

# Digital Television

The following article:

## *Development of Digital Terrestrial Television in Russia and Ukraine*

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## Foreword

Imagine turning on your television and not receiving any signal. For an increasing number of television viewers this could have been the case had they not re-equipped themselves for digital television. To mention only the early birds: Luxembourg, the Netherlands, Finland and Sweden completed the transition to digital terrestrial television between 2006 and 2007. Consumers living in these countries had no choice but to follow suit lest they feared to lose what is still one of – if not – *the* most used audiovisual media service. If everything goes according to the expectation of the EU Commission, almost all EU member states will meet the 2012 EU target for switch-off and, hence, more digital television equipment will find its homes.

All this hype about the pre-imminent completion of an EU-driven digital television landscape may easily blind us to the fact that going digital is not a piece of cake. Sure enough some EU member states lag behind causing some kind of “European digital divide”. The divide, however, deepens, if one looks beyond the EU borders where for a significant part of European territory, namely Russia and Ukraine, the goal to switch-off analogue digital television still seems to be pie in the sky. The lead article of this IRIS *plus* focuses on these two countries and their national policies for catching up with their digitally more advanced European neighbours. It explores existing legal instruments that might accelerate the switch-over and alludes to others which would still need to be developed. As pressing as the need for a “digital-proof” legal framework is the necessity to back this up with practical arrangements such as a general frequency policy, multiplex line-up, licensing and control of operators, provision of set-top boxes, and development of new services. Moreover, in both countries the role assigned to the national licensing body is central to the roll-out of digital terrestrial television. Last but not least, the lead article examines ownership issues and some already existing digital terrestrial broadcasting services.

In Europe, the transition to digital television is challenging not only Russia and Ukraine. Among the countries that are members of the European Audiovisual Observatory, the list of those which only very recently introduced digital services or are about to launch them this year reaches alphabetically from Bulgaria to Turkey. Other European States such as Bosnia-Herzegovina and Serbia are equally busy with plotting strategies to introduce a system of digital broadcasting. The related reporting-section updates on 2009 developments in many of these countries.

The ZOOM fills the DTT picture for all Observatory member states. Firstly, it presents the number of digital TV households for all reception modes (cable, satellite, terrestrial, DSL). Secondly, it lists the launch dates for digital terrestrial television services, the dates of the analogue switch off, the different DTT business models, the number of multiplexes as well as their operators and/or DTT packagers, and the adopted video/audio standard.

In 2010 and beyond, digital television will certainly be among the key topics for the audiovisual industry as well as its legislators and regulators and therefore the European Audiovisual Observatory. Enjoy the first results of our on-going investigations!

Strasbourg, February 2010

**Susanne Nikoltchev**  
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# Development of Digital Terrestrial Television in Russia and Ukraine

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## I. National policy towards digital TV – general approach

Plans for the introduction of digital terrestrial broadcasting in Russia and Ukraine are based on international accords such as the Regional Agreement GE06 (Geneva 2006),<sup>1</sup> which is a binding international treaty signed by national administrations and registered with the United Nations. This Agreement served as a stimulus for adopting national policies in the switch-over to digital broadcasting.

### 1. Russia

In the words of the President of Russia the challenge of making the transition to digital broadcasting is a problem of technological breakthrough. It also links well with the work on the nation's technological development and innovation policies. "At the end of the day", said Dmitry Medvedev on 26 May 2009 at a high-level meeting on digital broadcasting, "this so-called breakthrough must be as convenient as possible for citizens, increase the diversity of what is available on TV and, naturally, improve its quality. Along with this it should not create any additional problems."<sup>2</sup>

In Russia, the first legal act to set the standards for the digital transition was the Government Resolution No. 1700-r of 29 November 2007, which approved a *Concept Paper for the Development of TV and Radio Broadcasting in the Russian Federation in 2008-2015* (hereinafter "Development Concept").<sup>3</sup> This document was elaborated by the high-level Governmental Commission on Development of TV and Radio Broadcasting originally headed by Dmitry Medvedev in his capacity as first vice-chair of the government.

President Dmitry Medvedev is still very much personally involved in developing television and radio broadcasting and introducing digital format broadcasting. On 14 October 2008, before the start of a closed-door meeting with directors of federal television channels, he said about the switch-over process:

1) See its text in different languages at the website of the International Telecommunications Union:  
<http://www.itu.int/md/R00-CR-CIR-0262/en>

2) [http://www.kremlin.ru/eng/text/speeches/2009/05/26/1850\\_type82913type84779\\_216845.shtml](http://www.kremlin.ru/eng/text/speeches/2009/05/26/1850_type82913type84779_216845.shtml)

3) Concept of development of TV and radio broadcasting in Russian Federation in 2008-2015 (*Концепция развития телерадиовещания в Российской Федерации на 2008 — 2015 годы*) available in Russian at:  
<http://merlin.obs.coe.int/redirect.php?id=11089>

“This is the road that all progressive countries are taking, and we will take this road too. But to do this we need an approved plan to guide our steps forward. We have just such a plan – the television and radio broadcasting concept. It has received the government’s approval. I was personally involved in this during my time in the post of deputy prime minister.”<sup>4</sup>

The Commission, which is still active today, was established by the Government Resolution No. 304 of 22 May 2006<sup>5</sup> and mandated to co-ordinate the activities of different ministries and governmental agencies and other stakeholders in the process of switching over to digital television. It is chaired by Sergei Sobyenin, government deputy head and chief of staff.

The Development Concept sought to facilitate citizens’ enjoyment of their “constitutional right to obtain socially important information”. The main instrument to develop broadcasting was seen precisely in the switch-over from analogue to digital TV and radio by 2015.

The Development Concept was followed by the Resolution of the Government of the Russian Federation On the Concept of the Federal Target Programme “Development of TV and Radio Broadcasting in the Russian Federation in 2009-2015” (No. 1349-r) signed on 21 September 2009 by Prime Minister Vladimir Putin (hereinafter “Concept of the FTP”).<sup>6</sup> The Resolution allocated the maximum amount of RUB 76 366 million (some EUR 1.7 billion) from the federal budget for the Concept’s implementation. The Concept targets 6 500 state-owned telecommunications units to be upgraded for digital terrestrial broadcasting purposes.

According to the Concept of the FTP, the switch-over to digital TV will be implemented gradually with a special focus on the regions bordering foreign countries. Of special concern are the areas bordering with China, which recently started a 24-hour TV channel in Russian.<sup>7</sup>

The key role in the digital transition is to be played by terrestrial broadcasting as the simplest, fastest and least expensive platform for the coverage of the Russian territory.<sup>8</sup>

The ideology of how to develop the audiovisual field in the Russian Federation is similar to that in other branches of the national economy. It can be described as a form of partnership between the state (or, the government) and private business. The Development Concept specified: “Construction of the TV broadcasting networks shall be performed on the basis of the market players’ funds, and the government shall develop an easily understood and acceptable legal framework that meets the requirements of broadcasters, operators and consumers of TV broadcasting services.” In other words, it is planned that the infrastructure and networks necessary to develop digital TV and radio will be built at the expense of the communication companies, while the government takes on the burden of working out the legislative basis for such development.

In addition, the Concept of the FTP provides for digitisation of audiovisual archives. It specifically mentions in this regard only the state institution “State Fund of Television and Radio Programmes”. Only this activity, which is the major archive depository, will be (100 per cent) state financed. At the same time it is *the* archive depository in Russia.

Public awareness campaigning will be separately budgeted and conducted “through all major central mass media outlets”.

4) [http://www.kremlin.ru/eng/text/speeches/2008/10/14/2151\\_type82913type84779\\_207844.shtml](http://www.kremlin.ru/eng/text/speeches/2008/10/14/2151_type82913type84779_207844.shtml)

5) The text of the Resolution is available in Russian at:

<http://www.government.ru/content/governmentactivity/rfgovernmentdecisions/archive/2006/05/25/4260828.htm>

6) The text of the Resolution and the Concept of the FTP is available in Russian at:

[www.government.ru/content/governmentactivity/1788e064277343d19ccaef067d6a0b9b.doc](http://www.government.ru/content/governmentactivity/1788e064277343d19ccaef067d6a0b9b.doc)

7) See Sitnikov, Sergei *Практические вопросы цифровизации, Broadcasting*, No.3 (May-June), 2009: 15. See also Russia: Government adopts pre-plan for digital switch-over by Andrei Richter, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article26.en.html>

8) This conclusion of the Concept of the FTP was harshly criticised in a review of the Concept of the FTP by the editor of the Tele-Sputnik professional journal. See: Nikolai Orlov. *Новая концепция развития телерадиовещания в России*, Tele-Sputnik, No. 11 (November) 2009: 12.

Business experts confirm that the Government of the Russian Federation chose the model of a government-private sector partnership in the Development Concept in spite of the intentions of many influential players (in particular, the federal state unitary enterprise Russian Television and Radio Broadcasting Network – RTRS) to obtain funds for the modernisation of terrestrial infrastructure used to distribute TV signals.<sup>9</sup> Later developments, however, demonstrated that the RTRS will lead such partnerships in broadcasting (see below).

## 2. Ukraine

In Ukraine, the key document that provides an outlook on the switch-over process is the *State Programme of Introduction of Digital Television and Radio Broadcasting*<sup>10</sup> (hereinafter “the State Programme”) approved by the Resolution No. 1085 of the Cabinet of Ministers on 26 November 2008.

One month after the State Programme’s approval by the cabinet, it was suspended by a decree of the President of Ukraine. At the time these developments caused a political and legal crisis. The President claimed that the Programme was unconstitutional as the proposed switch-over process violated, *inter alia*, everyone’s freedom of speech and right to obtain information. He asked the Constitutional Court of Ukraine for confirmation of this position. The Court, however, decided on 3 March 2009 that the State Programme did not violate the constitution; as a result, the President revoked his decree on 22 April 2009 thus finally giving way to the implementation of the State Programme.

The State Programme foresees in particular “to establish – in accordance with the Regional Plan with respect to digital television broadcasting assignments (GE06) – 81 sub-areas for digital broadcasting with the use of the MPEG-4 standard,<sup>11</sup> which will enable to transmit within a single frequency band up to 10 television channels.” The State Programme demands that the principles for regulating broadcasters and telecom operators be reviewed to take into account the use of digital broadcasting technologies and the multiplication of content. The effectiveness of the State Programme once completed will be judged by criteria such as “availability of as many television and radio programmes as in the countries of Western Europe”, “higher attractiveness of the broadcasting sector for investors”, “better conditions for competition in the telecommunications”, “environmental protection and savings in electricity usage”, etc.

As part of this programme the government also plans to facilitate the production of digital TV sets and signal adaptors for analogue TV sets, and other elements and parts of hardware for digital broadcasting. This plan includes the provision of financial and technical assistance to research institutions in order to lay the “scientific and technological grounds for Ukraine’s participation in international activities aimed at introducing digital terrestrial broadcasting.”

The State Programme ends in 2015 and foresees expenses of UAH<sup>12</sup> 4.3 billion (equivalent to EUR 365 million). Of this sum, UAH 9 million (EUR 0.76 million) is to come from the national budget, while the rest is to be spent by private investors.

Conceptual guidelines for the transition to digital broadcasting were also provided by the National Council of Ukraine on TV and Radio Broadcasting (hereinafter “the National Council”). The National Council is a special supervising and licensing body with the mandate to implement legislative provisions on television and radio broadcasting and to monitor compliance of both state and private broadcasters with such rules.<sup>13</sup> These guidelines took the form of a “Plan for the

9) Digital Television in Russia. Edited by Groteck Co., Ltd. for the European Audiovisual Observatory. Moscow, 2008. P. 49.  
10) See its text in Ukrainian at the website of the Supreme Rada (the Ukrainian parliament) at:

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1085-2008-%EF>

11) MPEG-4 is a patented collection of methods defining compression of audio and visual (AV) digital data (Wikipedia).

12) UAH is the currency ISO code for Hryvnia, the Ukrainian currency.

13) See more on the body: New Law Establishing the National Television and Radio Broadcasting Council by Andrei Richter. IRIS 1997-8: 12, available at: <http://merlin.obs.coe.int/iris/1997/8/article20.en.html>. The full text of the statute that established the National Council is also available in English at: <http://www.nrada.gov.ua/cgi-bin/go?page=36>

Development of the National Television and Radio Sphere of Ukraine” (hereinafter “Development Plan”), which was adopted by the National Council on 9 November 2006 (decision No. 904). Since then, the Development Plan has been amended 15 times.<sup>14</sup>

This Development Plan set a number of basic rules according to which the National Council promised to act during the digital switch-over process. It undertook, among others, “to guarantee that the licence-holders, who at this time provide analogue terrestrial broadcasting, will keep their right to broadcast with the switch-over to digital standards without any loss of their audience.”

### 3. Costs of the digital switch-over

The financial contributions expected from private companies and the respective governments for the switch-over period are as follows:

Table 1. Expenses for the Digital Switch-over in 2009-2015 (planned)<sup>15</sup>

	Public expenses (million EUR)	Private investments (million EUR)	Total (million EUR)
Russia	1 716	1 036	2 752
Ukraine	0.76	364.24	365

## II. Legal concepts, decrees, and other acts related to the switch-over

### 1. Russia

Russia remains one of the few European countries without a parliamentary statute on broadcasting or the audiovisual media. Moreover, an unannounced moratorium for the preparation of a draft law on television and radio broadcasting exists since 2000.<sup>16</sup> Today the audiovisual sphere is mostly regulated by presidential decrees and government resolutions. Digital transition will probably require the federal government to draft and suggest to the parliament a set of amendments to three federal statutes (the Statute on licensing, the Statute on communications, and the Statute on the mass media), but so far the law-making process has begun with government resolutions.

The first in importance is Resolution No. 985 of 3 December 2009 of the Government of the Russian Federation On the Federal Target Programme “Development of TV and radio broadcasting in the Russian Federation in 2009-2015” (hereinafter the “FTP”).<sup>17</sup> The FTP slightly differs from the Concept of the FTP explained above and is even less clear on some key issues, which will be described further on.

### 2. Ukraine

In Ukraine, practically all legal acts concerning the digital switch-over originate in 2006. In hierarchical as well as chronological order, the new version of the 1993 Statute On Television and Radio Broadcasting adopted by the Supreme Rada (the national parliament) on 12 January 2006

14) See the text in Ukrainian at: <http://zakon.nau.ua/doc/?uid=1041.20249.21&nobreak=1>

15) Based on Russia’s FTP and Ukraine’s State Programme.

16) See on the reasons and history in: The Regulatory Framework for Audiovisual Media Services in Russia by Andrei Richter. *IRIS-Special, European Audiovisual Observatory (Ed)*, Strasbourg 2010.

17) See its text in Russian at the website of the Ministry of Communications and Mass Communications at: <http://gov.consultant.ru/doc.asp?ID=55969>

features first.<sup>18</sup> The new wording of Art. 22 of the Act includes a number of important provisions regarding the future of digital broadcasting. In particular, the Statute stipulates that the migration from analogue to digital broadcasting shall be carried out in accordance with the Development Plan. The National Council is bound to promote the introduction of digital broadcasting and corresponding technological re-equipment of operational broadcasting channels and networks. Where the terms of a broadcasting licence must be changed after the migration from analogue to digital broadcasting because they concern technological parameters, the type of broadcasting (i.e., switching to multichannel broadcasting) or the revision of the programme concept, these modifications are subject to a broadcasting licence renewal procedure.

Concerning the switch-over process, the Statute provides that in the event that the licensee fails to submit an application for renewal of the licence to the National Council within two months of the date on which the channel or network is ready for introduction of digital broadcasting, the National Council shall announce a competition for a licence for multichannel broadcasting; the existing licensee will retain the right to broadcast on one of the channels of the new digital multichannel television network (Art. 22 para. 9). When this norm was discussed and adopted in 2005-2006 it was probably expected that every existing terrestrial broadcaster would have a multiplex of its own without need for competitions.

The Statute does not answer a number of legal questions concerning the division of competences between various governmental agencies and the licensing of operators and content providers. In particular it remains open whether one and the same entity may be both an operator and a provider. In light of this legislative gap, the President and several governmental bodies felt entitled to regulate some of the issues without consulting the parliament.

According to the Statute On the Radiofrequency Resource of Ukraine No. 1770-III of 1 June 2000,<sup>19</sup> radio frequency allocation is performed in accordance with the Radio Frequency Resource Utilisation Plan (Art. 1). The current Utilisation Plan was approved by Resolution No. 815 of the Cabinet of Ministers of 9 June 2006.<sup>20</sup> It established in particular the switch-off dates for analogue broadcasting. Allocation of a new frequency takes place upon the request of the National Council under the condition that the frequency is legally assigned to broadcasting. The Development Plan stipulates that radio-electronic means of broadcasting must be made compatible in order to allow the creation and development of multichannel television networks. The funds required for the necessary developments are provided for in the State Budget of Ukraine as a separate line of expenditures of the National Council.<sup>21</sup>

Technological questions related to the digitalisation of broadcasting account for the largest part of the Development Plan, adopted by the National Council. Given the limits of its legal competence, however, the National Council could not use fiscal instruments to foster the establishment of the planned networks of relay systems and transmitters, the distribution of set-top boxes to the population, etc.

The transition to digital television was also on the agenda of the powerful Council for National Security and Defence of Ukraine (or RNBO)<sup>22</sup> at its meeting on 21 March 2008. It was part of its discussion on information security and sovereignty. The RNBO decision on this issue was adopted by the follow-up decree of the President of Ukraine On Urgent Measures to Provide for the

18) See more on the new wording of the Statute in "Ukraine Sweep Changes in Broadcasting Statute" by Taras Shevchenko in IRIS 2006-5: 19 available at: <http://merlin.obs.coe.int/iris/2006/5/article34.en.html>. The text of the Statute is also available in English on the website of the National Council at: <http://www.nrada.gov.ua/cgi-bin/go?page=33>

19) See its text in Ukrainian at: <http://zakon.nau.ua/doc/?uid=1087.525.23&nobreak=1>. In English the text is available on the website of the National Council at: <http://www.nrada.gov.ua/cgi-bin/go?page=34>

20) See its text in Ukrainian at: <http://zakon.nau.ua/doc/?uid=1096.849.7&nobreak=1>

21) According to Art. 22 para. 11 of the Statute of Ukraine On Television and Radio Broadcasting.

22) The RNBO is a constitutional state collegial body responsible for co-ordination of national policy in regards to security and defence, which is chaired by the President of Ukraine and consists of representatives of the Cabinet of Ministers, Supreme Rada, Prosecutor-General, Foreign Minister, Minister of Justice, etc. RNBO decisions become law through their approval by the decrees of the President of Ukraine.

Information Security of Ukraine of 23 April 2008.<sup>23</sup> In particular, this Decree instructed the cabinet of ministers to develop and approve a State Programme of Introduction of Digital Television and Radio Broadcasting. The Programme would require, *inter alia*, at least one digital multiplex to be operated by the state-run telecom provider, as well as state economic support for the population in the switch-over process (the State Programme was adopted on 26 November 2008, see part I). The Decree also demanded that the State Programme introduce emergency measures to stop the importation into and production in Ukraine of television sets unfit to receive TV signals of the *DVB-T/MPEG-4* standard. Another RNBO meeting on digital television issues took place on 11 September 2009, but its decisions have not been released at the time of writing this report.

### 3. State (national) standards for digital broadcasting

Finally, the adoption of State Standards has been necessary in order to harmonise different technological approaches to digital broadcasting. In Russia, the government adopted 17 State Standards that refer exclusively to digital TV, while 50 more are currently being developed.<sup>24</sup> Ukraine is in need of 15 National Standards and similar acts, according to the State Programme.

## III. Aspects of the process

### 1. Switch-over plan

The GE-06 Agreement sets 17 June 2015 as the date when all countries in the region will no longer be obliged to protect the analogue services of neighbouring states and can freely begin using the frequencies assigned to them for their digital services. The setting of this date is not a guarantee that analogue switch-off will then take place throughout a given country. But because analogue services will no longer be protected along its borders, it could serve as an incentive to switching off analogue services completely.

The FTP in **Russia** creates four sub-areas where digital terrestrial broadcasting will be introduced in stages: in 2010, 2011-2012, 2012-2013, and 2013 respectively. First in line are the border regions in the Far East and in Europe. The FTP does not set a date for the switch-off and, in a recent interview with Radio Svoboda (Liberty), Vitaly Stytsko, head of the department of digital television of the Ministry of Communications and Mass Communications, said that analogue broadcasting might continue long after 2015.<sup>25</sup> Most of the Russian officials claim that the switch-off will be allowed only when 95-98 per cent of the population has set-top boxes, an unrealistic figure according to experts.<sup>26</sup>

In **Ukraine**, different acts set different dates for the switch-off of analogue broadcasting. The Resolution No. 815 of the Cabinet of Ministers that approved the Utilisation Plan (see above) provided that the use of radio frequencies for analogue broadcasting and mobile telephony of CDMA-800<sup>27</sup> standard would end on 1 January 2016.

The Development Plan adopted by the National Council was more optimistic. This document detailed the switch-over procedure for national broadcasters and set seven stages pursuant to which the transition to digital broadcasting was to be completed in December 2012. By that time set-top boxes were to be held by 80 to 90 per cent of the population. By the end of 2009, analogue

23) See its text in Ukrainian at: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0010525-08>

24) Mayzuls R. and Yu. Shavdia. Развитие нормативно-правовой и нормативно-технической базы современного телерадиовещания / "Broadcasting. Телевидение и радиовещание" No. 3, 2008, pp.31-36. See: <http://broadcasting.ru/articles2/Regandstan/progress-tv>

25) See: <http://www.svobodanews.ru/content/transcript/1889152.html>

26) See: <http://www.cnews.ru/news/top/index.shtml?2009/12/07/372424>, See also Nikolai Orlov. Новая концепция развития телерадиовещания в России, Tele-Sputnik, No. 11 (November) 2009: 14. Here the author expresses doubts that the current 10-15 million users of cable and satellite TV will be *en masse* motivated to purchase in addition a set-top box for terrestrial DTV.

27) CDMA-800 is a CDMA data protocol for mobile telephones operating in the cellular (800 MHz - 850 MHz) frequency band.

broadcasting was to be switched to digital in 47 out of the 81 sub-areas. In fact, digital television is broadcast today in six sub-areas without switch-off of analogue broadcasting and with an obvious lack of penetration of set-top boxes.

Table 2. Penetration of digital terrestrial television (in per cent)<sup>28</sup>

	2009	2010	2011	2012	2013	2014	2015
Russie (population coverage)	0	15	30	75	98,8	98,8	98,8
Ukraine (coverage of territory)	3,1	11,4	25,15	42,87	60,59	78,31	96,03

## 2. Moratorium for new analogue frequencies

According to the GE06 Agreement, Russia and Ukraine have stopped their provision of new frequencies for analogue television broadcasting.

In **Russia**, the Ministry of Communications and Mass Communications suspended the allocation of bands for analogue television broadcasting in December 2007. The reason for this moratorium was the necessity to adopt a new plan of spectrum allocation for digital television broadcasting. This plan was partly approved by a decision of the State Commission on Radio Frequencies (GKRCh) on 19 March 2009. It confirmed the first multiplex of eight programmes (channels) and was based on the recommendations of the Governmental Commission on Development of TV and Radio Broadcasting and in particular the Development Concept drafted by the Commission.<sup>29</sup> The decision of the GKRCh foresees that once these eight digital programmes will be ready for broadcast, they will need no further permissions from the CKRCh provided that their over-the-air transmissions correspond to the relevant technical standards.

The exact line-up for the first multiplex was confirmed by a Presential Decree of 24 June 2009. In October 2009, the moratorium was lifted for those areas where spectrum allocation for digital TV had been completed. Existing analogue TV broadcasting channels that were incompatible with the digital plan in progress were to be repositioned to different frequencies. The lifting of the moratorium aimed to permit the renewal of analogue licences after their expiration (the maximum licence term in Russia is five years). As a result of the moratorium some TV companies had failed to renew their licences, which they had then eventually lost because their frequencies were either taken by the first multiplex or remained vacant as they interfered with digital TV.

In **Ukraine**, the moratorium obligations resulting from the GE06 Agreement were echoed in the Utilisation Plan. It established that allocation of new licences for analogue broadcasting ended on 1 June 2006 (for the use of transmitters of 100 Watts and above) and on 1 January 2007 (for transmitters below 100 Watts). The Utilisation Plan offered the possibility to grant new licences for analogue low-power broadcasting beyond 2006 under the condition that such broadcasting did not interfere with the development of digital TV.

## 3. Line-up of the multiplexes and must-carry rules

Until recently **Russian** law had no must-carry rules except for very few provisions in regional legislation. The Development Concept assigned the government the task to draw up a “socially important package of channels” whose transmission to the public via all platforms would be

28) Based on Russia's FTP and Ukraine's State Programme.

29) Concept of development of TV and radio broadcasting in the Russian Federation in 2008-2015 (*Концепция развития телерадиовещания в Российской Федерации на 2008 — 2015 годы*) available in Russian at: <http://merlin.obs.coe.int/redirect.php?id=11089>

obligatory and either without any charge or for a nominal fee. In other words, the government had to bundle a package of must-carry programmes. The government agreed to cover the costs for the package's transmission, while the delivery of all channels not included in the package will be left to the free market.

The line-up of this package was developed by the government. These programmes were denoted by type (e.g., "cultural programming channel"), but not named individually according to their providers. The list of specific channels was approved by the Decree of the President On National Mandatory Free Television Channels and Radio Stations of 24 June 2009.<sup>30</sup> The decree aims at "pursuing the objectives of ensuring freedom of information and guaranteeing that people everywhere in Russia have access to socially important information." It enumerates television channels and radio stations that must be broadcast nationwide and free of charge.

The package, namely a line-up of eight mandatory free national TV channels, is composed as follows:

1. Kultura (the culture and arts channel), part of the All-Russian State Television and Radio Company (VGTRK);
2. Sport (VGTRK);
3. Vesti (24-hour news channel, VGTRK);
4. Rossia (general interest channel, VGTRK);
5. a yet to be formed channel for children and youth (to be established by VGTRK no later than 1 January 2011);
6. Channel One (a stock company 51 per cent of which is owned by the state with the remaining part held by undisclosed private companies);
7. Petersburg – Channel 5 (run by the National Media Group owned by a group of gas, steel and oil companies close to the government);
8. NTV, owned by Gazprom-Media.

No public tender or competition was held for this selection. No explanation has been provided as to why, for example, a sports channel was prioritized over an educational programme, or why NTV was picked from an array of other private terrestrial national networks. No room was reserved for regional broadcasters, with the exception of the St. Petersburg's channel, although, according to the FTP, regional branches of the RTRS will be allowed to insert local windows into these programmes.<sup>31</sup> Moreover, the owners of Channel 5 recently announced plans to remodel its programming to become a national rather than regional channel.

The Presidential Decree stipulates that these channels will be broadcast in mandatory fashion throughout Russia, and at no cost to consumers. These TV channels in effect become must-carry channels all over the country on all platforms, including cable and satellite services, although relevant changes to the Federal Statute On Communications (2003) have not yet been discussed in the State Duma. These changes will oblige cable operators to provide the must-carry channels and suggest ways of compensation.

The Government of the Russian Federation shall be obliged to provide these TV channels with all necessary licences and to subsidise their parallel dissemination via analogue and digital means in the market areas with a population of less than 200 000 (till 2011) and less than 100 000 (starting from 2011).<sup>32</sup>

The first multiplex will be in DVB-T MPEG-4 standard. Neither the line-up of the further multiplexes nor the procedures to determine it have been established. If the Concept of the FTP spoke of the need of TV programmes for the youth, an educational, travel, news and other channels, the FTP itself makes no mention of that. While the Concept of the FTP noted the need for regional TV and radio channels, the FTP is also silent on this issue.

30) See: Russian Federation: Must-carry Channels Approved by President by *Andrei Richter*, in IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article25.en.html>

31) See Russia: Government adopts pre-plan for digital switch-over by *Andrei Richter*, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article26.en.html>

32) See Russia: Must-carry Channels Approved by President by *Andrei Richter*, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article25.en.html>

The 1993 Statute of **Ukraine** On Television and Radio Broadcasting (as amended in 2006) foresees that any broadcaster has the right to have its licence reissued for digital broadcasting without a new competition, though for a special fee (Art. 31 para. 5).<sup>33</sup> It also stipulates that the National Council shall determine the number of broadcasting channels, telecom networks and television networks that are expected to use the radio-frequency bandwidth of Ukraine in each territorial category (i.e., national, regional, local, or foreign broadcasting), including broadcasting based on the use of digital technologies (Art. 22 para. 12).

Complying with this provision, the National Council in its decision No. 260 of 3 October 2007 determined that eight multiplexes would be developed in Ukraine: MX-1, MX-2 and MX-3 in DVB-T (MPEG-2) standard; MX-4 and MX-5 in DVB-T (MPEG-4) standard; MX-6 in DVB-H standard; MX-7 and MX-8 in HDTV. At a later stage, when the Cabinet of Ministers had given its approval to the State Programme, the National Council decided that MPEG-2 would be replaced by MPEG-4.

On 5 December 2007, the National Council filled the line-up of the second and the third multiplexes with the existing national broadcasters:<sup>34</sup>

#### **MX-2**

1. "National Television Company of Ukraine" (First National);
2. TV and Radio Company "Studiya '1+1'", Ltd. (1+1);
3. Closed Corporation "UNTK" (Inter);
4. International Commercial TV and Radio Company "ICTV", Ltd. (ICTV);
5. TV and Radio Company "Ekspress-Inform", Ltd. (5 kanal);
6. CJSC "Novyi kanal" (N);
7. CJSC "MMTs-STB" (S);
8. CJSC "TV and Radio Company Ukraina" (TRK Ukraina);
9. "TS Sluzhba informatsii", Ltd. (NTN).

#### **MX-3**

1. CJSC "TV Company 'TET'" (Тет);
2. Open Joint Stock Company "TV Company TONIS" (T);
3. "TV and Radio Organization 'Multi Media Servis'", Ltd. (Megasport);
4. CJSC "TeleOdyn" (M1);
5. "TV and Radio Company 'NBM'" (5);
6. "TV and Radio Company 'Era'" (Era);
7. Public Broadcasting Channel;
8. Reserve;
9. Reserve.

The MX-1 multiplex of nine channels was set aside for broadcasting of encoded programmes of pay-TV that must still be determined in a competition to be held by the National Council.

On 5 December 2007, the National Council announced the competition for broadcasting to be carried by the MX-4 multiplex. On 2 April 2008, it determined the ten winners, all private companies. Most of them may be seen as "wild cards" or companies totally unknown to the audience and professionals. Among the winning channels are specialised programmes on culture, humour, cinema, football, travel, business, as well as a news channel and channels for children, youth and women. In order to win the competition, a company had to promise that it would broadcast 100 per cent in Ukrainian language.

On 16 June 2008, the National Council decided to make the MX-5 a multiplex for regional broadcasters. In certain specified regions, all terrestrial broadcasters obtained the right to occupy

33) The norm says: "Renewal of a licence in connection with the changeover from analogue to digital broadcasting shall be subject to a charge equal to the licence tax assessed for granting of a multichannel broadcasting licence."

34) The line-up consists of the name of the licensee and its business form as well as the name of the TV programme (in brackets).

a spot in the package. Initially, the MX-5 will start in the regions of Sumy, Odessa and the Trans-Carpathian region. The same day, the MX-6 was set aside for national mobile broadcasting in DVB-H standard.

#### 4. Operators

In **Russia**, the transmission of the first multiplex will be the responsibility of the federal state unitary enterprise Russian Television and Radio Broadcasting Network (RTRS). According to the RTRS, no other operator will obtain a transmission right.<sup>35</sup>

This function of the RTRS is yet to be confirmed by an umbrella licence, a requirement recently suggested by Roskomnadzor but not yet introduced.<sup>36</sup> Once the umbrella licence will have been granted, all private telecom licensees involved in the transmission will be sublicensed by the RTRS.<sup>37</sup> Even today the RTRS tells “alternative operators” to co-ordinate their activity with the company if they want to take a share of governmental subsidies for the upgrade of their networks and facilities. Another suggested option is to sell the business to the RTRS.<sup>38</sup>

For the terrestrial transmission of the second and the third multiplexes, the FTP relies on the services of the RTRS “or other operators”. Whether or not a competition will be announced for the service is still being debated. Also unclear is the duration of the licences. The RTRS claimed it would be technically ready to deal with the other two multiplexes. At the same time, the FTP demands that the programmes in the second and the third multiplexes be free-of-charge for the viewers.

The 2006 edition of the Statute of **Ukraine** *On Television and Radio Broadcasting* added to the traditional type of operators – telecom operators licensed by the Ministry of Transport and Communications – a new type of “content service provider” separately licensed by the National Council without competition procedures (Art. 23 para. 8). Telecom operators may themselves become content service providers upon obtaining one of these new licences for a 10-year period (or they may conclude a contract with a licensed content service provider). The idea behind the change was to force telecom operators of cable TV to obtain an additional licence – from the National Council – and thus affirm the line-up of the cable packages. In the case of cable TV, the National Council will also separately and on an annual basis approve the line-up together with the provider’s report on fulfillment of its previous package obligation. In addition, the content service provider should detail principles upon which it forms its packages and present contracts with all TV companies on retransmission of their programmes (Art. 40). The National Council scrutinised especially the programme origin and language quotas during the licensing of cable operators that took place following the changes made in the Statute. This resulted in a dramatic decrease of Russian and Russian-language channels in the cable networks of Ukraine.

All terrestrial broadcasters in a particular market fall under the must-carry rule for local cable packages, and this provision has not been changed with the transition to digital broadcasting.

Regarding the functions and position of telecom operators and content providers, the Statute practically gives them the same status for digital broadcasting on multiplexes that they have in cable or satellite television. One important difference between the two situations remains: in cable television typically one and the same entity resumes the functions of telecom operator and content provider, in digital terrestrial TV separate companies can exercise these functions.

35) See the interview of Aleksey Malinin, director-general of RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

36) Roskomnadzor is the Federal Service for Supervision of Communications, Information Technologies and Mass Media under the Ministry of Communications and Mass Communications. It is the special executive office in charge of licensing and state control as regards the audiovisual sphere.

37) See the discussion at the 13<sup>th</sup> Congress of the National Association of Broadcasters (November 2009) at: [http://www.nat.ru/?an=XIII\\_congress\\_nat\\_2009](http://www.nat.ru/?an=XIII_congress_nat_2009)

38) See the interview of Aleksey Malinin, director-general of the RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

Thus the Statute effectively leads to a possibility for the National Council to license digital television companies (both telecom operators and content providers or aggregators) and to do so without competition procedures. In this way it may prevent foreign (e.g. Russian) programmes to be rebroadcast in digital multiplexes.

As a result, on 16 January 2008 the communications company "Ukrainian Digital Telenetwork" (UTsTM) obtained the first licence to operate the MX-4 multiplex without a competition. This licence allowed UTsTM to take content from the TV companies that would win the competitions and bundle it into a package.<sup>39</sup> The National Council justified the licence by the fact that because UTsTM had applied for it, the licensing body was obliged to review and make a decision on the application within one month without competition procedures under the Statute *On Television and Radio Broadcasting*. This decision caused strong criticism. As a result, the National Council followed-up with a public call for applications for the forthcoming distribution of licences among content aggregators for the multiplexes 1 to 6. Although no competition is legally required, the procedure aimed at selecting the best candidate. The applications were reviewed on 26 November 2008 and failed to produce winners with one exception: a licence was issued to the TV and Radio Company "Eter" (Kiev) for mobile broadcasting on the MX-6 multiplex.

## 5. Set-top boxes

In **Russia**, set-top boxes are produced by the hundreds of thousands annually and widely sold in Kaliningrad (near the border with Poland and Lithuania) and other parts of the country. No governmental act foresees subsidies for their purchase for low-income families or other underprivileged parts of the population. In the words of the head of RTRS, this sphere is governed by "Mr Market".<sup>40</sup> Moreover, the government officials as recently as in November 2009 strongly discouraged the population from purchasing set-top boxes "in a risky and spontaneous manner" as the nationwide standards for them are yet to be approved sometime in 2010.

An interesting development in the debate on the distribution of set-top boxes was a recent offer to the government by the three major operators of mobile communication, MTS, VypelKom and MegaFon. The telecom companies claimed to be ready to supply free set-top boxes to the population if the government in return allocated the former analogue TV frequencies to 4G mobile communications.<sup>41</sup>

There are no clear rules in **Ukraine** as to the order of distribution of set-top boxes among the viewers. Some of the basic documents concerning digital television indicate that a "special procedure" must be implemented that will benefit the economically "unprotected" part of the population. The State Programme establishes that transition to digital terrestrial broadcasting "should be aimed to coincide with the solution of the problem of supply" of the signal adaptors to the population. The Cabinet Resolution that approved the State Programme directed the Ministry of Transport and Communications to present, in consultation with the National Council, within three months a detailed plan of distribution of set-top boxes. That instruction expired on 22 July 2009 and as of the time of writing no plan has been delivered.

The Development Plan approved by the National Council promised to "the socially unprotected citizens of Ukraine adaptors for digital signals to be provided for by the state." The State Budget was to include such an expense but failed to do so.

The Decree of the President of Ukraine On Urgent Measures to Provide for the Information Security of Ukraine of 23 April 2008 contained similar provisions on economic support of the population. But such budgetary decisions fall within the competence of the Cabinet of Ministers, and not the President.

39) See further on the competition for the MX-4 multiplex in III.3, IV.2 and VI.

40) See the interview of Aleksey Malinin, director-general of the RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

41) See the report by the RBK daily (Moscow) of 7 September 2009 at: <http://www.rbcdaily.ru/2009/09/07/media/429693>

We are only aware of a single case in the Odessa region where practical steps were actually taken. In April 2009, the regional state authority purchased 4 000 set-top boxes for the low-income families in the province.

## 6. Role of state TV

Neither of the two countries has a public broadcasting system. Its place, in a way, is taken by national broadcasters financed and run by the government.

State-run channels dominate the first multiplex in **Russia**, which will be operated by a state-run company (RTRS). Private national broadcasters will be allowed onto the next multiplexes if they agree to pay the political and economic price. The regional broadcasters which may be expected to obtain the slots in these multiplexes will most likely be local state-run companies politically affiliated with the governors (see part IV).

Only one state-run television company provides national terrestrial broadcasting in **Ukraine**. This programme by the "National Television Company of Ukraine" (NTCU) is titled "First National", though its ratings are far from being among the first as it can claim merely one to two per cent of the audience. All other players are commercial broadcasters. Attempts to introduce public broadcasting over the past 15 years have brought no positive results.

The line-up of the MX-2 multiplex contains a slot for the National Television Company (which is fully controlled by the government). Apparently, there is no intention to reform it into an independent public (but still state-owned) broadcaster. At the same time, the line-up of the MX-3 multiplex foresees a slot for a yet to be established public broadcaster. This decision of the National Council raised concerns with Ukrainian experts as there is no pattern of co-existence of state and public television in Europe with the exception of Azerbaijan.

## 7. Development of new services: on-demand, mobile TV, etc.

After the implementation of the FTP in **Russia**, 100 per cent of the country's population will have access to terrestrial broadcasting and will be able to view as many as 20 to 24 television channels. In addition, there will be up to three HDTV channels and up to ten channels for digital mobile TV in major cities with a population of at least 100 000 inhabitants.

Mobile television is at an initial stage, even though the first mobile television service, by the Skylink telecom provider, already started in 2005. Skylink provides 3G DVB-H services in 5 000 towns and settlements in 32 (out of 83) regions of Russia and takes 80 per cent of the market in the country.<sup>42</sup> Moscow, until recently, was not covered by the service due to the lack of frequencies. On 7 December 2009, however, another telecom operator, VypelKom, announced "test" mobile broadcasts in the capital. They will carry 11 programmes including six of the "must-carry" channels.<sup>43</sup>

New digital services develop in **Ukraine** without almost any legal regulation. Neither has the licensing process begun so far, nor has at least the national policy on the development of video-on-demand, mobile television or other technologies been announced.

Today, the largest mobile telecom operators such as Kyivstar<sup>44</sup> and Life<sup>45</sup> provide mobile television services in the form of access to video content on the broadcasters' websites, even though online access to the live programmes of TV channels via cell phones is yet unavailable.

42) See Технологии и средства связи (спецвыпуск Широкополосные мультисервисные сети) 2009, page 19.

43) See the news report at: <http://www.vesti.ru/doc.html?id=329786>

44) [http://www.kyivstar.net/personal/contract/services/mobile\\_tv/](http://www.kyivstar.net/personal/contract/services/mobile_tv/)

45) <http://www.life.com.ua/index.php?area=lifebox&lng=uk&page=15-25>

## IV. Licensing and competitions: the role of the licensing body

### 1. Russia

The current system and procedure for competitions to award licences was adopted by the government in 1999 and entailed the creation of the Federal Competitions Commission on Broadcasting (FCC). The FCC is a committee of nine persons, a mix of officials and public figures that meets to judge on licensing competitions. As its members receive no fee for this work and many of them are well known and respected, the FCC aims to guarantee some independence, transparency and legal certainty regarding the procedure. Although Roskomnadzor remains the licensing authority for all broadcast media outlets, until recently, the FCC also played a very important role in the licensing process. So far, the FCC selected the winners of the competitions for broadcasters and the licensing authority, Roskomnadzor, then had to award them the licences.<sup>46</sup>

According to the Development Concept, licensing remains the main instrument of the state's broadcasting policy and will continue to be performed by the executive branch of the government. There will be no limit as to the number of licences provided to a given broadcaster, but there will be a limit to the spectrum of licensees (see below). The Development Concept underlines that, in order to reach its aim, the government will in particular "define uniform rules of licensing of broadcasting despite the differences of methods and technologies of transmission". When the Development Concept was originally adopted by the Commission on Development of TV and Radio Broadcasting on 7 November 2007, Mr. Leonid Reyman, then minister of information technologies and communications, underlined its universal character as it "does not require different rules for different technologies of the signal delivery. Such an approach is particularly timely taking into account appearance of the new services for dissemination of TV signals such as the Internet and mobile networks of the third generation."<sup>47</sup>

The proposals for the second and third multiplexes were to be developed not by the broadcasters themselves but by a "working group" established by the Ministry of Communications and Mass Communications together with the Ministry of Defence by the end of 2009. It seems that the group will decide about the allocation of the licences and that the FCC will have no right to review these decisions.

So far, the moratorium and the follow-up decisions of the Governmental Commission on Development of TV and Radio Broadcasting and the President on the line-up of the first multiplex completely ignored the FCC rules and procedures, as well as the decade-old practice of holding competitions for the right to broadcast TV programmes. In a way, these were the first signs that under the new system for regulation of licensing television programmes the role of the FCC might become negligible.

The following example shows how the new system leads to legal problems and loopholes. In June 2009, the analogue TV channel Sport of the VGTRK became, by Presidential decree, part of the first multiplex. This was the result of a decision of the government that a programme on sports was necessary for the "social package". On 1 January 2010, Sport was transformed into the Rossia-2 channel with sports taking up just one-third of its programming. This change had been announced by the VGTRK in October 2009 and was aimed to cut costs for the purchase of copyrights to sports events and to attract those young potential viewers who so far prefer to "spend most of their time online".<sup>48</sup>

46) See more on the FCC in: *The Regulatory Framework for Audiovisual Media Services in Russia* by Andrei Richter. *IRIS-Special, European Audiovisual Observatory (Ed.), Strasbourg 2010.*

47) The report is available on the website of the Ministry at: <http://minkomsvjaz.ru/news/xPages/entry.6603.html>

48) *State's Sport Channel Retired as Costs Soar* by Ksenia Boletskaya, *The Moscow Times*. 2 October 2009. P. 7. See also *Философия «Спорта» остается* by Arina Borodina in *Kommersant* daily of 2 October 2009, <http://www.kommersant.ru/doc.aspx?DocsID=1247731>

On 23 December 2009, the FCC quietly reviewed the channel's change of name and voted to reissue the licence to Rossia-2. The Commission was told that so far there was no need to review changes in the programming policy as "they would come slowly".<sup>49</sup> No rules exist that would allow the FCC to review the line-up of a digital multiplex in case the name and programme policy of a channel change. To modify any of the facts established by the Decree of the President, one should logically review the Development Concept as well as other governmental decisions such as that taken by the GKRCCh (see above).

No wonder that, when faced with the question on the fate of Sport's spot on the first multiplex, Aleksandr Zharov, deputy minister of communications and mass communications, could only suggest that this issue be discussed by the Governmental Commission on Development of TV and Radio Broadcasting, the drafter of all concept papers on digital TV.<sup>50</sup> This means that changes in the format of a digital TV channel are now beyond the competence of both the government regulator for telecom and media and the FCC, and that they become a political decision of national importance.

In the same interview deputy minister Zharov said he knew at least six channels "ready to be part of the second multiplex" but he would not name them because it was "a commercial secret" of the contenders. He also mentioned two conditions for the channels to win a spot in the multiplex: firstly, to be widespread in analogue broadcasting and secondly, to be able to pay up to RUB one billion (more than EUR 22 million) per year just for the services needed to deliver the digital signal to the audience.<sup>51</sup>

In his speech at the congress of the National Association of Broadcasters (NAT) in November 2009, Zharov also said the second multiplex would consist of federal programmes only, but so far no governmental act points to this restriction.

Who will determine the line-up of the fourth and further multiplexes remains unclear. According to the FTP, they shall only carry broadcasts in cities with a population of over 100 000 inhabitants. The government will not make any financial investment to develop the next multiplexes but is nevertheless likely to appoint RTRS or Roskomnadzor as the quasi-licensing authority (for whose services broadcasters will need to pay).

Thus it is not only the FCC that loses its function: licensing at large might become irrelevant. The conditions for obtaining a spot in the line-up of multiplexes have not yet been officially stated, no programming policy has been declared, no ratio or quotas of different types of programmes have been given, nor has the period for which a channel may keep its position in the line-up been determined. An illustrative example for the lack of detail of the licensing conditions is given by the President's Decree on the line-up of the first multiplex, which did not specify whether the programmes obtained their spots for a limited period of time or indefinitely.

The impression that licensing might lose its importance was confirmed by the Concept of the FTP and the FTP itself, adopted in September and December 2009 respectively. The Concept of the FTP assigns to regional branches of the state-owned Russian Television and Radio Broadcasting Network (RTRS) the task to set up the hubs (administrative centres) entrusted with shaping the line-up of the second and third multiplexes of digital TV. The hubs are to include in the multiplexes local programmes, most likely of their choice. The hubs shall be federal property and be part of the system to implement the general state broadcasting policy. For the line-up process, both documents envision neither a tender or competition, nor any criteria for what programmes ought to be included, nor any role of the FCC.<sup>52</sup>

49) The decision has not been publicly announced. This information is based on the comments by Mikhail Fedotov, a member of the FCC, at a round-table at the Faculty of Journalism, Moscow State University, on 28 December 2009.

50) See the interview with Zharov in *Kommersant* daily of 7 December 2009.

51) *Ibidem*. This is a prohibitive sum for almost all regional broadcasters in Russia.

52) See Russia: Government adopts pre-plan for digital switch-over by Andrei Richter, IRIS 2009-10: 18, available at: <http://merlin.obs.coe.int/iris/2009/10/article26.en.html>. See also: Nikolai Orlov. Новая концепция развития телерадиовещания в России / Tele-Sputnik, No. 11 (November) 2009: 12.

On the other hand, it might still be possible that the hubs will perform only technical tasks and that the new line-ups will still be shaped by the FCC. Government officials are at least discussing such possibilities and are even formulating new criteria for the FCC in selecting licensees.

At the 13<sup>th</sup> congress of NAT held in Moscow on 17 November 2009, deputy minister Zharov made a number of important statements in this regard. In particular, he said that recommendations of the FCC would be taken into account in the selection of the line-up for the second and third multiplexes although he mentioned no obligation to follow them. He enumerated the following criteria to be used by the FCC in selecting the best TV stations:

- their public and social importance;
- evaluation of expenses incurred by them on the built-up of the existing analogue channel;
- television audience preferences (TV ratings and shares);
- financial ability to pay for dissemination of the digital signal.

As to selection of regional TV stations, the following criteria were recommended:

- independence from network programming;
- a large amount of local production;
- thematic variety;
- financial ability to pay for the dissemination of the digital signal;
- support by the regional governmental authorities.

Some of the major regional companies have already terminated their network agreements in order to prepare for the switch-over. TV networks will no longer need regional partners or affiliates in order to offer digital terrestrial television. Consequently, small-scale regional broadcasters with little programming of their own will have no chances to get on a multiplex.<sup>53</sup>

Deputy Minister Zharov also announced the introduction of new procedures, which would also allow the granting of a single multichannel licence for at the same time broadcasting by digital terrestrial means and on other platforms. Such a multichannel licence would confirm the line-up of the (terrestrial, cable, satellite, etc.) packages and contain an obligation of the licence-holder to notify Roskomnadzor of any changes in the line-up at least a month in advance.

At the same NAT congress, a Roskomnadzor official outlined the new licensing system. According to this system, there will be one-channel and multichannel licences, each subdivided into two subclasses, namely licences for broadcasting using a radio frequency resource (to be issued on a competitive basis) and licences for broadcasting transmitted over the Internet and other platforms (to be issued without competition).

This betrays the intention of the government to license broadcasting in all possible distribution forms, be it online, via cable, satellite or mobile telephony.<sup>54</sup> The main aim of the changes is to establish legal control over foreign channels disseminated via cable systems and IPTV that are not registered today as mass media outlets under Russian law. Their licensing will have to be preceded by registration. Both procedures have limitations for foreign companies. For example, they would be obliged to establish entities with at least 51 per cent of Russian capital.<sup>55</sup> "The activity of foreign television channels must be put in the framework of Russian legal norms", proclaimed in this regard Sergei Sitnikov, the head of Roskomnadzor.<sup>56</sup> There were recent reports that Roskomnadzor is already in negotiations on registration and licensing with Discovery Enterprises and BBC World.

53) Such stories in Krasnodar, Chita and Irkutsk were described by the Mediaprofi professional magazine, No. 11, 2009: 3.

54) This is confirmed also in: *Инвестиции в цифру* / Teletsentr, No 9 (November) 2009, p.66.

55) See more on registration and restrictions for foreign companies in: *The Regulatory Framework for Audiovisual Media Services in Russia* by Andrei Richter. *IRIS-Special, European Audiovisual Observatory (Ed.), Strasbourg 2010.*

56) See: Sitnikov, *Сергей Практические вопросы цифровизации* / Broadcasting, No.3 (May-June), 2009: 17.

## 2. Ukraine

The Statute of Ukraine On Television and Radio Broadcasting links the carrying out of terrestrial broadcasting and the use of multichannel networks (like cable or satellite networks) to the prior obtaining of a licence from the National Council. The issuance of the licence for broadcasting using radio frequencies and for broadcasting on free channels of multichannel networks (i.e., without using spectrum) is based on the results of open competitions (Art. 25 para. 1). The only exception to the competition requirement applies to digital broadcasting of existing and already licensed terrestrial analogue programmes (see above).

The competition for the MX-4 digital multiplex was the only one held by the National Council as of today. A peculiarity of the competition was the demand for all its participants to pay a "deposit against competition security" in the amount of UAH 65 773 (EUR 9 000). This amount was determined by a decision of the National Council. The law stipulates that it may not exceed ten per cent of the announced maximum rate of the license fee. In this particular case, it amounted to five per cent of the license fee. For the winners of the competition, the deposit was credited towards the total amount of the licence fee payable by them. The deposits of the participants who failed in the competition were remitted to the state budget. The procedure was stipulated in Art. 26 of the Statute of Ukraine On Television and Radio Broadcasting in 2006 for both analogue and digital broadcasting but never applied before in competitions for broadcast licences.

This competition was peculiar in other respects as well. The professional online publication "Telekrytyka" conducted its own investigation in the competition process.<sup>57</sup> It concluded that the process had not been transparent and that the winners seemed to be front companies for shadow businesses. Much later, in September 2009, when most of the winners had failed to start broadcasting within six months after the competition as required, President Viktor Yushchenko attacked the methods used by the National Council in the licensing of the MX-4 multiplex and called for the annulment of the licences. This call was made at an RNBO meeting specifically devoted to the digital switch-over. On 16 September 2009, the National Council (half the members of which represent the President) reacted to his call by deciding to inspect the TV companies that obtained the MX-4 licences.

Another issue related to the licensing procedure is the provision in the Statute On Television and Radio Broadcasting that a renewal of the licence in connection with the switch-over from analogue to digital broadcasting shall be subject to a charge equal to the licence fee assessed for the granting of a multichannel broadcasting licence (Art. 31 para. 5). As we can see from the competition for the MX-4 multiplex, the fee can be as high as EUR 180 000, which adds an unfair burden for the TV companies that have already recently paid a fee for an analogue licence issued for ten years (a standard licence term in Ukraine).

## V. Ownership issues

### 1. Russia

The Regulation On Licensing of 1994 is the only piece of Russian law to impose specific restrictions on the award of a broadcasting licence. Its Point 13 prevents a legal entity from obtaining "a television and/or a radio broadcasting licence for more than two broadcasting channels covering the same territory, if the zones served overlap completely, or for more than two-thirds of each zone, unless an existing law of the Russian Federation stipulates otherwise". However, this provision contains no further clarification on the use of different bands (AM, FM, SW, MW, etc.) by the same station. It also does not restrict any cross-ownership between broadcasting and the press and therefore it does not achieve its objective. Recently, Roskomnadzor did not follow up on possible violations of Point 13 of the Regulation, which its officials have called an obsolete norm, ready to be abolished.

57) See: <http://telekritika.ua/cabletv/2008-06-12/39689>

A monopoly exists in the telecommunications sector for transmission of terrestrial digital television. It is the above-mentioned RTRS which owns more than 90 per cent of all television transmitters in the country. Established in 2001 by presidential decree as a "state broadcasting company", the network disseminates TV and radio signals throughout Russia and ensures Russia's audiovisual presence abroad. Its director-general is appointed by the President of the Russian Federation. In addition to its current status, the RTRS has been assigned a major role in making the transition to digital television and radio broadcasting.<sup>58</sup>

## 2. Ukraine

In Ukraine the legal framework for the digital switch-over process has not triggered changes in media ownership restrictions. The Statute *On Television and Radio Broadcasting* is quite liberal in this regard and foresees a principle that one company may have one licence in each market segment (e.g. one national licence, a licence in each of the provinces and each city or town). At the same time, one owner can possess an unlimited number of companies benefiting from broadcast licences. The only limitation is not to control more than 35 per cent of the market, though whether "the market" should be calculated by advertising revenues, number of channels or size of the audience is not clear.<sup>59</sup>

Another ownership-related issue of the digital transition concerns the means of digital terrestrial broadcasting such as towers, transmitters etc. The law is silent about any restrictions on concentration in this context. At the same time, the major role in the switch-over process will belong to the state company "Broadcasting, Radio-communications & Television Concern (BRT Concern)".<sup>60</sup> The infrastructure of the BRT Concern includes more than 560 towers and masts, more than 12 000 kilometers of microwave links, over 1 350 television transmitters, and, in particular, 24 digital transmitters of DVB-T standard in the city of Kiev and its region, as well as in the Zhitomir and Odessa regions. More than 90 per cent of television transmitters in Ukraine either belong to the BRT Concern or are maintained by it.

Nevertheless, certain functions of multiplex operators and aggregators are to be given to private companies. The government's policy is to rely on huge investment from private businesses, which might mean that telecom operators are either expected to be private or to be privatized in the switch-over process.

## 3. Vertical restrictions

Note should be taken of the absence of any restrictions in both countries for a TV company to own the multiplex operator or provider which will serve programmes of *inter alia* its competitors.

## VI. Practice of the digital switch-over

In **Russia**, there are seven zones of experimental digital terrestrial broadcasting: Yekaterinburg and the Sverdlovsk region surrounding it, the Khanty-Mansy autonomous district, Tatarstan, the Kurgan region, etc. The Sverdlovsk region leads among them with some 60 000 users of digital terrestrial TV.<sup>61</sup>

58) See: <http://www.kremlin.ru/eng/text/news/2008/10/208317.shtml>

59) Art. 8 of the Statute on Television and Radio Broadcasting as amended on 18 March 2008, see its text in Ukrainian at: <http://www.medialaw.kiev.ua/laws/local/6/>

60) See more on the company (in English) at its website: <http://www.rtt.ua/en/concern>

61) See interview of Aleksey Malinin, director-general of RTRS, to Itogi magazine 3 August 2009, No.32, available at: <http://www.itogi.ru/hitech/2009/32/142821.html>

In **Ukraine**, the start-up of digital terrestrial broadcasting began with a set of experiments in Kiev. The first three licences were obtained in March 2006. In 2008, work began on the implementation of the digitalisation State Programme in Kiev, Zhitomir, the Sumy and the Odessa regions, but the advancement here is behind schedule.

As to the MX-4 multiplex, the winning TV companies (with one exception) failed to start digital broadcasting on time, and thus the multiplex operators were allowed by the National Council to fill the slots with the existing terrestrial broadcasters.

## **VII. Summary**

Both countries advance towards digital terrestrial broadcasting but in a tranquil way. The advent of digital television and other new services and technologies has recently accelerated the elaboration of regulation and related processes. This development could point to future changes that might go beyond merely adjusting the legal framework to digital technology. Whether it will lead to adequate legal regulation and thus the setting of transparent parameters for technical advancement, whose absence has been a major problem so far, remains unclear.

An even bigger problem in Ukraine is the lack of harmonisation among different agencies in the government and the National Council (the regulator which is independent from the Cabinet of Ministers).

The domination of state-run broadcasters and state-run telecom operators is an important feature in Russia. It triggers fears that the places on the first three terrestrial multiplexes may be allocated, without any competitions and public discussions, to incumbent players favoured by government policy.

In both countries, the economic crisis complicates the perspectives for attracting both public and private investments in this segment of the economy. This might cause either the collapse of hundreds of regional broadcasters facing the high cost of the switch-over to digital TV or lead to the preservation of analogue broadcasting in the central areas of Russia and Ukraine. As a result, the pluralistic and manifold programming and information promised in the concepts of digital television may not materialise.