artistic groups, youth organisations and child care organisations, associations for consumer protection and education, lovers of nature and animals, environmental and other non-government organisations and civil associations.

Any attempt of civil sector stations to act in a political manner will be deemed a serious violation of Article 95 Paragraph 3 of the Law. Also, the RBA will not allow

commercial stations to be founded under the guise of civil sector stations for the purpose of obtaining legal (exemption from the broadcasting fee) and other benefits. The exact number of future civil sector stations which, according to the Law, may obtain only a licence for broadcasting programmes at local level cannot be estimated precisely because now there are almost no such stations in Serbia (out of the total of 775 broadcasters in Serbia, only 27 broadcasters of this type are operating), and it is not possible to estimate exactly what number of non-government organisations will submit application to the public tender.

The RBA will support the *demetropolisation of broadcasting*. In practice, it implies strengthening the positions of local and regional stations and a possibility that national commercial broadcasters are not obliged to have their head office in Belgrade, which is in accordance with the RBA's policy of uniform development of broadcasting in the Republic.

The current draft Radio Frequency Assignment Plan is intended for analogue broadcasting. It is expected that the transition to terrestrial digital broadcasting technology would provide many more possibilities to broadcasters in terms of the number of programmes that can simultaneously be on the air.

The exact and final number of locations/frequencies and networks for all levels of broadcasting (from national to local) will be determined by the Telecommunications Agency and the competent Ministry by making a Radio Frequency Assignment Plan. In this activity the RBA has a right, pursuant to Article 9 of the Broadcasting Law and Article 82 of the Telecommunications Law, to give suggestions and proposals, but not to make final decisions. However, the Republic Telecommunications Agency and the competent Ministry have already stated that the estimates given in the Strategy present the grounds for the definition of proposed Radio Frequency Assignment Plan. In preparing the draft Assignment Plan, the positions expressed in the course of consultations related to the Strategy drafting were taken into account, as well as the results obtained by the expert team formed by the RBA. The numbers that refer to the number of future broadcasters in Serbia were taken from the Broadcasting Development Strategy. They presented a basis for the preparation of draft networks at all levels.

Data show that in 2004 the modest total of EUR 55 million were spent on advertising on electronic media, of which EUR 52 million on TV advertising and only three on radio advertising. Since the trend of investment in advertising on electronic

media has been upward since 2001, but at decreasing pace, it can be realistically assumed that maximum EUR 65 million will be spend in Serbia in 2005 on radio and TV advertising, which is an optimistic assessment. This gives rise to the question how many broadcasters such market can sustain.

Although the RBA Council will take into account the economic reality, the free market principle allowing for the number of broadcasters to be as high as possible as stipulated in the Radio Frequency Assignment Plan, cannot be disregarded either. The market, not the RBA, will determine which commercial broadcasters can survive. On the other hand, the Broadcasting Law restricts the number of broadcasters only by natural resources and technical possibilities arising from the Radio Frequency Assignment Plan. Namely, Article 49 of the Law states: "Public tender *must* be announced when, on the basis of the Radio Frequency Assignment Plan, there are possibilities for the issuance of new broadcasting licences." Since the Radio Frequency Assignment Plan always covers *all* available frequencies/locations, the legislator's intention is quite clear: there can be no ("reserve") frequencies/locations or radio and TV networks not used on purpose.

3.5. Types of broadcasters according to programme contents

The broadcasters that fail to qualify in the tenders for frequency allocation will be encouraged to resort to the utilisation of CDS or the system of joint use of frequencies (time sharing), as stipulated by the Law.

In accordance with Article 45 of the Law, according to programme contents, broadcasters may be:

- 1) broadcasters of complete programmes, which include news/current affairs, educational, cultural, scientific, sports and entertainment contents, as a predominant part of their activities;
- 2) broadcasters of specialised programmes, whose contents in terms of subject are basically of the same type (sports, cultural, musical, educational or other);
- 3) broadcasters whose programme deals wholly with advertising and sales of goods and services.

According to the RBA's records, complete-programme broadcasters are currently absolutely dominant in the television sector. As regards radio, it is not easy to determine the programme concept of a number of radio stations, but it may be said

that music/entertainment radio stations are prevailing. Many broadcasters do not observe the provisions on the quantity of own production, which additionally makes the estimation harder. However, it is possible to estimate that "complete-programme broadcasters" will be the most numerous in the television area after the completion of tenders, while the RBA, by its broadcasting licence issuance policy, will combat the tendency of unjustified increase in the number of music radio stations which practically do not produce their own programme. Broadcasters of specialised programmes and advertising programmes will mostly be directed to cable and/or satellite broadcasting. However, taking into account the need for stimulating the diversity of programme offer, the RBA does not exclude in advance highly-commercialised specialised stations (e.g. music, sports or film programme) from the group of candidates for obtaining the broadcasting licence at any level.

4. Privatisation of electronic media founded by local self-governments

The obligation of privatisation of electronic media founded by local self-governments (municipalities or towns) is not only an obligation prescribed by the Law, but also a strategic commitment of the RBA Council. These stations are particularly sensitive to political pressure, because their managements are appointed by the local self-government bodies. Since there are many stations of this type in Serbia (according to current records: as many as 113), it is necessary to conduct their privatisation as quickly as possible.

The privatisation of local electronic media with the public enterprise or socially-owned enterprise status is within the area of competence of the Ministry of Culture, Ministry of Economy and Privatisation, Agency for Privatisation and the RBA.

The task of the RBA is to prevent the monopolisation of the broadcasting space in the process of privatisation through acquisition of local RTV stations with the public enterprise or socially-owned enterprise status, i.e. essentially to identify any attempt to create disallowed media concentrations.

In view of the fact that the broadcasting licence presents the substance of the market value of an electronic medium, and that an electronic medium left without such a licence has no market or practical value, the best solution is for the public tenders for broadcasting licences to precede the process of electronic media privatisation. However, it is unlikely that all the tenders will be completed by the end

of 2007, when, in accordance with the adopted amendments to the Broadcasting Law, the final deadline for the privatisation of local self-government stations expires. Since a broadcasting licence cannot be guaranteed to anyone in advance, it is clear that the buyer bears the risk in purchasing a station which, due to the short legal deadlines, failed to pass through the procedure of public tender for the granting of broadcasting licences. In its enactments (recommendations and binding instructions), the RBA will attempt to foster and accelerate the process of local community station privatisation. The licence will be revoked from those stations which are granted a licence in the meantime, but fail to complete the privatisation process by the end of 2007.

5. Commercial broadcasting

The Law explicitly distinguishes between licensing requirements and licensing criteria. The requirements are stipulated in Article 50 paragraph 1 items 2) and 3) of the Law, while the criteria are stipulated in Article 53 of the Law. The RBA will announce and present to the public in a timely manner the requirements and criteria to be applied in decision making, in accordance with the Law. The Agency will determine detailed requirements and criteria for issuing all types of licences by a separate document – the Licensing Regulation, while this document will state only the strategic principles by which the RBA will be guided in prescribing concrete requirements and criteria.

According to the RBA's interpretation, licence award requirements are minimum formal standards without fulfilment of which the applicant in a public tender may not even be taken into account as a candidate for licence award. On the other hand, criteria are substantive standards by which the RBA Council is guided when there is more than one candidate for the vacant spot on the air.

5.1. Licensing requirements

The Law (Article 50) recognises three types of requirements the applicant for broadcasting licence must fulfil: technical, organisational and programme requirements. Derived from these requirements is the obligation of broadcasters to submit their organisational-technical concept and personnel structure when submitting the tender application (Article 52). Apart from that, the applicant must submit

documentation proving that it also meets the requirements set by the Telecommunications Law. As regards the requirements:

1) The RBA will, by its Regulations, define the technical level of produced picture/tone quality, but also the requirements regarding other minimum technical conditions for programme production and broadcasting such as: owning and/or leasing adequate premises, technical equipment of the studios and minimum quality of production equipment. A separate Technical Committee will be set up for the preparation of this portion of Licensing Regulation, which will also verify the fulfilment of prescribed requirements.

2) The RBA will cooperate with the Republic Telecommunications Agency in order to verify whether a broadcaster fulfils the requirements from the Telecommunications Law.

3) The RBA believes that minimum organisational requirements mean: existence of a legal entity registered for the activity of programme production and broadcasting, existence of legal documents which regulate the number of employees and types of activities, minimum number of permanently engaged workers for specific types of jobs (different number for different types of broadcasters) and similar standards that will be prescribed by the Regulations. In principle, the RBA Council will ensure that the priority in the licence issuance is given to those broadcasters which have radio or television programme production and broadcasting as the basic or only activity, i.e. the companies that are not part of a larger system unrelated to broadcasting, but rather an organisationally and financially independent legal entity specialised for broadcasting.

4) The RBA believes that programme requirements mean the existence of well designed programme concept and appropriate programme schedule. The programme concept and programme schedule which the broadcaster delivers when submitting the tender application will be deemed an integral part of the broadcasting licence, and failure to comply with them will result in the pronouncement of measures stipulated by the Law. In the tender, the broadcaster will be obliged to provide evidence of personnel and financial capacity for the realisation of the submitted concept and schedule.

For all broadcasters, the RBA will prescribe minimum programme standards in the form of general binding instructions stipulated by the Law, based on Article 68 of the Broadcasting Law. The purpose of these instructions will be the definition of

the bottom limit of legally permissible behaviour of broadcasters and their formal obligations (such as programme identification, transmission of urgent announcements and similar), but not the prescription of concrete contents of programmes broadcast by radio and TV stations because it falls within the competence and responsibility of the programme editor. The programme concept and editorial policy of electronic media cannot be prescribed by the RBA's documents because the excessive influence of the RBA on the programme orientation and editorial policy of broadcasters could lead to various forms of censorship or propaganda. Therefore, the RBA is of the opinion that its task is to create a healthy environment in the broadcasting sector which allows free market and programme competition free of political influences and pressures. Taking into account the freedom-of-expression principle, the RBA will not engage in value assessment of the programme for which the licence has been issued, unless it is the matter of observing the Law, binding instructions and other documents of the RBA, conditions under which the licence has been issued or obligations arising from current journalists' codes. In defining and estimating the fulfilment of minimum programme standards, the RBA Council will receive assistance from a special commission (Ethics Committee).

Finally, it should be pointed out that the list of requirements determined by the Law which must be fulfilled by an entity applying for licence is not exhaustive enough. Therefore it must be expanded, and three additional requirements will certainly be included in the conditions which a legal entity must fulfil in order to meet the formal requirements of public tender:

5) In case of commercial broadcasters, current economic position and status of the company submitting a tender application must certainly be taken into account. For example, companies with heavy losses, companies with no assets or relevantly high capital (it is now possible to found a company with capital of only US\$ 500), companies unable to offer any guarantee that they are capable of providing the necessary technical equipment and/or realising the proposed editorial concept, or companies facing bankruptcy cannot be deemed candidates for licence.

6) Directly connected with the previous economic minimum requirement is also the required transparency of ownership structure, real amount of capital and financing of electronic media. For the purpose of eliminating possible abuses, but also for the purpose of clarifying specific positions of individual broadcasters, the RBA will insist on the transparency of ownership structure, as well as on the transparency

of sources of financing. It is true that the owner and/or investor influence the stations editorial policy to a certain extent, but it is also a democratic requirement that in that case the public has the right to know whose capital the station has been founded with and in which way it is financed. Lack of transparency of financing of certain newspapers in Serbia is a constant source of doubt about their credibility. Therefore, any analogous situation in the broadcasting sector should be avoided by all means. The stations without transparent ownership structure and the stations that refuse to allow the RBA to inspect all sources of their financing will not qualify as candidates for obtaining a broadcasting licence.

7) Absence of forbidden media concentration is not stated among the tender conditions, but the forbidden media concentration is directly prohibited by the Law. Therefore, this requirement must be taken into account as well. In the process of privatising radio and TV stations of local and regional communities, the RBA will give its opinion, in accordance with the legislation on privatisation, to the Privatisation Agency regarding the existence of media concentration. Under the conditions prescribed by Article 41 of the Law, this competence of the RBA will also apply to foreign natural or legal persons that may have a share in the broadcaster's initial capital.

The final list of the requirements that a legal entity must fulfil in order to formally qualify for substantive assessment of the possibility of obtaining broadcasting licence is defined by the Licensing Regulations.

5.2. Licensing criteria

In Article 53, the Law prescribes that the RBA determines and publishes "...non-discriminatory, objective and measurable decision-making criteria, which correspond to the activities for the performance of which the licence is issued." Since the Law does not specify these criteria, it is clear that this is a matter of the Agency's substantive competence. The objectivity and measurability requirement coincides with the RBA's general intention to formalise the licensing procedure as much as possible, although it is very hard to carry out quantification ("measurability") of some standards which must be applied.

Non-discriminatory character of the licensing criteria will be achieved by their formalisation and universality, i.e. by adopting Licensing Regulations which will apply to all broadcasters without exception.

Objectivity and measurability of the criteria will be achieved by including those criteria that can be quantified. There are two basic criteria of this kind:

1) *Ratings*. Since here it is a matter of commercial broadcasting, this criterion arises as a matter of logic. The agencies conducting research of public opinion in the Republic of Serbia have already achieved a considerable level of precision in measuring TV programme ratings. Already now, the installed "peplemeters" can show current and long-term rating of individual stations. As regards radio, this research is much less reliable because they are still based on polls which add a subjective element to the results. However, even such unreliable research may serve as orientation points for evaluating the relative ratio of ratings of individual stations. Apart from that, a reason for including ratings among the licensing criteria lies in Article 3 of the Law that calls for "rational and efficient use of the radio frequency spectrum as a limited natural resource". As regards the stations that are already on the air, this criterion cannot be disregarded as it presents an objective indicator of a station's performance, certainly belonging to the elements of "rational and efficient use of the radio frequency spectrum". The issuance of licences to stations with very low ratings that are already too numerous in Serbia at the moment, would constitute a violation of Article 3 of the Law. However, although possibly the most measurable one, the ratings criterion cannot be either the basic or the decisive criterion because the Law allows that even those that still do not broadcast any programme may also participate in the tender. The obligation of programme broadcasting under Article 56 of the Law becomes effective only 60 days after the licence is obtained.

2) *Business performance/economic viability*. This criterion is also directly linked with the "commercial broadcasting" concept. Stated real profit should be a relevant factor in assessing whether a commercial broadcaster deserves to be licensed for a certain period to manage such a rare resource as a radio frequency. However, a global assessment of the candidate's economic capacity and business plan is necessary for the application of this criterion because there is a possibility that a tender application may be submitted by someone who has never previously engaged in broadcasting, or someone who deliberately wishes to operate at a loss for a certain time (in the period of "breaking in the programme"). On the other hand, as already

indicated earlier, the economic standards may also be eliminatory: if the applicant in a public tender for licence issuance cannot prove that he has sufficient technical and financial resources for continuous programme production, then he may not be deemed a candidate for licence issuance. In that case, the economic position is not the criterion on the basis of which someone is given a priority but the minimum requirement which must be fulfilled in order for the applicant to be included in the tender procedure at all. Because of all this, on the basis of Article 52 of the Law, all tender applicants will be required to submit a comprehensive business plan, while the appropriate guarantees will be also required for the most attractive (national and regional) licences. In any case, the statement that is valid for the ratings criterion is valid here as well: the requirement regarding the efficient use of radio frequency spectrum suggests that licences should be issued to successful broadcasting companies. Issuing a licence to a broadcaster for which it can be objectively assessed in advance that it will be economically unsuccessful would constitute a violation of Article 3 of the Broadcasting Law.

The following are the two criteria that are harder to quantify, but they must be taken into account because of their importance and the fact that the Law mentions them explicitly in Article 53:

3) "*Guarantee of contribution to higher quality and diversity of programmes*" referred to in Article 53 paragraph 1 item 5 of the Law is an important criterion which is probably the hardest to quantify. Before awarding the most significant (national and the most important regional) licences, the RBA will organise internal research which will ask the respondents to grade anonymously the quality of individual radio and TV programmes. Also graded will be the proposed programme concept in terms of proposed ratio of various programme contents (e.g. mutual ratio between feature, music, and entertainment programme on the one side, and cultural, scientific and children's programme on the other). However, the Law allows also the legal entities that currently do not broadcast any programme to submit tender applications. The RBA will require special guarantees for the realisation of proposed programme schedule from such candidates. In such cases the fact whether the founders of the legal entity applying have experience in broadcasting or similar activities will also be taken into account. Both in the case of the existing radio TV stations and in the case of applicants with no prior broadcasting experience, preference will be given, other

requirements being equal, to the organisations that perceive broadcasting as their core activity and submit adequate guarantees to that effect.

4) *Track record.* The Law stipulates that the "Council will, in adopting the decision on the issuance of a broadcasting licence, take into account also the contribution of that applicant to the realisation of the principles of regulating the relations in the broadcasting sector, provided for by Article 3 of this Law, in the previous period of broadcasting." On the basis of this provision of the Law, the overall behaviour of broadcasters until the moment of launching the tender will be assessed – from the quality of the broadcast programme to the assessment of broadcasters' professional behaviour in the sense of propaganda activity in favour of any political option in the previous period or other form of violating professional standards, and to whether the broadcaster has violated the provisions of the Broadcasting Law and the Telecommunications Law which prohibit radio-piracy, including also the provisions of Article 119 of the Law. The data collected by the RBA Technical Service within the established monitoring system will also be taken into account. It is obvious that this criterion is not applicable to applicants who do not broadcast programme at the moment of announcing the tender.

The broadcasting licence issuance process will be conducted in the most transparent manner possible. The specific data on broadcasters may be denied only if the RBA Council assesses that the type of data in question have the character of a business secret. For issuing licences at the national level, the RBA Council will obligatorily organise public interviews with candidates. If needed, these interviews will be also organised on the occasion of awarding licences at regional and local levels.

5.3. Broadcasting fee amount

Article 50 paragraph 1 item 4 of the Law prescribes explicitly that advertisement for the public tender for broadcasting licences should include “the level of annual fee for the acquired right to broadcast programme and the level of annual fee for the use of radio frequencies based on the issued broadcasting station licence”. This means that the RBA is under the obligation to publish in advance in the text of the public tender the precisely defined dinar amount the broadcaster must pay as a broadcasting fee. On the other hand, Article 66 of the Law stipulates two basic

parameters for determination of broadcasting fee amount: the number of residents in the desired service zone and the programme concept. Since the broadcasting licence is not guaranteed to anyone and in view of the explicit legal provision stating that the amount of fee must be set *before the launching of the tender* for broadcasting licence issuance, it is clear that the second criterion from Article 66 can be applied only after the issuance of the broadcasting licence and commencement of broadcasting by a certain broadcaster.

When initiating programme broadcasting, under Article 66 paragraph 9 of the Law, all broadcasters have an obligation to pay the broadcasting fee six months in advance, which means that the initial price for one coverage area must be determined not only in advance but also uniformly. Without this price it would not be possible to determine how much money the broadcasters should pay in advance. After the expiry of this period, in accordance with the criteria from Article 66 paragraph 4 of the Law, within the Law, based on a separate Regulation on the Amount of Fees and results of own monitoring of programme contents as part of overall supervision over the operation of broadcasters, the RBA will decide whether there are legal and substantive grounds for fee adjustment, i.e. whether there is a real programme justification to give a “discount” on the initially determined price to some of the broadcasters with the same coverage area. In such a way the legal provision from Article 66 determining the programme concept as the criterion for determining the level of fee will be observed. Namely, the Law provides specifically for the amount of *annual* broadcasting fee. If the adjustment is made after the end of the initial six-month payment prescribed by the Law, then the solution the RBA supports is quite in line with the Law because it allows for the possibility of broadcasters with the same coverage area to pay actually a different fee *at the annual level*. The RBA believes in principle that this stimulative strategic instrument should be approached extremely cautiously in order to ensure that a reduction of some broadcasters’ fee is not interpreted as a punishment of other broadcasters or favouring one or several broadcasters. For that reason, the amount of the approved stimulative discount cannot exceed 20% of the initially determined price, and the discount itself can last only as long as they are supported by the results of monitoring.

In determining the broadcasting fee, the RBA will take into account also the estimated possibilities of programme commercialisation and advertising market, as well as the experiences of surrounding countries, or compare advertising markets in

Serbia and the neighbouring countries. In doing so, it will take into account that under current conditions many broadcasters could not survive in such a cramped advertising market as the Serbian market under strictly commercial conditions, which imply payment of all services and duties as a prerequisite for regular operation (copyright and related rights, taxes, broadcasting licence and similar). However, this assessment will not affect the fulfilment of the clear legal obligation to launch tenders as soon as the Radio Frequency Assignment Plan allows it.

The RBA will make an effort to protect and encourage the development of radio as a medium. In doing so, the RBA proceeds from the assessment that less favourable conditions in the advertising market must not endanger the development of radio compared to television.

6. Cable and satellite systems

As a consequence of disorderly regulations in the CDS (Cable Distribution System) sector, there are no precise data on the number of CDS subscribers, or on the number of CDS operators. An extremely small number of networks has been constructed with valid construction permits and observing the previous or the new Construction Law. It is estimated that there are over 400,000 connected users in Serbia (implying up to a million and a half cable TV channel viewers) and that several dozens of operators (a constantly changing number) are in operation. Although the largest number of subscribers has been connected in the last few years, networks are still predominantly coaxial and, according to their characteristics, allow only one-way operation (distribution of radio and TV programmes). Also, there has lately been an increase in the installation of networks with optical cables for multiple purposes.

In the quite unregulated CDS market in the Republic of Serbia, CDS operators operate mainly on the basis of a general court registration on the provision of services or operation in the telecommunications sector. The previous Republic Law on Communications Systems did not stipulate the issuance of specific licences. Unfortunately, the postponement of adoption, and after that the postponement of application of the Telecommunications Law (together with some other factors) have further contributed to the maintaining of chaotic situation in the CDS sector. The protection of users and environment (against interference caused by poor CDS installations) does not exist.

The overall market in Serbia, according to the line Ministry's estimate, is two million users.

Satellite communications should be perceived as complementary, or as an integral part of the overall communications system in the country, considering the perceived trend of decrease in voice communication, and increase in the transmission of broadcasting signals and the Internet (data transmission).

National satellite centre should be designed as an intelligent platform for all radio communications services, including broadcasting. Within the preparations for demonopolisation, Telekom Srbija should prepare a project of attractive commercial

package for "putting" on satellite all domestic radio and TV programmes that are interested in that. This package would be offered to all TV stations.

6.1. The RBA's competence in the CDS and satellite broadcasting sectors

The RBA's competence in the CDS and satellite broadcasting sectors amounts to the issuance of broadcasting licences without public tender procedure (Article 40 of the Broadcasting Law). The RBA is of the opinion that the Telecommunications Agency should first discharge its legal obligation from the Telecommunications Law and issue licences for cable distribution of signal to operators. Most of the RBA competences, primarily including the issuance of licences for broadcasting individual programmes, supervision of contents of broadcast programmes and supervision of observance of copyright and related rights can be realised only after the issuance of licences for CDS installation and determination of the number of legal CDS operators in Serbia.

In the area of copyright and other related rights protection within the Law, the Agency will attempt to influence with its activities also those programmes and cable operators for whose licences it is not directly responsible. The competences of the RBA announced by the Draft Law on Intellectual Property Protection would open up greater room for this type of activity.

Within the preparations for the issuance of broadcasting licence for CDS and satellite broadcasting and on the basis of its competences the RBA will:

- register the existing CDS and satellite operators, in cooperation with the Telecommunications Agency
- record the number and type of programmes for which the CDS operators are obliged to obtain a broadcasting licence
- encourage, by special measures, transition to cable systems of those broadcasters/programmes for which there is no room in terrestrial analogue broadcasting
- encourage specialised broadcasters (sports, music, teleshopping, erotic and similar channels) to broadcasting through CDS or satellite.

7. Digital broadcasting

Further development of broadcasting, whether it be satellite, terrestrial or cable transmission or broadcasting, will be based exclusively on the digital technologies whose standards are already in use, such as: DRM (*Digital Radio Mondiale*) for short wave and medium wave audio broadcasting, T-DAB (*Terrestrial Digital Audio Broadcasting*) for audio broadcasting and the family of DVB (*Digital Video Broadcasting*) standards (*S-Satellite, C-Cable, T-Terrestrial* and *H-Handheld*) for television. Digital technologies for terrestrial broadcasting enable better use of existing frequency resources (more programmes in one channel) and greater resistance to reception quality degradation, which brings the digital service quality much closer to the studio level compared to analogue service. In terms of digital terrestrial broadcasting, our country has already opted for T-DAB and DVB-T standards.

Since a complete application of terrestrial digital broadcasting T-DAB in VHF (174-230 MHz) and DVB-T in VHF and UHF (470-862 MHz) frequency ranges in the European Broadcasting Area is not possible without a revision of the current international plan (Stockholm 61), a Regional Conference on Radio Communications RRC04-06 has been scheduled. At its second meeting (May 2006) the Conference should adopt a Digital Plan for DVB-T and T-DAB terrestrial broadcasting. At the national level, the new Digital Plan for television should be defined through the number of multiplex-channels.

The digitalisation of medium-wave (MF, AM) and short-wave (HF) radio transmitters is a process that will be supported by the Agency regardless of whether it is performed by a public service or commercial radio stations. However, since according to the Law it is only the broadcasting institution of Serbia that has the obligation to broadcast in short-wave (HF) area, the RBA rightfully expects this institution to be a leader in the entry of new digital technologies in the area of radio. Medium-wave and short-wave digitalisation gives a large coverage area with high-quality reception. The RBA believes that commercial radio stations will be most interested in digital broadcasting on medium-waves (in MF band). Furthermore, if the MF facilities of Radio Belgrade destroyed by the NATO bombardment are reconstructed, in the course of their reconstruction these transmitters should be fitted not only for analogue broadcasting but also for analogue broadcasting.

The existing Law does not deal with digital broadcasting. It is necessary to regulate digital broadcasting comprehensively by a new law or by amending the existing one because, unlike analogue broadcasting, it presents a system in whose chain from programme production to broadcasting there are many participants (*content provider, multiplex provider, transmission provider, broadcast provider*).

The application of digital terrestrial broadcasting should follow after the preparation of the programme and adoption of the national plan for transition to digital broadcasting along with giving priority to the application of *DVB-T* system over *T-DAB*. Introduction of digital terrestrial television should be accompanied by an implementation strategy of future *HDTV (High Definition Television)* services and *DVB-H* standards for handheld reception and other multimedia services.

The RBA has suggested to the Telecommunications Agency and the line Ministry to provide, by the Assignment Plan, for special TV channels intended for experimental digital broadcasting. By their technical characteristics, the channels intended for digital broadcasting should be those that are not suitable for analogue broadcasting, i.e. those that do not reduce the maximum number of available frequencies/locations that will be allocated in the upcoming public tenders. Although according to the Law (Article 78), only the public broadcasting service institutions are obliged to transfer to new digital technologies, the Agency will make efforts to enable, by its enactments, a possibility of access for all interested broadcasters to experimental digital channels.

8. Supervision over the operation of broadcasters

Pursuant to Article 13 of the Law the RBA has wide authority in the supervision of broadcasters with regard to the compliance with the conditions under which the licence was issued, in particular the type, as well as structure and contents of the programme. According to the Law this supervision can be conducted “independently or by engaging an authorised organisation“. Thus, the RBA will draft the regulation on the supervision of broadcasters’ operation and determine the manner of programme monitoring, as well the procedure of responding to citizens’ and broadcasters’ briefs.

All broadcasters with a national licence will be under constant supervision. Other broadcasters will be supervised according to a schedule which will, as an official secret, be accessible only to the RBA Council members and authorised employees of the RBA.

The RBA will pay special attention to the legal obligation of broadcasters to keep programme records, record and store the recorded programme for 30 days.

The RBA will place special focus on the compliance with and implementation of the legislation prohibiting the publication of contents instigating racial, national or religious hatred, hatred based on gender or sexual orientation, handicap, refugee or any other social status or occupation, as well as the protection of minors from detrimental contents. The Ethics Committee will assist the RBA in the cases when the border between the freedom of speech and violation of these principles is unclear or legally imprecise.

A separate enactment of the RBA will also regulate the punishment of electronic media programme abuse, aimed at blatant and one-sided personal or family promotion of the owner, or other persons who may influence the operation of those media.

In “open” (non-coded, accessible to everyone) broadcasting it will not be allowed to broadcast programmes containing pornography or whose contents present and support extreme violence, drug abuse or other forms of criminal behaviour, or programmes abusing the gullibility of the viewers or listeners. Explicitly pornographic contents will be allowed only as a commercial service within the coded channels of cable distribution systems (CDS).

The broadcasting of other programmes whose contents may harm physical, mental or moral development of children or youth must be clearly designated as such and presented only between 00:00 and 05:00 a.m., which will be monitored separately.

The contents of the programme of public broadcasting service institutions will be under a special supervision regime, because the Law prescribes special obligations for them. For that reason the RBA will pay special attention to the share of and adequate ratios between all types of programmes which the Law (Article 77) lays down as a programme obligation of public broadcasting institutions of Serbia and Vojvodina. The RBA Council will put special focus on the conduct of public broadcasting service institutions in the news and current affairs programme. The RTS programmes, as well as all national regional and local broadcasters will be placed under intensified supervision during pre-election campaigns. The broadcasting of open or hidden political propaganda outside the pre-election campaign will be considered a grave offence. The Ethics Committee will provide assistance to the Council in these activities, in the capacity of an expert advisory commission.

A special monitoring system will be established for the purpose of supervision of compliance with the regulations in the area of advertising and marketing. The provisions related to advertising are currently not part of the Law, and are regulated by the Advertising Law. Still, the mandate of the RBA Council in this area remains the same. The RBA will, thus, pay special attention to the compliance with the current provisions on the quantity and manner of advertisement broadcasting, both in the area of commercial broadcasting and in the programmes of public broadcasting services.

The subject of the RBA's supervision will also be the observance of copyright and related rights. Any avoidance to pay legal obligations of this type will be treated as a grave offence.

Based on the existing legislation (Articles 97 - 102 of the Law) and based on the authorisation to prescribe separate and general binding instructions (Article 12 of the Law), The RBA will prevent any occurrence of media concentration at all levels in order to prevent one-sided political or other influence on the public opinion. Such activity of the RBA will also refer to any establishment of other monopolies on the media and advertising broadcasting market, as well as to the formation of ties between broadcasters which may violate the principles of pluralism and free competition (illegal networking, etc.). By continuous insight into the broadcaster's documents of

incorporation, as well as the corresponding documents of its founders, and through the cooperation with the competent government bodies, the RBA will check each case of media concentration, both in tender procedure and subsequently. In that context, the RBA will, in line with its legal mandate, consider the possibility of granting approval to each change of the broadcasters' ownership structure during the period of validity of broadcasting licence.

In the event of a monopoly being created in some areas due to objective reasons (lack of significant interest in the establishment of a radio or TV station), the RBA will, in line with the technical possibilities, regularly issue tenders, as it will do in all other cases in the areas in which available radio frequencies subsequently appear.

The RBA will insist on the transparency of financing of all electronic media and collect corresponding data to that end.

An efficient system of responding to the briefs and complaints of citizens or broadcasters will present part of the supervision over the broadcasters' operation.

9. Unified transmission system

The situation in which one broadcaster (RTS) holds key transmission facilities and their corresponding infrastructure does not guarantee equal position of all electronic media. Apart from that, different broadcasters placed their transmitters without any licences, thus violating basic regulations and criteria, including the environmental regulations. This has resulted in the fact that the transmitters in Serbia were placed without any plan, even in places where they should not be placed in any case. For that reason, it is necessary to extract the broadcasting system and signal transmission system from the current RTS (future public service), as well as from the commercial broadcasters currently owning those facilities. This is also required because of the development of digital broadcasting which enables the broadcasting of several programmes on the same frequency.

These issues can be resolved by the establishment of a public company which will guarantee to all the broadcasters which are granted a licence equal access to broadcasting facilities. As the RTS transmission infrastructure was significantly damaged during the NATO bombardment, systemic reconstruction of the destroyed facilities should be ensured.

As an adequate compensation for investment in infrastructure, the service fee should be reduced for the public broadcasting institutions and all other broadcasters whose equipment was taken over or they should be temporarily exempt from the payment of services of the newly established transmission company.

10. Activity of the RBA on the improvement of the existing regulations

In accordance with the proclaimed goal of the Strategy, the RBA will direct its activities towards the revision of the existing laws and other regulations and their harmonisation with the actual circumstances in the process of transition of the broadcasting system in Serbia. In that respect, the RBA will initiate with the legislator the amendments to the relevant legislation. Amendments to the Law will be initiated exclusively for the purpose of clearing up the observed moot points it contains and increasing the efficiency of its implementation, without disputing the basic principles on which it is constructed. The RBA will perform all these procedures publicly and in cooperation with the competent institutions.

The issue of inspection supervision over the operation of broadcasters and implementation of the RBA Council's decisions arises as a concrete problem which must be resolved urgently through the amendment of corresponding laws or adoption of bylaws. According to the current regulations, the implementation of the decisions of the RBA relating to piracy combating (closing of stations that will not be issued a licence by the RBA) depends directly on the Telecommunications Agency. However, according to the Telecommunications Law, this institution does not have a standard inspection service either, but the institute of "radio emission controller" is envisaged (Article 27 of the Telecommunications Law). However, radio emission controllers do not have the full mandate that previously belonged to radio connection inspectors, such as, e.g., the right of temporary seizure of vital parts of equipment of pirate radio stations. In their activities, the controllers answer exclusively to the Board of Directors of the Telecommunications Agency, but not to the RBA Council. Article 28 of the Telecommunications Law actually sees the Board of Directors of the Telecommunications Agency as the final control instance. In this Article it is stated that "if a telecommunications operator or another person fails to act in accordance with the imposed sanction, the Board of Directors may order a telecommunications inspector, as a security measure, to seal the facilities where the telecommunications equipment is located, *including a radio station*, until such time as the sanction is withdrawn." Therefore, "may" but "does not have to", even in the case of broadcasting, and even when the RBA Council previously already adopted the corresponding decision. On the other hand, Article 18 of the Law which talks about the measures imposed against the broadcasters by the *RBA Council*, says that "a

broadcaster may be imposed measures set by a separate law governing the area of telecommunications when the broadcaster fails to discharge prescribed obligations". The Law does not specify at this point how these measures are imposed and implemented.

It is clear that the previously mentioned legal text fails to ensure sufficiently efficient mechanism of implementation of the RBA Council decisions. In other words, it cannot be clearly concluded based on the texts of the Broadcasting Law and the Telecommunications Law what exactly happens when the RBA Council adopts a decision not to issue a licence to a broadcaster (while he is already on the air) or to revoke his/her licence on a temporary or permanent basis. In view of the fact that the RBA is certain to face the problem of reduction of the existing number of active radio and TV stations, this lack of legal clarity may present a big problem and threaten the purpose of existence of the RBA. Namely, it was necessary to combat efficiently the expanding radio-piracy, in accordance with the law and numerous obligations our country has in the area of broadcasting. At the same time the RBA adopts decisions for which it is unknown who should implement them; despite having large authorizations on paper, it would be practically unable to do anything. That is why it is necessary to determine clearly and unambiguously, in its legal documents, the body which may and must efficiently implement the decisions of the RBA Council. The RBA is in favour of the existence of a body authorised to implement directly the RBA Council's decision. This body would have to have a right, at the RBA request, to prevent directly and physically the broadcasting of illegal radio and TV programmes, with the assistance of all government bodies if necessary.

The RBA believes that the penal provisions related to radio piracy and other offences from the Broadcasting Law are incomplete, inadequate for the problems the RBA has to deal with, and because of that, act as an incentive for law breakers. The very idea that regulatory bodies do not have the rights to impose fines directly, so the already long and complicated penal process must be conducted within the commonly inefficient magistrate courts, presents a serious threat to the implementation of the Law. The amount of the fines provided for, as well as the fact that radio piracy has long since been erased from the Criminal Code as a criminal act, do not guarantee an efficient deterrent from the violation of legal provisions on radio piracy and other offences stipulated by the laws on broadcasting and telecommunications. For that reason, in the case of radio piracy, the prescribed fines would have to be drastically

increased and calculated per day of illegal broadcasting, not as lump sum fines. The procedure of fine imposing and collecting would have to be drastically shortened and made more efficient. The weakness of the Broadcasting Law is that it provides for temporary or permanent licence revocation as the only effective measure directly imposed by the RBA Council due to programme reasons. (Amidst chaos on the air, other measures provided by the Law – internal “warning” and “public warning” – can hardly be considered penalties.) High fines could also be efficient when it comes to more severe *programme offences*, as demonstrated by the experience of Bosnia and Herzegovina.

Immediately upon the adoption of the Strategy, the RBA Council will adopt a framework schedule of activities, whose goal is to commence the implementation of the provisions of this Strategy and the Broadcasting Law as quickly as possible.

A strategic commitment of the RBA is to use, in its operation, the highest standards and experiences of the technically advanced democratic countries and implement them to the greatest possible extent in view of the conditions in and possibilities of the society of the Republic of Serbia.

In that context, the RBA will be quite open to all constructive proposals and suggestions aimed at the improvement of the total or partial situation in the area of broadcasting, and foster publicity, efficiency and realism as an operating method. The RBA will remain open for cooperation with all relevant domestic and international organisations and institutions after the adoption of this Strategy as well.

III. FINAL PART

This strategy shall be deemed adopted when approved by the Government.

This strategy shall be published in the “Official Gazette of the Republic of Serbia“.

In Belgrade,
29 November 2005

COUNCIL PRESIDENT
Nenad Cekic, PhD