

*Author Slobodan Kremenjak*  
*Co-author Jelena Surculija*

**DIGITALIZATION OF THE BROADCASTING  
SECTOR**

**Legal Analysis and Recommendations on Digitalization of  
the Broadcasting Sector**

*Belgrade, Serbia, 2008*

# Contents

1	Introduction .....	3
2	The existing legal framework .....	5
3	Problems caused by late allocation.....	9
4	Conclusions and recommendations .....	11

# 1 Introduction

Digital broadcasting has numerous advantages over the analogue. Most of all, digital broadcasting is more efficient in its use of the radio frequency spectrum, which is a limited natural resource. This means wider and more varied offer, as well as a larger market for programme content producers. Further, the reception of the digital signal is less prone to harmful interference, while the quality of sound and picture is higher. Digital broadcasting requires less power, which decreases broadcasting expenses and negative influence on the environment. Digital broadcasting also allows interactivity, as well as the use of additional services which could make programmes more accessible to persons with impaired eyesight or damaged hearing.

In accordance with the conclusions of the Regional Radiocommunication Conference of the International Telecommunication Union (ITU) in Geneva held in June 2006 (ITU RRC06), introduction of digital television and switch-off of analogue television in Europe, Africa and a part of Asia is scheduled to occur not later than June 17, 2015. The European Commission has made a recommendation to EU members to end the analogue service until the end of 2011. Many countries have decided to completely switch off the analogue television until 2012.

At the previously mentioned Regional Radiocommunication Conference of the ITU, Serbia has received two national coverage for T-DAB (Terrestrial Digital Audio Broadcasting) for audio broadcasting and eight national coverage for DVB-T (Digital Video Broadcasting – Terrestrial) for television. For the wider area of Belgrade there are six additional coverage for DVB-T, and for the south-eastern part of the territory 1-2 additional coverage for DVB-T (Digital Video Broadcasting - Terrestrial).

Serbia needs a strategy of digitalization of broadcasting which would offer adequate response to challenges brought by the introduction of digital and the complete switch-off of the analogue television. This strategy must not deal only with technological changes in broadcasting of television programmes, but create conditions for improvement of quality and choice of programme content, which would enrich media scene in the Republic of Serbia.

The strategy for digitalization of broadcasting would have to have the following goals:

- switchover to fully digital terrestrial broadcasting not later than June 17, 2015, or earlier if possible;
- creation of conditions for realization of public interest in the area of public broadcasting service in the digital age, as well as conditions for development of commercial broadcasting service at the national, provincial, regional and local levels;
- provision of technical and technological conditions for efficient and effective use of the radio frequency spectrum – which is a limited natural resource – in a best possible way that would satisfy the public interest;
- realization of conditions for access of independent content producers to digital networks in a way that would allow development of content pluralism and prevent vertical integration and illegal media concentration;
- in accordance with possibilities offered by digital broadcasting, creation of an additional space for citizens' needs for programme content which expresses cultural identity of Serbian people, national communities and ethnic groups in the Republic of Serbia, through all-encompassing services which would allow all citizens access to free programme content at the national, provincial, regional and local levels.

Digitalization must offer citizens better quality of sound and picture, wider range of content i.e. more television and radio channels, new services for persons with special needs and the elderly, improved additional services, portable and mobile reception and convergence of services. At the same time, digitalization must allow service providers formatting of content in accordance with needs of various target groups, interactivity, possibility to offer services on demand (with appropriate fees), lower costs of transmission and convergence of services. Digitalization enables the state to use the radio frequency spectrum more efficiently and to use the freed part of the spectrum for new services, as well as to promote development of technology, create new jobs, improve competition and offer more opportunities for advancement of creativity and preservation of cultural identity.

Taken as a whole, goals of digitalization must provide for greatest possible development of broadcasting and creativity in the area of radio and television in the Republic of Serbia, as well as the competitive edge of Serbian broadcasting.

## **2 The existing legal framework**

The Law on Broadcasting ("Official Gazette of the RS" Nos. 42/2002, 97/2004, 76/2005, 79/2005, 62/2006, 85/2006, 86/2006) concerns digitalization to the extent that the Article 11 defines the authority of the Republic Broadcasting Agency to issue licenses for programme broadcasting via terrestrial, cable or satellite transmission, both analogue and digital, in accordance with the procedure and criteria prescribed by law.

In accordance with such established authority, the Republic Broadcasting Agency has issued and is still issuing a range of licenses for analogue terrestrial broadcasting, with an expiry period of 8 years. Licenses for cable or satellite transmission, both analogue and digital, have not been issued.

Further, in the Article 78 defining obligations of the carriers of the public broadcasting service in realization of public interest, the law explicitly states their obligation to provide usage and development of modern technical-technological standards in programme production and broadcasting, and to implement plans of switchover to new digital technologies within defined schedule.

In accordance with the mentioned obligation, RTS, as a carrier of public broadcasting service, has begun experimental digital terrestrial broadcasting on the channel 27 from Avala and channel 32 from Iriski Venac.

Strategy of development of broadcasting in the Republic of Serbia until 2013 ("Official Gazette of the RS" No. 115/2005) deals with digitalization to the extent that it states that further development of broadcasting, be it satellite, terrestrial or cable transmission or broadcasting, will be based only on digital technologies. The Strategy further states that digital technologies for terrestrial broadcasting allow better exploitation of existing frequency resources and better resistance to degradation of

reception quality. Regarding digital terrestrial broadcasting, the Strategy specifies that Serbia has already selected T-DAB and DVB-T standards.

The Strategy concludes that the Law on Broadcasting currently in force does not deal with digital broadcasting and that it is necessary to fully regulate digital broadcasting with a new law or amendment, taking into consideration that digital broadcasting, unlike the analogue, "represents a system with many participants in the chain leading from programme production to broadcasting (content provider, multiplex provider, transmission provider, broadcast provider)".

The Strategy also states that the Republic Broadcasting Agency has suggested the Agency for Telecommunications and the relevant Ministry to set aside special TV channels, in the Plan of Allocation, for experimental digital broadcasting, in a manner that would not reduce the maximum number of available frequencies/locations to be allocated in public contests for analogue terrestrial broadcasting. According to the Strategy, the Republic Broadcasting Agency will make an effort to allow all interested broadcasters access to experimental digital channels.

The Law on Telecommunications ("Official Gazette of the RS" No. 44/2003, 36/2006) does not mention digitalization, but contains provisions specifying duties and authorities of state bodies in the area of telecommunications.

Therefore, in accordance with the Article 5 of the Law on Telecommunications, the Government of the Republic of Serbia is authorized – at the proposal of the Ministry of Telecommunications and Information Society prepared with participation of authorized organs of the autonomous province – to define policy in the area of telecommunications and to adopt the Strategy of development of telecommunications in the Republic and the Plan of use of radio frequency spectrums.

The Ministry of Telecommunications and Information Society, in accordance with the Article 6 of the Law, is authorized, among other things:

- to prepare the proposal of the Strategy of development of telecommunications in the Republic;

- to establish the proposal of the Plan of use of radio frequency spectrums and to adopt the Plan of allocation of radio frequencies, at the proposal of the Republic Agency for Telecommunications;
- in accordance with the Plan of use of radio frequency spectrums, to decide on numbers and deadlines, i.e. the periods for which the licenses for public telecommunication networks are issued, or services for which, in accordance with the law, a limited number of licenses may be issued, as well as to decide on minimal conditions for issuance of these licenses, including the smallest amount of one-time fee paid during the issuance of licenses.

The Republic Agency for Telecommunications (RATEL) is authorized, among other things:

- to perform control over the telecommunications;
- to more closely regulate conditions of usage of radio frequency spectrum and to prepare proposals of the Plan of use of radio frequency spectrums and the Plan of allocation of radio frequencies, in accordance with the law, as well as to control the use of the radio frequency spectrum;
- to allocate radio frequencies, in accordance with the law;
- to issue licenses to telecommunication operators for specific telecommunication activities, licenses related to telecommunication networks, systems and devices, as well as licenses for radio stations, in accordance with the law;
- to prepare and execute the public contest for issuance of certain licenses, in accordance with the law and with the Ministry's decision on the number, time periods and minimal conditions for issuance of these licenses;
- to monitor whether telecommunication operators adhere to conditions specified in issued licenses and, in the case of violation of license conditions or provisions of the law, to take measures in accordance with the law;
- to specify a special tariff regime and to monitor implementation of the tariff policy, in a manner prescribed by this law, in cases when there is only one public telecommunication operator in the market for certain telecommunication services, when the public telecommunication operator has a significant market share, or when the public telecommunication operator, using revenue from telecommunication network or service in which it is the only operator or in whose exploitation or delivering it has a significant market

share, subsidizes or co-finances other telecommunication network or service in its ownership;

- to coordinate activities with bodies and organizations which are authorized for the area of broadcasting, in accordance with law;
- to adopt technical regulations in the area of telecommunications;
- to monitor and enforce domestic and international standards and technical regulations.

The Strategy of development of telecommunications in the Republic of Serbia in the period 2006-2010 ("Official Gazette of the RS" No. 99/2006) specifies introduction of digital broadcasting as one of the strategic goals for development of telecommunications.

The Action Plan, which is a part of the Strategy of development of telecommunications and which defines the goals, activities and implementers of activities in realization of the Strategy, specifically states the restoration of broadcasting capacities of the public broadcasting service and implementation of digital technologies as one of the aims and activities. The Action Plan also points out the efficient management of the broadcasting spectrum, which includes planning of the restoration and construction of infrastructure for public broadcasting service in a manner allowing easy and cost-efficient switchover to digital technology, as well as the preparation of the Action Plan for switchover to digital broadcasting, with the aim to most successfully satisfy the expressed needs for broadcasting services and adoption of an appropriate Plan of allocation of radio frequencies.



### **3 Problems caused by late allocation**

Regular contests for issuance of licenses for commercial broadcasting in Serbia in the 20<sup>th</sup> century were not held. As is correctly stated in the Strategy of development of broadcasting, the lack of political will to regulate this area in accordance with European standards has resulted in a legal vacuum and chaos with too many radio and TV stations with low technical quality of broadcasting and bad quality programme content. Further delays in implementation of the Law on Broadcasting after its adoption in 2002 have caused the first public contest for the national coverage and the regional coverage in Belgrade to be organized not earlier than 2006. After that, contests for remaining regional and local coverage were organized in 2007 and 2008. The procedure of issuance of licenses for certain coverage is still ongoing.

In the Strategy of development of broadcasting, the Republic Broadcasting Agency states that in analogue broadcasting Serbia can have no more than five commercial TV channels for national coverage, no more than 40 regional televisions and up to 160 local TV broadcasters. The Strategy explicitly states the following:

"... the Republic Broadcasting Agency considers that the proposed (from the technical viewpoint: maximal) number of broadcasters at all levels is in accordance with free market principles, with the opinion that healthy competition can only improve the quality of domestic broadcasters' programme, and the interest of the audience. "

In accordance with the Strategy, after the public contest for broadcasting licenses for national coverage programmes organized in 2006, licenses were issued with the expiry period of 8 years in accordance with the law, valid for broadcasting of television programme, to six broadcasters on five commercial television networks. In accordance with the Law on Broadcasting, the public broadcasting service airs TV programme with national coverage on two more networks, while the provincial broadcasting service airs programme on two more networks in Vojvodina. Taking into account a large number of regional and local broadcasters, who are at this very moment being issued analogue broadcasting licenses with a longer expiry period than the scheduled deadline for analogue switch-off, it is clear that capacities of the

spectrum in the analogue sphere have been used to its upper limit. Only channels for experimental digital broadcasting have been considered, but not the channels necessary in the phase of simultaneous analogue and digital broadcasting as a necessary step in the switchover to digital broadcasting. This is clearly evidenced by the Strategy of development of broadcasting, which states:

"The RBA (Republic Broadcasting Agency) has suggested the Agency for Telecommunications and the relevant Ministry to set aside special TV channels, in the Plan of Allocation, for experimental digital broadcasting. Channels intended for digital broadcasting should be those channels whose technical characteristics are not suitable for analogue broadcasting, i.e. those which do not reduce the maximal number of available frequencies/locations to be allocated in future public contests."

This puts Serbia in a position in which it will be extremely difficult to switch to digital broadcasting without negatively affecting market positions of any broadcaster with properly issued license for analogue terrestrial broadcasting, during validity periods of those licenses, which means that commercial broadcasters, from the very beginning of preparation of the future Strategy, should be consulted on the manner of implementation of digitalization in practice, and their opinion taken into account.

## 4 Conclusions and recommendations

In the process of transition from analogue to digital broadcasting of TV channels, there should be a clearly defined role, as well as clearly specified deadlines, duties and responsibilities of each participant, for the Government of the Republic of Serbia and relevant ministries, especially the Ministry of Telecommunications and Information Society, as well as the Ministry of Culture, independent regulatory agencies (the Republic Agency for Telecommunications and the Republic Broadcasting Agency), carriers of the public broadcasting service, commercial broadcasters, most of all commercial broadcasters with national broadcasting licenses, network operators, including operators of cable distribution networks, equipment manufacturers and retailers, as well as consumer protection associations.

Various interests and needs that should be harmonized with each other necessitate, before the adoption of the Strategy, that a counselling body for digitalization of broadcasting be created and opened for a wide range of interested parties, and that the body, apart from the representatives of the previously mentioned Ministry of Culture, Ministry of Telecommunications and Information Society, RATEL and Republic Broadcasting Agency, should include representatives from other official organs (for example, the Commission for Protection of Competition, the Agency for Protection of Intellectual Property), the university, other academic institutions, and especially from those who can be expected to become content providers in digital broadcasting, including not only the public service broadcaster and the existing commercial broadcasters, but also independent producers, newspaper publishers and other possible content providers, equipment producers and importers, software producers and importers, and representatives of associations of users of services and others.

The work of the said counselling body should allow presentation of differing opinions regarding the implementation of digitalization, as well as of the following:

- the manner and procedure of selection of network operators (for example, in the process of public competition in accordance with the provisions of the current Law on Telecommunications, via adoption of a new regulation which would separate broadcasting facilities and objects currently owned by the RTS

and create a new public company with precisely defined obligations and responsibilities with regard to non-discriminatory digital broadcasting, or effect a combination of the two);

- the manner and procedure of selection of providers of multiplex service. Apart from television and radio programmes, this service includes additional digital content, electronic communication services and other related identification signals and data. It is also necessary to regulate conditions related to limitation of additional content data transfer and conditions of multiplex offerings;
- the manner and procedure of issuance of licenses for programme content – public media outlets which would broadcast digitally in available multiplexes (for example, in a public competition, in accordance with the Law on Broadcasting, with appropriate modification of the procedure in a way necessary to prevent complaints regarding transparency and metrics of criteria from the analogue allocation which has already been performed in accordance with the same Law);
- possible need to adopt legal framework for broadcasting of more channels by the carriers of the public broadcasting service, compared to those which are being broadcast now;
- solution to the issue of fees for broadcasting, i.e. the use of radio frequencies;
- proposal of a model which would take into account the existing situation in broadcasting and expiry periods of issued licenses for analogue terrestrial broadcasting, and prevent a negative influence on market positions of all broadcasters with regular licenses for the period of their validity.

It is also necessary to ensure that possible modifications and amendments to legal framework, which would prove useful or necessary, do not provoke negative influence on position of broadcasters with regular licenses for analogue broadcasting, nor make it more difficult to citizens to receive analogue TV channels within the validity period of issued licenses for analogue broadcasting.

In this sense, it is necessary, at the moment of initial transition to digital broadcasting of television channels in the first multiplex(es), to provide a place for all commercial broadcasters who broadcast using valid national coverage licenses.

Future strategy of digitalization would necessarily deal with the issue of substitution of terrestrial reception in the parts of Serbia where terrestrial coverage is not viable at the moment. This fact alone means that the Strategy of digitalization of broadcasting should not be limited only to digitalization of terrestrial broadcasting, but should also include digital satellite broadcasting as well as further digitalization of cable distribution, in which first steps have already been made.

In this sense, it is necessary to improve the legal framework for issuance of licenses for satellite and cable broadcasting, and to regulate the issuance of appropriate licenses for satellite DTH service, as well as to influence the digitalization of these networks through a system of conditions for issuance of permits for services of distribution of radio and television programmes via cable distribution networks.

Further, the future strategy of digitalization must include an appropriate promotional campaign which would ensure that the public is informed on the reasons for transition from analogue to digital broadcasting of television programmes, and the advantages of digital television, in order to ensure shortest possible period of inefficient simultaneous analogue and digital broadcasting.

Also, expenses, and sources for their funding, should be planned realistically with regard to the said promotional campaign, as well as the necessary analyses, expert opinions and public opinion research during the preparation of the Strategy and its implementation, including various forms of state subsidies in the process of digitalization. In the course of this, it is necessary to adhere to guidelines related to acceptable forms of public support prescribed by European institutions and, in this sense, it is necessary to give preference to the following:

- investment in transmission networks in areas with bad reception and areas characterized by low interest of commercial investors (rural and rarely inhabited areas);
- subsidies for acquisition of digital decoders for citizens, provided that they are technologically neutral;
- appropriate compensation for commercial broadcasters which would have to switch off broadcasting before the expiry of the licenses issued to them.

*Author, Mr. Slobodan Kremenjak, attorney at law, partner with "Živković & Samardžić" law office in Belgrade. Member of the Belgrade Bar Association. Graduated at the Law Faculty of the University in Belgrade in 1996. Attended Programme in Comparative Media Law & Policy at the Oxford University in 2000. Legal counsel for B92 and ANEM (Association of Independent Electronic Media) since 1998. Represented Internet service providers and mobile network operators. Lectured on the topics of information and communications technology policy, protection of privacy, media law and judicial practices on various programmes organized by Article XIX, European Institute for the Media, Stanhope Centre for Communications Policy Research, ANEM, etc. Coauthor (with Aleksandra Rabrenović, Robert Rittler and Miloš Živković) of "The Law of Broadcasting Enterprises in the Federal Republic of Yugoslavia", published in English and Serbian by Forschungsinstitut für Mittel und Osteuropäisches Wirtschaftsrecht (FOWI) from Austria and the Center for Advanced Legal Studies in Belgrade. One of the founders of the International Media Lawyers Association and member of its interim steering committee 2004-2005. ANEM annual 2005 Lighthouse award laureate for his contribution to development of the media sector.*

*Co-author, Ms. Jelena Surčulija graduated at the Faculty of Law, University of Belgrade in 2000 and obtained Master in Computer and Communications Law at Queen Mary, University of London in 2005 as British Chevening Scholar. Ms Surculija was the member of the expert working group that drafted Law on Broadcasting and Law on Public Information as well as Draft Law on transparency of media ownership and prevention of media concentration. She monitored drafting of the Law on telecommunications. She worked as a consultant for media, telecommunications and Internet laws for local and international institutions, namely Republican Agency for Telecommunications (RATEL), OSCE, UNDP, Konrad Adenauer Stiftung, InterMediaSurvey and other. Since 2006, Jelena has been a member of the Advisory Group of the Programme in Comparative Law and Policy (PCMLP), Centre for Socio-Legal Studies (CSLS), Faculty of Law at the University of Oxford. Ms Surculija is currently engaged as an Assistant Minister for Telecommunications and Information Society.*



*The views expressed in this publication are the authors' own and do not necessarily represent the views of the Association of Independent Electronic Media or any of the individuals and/or legal entities whose case examples are included. Moreover, the Association of Independent Electronic Media make no representation concerning, and do not guarantee, the source, originality, accuracy, completeness or reliability of any statement, information, data, finding, interpretation, advice or opinion contained within the publication.*



*This publication is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the author and do not necessarily reflect the views of USAID or the United States Government.*