

Federal Act enacting provisions for private radio broadcasting
(Private Radio Broadcasting Act - PrR-G)

1. Section
General

§ 1. (1) This Federal Act lays down the rules for performing radio broadcasts by means of analogous terrestrial transmitting techniques.

(2) Radio station operators in terms of the subject Federal Act are required to have a licence.

(3) The Broadcasting Act, Federal Law Gazette No. 379/1984 remains unaffected.

Definitions

§ 2. In terms of the subject Federal Act the following terms mean:

1. radio station operator: who, with the exception of the Austrian Broadcasting Corporation, produces, compiles and broadcasts radio programmes or causes such programmes to be produced, compiled and broadcast by others;

2. license: the authorization under broadcasting and telecommunications legislation for broadcasting a radio programme in the area to be covered by means of the transmitting capacities allocated;

3. area to be covered: the geographical territory defined in the license by the transmitting capacity as well as the municipality areas to be covered;

4. transmitting capacity: the technical parameters, such as location of the transmitting station, transmitter frequency, transmitting power and antenna features for terrestrial broadcasting of radio programmes;

5. double and multiple coverage: use of a transmitting capacity which from a technical point of view is not necessarily required for coverage of an area to be covered or for coverage in terms of § 10 para 1 subpara 1;

6. media owner: a domestic or foreign owner of a daily newspaper or weekly magazine or a domestic or foreign TV or radio station operator;

7. media group: a minimum of two persons or partnerships, one of whom being a media owner, who are to be considered group companies due to the ownership or control situation as stated in § 9 para 4.

2. Section
License

§ 3. (1) Licenses to broadcast radio programmes shall be granted by the regulatory authority for a ten year period. They shall be issued in writing, otherwise being null and void.

(2) The licence shall state the type, scheme and length of the broadcasts, define the area to be covered and allocate the transmitting capacities. The regulatory authority may also impose the prerequisites necessary to ensure compliance with this Act. When granting a licence to applicants without a clear legal structure, the authority shall make it a condition of the licence that evidence

of the legal structure be submitted within a six weeks' term, failing which the licence is considered not having been granted.

(3) The license expires,

1. if the regulatory authority, after having heard the radio station operator, discovers that during a one year period, for reasons he is responsible for, the radio station operator has not broadcast any programmes on a regular basis in accordance with the terms and conditions of the license,

2. by revocation of the licence under § 7 para 6,

3. by revocation of the licence under § 28,

4. by death or expiry of the existence of the legal entity of the licensee, not however in the case of a universal succession under company law,

5. in the case of licenses under para 5 by expiry or revocation of the license under § 28.

(4) Except for a universal succession, the license is not assignable.

(5) Licenses to broadcast radio programmes using transmitting capacities which are at the time of the application not allocated to any radio station operator or to the Austrian Broadcasting Corporation, may be granted for broadcasting programmes

1. locally for a public event of its own for the period of its duration or

2. in the local area of educational and training facilities if the programmes are broadcast in function of the tasks to be performed in such facilities.

Licenses under subpara 1 may be granted for the duration of an event for a maximum period of three months, licenses under subpara 2 for a maximum duration of one year. Such licenses shall be subject to the provisions of § 3 paras 2 to 4, §§ 7, 8 subparas 2 and 3 as well as, to the extent referring to subparas 2 and 3, subparas 4 and 5, § 9, § 16 paras 1, 3, 4 and 5, §§ 18 through 20, § 22 and §§ 24 through 30. Advertising is prohibited in programmes under subpara 2.

(6) Applications for a license under para 5 can be filed at any time with the regulatory authority and shall contain, besides a description of the programme planned, a presentation of free transmitting capacities. Such applications shall contain also:

1. in the case of legal persons, sole proprietorships and partnerships, the by-laws or the articles of association of the applicant;

2. evidence on compliance with the prerequisites stated in §§ 7, 8 subparas 2 and 3 and § 9.

(7) In case a license is cancelled by the Administrative Court or the Constitutional Court, the regulatory authority shall grant, within 21 days of receipt of an application to be filed by the ex licensee within a ten days' period to be counted from being served the cancellation decision, a temporary license (temporary authorization) for broadcasting radio programmes within the former area to be covered, provided that it is evident that he meets the legal prerequisites of § 5 para 2 and §§ 7 through 9 for the re licensing and his economic interests evidently outweigh the economic interest of the party winning the proceeding that led to the cancellation of the license. Such party shall also be a party to the proceeding to be held regarding granting of the temporary license; it shall be given the opportunity to comment within a seven days' term. The temporary license shall be subject to the provisions of paras 1 and 2 accordingly. The temporary license expires with the

new decision of the regulatory authority on the license, however at the latest after expiry of a six months' term from the date the temporary license has been granted.

(8) In the cases of para 7 the former licensee is allowed to broadcast radio programmes until expiry of the tenth day from the date of being served the cancellation decision. Provided that the ex-licensee has filed, in due time, an application for a temporary license for broadcasting radio programmes, he is authorized to broadcast within the scope corresponding to the former license until expiry of the day of being served the decision regarding his application by the regulatory authority.

Use of digital transmitting capacities

§ 4. Subject to approval under the provisions of the telecommunications law, the permission granted by the regulatory authority to broadcast radio programmes also includes the right to broadcast the licensed programme for the purpose of testing digital transmitting technologies in the serviced area covered by the license.

Licence application

§ 5. (1) Unless § 13 applies, licence applications may be filed with the regulatory authority at any time.

(2) All license applications shall be accompanied by:

1. in the case of legal persons, sole proprietorships and partnerships, the bye-laws or the articles of association;
2. Evidence of compliance with the prerequisites stated in §§ 7 through 9;
3. a description of the transmitting capacities planned for broadcasting the programme, in particular the intended location for the transmitting station, frequency, transmitting power and antenna features.

(3) Together with submitting proof of the license prerequisites under para 1, applicant shall evidence that he will be able to comply with the professional, financial and organizational prerequisites to produce the radio programmes intended to be performed and broadcast on a regular basis as well as with the programme principles in accordance with § 16, in particular by presenting a programme outline and scheme as well as the editorial agreement he intends to implement.

(4) In examining his application, the regulatory authority may request applicant to supplement the information submitted, in particular to disclose the ownership and any legal relationship to any public corporate bodies, radio station operators and companies in the media sector.

(5) Licensee shall report to the regulatory authority without delay any changes in the ownership arising after having been granted the license.

Principles of selection

§ 6. (1) In case more than one applicant complying with the legal prerequisites (§ 5 paras 1 and 2) applies for a license, the regulatory authority shall give preference to such applicant

1. whose documentation submitted appears, on basis of the results of the proceeding, to safeguard the objectives of the subject Act in the best way, in particular by offering a better guarantee for more plurality of opinion and giving reason to expect an independent programme choice taking into account the interests in the area covered or, in the case of format programmes, that the intended programme may give reason to expect a special contribution to plurality of opinion in the area covered, by comparison with the overall choice of programmes already broadcast under the subject Federal Act and

2. which gives reason to expect that it contains a larger volume of self produced features.

(2) The authority shall also take into account whether one of the applicants already has exercised a license in accordance with the law.

3. Section Radio station operators

§ 7. (1) Radio station operators or their members must be Austrian citizens or legal entities or sole proprietorships or partnerships under commercial law domiciled in this country.

(2) If the radio station operator is organized as a corporation, sole proprietorship, partnership, or cooperative society, a maximum of 49 percent of such company's shares may be held by a person of foreign nationality or a legal entity or sole proprietorship or partnership under the general control of such foreign person or a company domiciled abroad or in which such foreign persons or legal entities or sole proprietorships or partnerships domiciled abroad have the control possibilities stated in § 244 para 2 in connection with paras 4 and 5 of the Commercial Code, German Imperial Gazette p 219/1897.

(3) Nationals of parties to the Treaty on the European Economic Area have equal status as Austrian citizens, and such legal entities, sole proprietorships and partnerships domiciled in the sovereign territory of a party to the Treaty on the European Economic Area have equal status as such entities domiciled in Austria.

(4) The shares shall be registered shares. Trusteeships shall be disclosed. Shares held in trust shall have equal status as trustor's shares. Any transfer of shares is subject to consent of the company. Shares of a private foundation under the Private Foundations Act, Federal Law Gazette No. 694/1993 are given equal status as shares of the founder, as long as the founder controls the foundation's activities on basis of factual conditions, in a manner comparable to control as defined in §9 para 4 subpara 1. This provision applies also to foreign legal entities considered of equal status with a foundation.

(5) The radio station operator's application shall include disclosure of the identity of the owners or members as of the date of the application and any changes thereto shall be disclosed to the regulatory authority within a 14 days' period. In case any of the radio station operator's shares are owned directly or indirectly by corporations, sole proprietorships, partnerships or cooperative

societies, the ownership situation of such entities and any trusteeships thereto shall also be disclosed. Such obligations shall not affect any other obligations of disclosure imposed by the law.

(6) Whenever more than 50 percent of radio station operator's shares as existing at the time of granting of the license or as determined under the subject paragraph are being transferred to third parties, the radio station operator shall disclose such transfer to the regulatory authority in advance. More than one transfer shall be taken as one transfer. At the latest within an eight weeks' term from receipt of disclosure, the regulatory authority shall determine whether the provisions of § 5 para 2 and of §§ 7 through 9 are being complied with under the changed circumstances. The licence shall be revoked if the radio station operator has transferred any shares contrary to what has been determined as per the foregoing sentence.

Reasons for exclusion

§ 8. A licence must not be granted to:

1. legal entities under public law, with the exception of legally recognized churches and religious communities and of the Federal Ministry of Defence for the purpose of operating an information radio station for servicemen, in particular in a case of a mission under § 2 para 1 subparas a through d of the Military Defence Act 1990, Federal Law Gazette No. 305,
2. political parties as defined in the Political Parties Act,
3. the Austrian Broadcasting Corporation,
4. foreign legal entities to be considered of equal status as such legal entities stated in paras 1 through 3, and
5. legal entities or sole proprietorships or partnerships in which legal entities as specified in paras 1 through 4 directly hold any shares.

Equity interests of media owners

§ 9. (1) A person or sole proprietorship or partnership can hold more than one licence as long as the areas covered by such licenses do not overlap. In addition, the areas attributed to any person or sole proprietorship or partnership must not overlap. An area is to be attributed to a person in such case when such person is directly in possession of control possibilities as defined in para 4 subpara 1 through equity interests.

(2) The total number of inhabitants in an area attributable to a media group must not exceed twelve million people, and such figure must not exceed eight million people as far as attributable to one person or sole proprietorship or partnership. For the purposes of this paragraph an area covered is to be attributed to a media group when a person or sole proprietorship or partnership of the media group is himself licensee for such area covered or is in possession of shares or control possibilities of a licensee as defined in para 4 lit 1.

(3) Apart from technically not avoidable spill over, persons or sole proprietorships or partnerships associated with the same media group must not cover one particular part of the Federal territory more than twice.

(4) Persons or companies considered associated with one particular media owner are:

1. those who hold more than 25 percent of the equity share or voting rights or control of one media owner or one of the control possibilities laid down in § 244 para 2 in connection with paras 4 and 5 of the Commercial Code;

2. in which one of the persons or companies as per para 1 holds more than 25 percent of the equity share or voting rights or is in control of one media owner or of one of the control possibilities laid down in § 244 para 2 in connection with paras 4 and 5 of the Commercial Code;

3. in which one media owner holds more than 25 percent of the equity share or voting rights or is in control of one media owner or of one of the control possibilities listed in § 244 para 2 in connection with paras 4 and 5 of the Commercial Code;

For purposes of this paragraph it is of equal status with an equity share holding of more than 25 percent if there are one or more indirect equity share holdings and the equity share holding on each level exceeds 25 percent. Equity shares of media owners or of persons associated with them on the same level as defined in this paragraph are to be counted together when ascertaining the 25 percent limit.

(5) A media owner must not be a member of a radio broadcaster organized as an association.

(6) The Cartel Act 1988, Federal Law Gazette No. 600, remains unaffected.

3. Section Frequency allocation

§ 10. (1) The regulatory authority shall allocate the frequencies of the wireless terrestrial transmitting capacities to the Austrian Broadcasting Corporation and the private radio station operators under consideration of topographic and technical conditions and international telecommunication commitments of Austria, observing the following criteria in the order of sequence as stated:

1. In the case of the Austrian Broadcasting Corporation, a coverage in terms of §3 RFG (Broadcasting Act), Federal Law Gazette No. 379/1984, with a service of a maximum of four radio programmes shall be provided, whereby the service intensity for inhabitants authorized to operate a radio (audio) receiver as given per 1st May 1997 shall be sufficient for the fourth programme.

2. Transmitting capacities available beyond that shall upon request be allocated to areas already covered in order to improve the coverage, unless they are needed for further plans, in particular for the creation of a area to be covered for nationwide radio broadcasting.

3. To the extent of further transmitting capacities available, an area to be covered for nationwide private radio broadcasting shall be created.

4. Further transmitting capacities available shall be used either for the creation of new coverage areas or the enlargement of existing coverage areas of radio station operators. Decision factors to be used for this selection are the plurality of opinion in an area to be covered, the population density, the profitability of the radio programme as well as political, social and cultural aspects.

(2) Double and multiple coverage shall be avoided to the extent possible.

(3) The already existing allocation of transmitting capacities for areas to be covered as provided in the frequency use scheme, Federal Law Gazette II No. 112/2000, shall be the basis for first licenses to be granted under the subject Federal Act.

Supervision of allocation

§ 11. (1) The regulatory authority shall continuously supervise ex officio the transmitting capacities allocated to the areas covered by radio broadcasters as well as to the Austrian Broadcasting Corporation as to compliance with the criteria of § 10 and withdraw any licence for such transmitting capacities not used regularly for broadcasting programmes for more than two years, and invite new tenders according to § 13.

(2) The regulatory authority shall supervise the allocation of transmitting capacities on a continuous basis with regard to whether the use of already allocated transmitting capacities in certain coverage areas has resulted in double or multiple coverage. Whenever the regulatory authority, after hearing the licensee of the transmitting capacities, finds a case of double or multiple coverage in the respective area, it shall withdraw the license for such transmitting capacity and invite new tenders for it in accordance with §13.

Allocation of new transmitting capacities

§ 12. (1) Upon request, the regulatory authority may allocate free transmission capacities, within the parameters of the criteria of § 10 and taking into account the topographic situation, the technical conditions and international telecommunication obligations of the Republic of Austria, to the Austrian Broadcasting Corporation or existing coverage areas of radio station operators or use them for the creation of a new area to be covered.

(2) Additional transmitting capacities shall be allocated to the Austrian Broadcasting Corporation if necessary to provide programmes in accordance with § 10 para 1.

(3) An application in accordance with para 1 shall contain the technical parameters, in particular the intended location for the transmitting station, frequency, transmitting power and antenna features for the intended use of the transmitting capacity as well as proof of the expenditures incurred for working out the feasibility study. If the application is for creation of a new area to be covered, it shall also contain the information according to § 5.

(4) Whenever, after examination by the regulatory authority, the allocation of transmitting capacities or the creation of a new area to be covered applied for proves feasible from the point of view of telecommunication technology, the regulatory authority shall, in compliance with private data protection provisions, publish the application in a suitable manner. The public announcement shall contain the reference to the possibility of an appeal in accordance with para 5.

(5) If within four weeks from the public announcement a well founded appeal against the allocation or creation of a new area to be covered and applied for is lodged with the regulatory authority, the authority shall issue invitations to tender in accordance with

§ 13, provided that feasibility in accordance with telecommunication criteria is given. If no appeal is filed within such term, the transmitting capacity can, in case the other prerequisites under the subject Federal Act are complied with, be allocated to the applicant or a licence granted.

(6) An appeal in accordance with para 5 is well-founded if it states in a reasonable manner that the transmitting capacity could be used

1. to improve service in a different coverage area already existing or

2. to enlarge an existing area to be covered or

3. to create a new area to be covered.

(7) If a person or company is allocated a transmitting capacity and the application has been filed only on basis of the invitation to tender (§ 13), such applicant shall, against proof of the expenditures, reimburse the cost incurred for preparing the technical feasibility study to the former applicant in accordance with para 3.

(8) Any claims in accordance with para 7 shall be put forward under civil law. In case of controversies, the regulatory authority may be asked to mediate.

Invitation to tender for transmitting capacities

§ 13. (1) Tenders for transmitting capacities shall be invited in accordance with para 2, in addition to cases as stated in § 11,

1. six months before expiry of a licence;

2. immediately after expiry of a licence in accordance with § 3 para 3;

3. if a licence has been revoked by the Constitutional Court or by the Administrative Court.

4. in case of a well-founded appeal under §12.

(2) For this purpose the regulatory authority shall invite tenders for the transmitting capacities available in the "Amtsblatt zur Wiener Zeitung" (Official Gazette of the Wiener Zeitung) and in other Austrian daily newspapers as well as in any other suitable manner and fix a term of at least two months for submitting bids for allocation of transmitting capacity for an existing area to be covered or for a licence to broadcast radio programmes in the area to be covered for which tenders are invited under the subject Federal Act.

Book of frequencies

§ 14. The regulatory authority shall continuously maintain a list of terrestrial wireless transmitting capacities by frequency and location (book of frequencies), allocated to the coverage areas of private radio broadcasters as well as the transmitting capacities allocated to the Austrian Broadcasting Corporation. The book of frequencies shall be updated on a permanent basis and published in a suitable manner.

Transmitting facilities

§ 15. (1) The radio programmes produced under the subject Federal Act may also be broadcast via the transmitting facilities of the Austrian Broadcasting Corporation as long as such procedure is technically justifiable. In such cases the Austrian Broadcasting Corporation shall agree with the respective radio station operator on a reasonable remuneration.

(2) The Austrian Broadcasting Corporation shall make the transmitting facilities available at equivalent conditions and quality as it does for broadcasting its own programmes.

(3) In cases of any controversy as to whether the amount of the remuneration is reasonable or such broadcast technically justifiable, the regulatory authority shall decide.

4. Section Programming Principles

§ 16. (1) The programmes broadcast under the subject Federal Act shall be governed by the principles of objectivity and plurality of opinion.

(2) The broadcasters are held to present in a suitable manner in particular the public, cultural and economic life in the area covered. In doing so, they shall give to the essential groups and organizations of society in the area covered the opportunity to present their opinion within the framework of the editorial capacity available.

(3) Programmes must not contain any elements of pornography or glamorise violence.

(4) Presentation and contents of any programmes must respect human dignity and the fundamental rights of other people, they must not instigate anyone to hate on grounds of race, sex, religion or nationality.

(5) News coverage and information programmes must comply with accepted journalistic principles. Before being broadcast, news is to be verified, in accordance with diligence required under the circumstances, whether it is true and where it comes from.

(6) Para 2 does not apply to programmes aiming to a limited extent essentially at one particular type of contents (format programmes) or target groups.

Use of broadcasts produced by other radio stations

§ 17. Simultaneous broadcasting of programmes, serials and parts of productions of other radio stations or of the Austrian Broadcasting Corporation is permitted to an extent of a maximum of 60 percent of the daily time on the air. Music programmes without commercials, and which are not hosted, are not subject to such limit.

Public appeals in cases of crises or cases of emergency

§ 18. In cases of crises or cases of emergency and for other important public announcements, the Federal, Laender, and Municipal authorities in the area covered as well as private persons, for appeals in justified and urgent cases of emergency to avoid danger to health and life of people, shall be given the required and

suitable time on the air for public appeals free of charge at any time.

Commercials

§ 19. (1) Commercials (radio spots, short programmes and specially produced commercials including specially arranged announcements and closing announcements of sponsored programmes) must not exceed an annual average of a daily maximum of 172 minutes, with a maximum tolerance of 20 percent each day.

(2) Commercials for tobacco products and alcoholic beverages as well as advertising messages below the limit of perception are not permitted.

(3) Commercials must be identifiable as such and be unequivocally separated from other programmes by acoustic signals.

(4) a) Commercials must not be misleading or detrimental to the interest of consumers.

b) Surreptitious advertising is prohibited. Surreptitious advertising is understood to mean mentioning goods, services, names, brands or activities of somebody who manufactures goods or performs services, in programmes, when such mention is made by the radio station operator intentionally for advertising purposes and may mislead the general public with regard to the actual purpose of such reference or representation. A reference or representation is deemed to be intentional whenever it is made for payment or a similar consideration.

c) No persons must appear in commercials who regularly present newscasts and programmes featuring current political events.

d) An advertiser must not have any editorial influence on the contents of programmes.

(5) a) In a sponsored programme a public or private company not engaged in the business of producing radio programmes contributes financial means for such productions with the objective to promote the company's name, brand, appearance, activity or product.

b) Sponsored programmes must comply with the following requirements:

1. Contents and timing of broadcasting of a sponsored programme must not be subject to sponsor's influence in the way that the responsibility and editorial independence of the radio broadcaster's production is affected.

2. They shall be unequivocally identified as sponsored features with the name of the sponsor at the beginning and the end of the feature (announcement and closing announcement).

3. They must not encourage purchase, rental or lease of products or use of services of the sponsor or a third party, in particular by specific promotional references to such products or services.

c) Sponsored programmes must not be purchased by natural or legal persons whose main activity is the manufacture or sale of goods or the performance of services which are prohibited to be advertised under para 2 or other provisions of the law.

d) Programmes sponsored by companies engaged in the manufacture or sale of pharmaceutical products or medical services may only make reference to the name or the image of the company, but not to therapeutic treatments or pharmaceutical products available only against a doctor's prescription.

e) Newscasts and broadcasts featuring political information are prohibited from obtaining financial support as defined in para 1.

(6) Broadcasts of religious services, programmes featuring religious contents, programmes for children, newscasts and current events magazines must not be interrupted by commercials.

(7) The radio station operator shall establish a system of rates for commercial messages for the area he covers.

§ 20. (1) Commercials advertising pharmaceutical products and therapeutic treatments available only against doctor's prescription are prohibited.

(2) The provisions of the Medicines Act, Federal Law Gazette No. 185/1983, remain unaffected.

Independence of editors employed

§ 21. Radio station operators shall ensure independence of the editors they employ. As soon as a minimum of five editors are employed in a radio station, an editorial agreement shall be entered into and published within one year of having been granted the license.

Radio broadcaster's further duties

§ 22. (1) Radio station operators shall record at their own expense all of their broadcasts and keep such recordings for at least a ten weeks' period. On request of the regulatory authority they shall submit any recording requested. Also, they are obligated to grant access to the recordings to everyone who is able to show legal interest.

(2) In case a proceeding regarding a broadcast is pending with the regulatory authority, the obligation to keep the respective recordings shall be extended until termination of the proceeding.

(3) Notice of start-up of operation of a broadcasting station shall be given to the regulatory authority within one week's time.

5. Section Right to comment

§ 23. (1) After an application for a license has been filed in accordance with § 5, the Governments of the Laender comprising the areas for which radio coverage was applied for shall be given the opportunity to comment.

(2) The Laender Governments concerned shall also be given opportunity to comment on applications under § 12, in case such applications propose the creation of a new area to be covered or the enlargement of an existing one.

(3) The Laender governments shall be allowed a four weeks' term to submit their comments in accordance with paras 1 and 2.

6. Section Legal supervision

§ 24. The regulatory authority shall be responsible for the legal supervision of the activities of the radio broadcasters in terms of the subject Federal Act, it shall decide in case of alleged violations of any provisions of the subject Federal Act.

Complaints

§ 25. (1) The regulatory authority shall decide on any alleged violations of provisions of the subject Federal Act, either ex officio or on basis of complaints filed

1. by a person who claims having suffered direct damage by such violation of the law;

2. by a person with main residence in the Land for which the radio broadcaster affected by the complaint has been licensed and who is not excluded from the right to vote for the Parliament of the respective Land, as long as such complaint is supported by at least 100 persons; evidence of such support shall be given by means of a list of signatures identifying all persons supporting the respective complaint.

(2) Any complaints shall be filed within a six weeks' term to be counted from the date of the alleged violation of the subject Federal Act.

(3) The regulatory authority shall issue a statement as to whether and on the basis of which facts any provision of the subject Federal Act has been violated. If the regulatory authority finds that the subject Federal Act has been violated and such violation continues to exist at the time of its being found, the radio station operator shall without delay create a situation which complies with the legal view of the regulatory authority.

Decision

§ 26. (1) The regulatory authority shall decide on any complaints within a four weeks' term to be counted from receipt of the complaint.

(2) The regulatory authority may rule that its decision be published and instruct the radio broadcaster as to when and in which form the publication shall be made.

Administrative penalty regulations

§ 27. (1) Any person who

1. does not comply with the duty of reporting any changes as requested in §§ 5 para 4, 7 para 5 first clause,

2. violates the obligations of information and disclosure as requested in § 7 para 5 second clause or § 22 para 3, commits an administrative offence subject to a fine of up to 2180 euros.

(2) Any person who violates the requirements of § 19 paras 1, 2 or 4 subparas a and b or § 20 commits an administrative offence subject to a fine of up to 3600 euros.

(3) Any person who broadcasts radio programmes as defined in the subject Federal Act without having been granted a license commits an administrative offence subject to a fine up to 7260 euros.

(4) Any act which constitutes an offence falling in the jurisdiction of the courts or any act subject to a more severe

punishment under provisions of administrative law, is not considered to be an administrative offence in accordance with paras 1 through 3.

(5) Administrative fines according to paras 1 through 3 shall be imposed by the regulatory authority.

Revoking the license

§ 28. (1) In cases of repeated or serious violations of provisions of the law by the radio station operator, or if the radio station operator does no more comply with the requirements of §§ 7 through 9 or has not complied with his duty to report information under § 7 para 6 first clause, the regulatory authority shall ex officio institute the proceeding for revoking the license.

A proceeding for revoking the license shall also be instituted if a radio station operator has fundamentally modified the nature of the programme he had presented in his application for the license as approved (§ 3 para 2), such as in particular by modifying the category of the programme or essentially modifying the duration of his broadcasts.

(3) The regulatory authority shall hold a public oral hearing.

(4) If any provision of the law as per paras 1 or 2 has been violated, the regulatory authority shall

1. except for cases of subpara 2, instruct the radio broadcaster by ruling to establish a situation complying with the law and to make suitable arrangements to avoid violations of the law in the future; the radio station operator shall comply with such ruling within the term determined by the regulatory authority but not exceeding eight weeks and submit a report to the regulatory authority to this effect;

2. in case a ruling under para 1 has already been issued to a radio station operator more than once or if such operator does not comply with a ruling issued under para 1, the license shall be cancelled.

7. Section Applicability of other Federal Acts

§ 29. (1) To the extent the subject Federal Act does not provide for differently, the Media Act, Federal Law Gazette No. 314/1981, remains unaffected.

(2) The Industrial Code 1994, Federal Law Gazette No. 194/1994, shall not apply to the activity of broadcasting radio programmes under the subject Federal Act.

(3) Whenever the subject Federal Act refers to provisions of other federal acts they shall be applied as amended and valid from time to time, provided that the subject Federal Act does not provide differently.

Application of the General Administrative Procedure Act (AVG) and the Administrative Penal Act (VStG).

§ 30. (1) Any proceeding of the regulatory authority - unless provided differently in the subject Federal Act - shall be subject to the General Administrative Procedure Act 1991, any proceeding on administrative offences to the Administrative Penal Act 1991.

(2) For any appeals filed with the regulatory authority, the days required till the mail is delivered shall not be included in the count of the term.

Execution

§ 31. (1) To the extent the Federal Government is not in charge of execution of the subject Federal Act, such execution shall be the responsibility of the Federal Chancellor.

(2) Preparation and implementation of the resolutions of the Federal Government shall be the responsibility of the Federal Chancellor.

Transitional Provisions

§ 32. (1) Legally valid licenses issued under § 17 of the Regional Radio Broadcasting Act, Federal Law Gazette No. 506/1993, as amended by Federal Act, Federal Law Gazette I No. 51/2000, existing at the time when the subject Federal Act becomes legally effective, remain unaffected with regard to the term of such license.

(2) Licenses under telecommunications law existing at the time when the subject Federal Act becomes legally effective remain unaffected, however shall be, as of legal effectiveness of the subject Federal Act, subject to supervision in accordance with § 11.

(3) Applications filed with reference to a broadcasting license listed in a tender invitation initially published on 27th December 2000 in the "Official Gazette of the Wiener Zeitung" shall be subject to the provisions of this Federal Act with the proviso that §§ 12 and 13 shall not apply. For such applications filed before legal effectiveness of the subject Federal Act, applicants shall be granted a minimum two weeks' term, ending at the latest by 20th April 2001, to submit possible modifications with regard to the evidence required in § 5 para 2 subpara 2. Proceedings pending with regard to licenses listed in the frequency allocation plan, Federal Law Gazette II No. 112/2000, referred to as the licenses "Stadt Salzburg" with frequency 107,4 mcs and "Innsbruck" with the frequency 105,9 mcs are subject to the provisions of this Federal Act with the proviso that §§ 12 and 13 shall not apply. Applicants shall be granted a minimum two weeks' term, ending at the latest by 20th April 2001, to submit possible modifications of their applications with regard to the evidence required in § 5 para 2 subpara 2.

(4) Proceedings for granting of a license under telecommunications law pending when the subject Federal Act becomes legally effective shall be continued under the subject Federal Act, with the proviso that §§ 12 and 13 shall not apply - provided they refer to a licence already granted with legally binding effect.

(5) Applications for a licence, pending when the subject Federal Act becomes legally effective, shall be treated as applications under § 12 - unless they refer to transmitting capacities of broadcasting licences listed in the frequency allocation plan, Federal Law Gazette II No. 112/2000. Applicants shall be granted a four weeks' term to submit amendments to their application with regard to the requirements of § 12 para 3. Clauses 1 and 2 shall not apply to applications for a license to broadcast radio programmes in accordance with § 3 para 5 subparas 1 and 2.

(6) The responsibilities of the regulatory authority under the subject Federal Act shall be assumed by KommAustria.

(7) The tender invitation to bid for broadcasting licenses in accordance with § 18 para 2 subpara 4 of the Regional Radio Act, Federal Law Gazette No. 506/1993, as amended by Federal Act, Federal Law Gazette I No. 51/2000, as per resolution of the Private Broadcasting Authority dated 19th December 2000 and as published in the "Official Gazette of the Wiener Zeitung" on 27th December 2000, is considered to be a tender invitation of the regulatory authority in charge in accordance with para 6.

Date of Legal Effectiveness

§ 33. (1) This Federal Act becomes effective on 1st April 2001. With the date of legal effectiveness of the subject Federal Act, the Federal Act issuing regulations on regional and local radio broadcasting, Federal Law Gazette No. 506/1993, as amended by Federal Law Gazette I No. 51/2000, becomes ineffective.

(2) The use of frequencies scheme, Federal Law Gazette II No. 112/2000, becomes ineffective as soon as the subject Federal Act becomes effective.

(3) § 27 paras 1 through 3 as amended by Federal Act, Federal Law Gazette I No. 136/2001 become effective as of 1st January 2002.