



MALAWI

Communications Reform and Freedom of Expression

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INTRODUCTION

Nankhande is only 180 kilometres from Malawi's capital city, Lilongwe, but it might as well be a million. For Mr Chikoko, who lives in this lakeshore village at the end of a rough dirt road 25 kilometres from the paved M5, it is a half-day's journey to the crossroads. Once a month he hitches a lift to the bus-stop on the M5 to take his dried utaka to market.

Once there he then has to decide whether to catch a bus to Lilongwe or to head south to Blantyre. This month he chooses Blantyre because last month there was a great demand for the small silver fish. But when he arrives Mr Chikoko finds that the Blantyre market is awash with kapenta from Lake Kariba, and that instead of selling his utaka for 50 kwacha a kilogram he can only get K30. The Machinga maize seller at the next stall complains to Chikoko: in Lilongwe there is a shortage of ufa flour and instead of getting K15 for a kilogram of maize as in Blantyre, farmers there are selling their grain to millers for K20.

Mr Chikoko is a fictional character, but his story accurately reflects the problems faced by the 85 per cent of Malawians who live in the rural areas. Whether it is a villager trying to sell fish or maize, a trader trying to buy marketable goods or a child in need of urgent medical care, people living without affordable and efficient communications are seriously disadvantaged. Such people spend enormous amounts of time and energy travelling (mostly walking) to district towns to find a telephone that may or may not be working. Mothers facing complicated deliveries often die before ambulances can be summoned. Besides the lack of telecommunications, fast and reliable information networks that might help farmers decide what to plant and when are non-existent. Professionals working in the rural areas are cut off from information that would facilitate the provision of their scarce and vital services. Schools are understaffed but there is no communication link that might bring lessons into remote classrooms. While battery-operated portable radios are found in rural homes, televisions are not. Fax machines and e-mail services are almost non-existent, while the wealth of knowledge that internet could bring to Malawians has hardly been tapped. But this relationship between underdevelopment and a dearth of modern communications is already well understood. Equally important is the connection between human rights protection and the development of efficient, reliable and mass communication services.

1 FREEDOM OF EXPRESSION AND COMMUNICATIONS

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In December 1995 the Zimbabwe Supreme Court handed down a judgment in the Retrofit case that had implications for communications internationally, but more especially for countries like Malawi where information services are being extended and liberalized. In

this case a private cellphone operator, Retrofit, had asked the court to strike down the Zimbabwe Posts and Telecommunications Corporation's telephone monopoly. In its decision the court ruled that

a person should not only be free to express him or herself, but should also have the means of expression, including the telephone. For the state to have a monopoly of telecommunications and then fail to provide an adequate service hinders the right to receive and impart ideas and information [as guaranteed in the International Covenant on Civil and Political Rights, ratified by both Zimbabwe and Malawi].

The principle holds true for Malawi as well: to give meaning to the freedom of expression guarantees enumerated in the Malawian Constitution, the capacity to disseminate, access and share ideas, opinions and information must be available as far as possible in this impoverished country. Government monopolies that do not provide adequate information services must give way to enterprising companies and individuals that can. This, in fact, is what the government of Malawi apparently intends to do with its new Communications Bill. Therefore, one aim of this report is to summarize and analyse the Bill and the government's Communications Sector Policy Statement, which outlines the aims and methods to be adopted by government in developing its telecommunications, postal and broadcasting media sectors.

Since Malawi's return to multi-party democracy in May 1994 there have been major changes in broadcasting, telecommunications and value added services (internet, e-mail, etc). For instance, in 1994 internet and e-mail services were almost non-existent, there was no cellphone operator, there was one government radio station (MBC) and a Christian frequency modulation (FM) station. Now there are three MBC stations, and two more private broadcasters have been given licences to start FM services. Taking advantage of this liberalizing environment, it appears that individuals in positions of power have used their influence to benefit financially. This seems to be the case most clearly in the internet business, but it is probably true with regard to cellphones and television development too. Perhaps transitions are marked by a stage when new laws and regulations have not yet been enacted or enforced, when civil society and watchdog institutions are still weak, and when structural changes to guarantee competition are not yet in place. In such an environment irregularities and lack of transparency become commonplace. Therefore, the second aim of this report is to outline the structure of ownership in Malawi's communications sector in 1998.

Over the last four years the Malawian situation has not been significantly different from that in Zimbabwe. In Malawi, internet services have become the domain of a private company (in which the Malawi Posts and Telecommunications Corporation — MPTC — has a minority interest) while MPTC regulations and bureaucratic delays along with infrastructural shortcomings linked to funding problems have kept competitors at bay. In addition, some business people believe that technical information they have supplied to the MPTC on applications for licences to operate various telecommunications services, has been used by others (including competitors with MPTC connections) to start their

own businesses. One cellphone company, which is jointly owned by the MPTC and a Malaysian company, has a monopoly of business, although this will change at the end of 1998 with the arrival of a second company. At the moment its services are oversubscribed and highly congested, yet it appears that profit-taking by cellphone suppliers, rather than service provision, with a concomitant investment in infrastructure, has been the immediate goal of many of the individuals involved. Nor does the cellphone company have a wider social development agenda. In other words, profit-making through influence-peddling and monopoly formation while blocking various private sector initiatives have characterized communications development since the 1994 elections.

2 POVERTY AND POLITICS

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Malawi ranks very near the bottom of any list of socio-economic indicators. Life expectancy is 48 years and falling because of Acquired Immune Deficiency Syndrome (AIDS); annual gross domestic product (GDP) per capita has dropped to under US\$160; nearly one-quarter of children die before the age of five; female literacy stands at 29 per cent; and 80 per cent of rural households run out of food before their next harvest. There are few industries and some 85 per cent of the population lives in the villages, dependent on growing export crops for wages or on subsistence agriculture.

These and other indicators of poverty and underdevelopment are in part explained by Malawi's lack of natural resources and extractive and manufacturing industries, and by the fact that Malawi was ruled for 30 years (1964—94) by the autocratic Dr H Kamuzu Banda of the Malawi Congress Party (MCP), whose economic policies created a highly unequal society. For decades credit facilities, technical assistance and land and trade policies fostered the growth of a small class of civil servants/estate owners, while the bulk of the population was left to plant local maize without fertilizer on small plots, using no more than a hand-held *khasu* (hoe). Educational policy also favoured the elite, since even primary school was fee-paying and few ordinary people could afford to educate their children. Tradition played its role, discouraging girls from going to school or working for wages, and encouraging them to marry early and have large families instead.

After the end of the Cold War, Malawi embarked on a process that culminated in a transition to multi-party democracy. By 1992 Malawi's aid donors felt they could withdraw non-humanitarian aid, while the churches openly expressed the people's frustrations with the MCP and the opposition coalesced and formed parties. The first democratic election in 30 years was held in May 1994. A former Secretary-General of the MCP, Bakili Muluzi of the United Democratic Front (UDF), was elected President for a fixed five-year term. In addition to political reforms he immediately introduced free

primary education and instituted a 'poverty alleviation programme' that continues — along with donor-imposed 'structural adjustment' — to guide reforms in all sectors.

As poverty deepens and drought, hunger and AIDS-related deaths become regular features, the transition to democracy remains incomplete. Civic education and rights protection programmes are underfunded and poorly staffed; the decentralization process and local government elections are continually delayed; institutional and legal reform in many sectors has been stalled; corruption proliferates; insecurity in the form of armed robbery and murder intensifies as police without warrants raid homes and remove suspects by force; and politicians continue to abuse their powers with near impunity. Of the institutions established by the new democratic Constitution that are meant to address abuses — such as the Ombudsman's Office, the Human Rights Commission and the Anti-Corruption Bureau — only the latter has begun to have some significant impact.

Progress in the field of freedom of expression has also been variable. There is now a Media Council, but it barely functions; the local chapter of the Media Institute of Southern Africa (MISA) has been more effective. A Code of Conduct has been framed and disseminated, but is often ignored by journalists and editors, many of whom are still underskilled. There are now two schools of journalism, both funded by foreign donors and both experiencing internal problems. There are two government-run radio stations — Malawi Broadcasting Corporation (MBC) Radio 1 (in the amplitude modulation — AM — waveband) and MBC 2 (an FM station, which offers 'alternative' programming, such as Asian music). Both stations use news copy from a single source and since the transition it has at times been shaped by the Minister of Information. Three new licences to start private radio stations (in the FM waveband) have been granted by the MPTC since the election. These were given to a rural women's group, the President's press secretary and the son of a government minister, although several other people who are not politically connected have also applied. Since the election, several journalists have been detained for short periods, a newspaper office has been raided by the army, another newspaper has been banned and threats of arrest have been made against journalists by politicians, including the President, on a number of occasions. The Malawi Broadcasting Corporation Act, which has been a focus of criticism by aid donors, non-governmental organizations (NGOs) and journalists for several years, is only now being repealed and a new structure imposed on the MBC by the Communications Bill.

When President Muluzi came to power he appointed Brown Mpinganjira as Minister of Information, Broadcasting, Posts and Telecommunications (to whom Malawi Posts and Telecommunications answers). Mpinganjira, a journalist once employed by the Department of Information, was detained in the mid-1980s by Dr Banda for undisclosed reasons. He later worked for the British Council in Lilongwe as a project manager, at which time he, along with Muluzi and others, formed the UDF. Until he left the Ministry Mpinganjira took a direct role in the workings of MBC radio (including news broadcasts), had strong opinions about the various initiatives to reform the MBC Act and blocked attempts to make MBC radio independent. Mpinganjira was removed from his post in mid-1997 and appointed Minister of Education. Sam Mpasu was appointed by the President to the Information portfolio. Mpasu, also a political prisoner during the Banda

years, had helped create the UDF. Immediately after the election he was appointed Minister of Education but was removed from office when he was accused of profiting from the purchase of school notebooks, a charge that was never proven. At that point he became Secretary-General of the UDF, without a government post, and was only taken back into government when Mpinganjira was moved. His behaviour with regard to the MBC and the independent media has been little different to that of his predecessor.

3 INFORMATION SERVICES

3.1 Land-based Telephones

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Land-based or fixed line telephone services are provided by the government monopoly operator, the MPTC. These are linked to the international telecommunications system through the region-wide Panaftel network, with its half-dozen satellite earth stations and microwave links, most of which was constructed in the 1980s. The system is only partially digitalized and significant investment is needed to complete the task. The cost of international phone calls remains high, at \$3 plus 20 per cent tax per minute to the United States.

In 1970, when the population of Malawi was approximately 4.5 million people, there were 5,000 telephones in the country. Ten years later there were 6 million Malawians, about 14,000 telephones and 91 per cent of subscribers were linked to the automated telephone network. In 1987 the Banda government set out its economic and social objectives for the next decade in its Statement of Development Policies. The government then promised that it would:

ensure the efficient provision of a network of national and international communications services with sufficient coverage and quality to meet the reasonable needs of those prepared to pay for such services. Specific targets include an increase in telephone penetration with particular emphasis on the rural areas, reducing the average pedestrian distance from nearest telephone ... from 16 kilometres to 10 kilometres, and increasing the number of telephone exchange lines from 15,000 to 45,000. By 1998, all telephone services are expected to be automatic and international subscriber dialling available to 99 per cent of subscribers.

At that time a demand for 70,000 telephones with 59,000 actually connected was forecast for 1996.

This has not come to pass. In late 1997 the Postmaster General (PMG), Mike Makawa, told an audience of entrepreneurs and officials in the telecommunications sector that the telephone network now has 103 exchanges, with a total exchange capacity of 65,000 telephones, although only 36,000 lines are actually connected for lack of cable. This means `a penetration rate of 0.3 per 100 population, one of the lowest in Africa.' (It is also about one-tenth that in China and one-150th of that in the United Kingdom.) The MPTC's `mission', he explained, is to provide

modern and efficient telecommunications facilities to the urban and rural population at competitive rates in order to act as a catalyst in the social and economic development of Malawi.

He outlined the MPTC's goals for the year 2000: the rate of telephone penetration ought to be 0.9 per 100 people; there should be one telephone in each village with a population of more than 500 people; no one should walk further than 10 kilometres to use a telephone; residential connections should increase from 45 per cent to 60 per cent; the number of people waiting for telephone connections should drop to 20 per cent of total connections; reported faults should be reduced to one per cent of connections; the percentage of faults cleared within 24 hours should increase to 45 per cent of all faults; while the number of complaints relating to bills should be reduced to 1 per cent. But, he added, the expansion of services is expensive. Investment of some US\$100 million or more is needed within the next three years if the MPTC is to install 100,000 more lines.

Complaints about services are widespread: for instance, installations even in major cities are difficult to organize and may require bribes; repairs are slow and incomplete; lines are of poor quality; international rates are high; and bills are sometimes not sent and are sometimes contain errors. Services have eroded to the point where they frighten off new investors and demoralize companies operating in Malawi; more than one donor has raised the issue publicly and privately with government. It has been recognized for some time that a major change in telecommunications service delivery is needed to attract investment and to expand and improve services in both the rural and urban areas.

In January 1998 a voice-mail service opened in Blantyre, where for a fee of K300 per month a subscriber could access calls that had been received and recorded by the bureau. In addition the subscriber could receive incoming faxes, e-mail and internet messages, and for an additional fee (K35—60) could send outgoing e-mail messages.

3.2 Pagers

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Several attempts have been made to get the MPTC to approve the creation of a paging service. A year ago, for instance, one Blantyre-based computer company finally received a licence after trying for some time to get one. Since then, though, it states that it has

been unable to have frequencies allocated to it. Similarly another company complains that it has made a number of technical proposals to the MPTC, but has 'hit blockages' all along the way. According to the Postmaster General, one pager licence has been allocated and another is pending at the moment.

3.3 Cellphones

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Cellphones were introduced to Malawi in 1995 with the formation of Telekom Networks Malawi Ltd. The new company raised US\$11 million from the Bank Mumiputra Malaysia Berhad in November 1995 (when the US dollar was worth 15.2 kwacha). Its first directors in March 1995 were Steven Majiga, then Postmaster General (now replaced by Mike Makawa), Bright Mangulama of the Ministry of Information, Manuel Magalasi of the Government Loans Board and four Malaysians. Its authorized share capital was K65 million divided into 6.5 million shares at K10 each. Of these, 10 shares of K10 each were issued to Telekom Malaysia (six shares) and the MPTC (four shares). In other words, Telekom Malaysia owns 60 per cent of the company. Mangulama was no longer a director after late 1995, when Charles Namijingo, a businessman from Mulanje, joined the team. He has since been replaced by a Mr Sinjani, an export-import dealer.

In essence this company, which began operations in early 1996, has had a monopoly of cellphone services. There are currently more than 6,000 cellphone users in Malawi and demand for new telephones remains high. Each installation costs the subscriber K6,300 (US\$290), monthly rental costs are K300 plus tax (or K360) and there is a fee of K3 per minute for using the cellphone. According to Telekom Networks' Financial Controller, this latter charge for service to anywhere in the country is one of the lowest in the world.

The cellphone network in Malawi is peculiar in that a person rarely brings a cellphone from outside Malawi and has a 'card' installed in the phone to make it work. In fact, it is widely believed by people who have bought cellphones from Telekom Networks that this is impossible. This, however, is not the case.

According to senior officials, it is possible but rarely done because of 'security and theft' — a person may have stolen the phone and may try to use it illicitly in Malawi. Therefore, Telekom Networks will not put a card in a phone that does not have an accompanying sales receipt. The fact that they do not advertise the possibility was more plausibly explained by a technical member of staff in Lilongwe, who stated that they do not do it in order 'to protect their investment'.

Currently local cellphone suppliers are allowed to sell directly to the public, although initially they only sold their phones to Telekom Networks, who resold them to the public. Even now the phones sold by Telekom seem relatively costly. For example, in early February 1998, at the Lilongwe Telekom office, a Siemens cellphone cost K14,060

(Model S4, reduced from K16,950) or K9,520 (Model S6), while Nokia phones cost between K7,100 (Model 1631, which used to cost K10,700) and K20,100 (Model 8110). The three local suppliers are Fersons (for Nokia), Ecolectric Ltd (Siemens) and Business Machines (Ericsson and Phillips).

According to Telekom Networks' Financial Controller, the company's profit margin on each phone ranges between 30 and 40 per cent maximum. If that is the case then the cellphones listed above cost Telekom Networks between K5,000 and K14,000 (or at the old rate of exchange, between US\$320 and US\$900). In the US cellphones — when not given away free as an incentive to subscribe to a cellular service — rarely cost more than US\$100. In other words, in Malawi the high cost of becoming a cellphone user comes at the beginning, when buying the phone, rather than later when using it.

Telekom Networks has had serious operational problems in spite of its monopoly status. First, it is virtually impossible for a person using a fixed line telephone to reach a cellphone number, especially during business hours. The reason is that there are only 90 channels linking the Telekom system and the MPTC network — 30 each way in Blantyre and 15 each way in Lilongwe — but more than 6,000 cellphones and 36,000 fixed line telephones. Initially Telekom Malaysia asked the MPTC to provide 300 connections, and now they are asking for a minimum of 240 — 180 both ways in Blantyre and 60 in Lilongwe. To do so requires upgrading the switching capacity; the PMG says that this work is now under way.

Moreover the cellphones' range is limited to 35 kilometres (maximum and determined by cellphone density) from the transmitters located in Blantyre and Zomba (in the southern region), in Lilongwe (centre) and in Mzuzu (north). Equipment will soon be installed in Mangochi, Chikwawa and Mulanje (all in the southern region) to serve the lakeshore resorts and the residents of the sugar and tea estates. It is incumbent on the MPTC to provide a 2 Megabyte (MB) connection to extend the service to the lakeshore at Mangochi. Reportedly Telekom Networks looked at expanding its service to Salima in the centre of the country, but according to a market survey, there is no significant demand for services there. The medium term plan proposes the installation of transmitters in trading centres along the M1 road between Lilongwe and Blantyre, which will facilitate communication by those travelling between the two cities and by anyone living in a trading centre who is able to afford a cellphone.

According to the PMG and Telekom's Financial Controller, Telekom Networks has no contractual obligation to provide communications links to rural residents, or to other users who do not have access to the fixed telephone network. Telekom Networks is strictly a commercial operation primarily aimed to service the business community.

Subscribers also complain that it is not possible to dial out of the country with their cellphones, though sometimes they receive calls. In fact, it is possible to have a card installed in a locally purchased cellphone at a cost of K7,000 (and ongoing charges for use) to enable the owner to call numbers outside the country. The reason this is not widely advertised (or known) is because if all users wanted the international service, the

cellphone connections to the MPTC system would become even more congested than they are now.

The high front-end cost of buying a cellphone — profits from which seem not to accrue to Telekom Networks nor the MPTC, but to the suppliers of the telephones — and the relatively low cost of ongoing phone use mean that the MPTC does not receive the full benefit of its investment, although it has huge ongoing costs (which it cannot meet) to develop the infrastructure needed to make the service work. This and the lack of social development obligations mean the service is both inefficient and exclusive, as the general public, including most city-dwellers, are unable to afford it.

There has been pressure by the donors to get the government to license another cellphone operator. Telekom Networks' Financial Controller and Chief Engineer argue that the market is too small to support another cellular company. Moreover, significant funding would be required to build the necessary infrastructure to make the new system functional and to integrate it with the existing systems. How this will be done when the MPTC is unable to meet the needs of the existing cellphone network remains unclear. Nonetheless, in July 1998, Sam Mpasu announced that the second cellphone company would begin operations in December 1998 — a 'Christmas gift to the nation' from President Muluzi.

3.4 E-mail and Internet Service Providers

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UNIMA, an e-mail server based at Chancellor College in Zomba, has been supported by external donors since its inception. For instance, World University Service (Canada) has provided the organization with technical assistance and has given groups and individuals working on human rights issues modems to connect to the international network. It is run by a physicist, Paulus Nyirenda, and serves several hundred subscribers. Epsilon & Omega, a computer supply and consultancy business in Lilongwe owned by a Malawian family, has a 'store and forward' e-mail service (via South Africa) with about 250 subscribers. Healthnet, which is based in the US, is freely available to health workers through the Malawi College of Medicine in Blantyre. It probably serves fewer than 100 people, but since Christmas 1997 the telephone line serving it has been unreliable. A leading computer business in Blantyre is Computer Solutions, started by a South African engineer, which has provided 'store and forward' e-mail services intermittently for more than three years. In early 1998 it had about 300 subscribers.

Currently there is one internet service provider (ISP) in Malawi called MalawiNet, which also has an on-line e-mail service for subscribers. It was launched in July 1997 — much to the surprise of even those working in the computer business — and the Memorandum and Articles of Association were filed the following month. MalawiNet advertises itself

as a joint venture between the MPTC and a 'US-based Company USCOMNET', although its owners are mostly Malawian.

To be more precise, according to company records filed at the Registrar General's office, when MalawiNet was formed its owners were MPTC and USCOMNET. USCOMNET — which had changed its name from Ufa Ltd in March 1996 — is, in turn, owned by Vishnu (also known as Jeff), Jayshree and Chiman Patel, a business family based in Limbe and Lilongwe. There is also a California-based company of a similar name — US ComNet Distributors, Inc., a division of US Trade Connection, Inc. — which is managed by Raj Patel (also president of San Francisco-based Trans-Pacific Investments) who supplied equipment to MalawiNet when it was setting up.

Also according to company records on file at the Registrar's office, when MalawiNet was formed in August 1997, its authorized share capital was K10 million divided into 10 million shares at K1 each. Of this two shares were issued — one to the MPTC and the other to USCOMNET. Mike Makawa, then deputy PMG, signed on behalf of the MPTC while Vn. Patel signed for USCOMNET.

MalawiNet's first directors were Tom Mpinganjira, an accountant and now chairman of Stockbrokers Ltd, and cousin to the then Minister of Information, Brown Mpinganjira; Armstrong Kamphoni and Henry Mvaya, the MPTC's Executive Director of Finance and Internal Auditor respectively. The Minister and the two MPTC employees reportedly hail from the same area of Mulanje district.

Although it is not reflected in the company records at the Registrar General's office, MalawiNet is apparently owned by the MPTC (38 per cent), USCOMNET (42 per cent) and the BLJ Trust (20 per cent). But who manages the trust is not clear, as it is not registered at the Registrar General's office. Tom Mpinganjira told one journalist that he is a trustee, while the Postmaster General told ARTICLE 19 that the former Minister of Information, Brown Mpinganjira, is a trustee. It is unclear whether there was a conflict of interest between Brown Mpinganjira's position as Minister and as a trustee of the BLJ trust because there is no documentation of when the trust became a partner in MalawiNet. But the indications are that it has been a partner since MalawiNet's inception, in which case there would have been a clear conflict of interest. The Anti-Corruption Bureau is currently investigating Brown Mpinganjira and MalawiNet.

In summary, there are a series of unanswered questions about the ownership of MalawiNet and its licensing as an ISP:

- Are there two or three owners of MalawiNet?
- If there are three, who are the trustees of the BLJ Trust?
- When did the BLJ Trust acquire its interest in MalawiNet?
- Why was MalawiNet the only company awarded an ISP licence?

In February 1998, MalawiNet had approximately 800 subscribers. It costs K2,600 (including taxes) to be connected to its internet service, and K1,872 per month for unlimited access. (An e-mail-only connection costs K1,300, with a monthly fixed charge of K312). According to the Executive Director, Bessie Saidi, these fees are similar to those charged by ISPs elsewhere in the region. While the monthly charge may seem high, she said, it is not because it covers unlimited on-line access to the internet.

At the time MalawiNet was starting its business, the other major internet service provider was CompuServe/AOL (America Online). At the international level, CompuServe/AOL had approached SITA — the airlines' and travel agencies' worldwide telecommunications and information service — to gain access to its global communications network. SITA's non-airlines communications subsidiary, EQUANT, agreed to sell CompuServe/AOL worldwide access to its network, so after 28 August 1997 subscribers in several African countries, including Malawi, were able to access e-mail and the World Wide Web through CompuServe/AOL.

Earlier, in February 1997, SITA had approached the MPTC to upgrade its 9600-byte line to a 64KB line, which in essence would permit SITA's subscribers to send and receive more information faster. (Rental on this line cost K600,000.) In March 1997, SITA paid K200,000 for a licence to operate this new faster service (thereafter the annual charge would be K150,000). The process was delayed, but in August 1997, a month after MalawiNet opened, Mr Hiwa, Deputy Director of Planning at the MPTC, called the local SITA manager to discuss the licence. At that point he told SITA that he had heard that they were providing CompuServe without a licence. Moreover, SITA could not have a licence for the 64KB line until the internet service was terminated. SITA believed that it did in fact have a legal right under its contract with the MPTC to transmit CompuServe and AOL through its network and disputed the issue.

In November, SITA was threatened with closure, but no action was taken. In December, the manager of one of the Blantyre computer companies met the executive director of MalawiNet and, not knowing that SITA had applied for a 64KB line, explained that the SITA/CompuServe/AOL combination would be a formidable competitor if its line was ever upgraded. Within two weeks real threats to cut off SITA's service were made, and at that point SITA's manager felt he had no choice but to terminate CompuServe/AOL's access. From January 1998 subscribers in Malawi were no longer able to access CompuServe/AOL services. As accusatory fingers pointed at MalawiNet, BUMAS, a Blantyre computer company took it upon itself to issue a statement defending MalawiNet, saying the company was not responsible for CompuServe/AOL being 'switched off'.

In early January 1998 SITA received its licence to operate its new faster line. A few weeks later the local manager of SITA approached the Postmaster General to discuss the CompuServe/AOL issue. According to the SITA manager, after looking at SITA's contract with the MPTC, the PMG agreed that the company did have the right to lease access to CompuServe and AOL. But the Postmaster General denies this, saying that while 'there is no question of not allowing him' to restart his service, SITA must apply

for an 'internet licence' because SITA's original licence to operate did not mention the internet. Thus the dispute continues, CompuServe/AOL subscribers are without a service and considerable numbers of Malawi-based users have switched to MalawiNet.

Cutting CompuServe/AOL's service, leaving MalawiNet in a monopoly position, reflects the treatment meted out by the MPTC to other potential ISPs (and competitors of MalawiNet) since the election. Business people in Malawi complain that they have tried since 1994 to become ISPs, but with no result. For instance, with an interest in establishing internet services one local computer company with international connections approached the MPTC three years ago, before there was any ISP in Malawi, to get a licence to use an MPTC line or to erect a satellite dish — a VSAT (a very small aperture terminal) — to up- and download internet transmissions. According to the company manager, the VSAT licence was refused 'due to policy', but the MPTC agreed that the company could lease a 64KB line. The company paid a deposit of K58,000 for the licence (setting up operations will cost in excess of K1 million more in licence fees and line rentals) but now two years later the company is still waiting for the line. In the meantime the company began sending its technical data to the MPTC, which the latter requires before issuing a licence. The manager suspects that 'all our ideas and information' were used by MalawiNet to plan its operations, but is unable to prove it.

While this and other companies were waiting for lines and licences, the MPTC gave MalawiNet an 'E-1' or 2MB line, which is so powerful it can be used for television transmissions, as well as a licence to operate as an ISP. At the public launch in Blantyre, the MPTC claimed that 'nobody in Malawi had applied' to operate an internet service. According to the company manager mentioned above, who attended the meeting with papers to prove he had applied some time before for a licence, the chair of the panel seemed unwilling to recognize any speaker in the audience who could prove that MalawiNet was not the first company to request a licence. He did get his say, though, when the audience — partly comprising other business people who were also upset by the MPTC's decision to give MalawiNet the go-ahead — insisted that he be given a chance to speak. At that point he says he demonstrated the falsity of the MPTC's claim. Still, the company is without a line or a licence to become an ISP.

A different company has 'another sorry tale of frustration' to tell. In 1996 it too approached the MPTC to start an internet business, asking for a 64KB line (for a rental fee of K600,000) and a licence to operate (K200,000), with the idea of developing a network that would be shared with other ISPs. After looking at the equipment available and realizing that the MPTC did not have the technology to support an ISP, this company's owner sourced new equipment in South Africa to upgrade the existing system. At this point the company also registered the Top Level Domain 'mw' or Malawi with INTERNEC, the global domain management structure. Meanwhile the company ran a 'store and forward' e-mail service, and its owner met regularly with Mr Hiwa to discuss the proposal.

Also in 1996, the two aforementioned companies investigated the possibility of starting a joint venture with World Net Africa, a South Africa-based company, which would have

bypassed the technology bottleneck at the MPTC by setting up its own VSAT. Both companies would have become internet service providers in competition with each other, but using the same VSAT and World Net Africa system. Although the companies tried 'at the highest level' to get approval, the joint effort failed.

In the midst of these efforts to get a licence and line to start up an internet business, the owner of the latter company was surprised to hear that the MPTC was establishing MalawiNet. Soon, however, the US consultant to MalawiNet, Bob Evans of Media City, a San Francisco-based computer company, approached the local company to enquire about the 'mw' domain. This began a period of intense discussion, as the two engineers debated the best way to raise awareness and increase familiarity with the new technology, to promote internet services in Malawi and to link other ISPs into the MalawiNet system. At this point the idea of opening an 'internet cafe' was mooted. Soon Evans arranged to have MalawiNet lines connected to premises where computers were installed, and the cafe opened. Meanwhile Evans encouraged the owner to consider marketing MalawiNet as a reseller of its services; as a result materials for a MalawiNet 'starter-kit' were printed. But then Evans completed his task and left. At that point, according to the owner,

the project seemed to lose direction, no further communication took place, and nothing happened on the appointed day for the official launch. About two weeks later the company learnt that MalawiNet was marketing direct to the end-user and that no participation was planned for resellers.

Soon the lines and 'demonstration accounts' that were being used to run the internet cafe were closed down, and there began a long-running dispute about payment for their use.

One senior MalawiNet employee confirmed that when the company began it intended to give access to other companies so they could become ISPs, reselling MalawiNet's service. There was 'plenty of unused capacity', he said. The current chief executive at MalawiNet, Bessie Saidi, agrees: the company now uses only 128KB of its 2MB line. But, she said, the plan to allow other ISPs to resell the MalawiNet service is 'on hold' because these companies will require 64KB digital lines, which must be provided by the MPTC. All that are available now, she said, are 96KB analogue lines. It is 'not a policy decision' to keep the other ISPs out of the market, but one based on the incapacity of the MPTC to provide the lines, she concluded. As a result companies that once hoped to run their own internet businesses, and later to sub-let access from MalawiNet to set up as ISPs, are relegated to installing MalawiNet's software for a small fee on their new customers' machines.

A fourth group to complain about the preferential treatment given to MalawiNet was the Sustainable Network Development Programme (SNDP) of the United Nations Development Programme (UNDP), which had been trying to establish internet connectivity for more than two years before MalawiNet was launched. According to a press report of a UNDP spokesman at the time of MalawiNet's launch,

his organisation was very displeased with the decision by the Malawi Posts and Telecoms, whose political head is Brown Mpinganjira, for opting to set up the network on a commercial basis when UNDP could have provided the service cheaply. [The UNDP] was already in the process of establishing a similar network with the MPTC which has surprisingly gone into partnership with an American firm [This] is not in line with a basic agreement the government signed with the UNDP in 1994 [After] completion of the preparatory stages, the UNDP was now waiting for the government to grant it a licence to enable it to go ahead with the project. He ... said ... the government has been mum on the issue...

The SDNP initiative is part of a larger UNDP capacity-building programme in support of the Malawi national environmental programme. As part of this effort UNDP intends to help the government develop an environmental information system, facilitate district-level information-sharing, and create a district environmental network linked to the national network for information-sharing. The SDNP network will comprise a main server and three regional servers as well as six district servers, all of which will be connected using high-speed communications links so that users have access to the internet by telephoning a local number. The SDNP project has attracted the involvement and support of development workers as well as entrepreneurs in the communications sector generally.

An SDNP steering committee was initially formed to guide the process. It comprised 10 people: one from the MPTC and one from the university, both of whom were to represent the parastatals; two from NGOs; two from government; two from the donor community; and two representing the private sector. The committee was meant to debate policy and to oversee staff recruitment, the procurement of equipment and the establishment of offices. The MPTC was represented by Mr Hiwa, who, according to other members of the committee, often told other members he planned to attend meetings but did not. As a result the work of the committee was frequently stalled because it was not informed of MPTC policy. In the end all it was able to do, according to one close observer, was 'talk, talk, talk, but it never achieved anything'.

For example the steering committee found it impossible to go forward because it could not find out from Hiwa whether the government approved its plans to install a VSAT or not. All along the UNDP had agreed to import and set up a VSAT, but the Minister of Information had to approve it. While the Minister never denied the application, he did not approve it either, and so the matter 'dragged on'. In fact, delay in approving applications and specifications became one method of slowing down the whole SDNP development process.

When MalawiNet was launched — without the knowledge of the UNDP, whose agreement with government must have predated that of MalawiNet — and it became apparent that the Minister had granted MalawiNet a licence, access to the national satellite, and a 2MB line, members of the SDNP task force became angry and

demoralized and they stopped meeting. The SDNP initiative nearly collapsed at that point.

By all accounts the situation improved after mid-1997 when Sam Mpasu replaced Brown Mpinganjira as Minister of Information, and about the same time Steve Majiga was replaced by Mike Makawa as PMG. Specifically, with Mpasu as Minister, reforms in the communications sector could once again be considered, while progress on various information initiatives, including the SDNP, was once again deemed possible.

For instance, by February 1998 the manager of the SDNP was able to begin thinking about whether to form a company, a foundation or a trust to run the new internet service. Negotiations had begun about the licensing fee and a possible waiver for two years (by which time it hopes to be financially self-sustaining). Meanwhile the equipment had been ordered and the most optimistic scenario saw the hub at the Polytechnic in Blantyre operational within a few weeks. Discussions with government regarding tax relief were also under way.

Some issues are still unresolved, however. For instance, while there have been 'positive indications' from the Ministry of Information that SDNP may be allowed to install a VSAT rather than have to link up to the national satellite, this promise has not been made in writing. Similarly, the government has said it will provide SDNP with a licence to operate, or will waive the licensing requirement, but in neither case has anything been committed to paper. Because of the delaying tactics used to halt the progress of the SDNP initiative in the last couple of years, close observers remain sceptical and maintain a 'let's see' posture. As one person close to the project said, 'we get positive feedback from everybody but then it stops.... It all gets stuck somewhere'.

Another possible internet programme that could benefit Malawi is the Leland Initiative. This is a five-year US\$15 million US government effort to extend full internet services to approximately 20 African countries. The first step in implementing this programme in any country is an indication of interest from the USAID mission in the country that 'internet connectivity is desirable and feasible'. In the light of the animosity between the ex-Minister of Information and the US Embassy in Malawi, the Americans probably felt that the political preconditions for liberalization of the communications sector were not present. This may well have changed, however, with the announcement by Mpasu in September that 'the time has now come to open the sector to private sector participation'. Therefore, the question now becomes how the Leland Initiative can complement and support projects, such as the SDNP, that are already under way, as well as help private businesses that want to share a VSAT and become ISPs. Certainly high-speed digitalized connections are needed. How the initiative will fit within the government's new communications policy has yet to be determined as well.

To summarize: by mid-1998 there had been several internet initiatives by private businessmen and women, all of which had been unsuccessful. Only MalawiNet, with its close connections to the Minister, has moved forward. All other stakeholders cite blockages at the MPTC as the cause. One businessman stepped back and looked at the

situation as a whole, and said that, with regard to value added services, the MPTC has demonstrated in the last couple of years that it has 'no policy, no vision, no leadership, just greed'.

3.5 Broadcasting

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The government-run Malawi Broadcasting Corporation (MBC) still dominates radio broadcasting in Malawi, just as it did before and at the time of the 1994 elections. Since the elections, however, MBC has created a second radio station that offers 'alternative' programming. Urban listeners generally feel that its advantage over Radio 1 is that it provides rock and roll and Asian music. Its news coverage is basically the same as that found on MBC 1. Since the transition a number of individuals have attempted to get licences to start their own FM radio stations, but these have been refused, often for technical reasons. Only Alaudin Osman, the president's press secretary, and the son of Minister Harry Thompson have been given licences to start stations in Blantyre broadcasting sports and entertainment. The latter station, 101FM, started broadcasting in September 1998. A third station, for rural women, supported by donors, has also received a licence recently. The African Bible College runs a religious station, which has not been permitted by the MPTC to broadcast news (but which concentrates instead on morality plays, Christian music and edifying discussions). It is located in Lilongwe.

Malawi is still without its own national television station, although since 1994 the former and the current Ministers of Information have promised that Television Malawi (TVM) will start broadcasting soon. Oddly TVM has all along been a project within the MPTC rather than MBC, although in mid-1996 a senior executive at the MPTC told ARTICLE 19 that the MPTC 'is not in the TV business' and that after the station became operational it would be privatized. As with Radio 2, external donors have been reluctant to fund television development, firstly because it hardly seems a priority in a country where funds are so badly needed in other sectors, and secondly because they were reluctant to support communications projects without a new MBC Act. Over the years, too, there has been some confusion about the less-than-transparent purchasing of the TVM equipment. In early 1998, the Minister went to Beijing to ask for funding, but that possibility is now linked to China's demand for full diplomatic relations with Malawi (which has traditionally relied heavily upon its Taiwanese connection).

Funding for development of TVM has come from the MPTC, which has its own financial difficulties, rather than from central government. This has slowed progress and is keeping the station off the air. In mid-1998, the parastatal Malawi Development Corporation promised TVM K30 million and became 51 per cent shareholders in the project. The MPTC held the remaining 49 per cent. According to the Project Coordinator, with sufficient funding (approximately K30 million) TVM can be up and running within three months. In fact, according to Sam Mpasu, the second 'Christmas gift' from the President

to Malawi is to be TVM, which is to be operational in December 1998. It has stored five months of programming, mostly on educational topics, and has acquired satellite dishes from German and French broadcasting companies so it can download their programmes. Its Sony UK equipment is half-paid for, and partially installed in its new studios at the Kwacha Conference Centre (which belongs to the Ministry of Tourism) in Blantyre. TVM has a staff of 36 people, including production crews, producers, camerapersons, presenters and reporters. Training has come from the German external service, Deutsche Welle, and from the Thomson Foundation in the UK. As a public broadcaster, TVM's goal is to 'foster unity and development, [and to] provide civic education and information'. Initially it should broadcast in Lilongwe, Blantyre, Mzuzu and Zomba from 4—10 p.m. during the week, and from 7—10 a.m. and 2—10 p.m. at the weekends.

Satellite television is available to those who can afford television sets, decoders and dishes. Satellite stations that can be received in Malawi include South Africa's MNet entertainment channel and a movie channel, as well as the British Broadcasting Corporation (BBC) and Cable News Network (CNN), which provide alternative news but to a very limited audience.

After trying for several years to get a licence, recently Raise Ltd (previously belonging to Lonrho and now apparently primarily owned by a Zimbabwean company, FMI Holdings) has been licensed by the MPTC to establish a rebroadcasting service. Raise will bring down satellite signals and rebroadcast BBC, CNN and other stations to families in the major cities for a hefty price. Allegations of corruption have been already levelled by the *Malawi News* against an unnamed government official regarding the failed purchase of shares in Raise Ltd by the MPTC, and 'why [FMI] got a licence before they had finalized the issue of shareholders and capacity issue'.

4 COMMUNICATIONS REFORM

4.1 The Process

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A good deal of the pressure leading to the transition resulted from popular frustration with President Banda's suppression of free speech. For nearly 30 years Malawians were afraid to complain even to their spouses about Banda's rule, for fear that their words would be reported and they would be hauled off to prison. Publications and films from outside the country were purged by the censors, while self-censoring editors at MBC and the two Banda-controlled newspapers produced reports that accommodated the president's biases. Control of information was crucial to the success of Banda's regime, and it is little wonder that the spread of critical information — through fax machines, broadsheets and ultimately alternative newspapers — hastened its end.

From before the election until the present there have been calls for media reform. In August 1994, for instance, the International Federation of Journalists brought together media workers, officials and human rights activists to discuss the formation of a media council, reform at MBC, the strengthening of journalists' training, the formation of a media workers' union and media economics. Several other meetings have been held since — to establish a Media Council and a code of ethics for instance, or to train journalists about human rights. Changes in the MBC Act have been the focus of the efforts of ARTICLE 19 and its local partner, the Civil Liberties Committee (CILIC), of MISA-Malawi and of foreign embassies. Indeed, the major aid donors (which include the European Union, USA, UK, Germany and Denmark) have held firm with regard to the MBC. Almost all donors (with the exception of UNESCO Malawi) have followed suit and have refused to fund media projects, such as Radio 2 or TVM, until a new MBC Act is passed. The MBC Board itself commissioned a small working group of independent lawyers to draft a new MBC Bill which would free the Corporation from direct ministerial control. After much stalling from the then Minister, Brown Mpinganjira, the MBC Board's draft was reviewed at a workshop in April 1997 involving media, government and representatives of the broader political and civil society. The draft, which provided detailed guarantees of the managerial and editorial independence of the MBC, was widely welcomed.

Nevertheless, little real progress was made until Mpinganjira was moved to Education. That — and the government's recognition of a need for private investment in telecommunications and the global trend toward (and the donors' insistence on) 'privatization, liberalization and deregulation' — led to the recent reform initiative.

Initially efforts were made to change only the MBC Act of 1991, but the first draft of the new bill left important residual powers in the Minister of Information's hands. At that point it became clear that an independent broadcasting authority would be needed to oversee some of his old duties — the allocation of licences for radio wavelengths, for instance — while MBC would be left to specialize only in broadcasting. At the same time the regulatory arrangements for posts and telecommunications had to be modified if the MPTC was going to be significantly changed. In the end the government decided to amend three acts — the MBC Act, the Radio Communications Act, and the Malawi Posts and Telecommunications Corporation Act — by incorporating them into a single new act.

A task force was formed by government in mid-1997 to develop a new telecommunications strategy and to prepare for the establishment of an independent regulatory body for the communications sector generally. It began its task by taking a 'study tour' of four African states and preparing a report for government.

Although the government's stated goals were to 'ensure that a policy document for the Telecommunications Sector is developed in the most transparent manner and that the public should participate in the process', the task force comprised only men working for government. In fact, according to the task force chairman, Evans Namanja, now Deputy Director of Telecommunications at the MPTC, no one ever suggested that it include a private sector member, although it was enlarged after the first public meeting with the

addition of specialists from broadcasting and elsewhere. In the end, the task force comprised two people from the MPTC, one from the post office, one from TVM, one from MBC, one from the Privatization Commission, the Law Commissioner, one from the Attorney-General's Chambers, one from the Ministry of Finance and one from the Ministry of Information. While members of the public and business people involved in telecommunications and broadcasting were invited to the October workshop to express their views, few were asked to come to the 13 January 1998 meeting where the policy document and draft Bill were presented and debated. This meeting, as one member of the task force explained, was for 'specialists'. On the other hand, according to the chairman of the task force, after the Bill was discussed the public and anyone else who wished to were asked to make written submissions suggesting modifications, although few did (with the exception of the World Bank and some government officials). Nevertheless, several people complained to ARTICLE 19 in February 1998 that although they asked for a copy of the policy document, they were denied access to it even after it was presented. 'It has to go to the minister first,' one was told, while another businessman was told 'it is a government document, not for the public.' While the public remained ignorant of the major changes being discussed, the Bill was sent to Law Commissioner and the Ministry of Justice for legal drafting before going to the whole cabinet.

At the beginning of 1998, stakeholders heard that the Bill would go before the National Assembly at its first session in March 1998, but soon they were to learn that it would be postponed again, 'for technical reasons', and would not be presented until the parliamentary session in June. Since reform had been promised since 1994 but nothing accomplished, at the Consultative Group Meeting on Malawi in Paris in May 1997 the donors made it clear that they wanted to see changes to the MBC Act and liberalization of telecommunications soon. The donors' initial reaction to this latest postponement was scepticism about the reasons for it. Yet it should be recalled that the task force 'started its work from scratch in July 1997', as there 'had been nothing done' at the MPTC regarding changes in telecommunications policy before that. Getting the Bill and policy ready has taken the task force longer than expected.

However, the Bill was not tabled in the June session of Parliament and by September had just reached the Cabinet from the Cabinet committee on legal affairs. Guarantees have been given to opposition parties, donors and the public that it will be presented at the October session of Parliament, although sceptics argue that a failure of political will may mean that it will be delayed again or that Cabinet will institute major changes before it reaches Parliament.

4.2 The Communications Bill and Communications Sector Policy Statement

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The Communications Bill incorporates a number of elements of the MBC Board's own draft but goes far beyond it in setting out a unitary regulatory structure for the entire sector. Broadcasting and telecommunications will fall under a new Malawi Communications Regulatory Authority (MACRA). The Bill separates the post office from telecommunications and turns it into a new parastatal company to be known as Malawi Posts. The Malawi Posts and Telecommunications Corporation, the current parastatal, will be privatized as the telecommunications operator, to be known as Malawi Telecom. When and what form privatization will take — selling of shares to the public or raising funds from an investor, for instance — has not yet been decided. In any event, after separation the post office is supposed to run more efficiently and profitably and the telephone company should have enough money to expand and make needed improvements. Whether or when an additional fixed-line telephone company will be permitted also awaits the decision of MACRA. A new cellphone company will only be allowed to operate (according to the policy statement) 'as soon as demand is sufficient to justify it'. VSATs will be permitted for private networks, but not for those businesses 'providing a telecommunication service to others'. In other words, it appears that the national satellite and Malawi Telecom's transmission capacity will be used wherever possible by internet service providers and others. This will generate income for Malawi Telecoms. MBC will incorporate Malawi Television, although it and MBC radio will be run separately. No other land-based television system will be allowed for seven years. MBC Radio 1 and 2 (and presumably other MBC stations at a later date) are deemed public broadcasters, and are allowed to broadcast nationwide. Apparently, MBC will continue to dominate the AM air waves. Private (and community) broadcasters will be able to open FM stations — but no more than two FM licences will be given to any person or group. A code of conduct for broadcasters will pertain to all broadcasting service providers. An independent board of directors will be appointed to establish policy at MBC, while a manager will be appointed by the board to run the corporation. The new body, MACRA will, *inter alia*

regulate the operation of Telecommunications Networks and the provision of Telecommunication services; ... regulate Broadcasting Services; ... plan the use of radio frequencies and assign rights of use to particular persons;... supervise the provision of Postal Services; [and] ... propose licence modifications and amendment.

It is expected to raise funds through licensing and will receive government subsidies.

MACRA has the responsibility to ensure 'reliable and affordable communication services' throughout the country (s.4.1). It is charged with protecting the interests of consumers, promoting open access to information and promoting efficiency and competition (s.4.2). It is required to be independent and impartial in the performance of its functions (s.4.3).

MACRA's functions include providing training in communication matters, as well as advice to users and providers of communication services and to the Minister. The authority will be responsible for regulating the provision of telecommunication,

broadcasting and postal services, including the licensing of telecommunications and broadcasting providers and planning and allocating the use of the frequency spectrum (s.5).

Members of MACRA are to be appointed by the President from a list of nominees provided by the Public Appointments Committee of Parliament. Members of the authority must be resident in Malawi, have expertise in a relevant area and 'when viewed collectively, represent a cross-section of the population of Malawi' (ss.6-7).

One of the crucial aspects of MACRA's role is the regulation and licensing of telecommunications, radio and broadcasting. Its mandate in relation to broadcasting is to regulate provision of sound and television broadcasts to, among other considerations:

- ensure the provision of regular news services and programmes on matters of public interest;
- support the democratic process through civic education;
- promote a diverse range of national and local broadcasting services;
- promote the integrity and viability of public broadcasting services; and
- ensure equitable treatment of candidates in elections (s.45(1)).

Broadcasting licences will be allocated under a tendering process, whereby MACRA will announce in advance the licences to be allocated and, by notice in the official *Gazette* and other media, invite tenders. The public will then be invited to make representations on MACRA's proposals and the applications submitted. Applicants have the opportunity to reply to public representations (s.48).

There are restrictions on who may control a private broadcasting licensee. No party-political body can be licensed and no one may control more than one national private broadcasting licensee, or more than two local private broadcasting licensees (ss.48 and 50). MACRA has the discretion to limit foreign ownership of companies receiving licences and to limit the proportion of air time devoted to advertising, provided that such limitations are applied across the board (s.51).

A detailed procedure is set out for dealing with breaches of the conditions of a licence. MACRA is required to publish all findings and the reasoning behind its conclusions. The Authority has a sliding scale of sanctions that it may apply for breach of a licence condition, or the broadcasting code of conduct, including broadcasting a correction or balancing opinion, or imposing a fine. Non-compliance may be punished by suspension of a licence, but only for a period up to 30 days in the first instance (s.54).

Under the new Bill the Malawi Broadcasting Corporation is required to operate in accordance with a series of principles which offer a marked contrast to the operation of

state broadcasting during the period of one-party rule. The MBC is required to 'educate, entertain and inform'. It must encourage free and informed opinion, reflect the wide diversity of the country's cultural life and encourage respect for human rights, the rule of law and the Constitution. The MBC must operate without political bias and independently of any political party, support the democratic process, refrain from broadcasting any matter expressing its own opinion on current affairs, provide balanced election coverage and have regard to the public interest (s.87).

As with appointments to MACRA, the MBC Board of Directors is to be appointed by the President from a short list drawn up by the Public Appointments Committee of Parliament. Board members should have relevant qualifications and must represent a cross-section of the population. Individuals who have a recent conviction for a crime involving dishonesty, undischarged bankrupts and political office-holders or public servants are ineligible for membership of the Board (s.90).

The draft Communications Bill represents an enormous advance on the practice of the past, as well as tidying up the legislative confusion which preceded it. Under existing law, the MBC itself functions as principal adviser to the Minister on matters of broadcasting policy. Licensing of private broadcasting (which has in fact never been unlawful) has been the responsibility of the Postmaster General, who was until recently a senior civil servant within the Ministry of Information, Broadcasting, Posts and Telecommunications. While there may have been criteria and a procedure for licensing broadcasters, in practice these were used as a justification to bar the establishment of would-be independent radio stations. A senior MPTC official told ARTICLE 19 in July 1996 that there were 16 pending applications for broadcasting licences. Of those, only that of Presidential Press Secretary Al Osman has been granted.

The new Bill, by contrast, establishes clear criteria and a formal procedure for tendering and issuing of licences in all these areas, as well as establishing an independent body to oversee them. Reflecting the contemporary convergence of technology in the telecommunications and broadcasting fields, these powers are centralized in a single regulatory body.

4.2.1 Shortcomings

4.2.1.1 Appointments

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Freedom of expression campaigners, however, have identified a number of problem areas in the Bill. Although there are important safeguards included in the appointment process for both the MBC Board and MACRA, there are fears that the Bill still leaves too great a margin of presidential discretion in appointments. The President can, if he chooses, reject any of Public Appointments Committee's nominees. Indeed, there were worrying reports in September 1998 that the appointment procedures for the MBC Board had been

modified by the Cabinet legal affairs committee. These changes apparently allow the President to appoint the Board on the advice of the Public Appointments Committee. The effect of this is that the President could select someone not recommended by the committee. It is the view of ARTICLE 19 that the committee should nominate candidates and that the President should be bound to accept this list of nominees unless a particular person is lawfully disqualified. Reasons for disqualifying persons should be clearly enumerated, to reduce the discretionary powers of the President and eliminate any control he may have over either board.

4.2.1.2 Minister's role

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Throughout the Bill reference is made to the Minister of Information. For example, with regard to the management of radio frequencies, MACRA 'shall comply with any general directions given to it by the Minister as to the manner in which it is to carry out its duties ...' (s33(2)). Similarly, with regard to telecommunications (s16(1)), 'the Authority [MACRA] may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties ...'. Later (s57(1)) the Bill states that the Minister, 'on the advice of the Authority, may issue from time to time regulations governing the provision of Broadcasting Services'.

The Minister is central to the appointment of the board of directors of Malawi Posts (s76). There are seven members of the board, six of whom are appointed by or answerable directly to the Minister. Moreover, according to the Bill, the Minister appoints the Postmaster General (s77).

It is ARTICLE 19's view that the Minister's role should be reduced to a minimum. This Bill does not do that. The functioning of MACRA and through it, the MBC, posts and telecommunications, should be divorced from politics, and the only way to ensure this is to reduce the role of the Minister of Information and to establish regulations that guide the Authority, and permit it, only when it feels it is necessary, to consult the Minister. Although ministerial regulations or directives could not, in law, override the provisions of the Communications Act itself, this frequent recourse to the Minister is an unfortunate echo of the one-party period and may in practice inhibit the independence of MACRA and the other bodies constituted under this law.

4.2.1.3 Conflict of interest

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The inability of powerful and wealthy individuals to separate government affairs from private business characterized the Banda regime and little has been done by the

authorities to stop it since. Indeed, since 1994 there have been a number of cases brought to light by the press where officials have clearly used their positions to benefit financially. This appears likely in the communications sector too. Therefore, the Bill should make sure it addresses this issue head-on, so that in the future no one in the communications business can make policy and no one in a position to make policy can directly benefit from it financially.

A considerable cause for disquiet is the lack of adequate safeguards in the Bill against conflicts of interest for members of MACRA and the MBC Board. In neither case is an individual disqualified from membership by virtue of having a financial interest in broadcasting or communications, although they are required to declare that interest and not take part in any discussion or vote which might affect that interest. No MBC Board member may be a private broadcasting licensee, but it is remarkable that no such exclusion applies to MACRA members. The Bill could be greatly strengthened by provisions which would exclude close family members of MBC Board or MACRA members from holding financial interests in relevant companies.

4.2.1.4 Freedom of expression

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There are a number of ways in which guarantees of free expression can be incorporated more explicitly in both the policy and the Bill. First, when enumerating the general duties of MACRA (s.4) it should be carefully stated that one of these is to promote and protect freedom of expression and information (not just access to information) as laid out fully in the Malawi Constitution (Articles 34, 35, 36, and 37). This should alert the board, the government and the public that this task ranks equally with ensuring efficiency, competition, research and development.

More specifically, however, freedom of expression does not only mean that a few FM stations are permitted to broadcast in the major cities. It means that competing points of view can be fully aired. It means criticisms of all politicians, public figures and government officials, including the president and cabinet members, may be broadcast widely. It also means that preferences may be stated and opinions presented. These are an essential part of building a democratic multi-party state. Therefore, the thrust of the new law and policy ought to be to promote the dissemination of as many different opinions as possible, so that the public can hear and consider competing 'fact' and points of view. Only then can they make an informed choice during elections, and be fully aware of and involved in the decisions affecting them in between times.

Rather than promoting a free flow of ideas the new Bill opens the airwaves to competitors, but only in restricted circumstances. First, MBC will be the only 'national broadcaster' — that is, broadcasting nationwide — and it will apparently have sole access to AM frequencies for a seven-year period. Other private stations will be permitted access to FM airwaves, which means that they will be able to broadcast to areas within a limited

radius. The prohibition on one individual or company owning several broadcasting stations — while not objectionable in itself — means that the MBC will thus retain its monopoly of nationwide broadcasting.

Another aspect of the Bill which needs further consideration is its attempt to lay down standards for the content of broadcasts. The prohibition on material which is 'indecent or obscene or offensive to public morals ... or religious convictions' (Schedule 3) is problematic, given the notorious difficulty of defining such concepts with any degree of precision. Attempts to balance points of view on controversial issues are a well-meaning effort to avoid the one-sided coverage of the past. However, these objectives might be better served by ensuring a wide variety of different viewpoints on the airwaves, rather than over-detailed legislation on content.

In granting a licence to operate a telecommunications service, a company will be judged whether it passes muster on 'national security' grounds (s.19(2)). This provision gives the President wide and unacceptable powers to override MACRA and refuse a licence on grounds that are not defined in the Bill and can be defined arbitrarily at the time a licence application is filed.

Finally, the Bill attempts to restrict free expression during a state of emergency (s.43). It gives the President the power to compel a broadcaster to transmit any message relating to the emergency in the 'interests of public safety and tranquillity', and to 'take over a radio station', compensating the owner and returning the station to the owner 'when the President declares that the public emergency is at an end'.

This clause is not satisfactory for a number of reasons. First, limitations on expropriation of property are covered in the Constitution (Article 44 (4)) and any new legislation advocating 'take overs' should be in conformity with this — and with Article 28 (2), stating that 'no person shall be arbitrarily deprived of property'.

Derogations with regard to freedom of information and expression were very carefully limited by the authors of the Constitution to ensure that a 'rule of silence' was never imposed on Malawians again. Therefore, regulations regarding attempts to take over radio and TV stations must be brought into conformity with Article 45 (3) of the Constitution. Specifically, derogation of freedom of expression and other guarantees can only be acceptable when they are not inconsistent with Malawi's obligations under international law and only during war or threat of war when derogation prevents the lives of defensive combatants and military objectives from being placed in jeopardy. Finally, the National Assembly and the High Court both have a role to play in declaring and ending a state of emergency (Article 45 (4) and (5)) that is not reflected in the simple words, 'when the President declares that the public emergency is at an end' (s.43(2) of the Bill).

4.2.1.5 Other concerns

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At various points in the Bill, MACRA is given powers to settle disputes, as well as to enforce sanctions against telecommunications, radio and broadcasting licensees who breach the terms of their licences. It is important, however, that an explicit right of appeal to an external authority is included in the Bill. This should not only be the right to judicial review of the procedure adopted by MACRA in any disciplinary case, but should also entail an appeal on the substance of the Authority's decision.

Section 88(1)(a) indicates that Television Malawi will become part of MBC, which is, in fact, laid out in the policy document. The fact that TVM will have a seven-year period of exclusivity is not mentioned in the Bill. This major policy decision should be discussed by the public, stakeholders and parliament as well.

Value added services — internet, e-mail, etc. — are not adequately covered in the Bill, nor in the policy statement. Nonetheless, major policy decisions are being recommended by the task force without parliamentary or public debate, especially when it proposes that 'a further cellular mobile licence will be issued as soon as demand is sufficient to justify it', 'providers of these services, or their customers, will normally lease the transmission capacity they require from national and local operators', and that the 'VSAT licence will be limited to organizations that have [a] legitimate business interest in operating a VSAT network and that are not providing a telecommunications service to others'. While this wording seems clear, the policy is not. The PMG stated that the phrase meant that only those transmitting voice would not be allowed to use VSATs but ISPs could use VSATs to transmit data. On the other hand, the chair of the task force, Evans Namanja, said that this clause barred even ISPs from using their own VSATs to up- and download internet and e-mail messages. Yet, he added as an afterthought, licences for ISPs to use VSATs might be given. In other words, what exactly is intended by this paragraph remains obscure.

5 CONCLUSION

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The delay in passing the Bill may be positive if it creates an opportunity to remedy some of these shortcomings. But the need for reform of broadcasting is becoming increasingly urgent. Malawi is due to hold its second multi-party presidential and parliamentary elections in mid-1999. There have been murmurings from the government that it expects the MBC to play a 'loyal' role in its election coverage, whereas the Communications Bill sets out explicitly the duty of impartiality of the public broadcaster in elections. It is becoming a matter of urgency that the Bill be tabled in Parliament and passed before the elections. The test of its effectiveness will come very soon.

Local and regional journalists and human rights campaigners have met repeatedly since 1994 to draft and push through a new MBC Act. Now a similar process is needed to ensure that consumers' and entrepreneurs' views and interests regarding telecommunications, including value added services, are adequately reflected in the new legislation. Forming a committee of stakeholders was suggested to ARTICLE 19 by more than one entrepreneur. Also, the chairman of the task force, Evans Namanja, stated that a group such as this should be formed to meet with members of the task force, and with engineers, planners and others to discuss 'bottlenecks' and to plot a way forward that suits them all.

In the light of events in the telecommunications sector in the last two years, transparency, openness and public input are essential to any further policy-making. An opportunity to create this new atmosphere is evident now with the appointment of the new Minister of Information, the new PMG, and eventually the formation of the new regulatory agency, with a new chairman. Namanja did point out that MACRA will have to re-license all broadcasters, ISPs, and others transmitting voice and data from, or within Malawi. At that point any irregularities in the establishment, ownership or licensing of existing operators will be addressed and rectified.

Taking a lesson from media workers, a special meeting of concerned parties should therefore be convened by stakeholders to discuss the new policy and how to tackle the infrastructural, financial and personnel problems at MPTC that hinder development of telecommunications and value added services. In this way civic society can take an active role in drafting legislation and designing policies that affect it directly — which is what the transition to democracy was all about.

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