



GENERAL NOTICE 04/2020

PROPOSED DECISION IN TERMS OF SECTION 32 OF THE ESWATINI COMMUNICATIONS COMMISSION ACT, 2013: ESWATINI COMMUNICATIONS COMMISSION BROADCASTING CODE FOR CONSULTATION

INVITATION FOR WRITTEN REPRESENTATIONS

The Eswatini Communications Commission, hereinafter referred to as the Commission, has developed the Eswatini Communication Broadcasting Code in accordance with Section 7(e) of the Eswatini Communications Commission Act, 2013. Section 7(e) enjoins the Commission to establish quality of service codes as well as content and censorship codes.

The Eswatini Communication Commission Broadcasting Code gives direction to broadcasters on the expected conduct while delivering their services to the viewers and listeners. The code highlights the expected standards in terms of advertising, watershed, programme sponsorship, local content, accessibility to broadcasting services for the disabled, privacy and copyright issues.

A copy of the proposed Decision document is available on the Commission's website at www.sccom.org.sz and at the Commission's offices at North Wing 4th Floor, Sibekelo Building, Mhlambanyatsi Road, Mbabane.

The provisions of Section 32 of the ESCCOM Act, 2013, allow for stakeholders and interested persons to make comments on proposed decisions of the Commission. The public is hereby invited to submit their written representations on the proposed Decision to publish the Eswatini Communications Broadcasting Code herewith by the Commission.

Written representations with regard to the proposed Decision must be submitted to the Commission no later than 17h00 on 28 August 2020 by post to Eswatini Communications Commission, P.O. Box 7811 Mbabane, hand delivered or electronically to legal@esccom.org.sz.

Mvilawemphi Dlamini

Chief Executive



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**Eswatini Communications Commission
Broadcasting Code
Part 1**

Contents

1. Background	1
2. Interpretation	2
3. Watershed.....	3
4. Advertising	7
5. Programme Sponsorship.....	21
6. Local Content	31
7. Accessibility To Broadcasting Services for the disabled	33
8. Privacy	34
9. Copyright	35

1. Background

Eswatini Communications Commission (ESCCOM) is required under the Eswatini Communications Act, 2013 ("the Act") under section 6 (c) to regulate and supervise the provision of radio and television broadcasting services including the content of those services. In addition, section 7 (e) of the Act enjoins the Commission to establish content codes for television and radio, covering standards for programmes, sponsorship, product placement in television programmes, fairness and privacy to name a few. This Code is to be known as the Eswatini Communications Commission Broadcasting Code ("the Code"). Broadcasters are required by the terms of their ESCCOM licences to observe the Broadcasting Guidelines, 2017 (BG17), which is to be interpreted as a reference to this Code. This Code is intended to fill the gaps that are not covered by the Broadcasting Guidelines, 2017 as well as further clarify in detail some areas which has not be adequately amplified.

2. Interpretation

“Advertising” shall mean any visual or aural communication, representation, reference or notification of any kind –

- (i) which is intended to promote the sale, leasing or use of any goods or services; or
- (ii) which appeals for or promotes the support of any cause.
- (iii) Promotional content of display material, menus, labels, and packaging shall also fall within the definition. Editorial material shall however not be an advertisement, unless it is editorial for which consideration has been given or received.
- (iv) The word "Advertisement" shall apply to published advertising wherever it may appear. It shall however not apply to editorial or programming publicity.

“Infomercial” means any advertising broadcast in visual or audio form, lasting for more than two minutes, which may contain demonstrations of the use of the product or service advertised, and includes direct offers to the public in return for payment, and results in the broadcaster receiving payment in monetary terms or otherwise;

“Plugging” means a free mention of a product, service, company name either by the presenter or voice-over narration praising the qualities of the product or service. It may also include close-ups, choice angles, repeated and/or prolonged shots of commercial products, services, logos, trade names, etc.

“Product placement” means the placement of a product in a programme such that it is prominently seen, either through close-ups, choice angles, a shot held longer than usual, or repeated often.

“Sponsorship” means any contribution made by a public or private undertaking or natural person not engaged in providing broadcasting services or in the production of

audio and or visual works, to the financing of such works with a view to promoting its name, its trade mark, its image, its activities and or its products.

“Watershed period” means the time after 2300hrs and up to 0330hrs that is observed by licensees when television programmes which might be unsuitable for children can be broadcast.

3. Watershed

Relevant legislation to this section includes Section 7 (c) (e) of the *Eswatini Communications Commission Act, 2013*, and Clauses 7.17 and 10.5 of the *Broadcasting Guidelines (BG), 2017 as amended*

3.1 Scope

- 3.1.1 This Programming Code seeks to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- 3.1.2 The Code further seeks to ensure programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming during the watershed period is gradual.
- 3.1.3 Attention will be given to include and respect diversity such as may be expressed through differences due to, but are not limited to, cognitive or physical ability, culture, ethnicity, religion, socio-economic status, gender, age, national origin, marital status, educational background or geographic location.
- 3.1.4 The watershed period guidelines apply to all programme and non-programme matter, namely advertisements, infomercials (long-form advertisements), programme promotions, programme listings, community service announcements, station identifications, commentaries, interviews and documentaries.

3.2 Definition of Watershed period

“Watershed period” means the time after 2300hrs and up to 0330hrs that is observed by licensees to broadcast material unsuitable for children Any programmes or movies classified or rated for Adults can be aired during this period.

3.3 Guidelines to programming before and during the watershed period

- 3.3.1 Material unsuitable for children should not be shown before 23:00hrs and after 03:30hrs. The transition from family-oriented to adults only programming during the watershed period of 2300hrs shall be gradually executed. For subscription and pay per view services, mechanisms put in place to protect children must be clearly explained to subscribers.
- 3.3.2 Consumer advice such as warnings, labelling, classification details and other announcements should be given prior to the telecast of the programme or its trailers.
- 3.3.3 Classification details or rating should be shown throughout while the programme is running. However, this does not diminish the broadcaster’s responsibility for sensitive scheduling of programmes to reduce the risk of causing offence.
- 3.3.4 Save for educational programmes, which may require graphic details, no broadcasting station shall air programmes including interactive call-ins or discussion sessions whose content is suitable for adult only audience before the watershed period.
- 3.3.5 Promotional material and music videos, which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences, shall not be broadcast before the watershed period (before 23:00hrs and after 03:30hrs).
- 3.3.6 Material that contains images and/or language of a strong sexual nature or strong language in general must not be broadcast before the watershed period.
- 3.3.7 Programmes rated Adult only should not be aired before the watershed period

- 3.3.8 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:
- 3.3.8.1 must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - 3.3.8.2 must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children unless there is editorial justification;
 - 3.3.8.3 must not be condoned, encouraged or glamorised in other programmes likely to be widely seen, heard or accessed by children unless there is editorial justification.
- 3.3.9 Representations of sexual intercourse must not occur before the watershed (before 2300hrs and after 03:30hrs) (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children, unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, when children are particularly likely to be listening, or when content is likely to be accessed by children and must be appropriately limited.

3.4 **Program Classification and Rating**

This means the rating or classification allocated to a programme or broadcast in Eswatini as guided by the Clauses on Program Classification and Audience Advisories of the BG, 2017 as amended.

3.4.1 **Scope**

Classification guidelines as prescribed apply to all programme and non-programme matter, namely commercials, infomercials, documentaries, programme promotions, programme listings, community service announcements and station identifications.

3.4.2 Guidelines for programme classification or rating

- 3.4.2.1 The two key principle guidelines for programme classification or rating are:
- (a) To protect children and vulnerable adults from potentially harmful or otherwise unsuitable content
 - (b) To empower consumers, particularly parents and those with responsibility for children, to make informed listening and viewing decisions.
- 3.4.2.2 Broadcast material must be classified prior to being aired.
- 3.4.2.3 Broadcasters are encouraged to include warnings for all parental guided and age restricted programmes in their programme guides in publicity materials, electronically and on online platforms.
- 3.4.2.4 All trailers and promotional material shown before the watershed period must comply with the programming allowed before the watershed.

3.4.3 Subscription broadcasting rating system

Subscription broadcasting services providers shall:

- 3.4.3.1 Provide mandatory restricted access such as a PIN protected system (or other equivalent protection) that restricts access solely to those authorized to view and protects children from accessing content rated for Adults only;
- 3.4.3.2 Ensure that the mechanisms that have been put in place to protect children are clearly explained to subscribers.
- 3.4.3.3 Provide information to subscribers about programme content and rating that will assist adults to assess its suitability for children.
- 3.4.3.4 Provide information to subscribers that clearly itemizes viewing details including viewing times and dates.

4. Advertising

Relevant legislation to this section includes Section 7 (e) of the *Eswatini Communications Commission Act, 2013*, and Clauses related to Responsibilities of the Commission, News and Current Affairs, Sponsorship, Broadcasting of Parliament Sessions and Advertising Content of the *Broadcasting Guidelines (BG), 2017* as amended.

4.1 Scope

Broadcasters are responsible for advertising material transmitted by their stations and must therefore ensure that all advertisements are lawful, honest, decent, truthful and conform to the rules of fair competition. Broadcasting, and particularly radio and television broadcasting, because of their continuous presence in the home, must maintain a consistently high quality broadcast advertising.

4.1.1 Advertising shall not –

- (a) Prejudice respect for human dignity,
- (b) Include any discrimination on grounds of race, sex or nationality,
- (c) Be offensive to religious or political beliefs
- (d) Encourage behaviour that is harmful to the protection of the environment.

4.1.2 Advertisements shall be clearly distinguishable as such and recognizably separate from the other items of the programme service.

4.1.3 The expression of "News Flash" or "Breaking News" must not be used as an introduction to an advertisement, even if preceded by an advertiser's name.

4.1.4 Advertisements should not encourage behaviour prejudicial to health or safety.

4.1.5 Advertisements should not without justifiable reason depict or describe situations, which show dangerous practices or a disregard for safety. Special care should be taken in advertisements directed towards or depicting children.

- 4.1.6 All forms of advertising for cigarettes, cigars, electronic cigarettes and other tobacco products are prohibited.
- 4.1.7 Advertisers must exercise the utmost care and discrimination with regard to the content and presentation of advertisements transmitted during breaks within or near or adjacent to programmes designed for children.
- 4.1.8 Advertisements shall not exhort children to buy a product or service by exploiting their inexperience or credulity.
- 4.1.9 Advertisements shall not unreasonably show children in dangerous situations.
- 4.1.10 Advertisements shall not contain any descriptions, claims or other material, which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended;
- 4.1.11 Advertisements should not unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.
- 4.1.12 A licensee shall before broadcasting an advertisement ensure that the advertiser has adequately substantiated any descriptions or claims in the advertisement.
- 4.1.13 It is unethical and not allowed for certain professions to advertise. They are Physicians, Lawyers, Dentists, Osteopaths, Chiropractors, herbalist, Traditional Doctors, Occultists, Optometrists and others of a similar nature.
- 4.1.14 Commercial communications for fortune tellers, magicians, psychic services etc., are acceptable where the service is evidently for entertainment purposes only and this is made clear in the communication.
- 4.1.15 Claims that future events may be predicted, other than as a matter of opinion, are not permitted.
- 4.1.16 Claims to make contact with deceased persons are not permitted.
- 4.1.17 Claims pertaining to matters of health, cures, curing and/or healing are not permitted.
- 4.1.18 No broadcasting service provider shall promote the use of witchcraft.
- 4.1.19 No broadcasting service provider shall host a witchdoctor for purposes of promoting his/her witchcraft practices.

- 4.1.20 No broadcasting service provider station should be used to advertise the services of a witchdoctor or giving directions to people to visit a certain witchdoctor.
- 4.1.21 No person shall use a broadcasting service provider station to use witchcraft, sorcery, enchantment, conjuration, knowledge of an occult or crafty science to tell fortunes, recover stolen property, give luck and wealth, cast out misfortunes or curing certain diseases.
- 4.1.22 No broadcasting service provider station shall broadcast a programme that promotes the practice of necromancy (*the supposed practice of communicating with the dead, especially in order to predict the future*).

4.2 Infomercials

- 4.2.1 Infomercials are prohibited for non-commercial public service broadcasting licensees unless this are congratulatory messages that are less than two (2) minutes.
- 4.2.2 In special occasions, such as trade fares, which promotes business activities in the country, the Commission may grant approval for public services broadcasters upon written request to produce and broadcast infomercials which are not more than fifteen (15) minutes each.
- 4.2.3 A licensee shall not broadcast an infomercial—
- (a) for a period exceeding three and half hours of the performance period in any day;
 - (b) during prime-time; or
 - (c) during any break in the transmission of a children's programme.
- 4.2.4 A licensee shall ensure, through visual or audio form, that the broadcast of any infomercial is distinguishable from any broadcast programme material.
- 4.2.5 A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest, decent and conform with the principles of fair competition.
- 4.2.6 The provisions of paragraphs (3.2.2) and (3.2.3) shall not apply to stations, which exclusively broadcast infomercials.

4.3 Offence, Harm and Human Dignity

Scope

Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimize the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling.

Directives

- 4.3.1 Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18.
- 4.3.2 Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.
- 4.3.3 Advertisements must not exploit the special trust that persons under the age of 18 place in parents, guardians, teachers or other persons.
- 4.3.4 Advertisements must not include material that is likely to condone or encourage behaviour that prejudices health or safety.
- 4.3.5 Advertisements must not include sounds that are likely to create a safety hazard, for example, to those listening to the radio while driving.
- 4.3.6 Advertisements must not include visual effects or techniques that are likely to affect adversely members of the audience with photosensitive epilepsy.
- 4.3.7 Advertisements must not be excessively noisy or persuasive. The maximum subjective loudness of advertisements must be consistent and in line with the maximum subjective loudness of programmes and junction material. Measurement and balancing of loudness levels should preferably be carried out using a means of subjective loudness measurement conforming to standards derived from relevant ITU recommendations.
- 4.3.8 Advertisements must not condone or encourage harmful discriminatory behaviour or treatment. Advertisements must not prejudice respect for human dignity.
- 4.3.9 Advertisements must not condone or encourage violence, crime, disorder or anti-social behaviour.

- 4.3.10 Advertisements must not distress the audience without justifiable reason. Advertisements must not exploit the audience's fears.
- 4.3.11 Commercial communications shall not be offensive or derogatory to religious or cultural beliefs, or encourage behaviour prejudicial to the protection of the environment or to the health or safety of the public.
- 4.3.12 Commercial communications shall be appropriately scheduled with regard to the time of broadcast, type and or content of broadcast, channel/service type, nature of the product or service being promoted and shall at all times be mindful of the likely composition of the audience
- 4.3.13 Commercial communications shall not cause or be to the moral, mental or physical detriment to children, and shall comply with the following criteria for their protection:
- 4.3.13.1 They shall not directly exhort children to buy or hire a product or a service by exploiting their inexperience or credulity;
 - 4.3.13.2 They shall not directly encourage children to persuade their parents, guardians or others to purchase the products or services being promoted;
 - 4.3.13.3 They shall not exploit the special trust children place in parents, guardians, teachers or other persons of stature in society;
 - 4.3.13.4 They shall not unreasonably show children in dangerous situations
- 4.3.14 Individual living persons shall not normally be portrayed or referred to in commercial communications without their permission. However, references to living persons may normally be made in commercial communications for books, films, radio or television broadcasts, newspapers, magazines etc., which feature the persons referred to in the communication, provided they are not offensive or inaccurate.
- 4.3.15 Commercial communications shall not be calculated to induce unwarranted fear on the part of the viewer or listener. Advertisements must not distress the audience without justifiable reason. Advertisements must not exploit the audience's fears or superstitions

4.4 Misleading advertisements

Directives

- 4.4.1 Advertisements must not materially mislead or be likely to do so.
- 4.4.2 Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.
- 4.4.3 Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means must be made.
- 4.4.4 For advertisements that quote prices for an advertised product or service, material information includes:-
 - (a) the main characteristics of the product or service;
 - (b) the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting;
 - (c) the price of the advertised product or service, including taxes, or, if the nature of the product or service is such that the price cannot be calculated in advance;
 - (d) the manner in which the price is calculated,
 - (e) delivery charges;

(f) the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect, that consumers have the right to withdraw or cancel, if they have that right.

4.4.5 Subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims.

4.4.6 Advertisements must not mislead by omitting the identity of the advertiser. Advertisers should note that it is a requirement for advertisers to identify themselves in some advertisements.

4.4.7 Advertisements must not falsely imply that the advertiser is acting as a consumer or for purposes outside its trade, business, craft or profession. Advertisements must make clear their commercial intent, if that is not obvious from the context.

4.4.8 No advertisement may use images of very brief duration, or any other technique that is likely to influence consumers, without their being fully aware of what has been done.

Substantiation

4.4.9 Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation.

Qualification

4.4.10 Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

4.4.11 Qualifications must be presented clearly.

Exaggeration

4.4.12 Advertisements must not mislead by exaggerating the capability or performance of a product or service.

4.4.13 Advertisements must not present rights given to consumers in law as a distinctive feature of the advertiser's offer.

- 4.4.14 Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.
- 4.4.15 Advertisements must not mislead about the nature or extent of the risk to consumers' personal security, or that of their families, if they do not buy the advertised product or service.
- 4.4.16 Advertisements must not claim that a product or service is able to facilitate winning in games of chance.
- 4.4.17 Advertisements must not explicitly claim that the advertiser's job or livelihood is in jeopardy if consumers do not buy the advertised product or service.

Prices

Definition

Price statements include statements about the manner in which the price will be calculated as well as definite prices.

- 4.4.18 Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product or service depicted in the advertisement.
- 4.4.19 Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.
- 4.4.20 If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the advertisement must make clear that it is excluded from the advertised price and state how it is calculated.
- 4.4.21 Advertisements that quote instalment costs must state the total price of the advertised product or service and the instalment frequency as prominently as the cost of individual instalments.

- 4.4.22 Advertisements that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.
- 4.4.23 If the price of one product or service depends on another, advertisements must make clear the extent of the commitment consumers must make to obtain the advertised price.
- 4.4.24 Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by consumers.

'Free' claims

Principle

Advertisements must not describe a product or service as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the promotion and collecting or paying for delivery of the item.

- 4.4.25 Advertisements must make clear the extent of the commitment consumers must make to take advantage of a "free" offer.
Advertisements must not describe items as "free" if:
 - 4.4.25.1 consumers have to pay for packing, packaging, handling or administration of the "free" product or service
 - 4.4.25.2 the cost of response, including the price of a product or service that consumers must buy to take advantage of the offer, has been increased, except where the increase results from factors that are unrelated to the cost of the promotion
 - 4.4.25.3 the quality of the product or service that consumers must buy has been reduced.
- 4.4.26 Advertisements must not describe an element of a package as "free" if that element is included in the package price, unless consumers are likely to regard it as an additional benefit because it has recently been added to the package without increasing its price.

- 4.4.27 Advertisements must not use the term "free trial" to describe a "satisfaction or your money back" offer or an offer for which a non-refundable purchase is required.

Availability

- 4.4.28 Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.
- 4.4.29 Advertisements that quote prices for featured products must state any reasonable grounds the advertisers have for believing that they might not be able to supply the advertised (or an equivalent) product at the advertised price, within a reasonable period and in reasonable quantities. In particular:
- 4.4.29.1 if estimated demand exceeds supply, advertisements must make clear that stock is limited
 - 4.4.29.2 if the advertiser does not intend to fulfil orders, because the purpose of the advertisement is to assess potential demand, the advertisement must make that clear
 - 4.4.29.3 advertisements must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.
- 4.4.30 Broadcasters must be satisfied that advertisers who advertise products at specific prices will not use the technique of switch selling, in which their sales staff refuse to show the advertised product, refuse to take orders for it or to deliver it within a reasonable time or demonstrate a defective sample of it to promote a different product.
- 4.4.31 Advertisements must not falsely claim that the advertiser is about to stop trading or move premises. They must not falsely state that a product or service, or the terms on which it is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice.
- 4.4.32 Advertisements must not mislead consumers about market conditions or the possibility of finding the product or service

elsewhere to induce consumers to buy the product or service at conditions less favourable than normal market conditions.

Comparisons

The Commission will consider unqualified superlative claims as comparative claims against all competing products or services. Superiority claims must be supported by evidence unless they are obvious puffery (that is, claims that consumers are unlikely to take literally). Objective superiority claims must make clear the aspect of the product or service or the advertiser's performance that is claimed to be superior.

Comparisons with Identifiable Competitors

- 4.4.33 Advertisements that include a comparison with an identifiable competitor must not mislead, or be likely to mislead, consumers about either the advertised product or service or the competing product or service.
- 4.4.34 Advertisements must compare products or services meeting the same need or intended for the same purpose.
- 4.4.35 Advertisements must objectively compare one or more material, relevant, verifiable and representative feature of those products or services, which may include price.
- 4.4.36 Advertisements must not create confusion between the advertiser and its competitors or between the advertiser's product or service, trade mark, trade name or other distinguishing mark and that of a competitor.
- 4.4.37 Certain agricultural products and foods are, because of their unique geographical area and method of production, given special protection by being registered as having a "designation of origin". Products that are registered as having a "designation of origin" should be compared only with other products with the same designation.

Other Comparisons

- 4.4.38 Advertisements that include comparisons with unidentifiable competitors must not mislead, or be likely to mislead, consumers. The elements of the comparison must not be selected to give the advertiser an unrepresentative advantage.

Price Comparisons

- 4.4.39 Advertisements that include a price comparison must make the basis of the comparison clear.
- 4.4.40 Price comparisons must not mislead by falsely claiming a price advantage. Comparisons with recommended retail prices (RRPs) are likely to mislead if the RRP differs significantly from the price at which the product or service is generally sold.

Imitation and Denigration

- 4.4.41 Advertisements must not mislead consumers about who manufactures the product.
- 4.4.42 Advertisements must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark.
- 4.4.43 Advertisements must not take unfair advantage of the reputation of a competitor's trade mark, trade name or other distinguishing mark or of the designation of origin of a competitor product or service.
- 4.4.44 Advertisements must not present a product as an imitation or replica of a product or service with a protected trade mark or trade name.

Endorsements and testimonials

- 4.4.45 Testimonials or endorsements used in advertising must be genuine, unless they are obviously fictitious, and be supported by documentary evidence. Testimonials and endorsements must relate to the advertised product or service. Claims that are likely to be interpreted as factual and appear in advertisements must not mislead or be likely to mislead.
- 4.4.46 Advertisements must not feature testimonials without permission.

- 4.4.47 Advertisements must not display a trust mark, quality mark or equivalent without the necessary authorization. Advertisements must not claim that the advertiser (or any other entity referred to in the advertisement), the advertisement or the advertised product or service has been approved, endorsed or authorized by any person or body if it has not or without complying with the terms of the approval, endorsement or authorization.
- 4.4.48 Advertisements must not falsely claim that the advertiser, or other entity referred to in the advertisement, is a signatory to a code of conduct. Advertisements must not falsely claim that a code of conduct has an endorsement from a public or other body.

Guarantees and after-sales service

- 4.4.49 Advertisements must not use the word "guarantee" in a way that could cause confusion about a consumer's rights.
- 4.4.50 Advertisements must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Broadcasters must be satisfied that the advertiser will supply the full terms of the guarantee before the consumer is committed to taking it up.
- 4.4.51 Broadcasters must be satisfied that advertisers will promptly refund consumers who make valid claims under an advertised money-back guarantee.

4.5 Recognition Of Advertising

- 4.5.1 Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognize the message as an advertisement
- 4.5.2 Commercial communications shall operate on a principle of transparency. Any commercial arrangement or promotion within any broadcast shall be readily recognizable as such and the

listener/viewer shall be made aware of such an arrangement or promotion.

- 4.5.3 If used in an advertisement, an expression or sound effect associated with news bulletins or public service announcements (for example, "news flash") needs special care. The audience should quickly recognise the message as an advertisement
- 4.5.4 The use of a title, logo, set or music associated with a programme that is broadcast on that medium needs special care. The audience should quickly recognise the message as an advertisement.
- 4.5.5 Presenters and other on-air personnel shall not advertise or endorse products or services during the broadcast of editorial content
- 4.5.6 Advertisers, sponsors and providers of placed products or services shall not exercise any editorial influence over the content or scheduling of broadcasts.
- 4.5.7 Commercial communications shall not describe products or services as "free" unless the products or services are supplied at no cost or at no extra cost (other than actual postage or carriage) to the recipient. And the latter fact must be made explicitly clear.
- 4.5.8 Commercial communications shall not feature persons regularly presenting news or informational broadcasts, except for commercial communications promoting appeals by registered charities or public service campaigns or announcements for safety, health, education, etc.

A person who currently and regularly reads the news on radio or television may voice radio advertisements but must not advertise products or services that are likely to be seen to compromise the impartiality of their news-reading role.

Split Screen Advertising

- 4.5.9 Split-screen advertising consists of the simultaneous or parallel transmission of editorial content and advertising content. For example, an advertising spot may appear in a window during the transmission of a regularly scheduled broadcast in such a way that

two separate images are visible on the screen. Provided the space set aside for advertising is not excessive, this technique enables the viewer to continue to watch the scheduled editorial broadcast during the transmission of an advertising spot. The split-screen technique is generally used for broadcasting relatively short advertising spots and, to date is primarily used during sports programming.

- 4.5.9.1 Split-screen advertising is permitted during natural breaks and during end credits. Split-screen advertising may also be inserted during long-form sports programmes which do not have a natural break e.g. Formula 1 Racing.
- 4.5.9.2 Split-screen advertising shall not exceed 50% of screen space and only one split-screen advertisement shall appear at any given time.
- 4.5.9.3 Split-screen advertising is not permitted in news or current affairs Broadcasts.
- 4.5.10 Self-promotion on split-screen is allowed in all programme categories, with the exception of children's programmes and broadcasts of religious services.

5. Programme Sponsorship

- 5.1 A programme is deemed sponsored if any part of its costs of production, acquisition or transmission is met through payment, or other valuable reward or consideration to the broadcaster, with the objective of promoting the sponsor's name, image, product, activities or services.

The overriding concern with programme sponsorship is the preservation of the editorial integrity of sponsored programmes. The threat to editorial integrity continues to grow, as advertisers/sponsors have assumed an even greater influential role in the media, where broadcasters, through the former's influence, have continued to change media output to suit their corporate interests. The broadcaster must ensure that the editorial integrity of their programming is not influenced by the sponsor.

A sponsor is any public or private undertaking (other than the broadcaster or programme producer), who is sponsoring the programme, broadcast, programming or channel in question with a view to promoting their or another's name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends and is also applicable to those who are otherwise supplying or funding the programme or channel.

Sponsorship arrangements include: -

- (a) The provision of direct funding by the sponsor e.g. where a sponsor provides funding and is the named sponsor of the programme.
- (b) Through in-kind investment in the form of the provision of facilities or services from the sponsor (e.g. in outdoor broadcasts).
- (c) The supply of products and services, including prizes

Broadcasters should recognise that there is a distinction between programme sponsorship and advertising. Through the sponsorship of a programme, an organisation gains public exposure, prestige and favourable association. The image of the organisation may be enhanced, and this is what sponsorship amounts to. It does not equate with advertisements or infomercials (long-form advertisements), where there is a direct appeal to the public to purchase a specific product or use a particular service.

Directives

- 5.1.1 Sponsorship shall not constitute advertising as defined by this Code.
- 5.1.2 A sponsorship announcement or reference shall not directly encourage the purchase or rental of a product or service, in particular by, inter alia, making special promotional references to a product or service, by the inclusion of advertising copy, prices, endorsements or calls to action, or by affording undue prominence to a product or service of the sponsor
- 5.1.3 Viewers and listeners shall be informed of the existence of a sponsorship agreement. Sponsored programmes shall be identified as such by the name,

logo and/or any other symbol of the sponsor such as a reference to its product or service or a distinctive sign thereof in an appropriate way for programmes or broadcast at their beginning, during and/or the end of the said programmes or broadcasts. Sponsor logos shall not be shown during the editorial segments of television documentaries.

- 5.1.4 Programme material shall not be sponsored by an entity involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted.
- 5.1.5 Programmes shall not be sponsored by a sponsor(s) whose products or services are not permitted to appeal to the typical audience for that programme or during which time it would not be permitted to promote
- 5.1.6 The sponsorship of programmes by entities whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription
- 5.1.7 News, current affairs, and religious services shall not be sponsored on radio and television.
- 5.1.8 The information provided in respect of, and the mechanism used to participate in, sponsored competitions shall not constitute advertising.
- 5.1.9 Broadcasters may accept sponsorship of weather broadcasts, financial broadcasts or traffic reports but the licensed operator shall retain ultimate editorial control of the sponsored programme;
- 5.1.10 Broadcasters shall ensure that sponsorship of an informative programme does not compromise the accuracy and impartiality of the programme's contents;
- 5.1.11 Broadcasters shall not discriminate against or favour a particular sponsor;
- 5.1.12 Broadcasters shall acknowledge the sponsorship of a programme immediately before and after the programme is broadcast, and any connection between the programme's subject-matter and the sponsor's commercial activities shall be explicitly identified as such.

- 5.1.13 Broadcasters should maintain their integrity and exercise their responsibility to the public to ensure that consumer's interest is protected. Hence, they must retain their editorial and programming independence and should not be influenced by the sponsor on either the content or acquisition of a programme.
- 5.1.14 On free-to-air television, broadcasters should bear in mind that channels are not over-commercialised such that viewers are inundated with sponsorship messages.
- 5.1.15 Sponsorship of a channel is not allowed.
- 5.1.16 Sponsorship of programmes may be allowed, but promotional references and presenters' endorsements of the sponsor or its products, that have the effect of advancing the sale or publicising the sponsor or its products within the programme, are not allowed.
- 5.1.17 Programmes should not be made to look like infomercials.
- 5.1.18 Broadcasters should be vigilant in ensuring that there is no undue prominence given to a sponsor. As a general principle, references to a sponsor's name, product/service, product name, trade mark or slogan in any programme should be editorially justified and should not obtrude on programme interest. Sponsorship identifications in a programme should also not be distracting such that they affect viewing pleasure.
- 5.1.19 Broadcasters should bear in mind that programmes such as info-educational, current affairs, and children's programmes require a greater sensitivity to sponsorship, as opposed to entertainment or sports programmes. Broadcasters should hold these programme genres to stricter sponsorship standards. Genres such as info-educational programmes should always provide balanced, factual and objective coverage so that viewers can make informed choices.
- 5.1.20 Advertisements tagged as part of a sponsorship credit will be counted as part of the 12 minute per clock hour advertising limit. However, sponsor credits before and after a programme will not be included in the 12-minute limit.

5.1.21 A sponsored programme or programme segment must be clearly identified before the beginning and after the end of the programme or programme segment. The credits should explain the sponsor's actual connection with the programme.

5.2 Sponsorship Considerations For Programme Genres

5.2.1 Children's Programmes

5.2.1.1 For the purposes of this standard, 'children' is defined here as persons aged 18 years and below.

5.2.1.2 Sponsorship of children's programmes should be treated with caution. Broadcasters should consider carefully the appropriateness of any sponsorship of children's programmes as children are unlikely to understand fully the relationship between sponsor and programme.

5.2.2 Current Affairs and Info-educational Programmes

5.2.2.1 Current Affairs programmes are characterised by their analysis and explanation of current events and issues, including materials dealing with current public policies, political, economic or social controversy.

5.2.2.2 Info-educational programmes are programmes, which serve informational and educational needs. These programmes serve to inform and educate the public about a range of issues including, but not limited to, health, finance and education.

5.2.2.3 Broadcasters should consider carefully the appropriateness of any sponsorship of these programmes, particularly programmes that are analytical, informative or investigative in nature. It is therefore the responsibility of the broadcaster to maintain the programme's editorial integrity.

5.3 Sponsorship Format

Sponsorship Credits

5.3.1 A sponsored programme or programme segment must be clearly identified before the beginning (i.e. front credit) and/or after the end (i.e. end credit) of the programme or programme segment.

- 5.3.1.1 The credits should explain the sponsor's actual connection with the programme, for example: "sponsored by", "in association with" or "brought to you by".
 - 5.3.1.2 The sponsor's name, trade, brand, product, service name and/or trademark or logo (the essential identification for the sponsor) may be used.
 - 5.3.1.3 Credits may indicate the connection between the sponsor and a brand or the nature of the sponsor's business, e.g. "sponsored by Company X, makers of Product X".
 - 5.3.1.4 Slogans or copy lines of the sponsors may appear in visual display and/or through voice-overs during the front/end credits, but not within the programme or programme segment. Sponsor's promotional messages are also allowed at the end of a sponsored programme or programme trailer.
 - 5.3.1.5 Bumper sponsorship credits (i.e. entering and/or leaving any commercial break) would be counted as part of the advertising allowance of 12 minutes per clock-hour. of the programme or programme segment.
- 5.3.2 The main purpose of a trailer is to alert viewers to a forthcoming programme or to provide general information about the broadcaster's programme service. The sponsor's presence should therefore remain secondary.

5.4 **Programme title sponsorship**

- 5.4.1 A sponsor's name may be incorporated into the title of a programme, provided that it is an entertainment variety or sports programme. These programmes should adhere to the general principles of sponsorship and not be made to look like infomercials. While the sponsor's products and services can be featured in the programmes, they should not be given undue prominence and be sales pitches that promote and encourage the purchase of the products. Presenters or interviewees appearing in these programmes should also not endorse the sponsor's products or services.

- 5.4.2 A sponsor's name should not be integrated into the titles of other programme genres, especially news, current affairs, info-educational and children's programmes.
- 5.4.3 A sponsor's name may also be integrated into a programme title when the title is that of a sponsored event covered by the programme (e.g. the MTN Cup Final, EPTC Charity Cup) or when the programme is acquired (e.g. Barclays EPL Highlights). This applies to both sponsored programmes and segments.
- 5.4.4 A sponsor's name may be integrated into the generic title for programme title slots. Therefore, generic titles for time slots, such as "Company XXX's Blockbuster Sunday", may be used. However, this dispensation will not be applicable to time slots dedicated to children's programmes news, current affairs, business and informational programmes.
- 5.4.5 The programme title should not share the same graphic representation or adapt the typeface of the sponsors' trade name/mark/logo. This is to preserve the identity of the broadcaster's programme from that of the sponsor's. A programme title is a part of a programme and producers of these shows should not be pressured into designing titles to meet sponsorship demands.
- 5.4.6 The sponsor's logo should not appear within programme genres such as news, current affairs, info-educational or children's programmes. An exception would be if the sponsor's logo appears as part of the physical landscape of the featured event itself.
- 5.4.7 For entertainment programmes, sponsor's logo may appear within a programme, as part of the studio set or on sponsor's products. However, the logos' appearance on screen should be incidental and should not be given prominence in terms of close-up or from favourable camera angles, or for any significant length of time.
- 5.4.8 The sponsor's logo should not be superimposed onto any programmes such as News, Info-educational, Current Affairs, and Children's programmes. A sponsor's logo can be superimposed onto a programme in the following instances:

5.4.8.1 **Superimposition on Screen**

Sponsor's logos can be superimposed on a corner of the screen during entertainment programmes, such as films, dramas or variety programmes. This can be allowed for a maximum of five seconds.

5.4.8.2 **Provision of Information Services**

This includes reports containing factual data such as weather reports, scoreboards, traffic updates etc. In this instance, the sponsor's logos can also be accompanied by a short slogan provided it does not block vital information.

5.4.8.3 **Coverage of Sports Events**

This will include technical timing for various sporting events such as athletics, swimming and football matches.

5.4.8.4 **Provision of timing**

This will include technical timing for various sporting events such as athletics, swimming and football matches. An on-screen acknowledgment to the technical provider may appear on screen whenever the information is displayed.

5.4.8.5 **Banners Superimposed during Programmes**

This refers to SMS banners (superimposed banners carrying viewers' SMS messages) and programme banners (superimposed banners to promote the channel or its programmes).

5.4.9 In the above exceptions mentioned in Clause (4.5.8.1) to (4.5.8.5), the sponsor's logo as well as the vehicles that carry the logo (e.g. timer, SMS banner), should not block any vital action or visual information on screen and not mar viewing pleasure. Sponsors logo and programme banners should not appear concurrently. Sponsor's logos should also not appear more than once every quarter of an hour.

5.4.10 Crawlers with congratulatory messages and a sponsor's logo can be allowed in the coverage of sports events where there is local participation to congratulate local athletes who have won competitions. The messages

presented should not be unduly distracting and the logo used in such crawlers should be in accordance with guidelines mentioned in Clause (4.4.9)

5.5 Virtual Logos/Billboards

- 5.5.1 Electronic imaging systems allow broadcasters to alter, add, or superimpose logos or billboards onto the telecast of an event. For example, a sponsor's logo is superimposed on the football field before the start of a match.
- 5.5.2 The use of such virtual signage is allowed. When used, the virtual signage should not obstruct or interfere with events happening on the screen.
- 5.5.3 The virtual signage can feature the sponsor's logo and slogans, but it should not contain any sales message. (Example of a slogan without sales message is "Nedbank – Green and caring bank".)
- 5.5.4 Since such virtual signage works by altering the broadcast signal itself, the usage of such systems should not result in a discernible degradation of the picture quality.

5.6 Undue Prominence

- 5.6.1 When featuring a sponsor in the programme, it is important to note that undue prominence should not be given to the sponsor within the programme such that the effect amounts to advertising. Any references to a product, service, company name or logo must be limited to what can be justified by the editorial requirements of the programme.
- 5.6.2 Undue prominence may result from the recurring presence or reference to a product, service, company name or logo in a programme, or from the manner in which a product, service, company name or logo is presented or appears in a programme. Instances where undue prominence may occur include product placements and plugging.
- 5.6.3 The general principle of undue prominence should also apply to product and/or set sponsors. These are sponsors who provide only props/sets in programmes. These items need to be relevant to the programme's storyline or context and used discreetly and tastefully.

5.7 Endorsements

5.7.1 The presenter of sponsored programs (including featured artistes and guests) should be objective and should not promote or endorse the sponsors and their products, especially in children's programmes and programmes that seek to inform/educate or give consumer advice.

5.8 Game and Award Shows

5.8.1 More flexibility is given to Game and Award shows in which sponsored prizes and products may form an inherent part of the programme. For instance, aural and audio/visual references to the sponsor's provision of the prizes may be allowed.

5.9 Unacceptable Products and Advertisers

5.9.1 Broadcasters should not accept sponsorship from products, services and establishments that are not acceptable for advertising under the Advertising section of this code.

5.10 Unsponsorable Programmes Or Programme Segments

5.10.1 The following programmes must not be sponsored:

5.10.1.1 Religious Services - except for religious community broadcasters where Churches sponsor some of the programmes.

5.10.1.2 Parliamentary Programmes

(a) Parliamentary programmes would include Opening of Parliament, Highlights from Parliament, Select Committee Hearings, Special Committees of Parliament, Commission of Inquiry, etc.

5.10.1.3 Programmes related to the elections

(a) Election-related programmes include Campaign Reports and Polling Night Results.

5.10.1.4 Ministerial Speeches, Press Conferences and Speeches by Public Officials

5.10.1.5 News Programmes including flashes, bulletins, headlines, top stories specials, and breaking news

(a) The main news bulletin, including headlines, top stories, news flashes and breaking news, should not be sponsored

- (b) Specialist news reports may however be sponsored. Specialist news reports refer to factual data like traffic, weather, stock market indices, foreign exchange rates, and “softer” news items like culture, sports and travel. Such sponsored reports must be separated from the general news programme clearly, for example by programme end credits or a commercial break, so as not to give the perception that the whole news programme is sponsored.

6. Local Content

Relevant legislation to this section includes Section 7 (e) of the Eswatini Communications Commission Act, 2013, and Local Content Clause of the Broadcasting Guidelines (BG), 2017

6.1 Scope

6.1.1 For purposes of this Code, Local content means the total of all television or radio programmes excluding news and advertisements, which fulfil any five of the following conditions:

- (a) the production is made in either Eswatini’s indigenous or official languages;
- (b) production and post-production was wholly or partly done in Eswatini;
- (c) the content deals with issues that are unique and relevant to Eswatini audiences;
- (d) at least fifty percent (50%) of the leading actors, major supporting cast appearing in the program and technical crew are Emaswati;
- (e) the location of shooting, in case of audio-visual programmes or performance was wholly or partly in Eswatini;
- (f) the author(s) of the program are Emaswati (whether or not the program is produced in conjunction with a co-producer, an executive producer or director who is not Swati)

6.1.2 In case of an animated program, the program satisfies at least four of the following requirements;

- (a) the production designer is Swati
- (b) the character designer is Swati
- (c) the supervising layout artist is Swati
- (d) the supervising storyboard artist is Swati
- (e) The key background artist is Swati
- (f) The director is Swati

6.1.3 Every broadcasting licensee must, through the promotion, development or broadcasting of local content strive to -

- 6.1.3.1 Encourage the development of Eswatini identity and expression by providing, within the type of programmes or music promoted, developed or broadcast by a broadcasting licensee, a wide range of local content which reflects Emaswati attitudes, opinions, ideas, values and artistic creativity by displaying Eswatini culture and entertainment through music, dramas, series, news, documentaries, current affairs, movies, films and other programmes;
- 6.1.3.2 Serve the needs and interests and reflect the circumstances and aspirations of Eswatini women, men and children;
- 6.1.3.3 Promote, develop, produce and maintain local content of high standards and quality; and
- 6.1.3.4 Make maximum use of Eswatini and African creative and other resources in the creation and presentation of local content.

7. Accessibility to Broadcasting Services for the disabled

Clause 5.2(g) of the Broadcasting Guidelines, 2017 calls for all Public Broadcasters to strive to offer a broad range of services aimed in particular at people with disabilities.

7.1 Scope

Broadcasters are expected to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted.

7.2 Guidelines for the Accessibility of Broadcasting Services by the Disabled

- 7.2.1 Broadcasters shall take specific steps to include Persons with Disabilities (PWD) in different programmes. In addition, broadcasters should air programmes focusing on persons with disabilities with a view to improving their general welfare and wellbeing.
- 7.2.2 Broadcasters are required to implement closed captioning, subtitling, and sign language inserts during news and current affairs programmes, emergency announcements and during programming of national interest such as national events. Audio description must also be used, specifically for the benefit of the visually impaired.
- 7.2.3 Humour based on physical, mental or sensory disability, even where no malice is present should be avoided. Reference to disability should only be included where relevant to the context.
- 7.2.4 The amount of programming made accessible to PWDs shall be gradually increased as prescribed by the Commission from time to time.

8. Privacy

Relevant legislation to this section include Section 7 (e) of the Eswatini Communications Commission Act, 2013, and Clause 7.3 of the Broadcasting Guidelines, 2017

8.1 Scope

The guiding principle here is to ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

8.2 Guidelines on Right to Privacy

- 8.2.1 The right to privacy of individuals shall be respected. Intrusion into purely personal matters which have no bearing on the public interest is prohibited.
- 8.2.2 Persons affected by tragedy or grief shall be treated with sensitivity, respect and discretion.
- 8.2.3 Persons who have suffered grief should not be subjected to stalking by the media
- 8.2.4 News coverage must not violate nor interfere with an individual's right to be presumed innocent until proven guilty.
- 8.2.5 Care and reasonable discretion should be exercised in disclosing the identities of persons, by face or by name, so as not to harm their reputation and safety. Proper labelling of a person as a "suspect," "alleged perpetrator," "accused," or "convict(ed)," is required.
- 8.2.6 The broadcast of material showing arrested or detained persons being physically assaulted or verbally abused in a manner that demeans or humiliates them should be avoided except where it is justified in public interest.
- 8.2.7 Broadcasting stations are not permitted to share phone-in commentaries, including names and phone numbers of the participants without first seeking their consent, except where public interest is justified and in line with the law.
- 8.2.8 Broadcasters shall not broadcast any information acquired from a person without that person's consent, unless the information so acquired is essential

to establish the credibility and authority of a source, or where the information is clearly in the public interest.

- 8.2.9 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy.
- 8.2.10 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event.
- 8.2.11 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime).
- 8.2.12 Broadcasters must not reveal the identities of rape victims in line with section 194 of the Sexual Offense and Domestic Violence Act, 2018.

9. Copyright

8.1 Guidelines on Copyright

8.1.1 The Broadcaster shall be responsible for all obligations and liabilities to any third party associated with copyright or other rights that may arise from the broadcast of copyright programme.

8.1.2 The Broadcaster must have contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material and shall, upon request, submit such contract to the Authority.