**Comments on the Draft Regulation on the Financial Requirements and Ways of Payment for Obtaining a License for Performing a Broadcasting Activity**

**(KNKM-2014/01)**

The Draft Regulation on the Financial Requirements and Ways of Payment for Obtaining a License for Performing a Broadcasting Activity (KNKM-2014/01), henceforth referred to as **Draft**, was assessed with regard to best practices of regulators in the region of South East Europe.

**Summary of Comments and Recommendations**

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| ***General Comment**** ***We recommend the drafter revise the Serbian language version of the Draft by removing the words* “licenca” *and* “taksa” *and replacing them with* “dozvola za emitovanje” *and* “naknada” *respectively.***

***Specific Comments**** ***We propose the drafter follow the best practices of the regulators in South East Europe as follows:***
* ***We suggest the drafter refrain from using the physical size of the territory, altitude or power of transmitters as a factor for calculation of the fees. Consider instead only using number of serviced residents as a factor for calculations;***
* ***Consider applying administrative fee for licence in line with applicable legal framework on administrative taxes if such documents are existing;***
* ***Reconsider using of the potential number of subscribers as a factor for calculating fees. Instead, consider the number of serviced residents as a factor for calculations;***
* ***Reconsider Article 4, the Criteria for Defining the Yearly Fee, and revise it as follows: a) add the number of programmes carried to the criteria;***

***b) use the income of the operator and not the budget as a basis for calculation of the fee;*** ***c) use the number of actual subscribers and not the number of potential subscribers as a basis for calculation of the fee; and*** ***d) do not use the number of residents as a basis for calculating the fee;**** ***Revise Article 6 to allow clients to pay fees in instalments;***
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**General Comments:**

***Revise the Serbian language version of the Draft***

The quality of the language in the Serbian translation of the Draft should be improved. Several mistakes in the Serbian language version of the Draft are observed. For example, in the title of the Draft **“Uredba o visini i načinu plaćanja godisnje takse za licencu”** and then throughout the entire Draft the term **“licenca”** is used. That term is not recognised as official in Serbian language and we suggest the term “**licenca”** is replaced with **“dozvola za emitovanje”**. We also suggest that the drafter replace the word **“taksa”** with **“naknada”.** Legal clarity and precision are of vital importance for the proper implementation and enforcement of the regulations. Therefore, we recommend that the drafter revise the Serbian language version of the Draft and ensure that the Draft is free of non-existing terminology and/or non-existing words.

**Specific Comments:**

**Article 2**

* ***Follow the best practices of the regulators in the South East Europe region, including:***
* ***Refrain from using the physical size of the territory (number of municipalities), altitude or power of transmitters as factors for calculating fees;***
* ***Consider instead the number of serviced residents as a factor for the calculation of fees.***

According to research conducted by the OSCE, none of the observed regulators in the region use the physical size of the territory, altitude or the power of the transmitters as a factor for calculating fees.

Instead, all of the regulators in the region only use the number of serviced residents as the basis for their calculations. Therefore, we suggest that the drafter follows the best practices in the region.

**Article 3**

* ***Consider applying administrative fee for licence in line with applicable legal framework on administrative taxes if such documents are existing;***

We suggest the drafter to use legal framework for charging administrative fees and taxes if such documents are existing.

**Article 4**

* ***Reconsider Article 4, Criteria for Defining the Yearly Fee;***

In the paragraph **1 a**. **Basic Defined Values for coefficient A** itis stated that these values are calculated on the basis of the overall yearly **budget** of the broadcaster.

None of the observed regulators in the region is charge their clients on the basis of the broadcaster’s yearly **budgets** but on the basis of the yearly **income of the broadcaster**. Therefore, we suggest that the drafter reconsider this paragraph and change the way **coefficient** **A** is calculated.

In the **paragraph** **2** of **Article 4,** the **criteria for defining the yearly fee for network operators** are defined on the basis of**:**

1. Number of residents (A);
2. Number of potential subscribers (B);
3. Proportion of the market (C);
4. Average subscription fee (D);
5. Percentage of the overall budget (E).

Instead, we suggest that the **number of programs** transmitted to the clients by the network operator is also **considered as a factor for the calculation of the fee.** We also suggest that the fee should be calculated on the basis of the **number** of subscribers and not on the basis of **potential** subscribers. The number of residents cannot be part of the formula for calculating the fee for network operators as not all of the residents are actually subscribers at the same time. And finally, as suggested under **paragraph 1 above**, instead of the percentage of the overall budget (**coefficient E)** consider **the income** as the basis for calculating the fee.

**Article 6**

* ***Revise Article 6 to allow clients to pay fees in instalments.***

The majority of the broadcasting regulatory agencies in the region allow their clients to pay fees in several instalments **(from 4 to 12 instalments).** We recommend a revision of Article 6 to allow clients the option of doing so as well.