A New Direction for the Organization and Operation of the Korean Broadcasting Commission

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Abstract : The Broadcasting Act of 2000 gave birth to Korean Broadcasting Commission (KBC) as the authority of policy making, economic and ethical regulations and the promotion in broadcasting. But the vagaries of the articles of Broadcasting Act make KBC's role and its relationship with government agencies unclear. This paper reviews the problematic organizational status and structure of KBC and explores alternatives for KBC to fulfill its mandate as an independent, effective government agency. In order to become a government agency, KBC must fall legally under the auspices of the President or the Prime Minister. The four committees stipulated in the Broadcasting Act should enable the commissioners to implement policies and regulations, and perform a quasi-judicial function. The current budget of the Commission heavily relies on the Broadcasting Development Fund, which is inappropriate. The Commission should secure National Treasury funding for its operating expenses. The civilian composition of Secretariat is inappropriate and current civilian staffs should be converted to government officials. The Commission should recruit experts capable of managing the new broadcasting and communication technology.

INTRODUCTION

The Broadcasting Act of 2000 passed in December 1999 and went into effect on March 13 2000. The Act revamped the organization of the Korean Broadcasting Commission (KBC) and integrated the cultural-ethical regulations of the former Korean Broadcasting Commission and the Korean Cable TV Commission with the broadcasting policy and economic regulations of the Ministry of Culture & Tourism (MCT). KBC is now the authority for policy-making, economic and ethical regulations, and the promotion in broadcasting. The Ministry of Information and Communication (MIC) still controls the technical regulations of the broadcasting business, plots the direction of the digital transition plan and provides financial support for R&D.

Most supporters of the new Act and a new Commission are disappointed with the current state of KBC. Even though the Broadcasting Act empowers KBC as the policy implementer and regulator, the Commission's institutional position and administrative procedures in relation to government ministries remains unclear. The Commission must negotiate with government officials over the implementation of articles in the Broadcasting Act, presidential decrees implementing sections of the Act, the Government Organization Act, the Public Administrative Procedure Act and various additional acts. The Commission regulates broadcasters; however, the Ministry of Planning & Budget will not allow KBC to be financed by the national treasury. Consequently, KBC's operating expenses come from the Broadcasting Development

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Fund.

Although the Act has gone through four amendments, and the terms of all the first-term commissioners have expired, KBC's legal handicaps remain. The Legislative process and the enforcement of the Act in the first quarter of 2000 were typical of the bargaining between political parties and broadcasting companies. The resultant compromise produced vague articles and presidential decrees, which in turn produced conflict between the Commission and government ministries. Administrative difficulties arise because the Commission operates without a legal basis for implementing regulations, planning a budget or hiring personnel. Broadcast experts are disappointed that the vagaries of the articles of Broadcasting Act make the Commission's role within the political-administrative structure and its relationship with government agencies unclear.

This paper explores alternatives to the Commission's organizational problems to assist the Commission in fulfilling its mandate as an independent, effective government agency for coordinating broadcasting policy and regulations.

LEGAL ASPECTS AND GOVERNMENTAL RELATIONS WITH THE COMMISSION

Legal Aspects of the Commission

The Broadcasting Act of 2000 consolidated broadcasting regulations and introduced satellite broadcasting.[1] The Commission assumed control of broadcasting policy and regulatory administration from MCT, as well as the functions of both the old Broadcasting Commission and the Korean Cable TV Commission. The administrative changes are laid out in Table 1.

The Commission's mandate is to make policy, manage the Broadcasting Development Fund, make recommendations for licensing, regulate unfair trade practices and evaluate program contents. MIC retains functions related to the technical aspects of the broadcasting industry and licensing, and licenses businesses upon recommendation from the Commission. MCT promotes the audio-visual and advertising industries that are closely related to the broadcasting industry, and can be involved in broadcasting policy and regulation. Therefore, while the Commission is the titular head for broadcasting policy-making, in reality the Commission shares a portion of its mandate with the ministries.

In order to secure the political independence of the Commission, the Broadcasting Act specifies that the Commission control policy-making, regulations and staffing. The Commission is also independent of the president and the prime minister, and the president appoints only three of the nine commissioners, while National Assembly appoints the other six. In this manner, the Commission resembles the National Election Commission. Article 114 of the Constitution states that for the National Election Com-

1) After the Broadcasting Act was implemented, the previous Broadcasting Act, Cable TV Act, Broadcasting Transmission Act, Korean Broadcasting System Act were repealed.

mission, three members each are appointed by the President, the National Assembly and the Supreme Court. KBC's independence, however, is less secure than the National Election Commission. KBC has limitations in executing its policy and regulatory functions because of conflicting interpretation of various laws by government agencies.

Table 1. Comparison of Old and New Broadcasting Policy and Regulatory Bodies

	Old Institutional Structure	New Institutional Structure
Policy		
Planning	MCT	KBC, MCT
Legislation		
Acts, presidential decrees	MCT	MCT, KBC
Enforcement and regulation	MCT	KBC
Assistance		
Financial assistance	MCT	KBC, MCT
Technology development	MIC	MIC
International cooperation	MCT	KBC, MCT
Regulation		
Licensing	MCT, MIC	KBC, MIC
Fair trade	MCT, FTC	KBC, FTC
Fee collection	MCT	KBC
Technical standards	MIC	MIC
Programming	MCT	KBC
Content review	BC, KCC	KBC

Notes: MCT: Ministry of Culture and Tourism; MIC: Ministry of Information and Communication; KBC: New Korean Broadcasting Commission; FTC: Fair Trade Commission; BC: Old Korean Broadcasting Commission; KCC: Korean Cable TV Commission.

The Act defines the five full-time commissioners as government officials and the staff in the Secretariat as civilian. Civilian status is problematical because the staff must interact with government officials and the broadcasting industry has long had strong political connections. The Broadcasting Act also assumes that the Commission functions as a government regulatory agency. In Article 22, the Act grants the chairperson of the Commission ministerial duties and powers, such as testimony before the National Assembly, attendance at cabinet meetings and submission of policy agendas to the prime minister. The chief financial officer for the Commission is empowered by the Government Budgeting and Accounting Act. Current laws assume that central government agencies other than constitutional institutions are under the purview of the president or the prime minister. The Commission and National Human Rights Commission[2)] are exceptional in that they stand independently. The Broadcasting Act does not clearly state that the Commission is a central government agency, and government agencies, such as the Ministry of Legislation and Ministry of Government Administration and Home Affairs (MOGAHA), have never designated the Commission a central government agency. The commission, therefore, is considered a "national authority" but not a central government agency.

2) This is according to National Human Rights Commission Act, the Commission of October 2001. The secretariat of the Commission was staffed by government officials in order to provide the force of implementation.

Agencies titled, "Ministry" or "Administration", are central government agencies. In order for the Commission to become a government agency, it must be legally so designated and fall under the auspices of the President, the Prime Minister or cabinet ministers. For example, the Civil Service Commission is under the purview of the President, and the Financial Supervisory Commission and Fair Trade Commission are under the purview of the prime minister. The Board of Audit and Inspection, on the other hand, is controlled by the president even though it is a constitutional institution and functions independently from government.

The Commission has had numerous problems because it is not a government agency. The Commission's regulations do not have the force of law, even though they include regulations that affect broadcasting companies' economic behaviors and program contents. In contrast to government agencies, the Commission's regulations are not reviewed by the Ministry of Legislation. Related acts specify only the constitution, treaties, acts, and presidential, prime ministerial and ministerial decrees to be reviewed. Consequently the Commission's regulations do not have the force of law. It is an experiment of sorts for the Commission to struggle for government agency status, yet remain outside the government. The uncertainty of the Commission's legal standing will persist until the Government Organization Act, the Administration Procedure Act and the Broadcasting Act are amended.

The Commission's Relationship with Government Agencies

MCT was the lead agency for passing the Broadcasting Act and approving the Commission's authority. To operate effectively, the Commission should reach a consensus with MCT on the obligations of domestic programming, and the promotion and development of a broadcasting plan.

The Fair Trade Commission reviews broadcasters' unfair trade practices, while KBC plays only a minor role in the investigating process. MIC established a digital broadcasting plan and has the lead in developing a new direction for the broadcasting industry, which includes introducing mobile multimedia broadcasting and supporting digital transmission of terrestrial and cable TV through the administration of Informatization Promotion Fund.[3] The transfer from analogue to digital transmission requires a huge financial and technical investment, and the broadcasting industry demands public financing to support the transition. The Commission, which has insufficient funds to support digital transmission, must cooperate with MIC to produce a broadcast development plan that includes financing.

Under the guidelines of the Ministry of Planning and Budget, the Commission manages the Broadcasting Development Fund, of which the revenue comes primarily from contributions from major broadcasters, to provide funding for non-governmental organizations in the broadcast sector. The broadcasters' contribution to the fund, as required by the Broadcasting Act,[4] cannot increase because although competition in

3) Digital satellite broadcasting and digital terrestrial broadcasting began in Korea in October 2001.

4) The Act requires a collection of 6% of all advertising revenue of terrestrial broadcasters and 6% of business revenue of cable and satellite operators as a contribution to the Broadcasting Development Fund.

broadcasting is increasing, market share of major broadcasters is decreasing. With a tight budget, the Commission has little room to maneuver when it comes to operational expenses. Consequently, the Commission needs additional funding from general revenue or the special project budgets of the National Treasury, but the Ministry of Planning and Budget is frugal when it comes to Commission expenses. This financial burden restricts the Commission's independence from the government budgeting process since its budget closing account is approved by the Board of Audit and Inspection. The Commission currently utilizes the Broadcasting Development Fund for general operating expenses. However, the Broadcasting Development Fund, according to Article 38 of the Broadcasting Act, is restricted to specific project expenditures. This highlights the Commission's need to be financed from the National Treasury.

In the Korean government, a commission attains autonomy from related agencies. For example, both the Fair Trade Commission and the Financial Supervisory Commission, which were once departments of the Ministry of Finance and Economy, have autonomy. KBC, however, remains unrecognized as a central government agency. A significant difference between the Commission and the other commissions is that the Commission employs civilians who, in the Korean government culture, are generally disliked within the public sector. This results in government agencies having a tendency to hinder the Commission's policy-making and implementation process. If the Commission continues to lack support from the highest government echelon and the public, it may be subsumed under the influence of the Ministry of Culture and Tourism and the Ministry of Information and Communication.

THE COMMISSION'S ORGANIZATION AND OPERATION

Committees

According to Broadcasting Act, the Commission can establish four committees: the Broadcasting Evaluation Committee, the Broadcasting Regulation Committee, the Complaints Settlement Committee and the Broadcasting Development Fund Management Committee. In addition, the Commission has three several special-purpose committees: the Administrative Review Committee, the Regulatory Review Committee and the Digital Broadcasting Promoting Committee. As required by the Broadcasting Act, the Commission selects the members for the four committees. The Broadcasting Evaluation Committee, which is chaired by an executive commissioner, publishes an annual report on the performance of major broadcasters. The Broadcasting Regulation Committee meets weekly to review the ethical issues in broadcasting such as violence, sexuality, political bias, etc. The Vice-chairperson of the Commission chairs Broadcasting Development Management Committee and a part-time commissioner chairs the Complaints Settlement Committee.

The strong point of the Commission's organization is that it is has expertise and is neutral. The four committees stipulated in the Broadcasting Act enable the commissioners to implement policies and regulations, and perform a quasi-judicial function. The current second-term nine commissioners are composed of four terrestrial broad-

casting experts, three journalists, one broadcasting advertising executive and one lawyer. There are no members with expertise in government affairs, accounting services or technology. This lacuna should be redressed. Members of the several committees could be composed of specialists such as having certified public accountants on the Broadcasting Development Fund Management Committee, or ex-government officials on the Administrative Review Committee. The division of labor in the Commission's secretariat should utilize committee members' expertise. The secretariat should assist the related committees in functioning effectively.

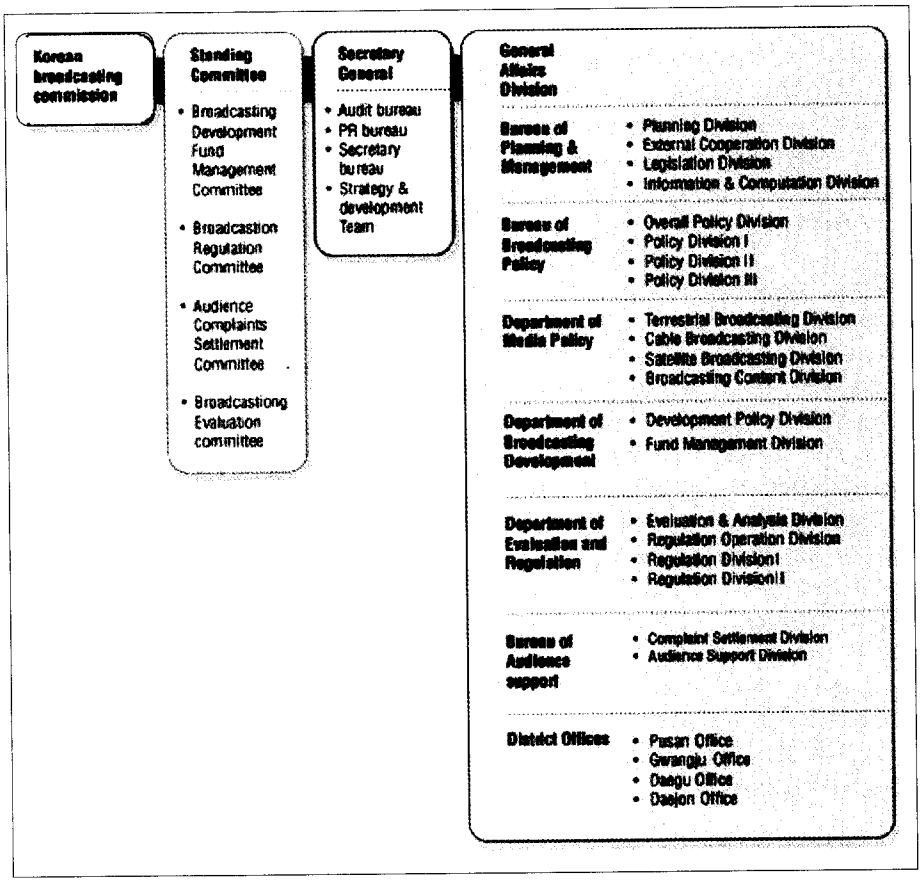
The contribution rate of the broadcasting companies and fund distribution, both of which are decided by the Committees, are very important policy instruments of the Commission. Consequently, the Broadcasting Development Fund Management Committee should operate the broadcasting development fund since it oversees the Commission's expenditures. Although the accounting process is entrusted to Korea Broadcasting Advertising Corporation, whose members are the Minister of Culture and Tourism's appointees, the Committee retains management of the fund.

Five Broadcasting Regulation Committees are established according to media and program characteristics: terrestrial broadcasting news and culture, terrestrial broadcasting entertainment, new media broadcasting news and culture, new media broadcasting entertainment, and "home shopping" advertising programs. Each Broadcasting Regulation Committee consists of seven civilian specialists. The Committees review the program contents from a cultural-ethical perspective. The regulatory mandate is to protect viewers from vulgar materials, to provide fair and accurate news information, and to protect individual privacy. Because there are a considerable number of cable and satellite TV channels, the Regulation Committees cannot monitor all the programs transmitted, and so must investigate at a secondary stage. The first stage of investigation is presumed to occur either at the viewers' committee of each broadcasting company or at a nonprofit organization for viewers' rights.

The Complaints Settlement Committee handles viewers' complaints, petitions, and disputes. The Committee reviews the conditions of service contracts and requires the revision of conditions deemed unfair. Because the number of pay channels of cable and satellite broadcasting continues to grow, the Committee will play an ever more significant role in protecting consumer's rights. The Broadcasting Evaluation Committee was a new body that was established under the Broadcasting Act of 2000. The Committee periodically reviews and publishes on the performance of the major broadcasters. In the long term, the Commission's authority area is expected to switch from reviewing program content to assessing broadcaster's business practices and serving the public interest. Data on viewer's complaints and the settlement process can be used in the evaluation, and the Commission should consider the evaluation results in processing of license renewals.

The Organization of the Secretariat

Under the Secretary-General, there are 6 bureaus, 4 teams, 22 divisions, and 4 local



http://www.kbc.go.kr/introduction/org_03.asp

Figure 1. Organizational Chart of the Korean Broadcasting Commission.

branch offices. Figure 1 shows the Commission's organizational chart. The Secretary Team serves the commissioners, and the general affairs division is the Secretary-General's staff organizational arm and is concerned with human resource management. The Audit Team is in charge of accounting and work-ethics inspection for the Commission, as well as the institutions assisted by the Broadcasting Development Fund. The Public Relations Team is involved in providing information to the press and the public. The Strategy Development Team analyzes special agendas for chairperson.

The Bureau of Planning and Management is in charge of budgeting, legislation, legal affairs, and providing information. The Bureau of Broadcasting Policy develops and implements policy for the broadcasting industry, promotes international cooperation and researches broadcasting technology. The Bureau of Media Policy regulates broadcasters through licensing, approval and registration. The bureau is also in charge of the sanction process and has the power to revoke licenses or impose fines for negligence. These functions were formerly performed by MCT. The Bureau of Broadcasting Development develops broadcasting promotion programs and operates the Broadcasting Development

Fund. The Bureau of Evaluation and Regulation reviews broadcasters' business performance, sets programming standards of program ratings and performs program content analysis, and imposes sanctions on violators. The Bureau of Audience Support assists the Complaints Settlement Committee and receives complaints and petitions, supports nonprofit viewer's organization and encourages viewers' committees to participate in program production research.

The Broadcasting Evaluation Committee and Broadcasting Regulation Committee are assisted by the Bureau of Evaluation and Regulation. The Complaints Settlement Committee is assisted by the Bureau of Audience Support and the Broadcasting Development Fund Management Committee is assisted by the Bureau of Broadcasting Development. It is crucial for the effective operation of the Commission that the committees and the secretariat work in harmony.

Although the bureaus are controlled by the Secretary General, the committees guide the operation of the corresponding bureaus that are related to each particular committee's jurisdiction. The committees should be able to make meaningful decisions, and the Secretariat should implement those decisions without emendation. The Secretariat should provide current, accurate data and information for the committee members. The current organization of the Secretariat minimizes the importance of the broadcasting evaluation function, which in turn hinders the Commission in its mission to develop a regulatory framework. The Evaluation Committee should place more emphasis on an overall evaluation of management performance and contribute to the public interest, rather than evaluating program content. The Bureau of Media Policy should utilize the Evaluation Committee's review of performance of each broadcaster as a part of the license renewal process.

Human Resources

The President appoints government officials at the division deputy director level and higher. Article 41 of the Broadcasting Act specifies that the Commission chairperson appoint the Secretariat personnel. Mid or high ranking government officials cannot be appointed to the Secretariat. Currently, other than the five full-time commissioners, there are no government officials of any rank in the Commission, yet it is reasonable to assume that civil servants are more experienced in and can mange better such public matters as budgets, legislation and licensing, and furthermore can liaise more effectively with other government agencies than can civilian employees. The current Secretariat personnel are experienced in analyzing program content but lack in the expertise and personal contacts to be effective public administrators. The Bureau of Broadcasting Policy staff should have sufficient accounting and business administration acumen to resolve the contract disputes among broadcasters. This lack of expertise in the Secretariat restricts the Commission's capacity to make appropriate decision.

The Commission consists of five politically appointed commissioners, four part-time commissioners and 157 civilian staff in the Secretariat. In addition to the regular staff, the Commission recruits part-time personnel to monitor all televised programs, which leads to high expenditures associated with monitoring personnel. The Commission and the five Broadcasting Regulation Committees would make better use of resources by

investigating only programs that are reported by viewers or the press as being in violation of the laws and regulations. The Commission could thereupon require broadcasters to submit the original materials for the investigation.

A NEW ORGANIZATIONAL DIRECTION FOR THE COMMISSION

In the short term, the Commission should strengthen its relationship with government agencies in the areas of legislation, personnel, and budget. In the long term, the Commission should redesign its policy and regulatory framework in the digital communication convergence era.

The Legal Status of the Commission and the Secretariat Staff

In the past, the governing party and ministerial agencies often distorted programming and contents to present a perspective favorable to the government. Consequently, the Broadcasting Act tried to make the Commission independent of government interference. The Commission's non-affiliation has resulted in a degradation of the status of the Commission. The National Assembly Members who proposed the Broadcasting Act seem to have expected that the Commission would be regarded as quasi-constitutional institution; however, the Commission is regarded as a government arm that is somewhat beneath the ministry rank, and consequently it has numerous administrative difficulties.

If the Commission were under the auspices of the President, it would have the status of a government agency. However, a proposal such as this would create serious opposition among various political and social groups because they believe that such a proposal would give the President's control of the broadcasting industry. Any proposed amendment of Broadcasting Act along these lines should include articles to guarantee the Commission's independence. An article similar to Article 2 of the Board of Audit and Inspection Act could be added to the Broadcasting Act as an amendment. That Article states that the Board is under the auspices of the President, but has independent status in carrying out its duties. Article 2 further states that the independence of the Board in staffing, organization and budgeting must be respected. A proposal to affiliate the Commission with the President has little chance of success because it would be opposed by the opposition party, major broadcasting businesses and the press labor union, all of which have strong influence on matters of this nature. People worry about a repeat of government interference in broadcasting. For the time being, an amendment to the Broadcasting and Government Organization Acts to reform the Commission's organizational affiliation is not feasible. The legal problems of the Commission should be solved on a case-by-case basis under the current government administration scheme. The commissioners should soon amend the Broadcasting Act and its enforcement decree so that the regulations are spelled out in detail. The Commission's regulations that restrict the rights of the broadcasting industry but are deemed by government agencies not to have the force of law must be upgraded to the articles of the Broadcasting Act or its enforcement decree.

The Secretariat staff is civilian, yet its duties are typical of civil servants and include

functions such as writing regulations, appropriating funds for public projects and imposing penalties on rule violators. The civilian composition of the Secretariat is a result of absorption of employees from the old broadcasting and cable TV commissions, as well as broadcast employees' bad memories of authoritarian control by government officials. Nevertheless, it is more appropriate that government officials work on budgets, legislation and liaise with ministerial agencies. Even before the amendment of the Broadcasting Act, the Commission Chairperson can request that government officials perform the Secretariat's duties. To avoid concerns that this move might compromise the independence of the Commission, the government officials dispatched should be from ministries other than Ministry of Culture and Tourism and Ministry of Information and Communication, and perform only administrative functions.

Securing National Treasury Funding

The Commission's budget since fiscal year 2000 has been composed of the funds from the Broadcasting Development Fund with the exception of the personnel expenses of the five full-time commissioners.[5] Because the Commission is regarded as neither a government agency nor independent authority, the Commission should secure National Treasury funding for its operating expenses. Article 38 of Broadcasting Act limits the Broadcasting Development Fund to expenditures for projects. The current budget of the Commission relies heavily on the fund, which in fact, denies the Commission's status as a government agency. The fund, which is made up of 6% of the advertising revenue from major broadcasters, depends upon the advertising market situation. The Commission's operation would be restricted should the fund revenue shrink drastically, as it may do in an economic downturn. Government agencies should be able to meet their budgets irrespective of economic conditions.

Streaming the Organization and Strengthening Expertise in the Secretariat

The Secretariat is overstaffed in relation to its workload. The personnel (157) and bureaus (6) should be downsized to less than 100 staff and 4 bureaus. The Australian Broadcasting Authority (ABA) is composed of four branches: Corporate Services (human resources, information management, secretariat, resource management and planning, and information technology); Policy, Legal, and Licensing (legal, licensing, policy, and research); Planning (engineering, information service, manager engineering, planning, branch support) and Industry Performance and Review (industry review, content assessment, industry performance, investigations).[6] The KBC Secretariat should also have a 4-bureau structure: a Bureau of Planning & Management, a Bureau of Broadcasting Policy, a Bureau of Licensing & Evaluation and a Bureau of Content and Audience Support. First, the Strategy Development Team should move to the

5) The Korea government's fiscal year runs from January 1 to December 31.

6) The ABA is composed of seven members: chairperson, deputy chairperson, a full-time member, and four part-time members. A composition of five full-time members and no part-time member is a workable alternative to the current KBC composition of five full-time member and four part-time members.

Bureau of Planning & Management. Second, the Bureau of Broadcasting Development should be merged with the Bureau of Broadcasting Policy. Third, the Bureau of Media Policy and Evaluation and the Analysis Division of the Bureau of Evaluation and Regulation should be merged with the Bureau of Licensing & Evaluation. Fourth, the three regulatory divisions of the Bureau of Evaluation and Regulation, and the Bureau of Audience Support should merge into the Bureau of Content and Audience Support. Four or five divisions should be assigned to each of four new bureaus, thus reducing the number of divisions from 22 to 19.

Public issues are related mainly to the new regulatory framework, adaptation of digital convergence, digital transmission, mobile multimedia broadcasting and webcasting. The support for authoritative involvement in the contents evaluation process has generally declined. It is desirable for the Commission to focus on designing the policy framework and industrial structure of the new media. Therefore, the Commission should upgrade the Bureau of Broadcasting Policy by recruiting outside experts so it can concentrate on handling technological development, market competition and global communications. The Bureau of Licensing & Evaluation should provide accounting expertise for the outside experts so they can review the financial aspects of broadcasters' performance and market changes.

The redesigned bureaus of Broadcasting Policy, and Licensing & Evaluation should play the leading roles in developing broadcasting policy and regulations, and in enhancing the interface with outside experts in research institutes or universities. Young scholars and practitioners can be given opportunities to participate in the decision-making process of the Commission as members of various special purpose committees that advise on the operations of the Secretariat. Digital broadcasting especially has a tremendous impact on the broadcasting industry by speeding up the convergence with telecommunications and the Internet, and developing interactive broadcasting. The Secretariat staff should be able to provide various alternatives so commissioners can respond to the rapidly changing digital broadcasting environment.

CLOSING REMARKS

The commissioners and the Secretariat staff should bear in mind that they are a part of the government sector, and consequently they must therefore observe the government's ethics and standards. The Commission is now the last resort for authoritative decisions that affect the entire the broadcasting industry. The Commission should recruit and nurture experts capable of managing the new broadcasting and communication technology. Before an amendment to the Broadcasting Act, all Commission personnel should become responsible and capable officials.

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