

Transition to a Diverse, Plural, and Inclusive Free-To-Air Digital Television





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Freedom of Expression Standards for the Transition to a Diverse, Plural and Inclusive Free-to-Air Digital Television

Office of the Special Rapporteur for Freedom of Expression of the
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CHAPTER 1
INTRODUCTION

INTRODUCTION

1. Freedom of expression is a fundamental right and a basic component of any democratic society.¹ In fact, in its very first ruling on the subject, the Inter-American Court of Human Rights called freedom of expression “a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed.” Consequently, the Court concluded, “a society that is not well informed is not a society that is truly free.”²
2. In this context, the media—and especially the audiovisual media—perform an essential function in guaranteeing the freedom of expression of individuals, as the media serve to convey individuals’ thoughts and information while at the same time allowing them access to the ideas, information, opinions, and cultural expressions of others.³ The Inter-American Court of Human Rights has been emphatic in ruling that media is a vehicle or instrument of freedom of expression and information, and therefore freedom and diversity must be guiding principles in the regulation of broadcasting, as well as that media activity must be guided and protected by the standards regarding the right to freedom of expression.⁴ In fact, the IACHR has indicated that regulation of the broadcast spectrum must simultaneously guarantee freedom of expression for the greatest number of people or perspectives; equality of opportunities in media access; and the right of contemporary societies to plural and diverse information.⁵

¹ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8; I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70; I/A Court H.R. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 112; I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111, para. 82; I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 116.

² I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

³ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 4.

⁴ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 34; IACHR. Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression Standards for Free and Inclusive Broadcasting. December 30, 2009, para. 7.

⁵ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

3. Today, the countries in the region are transitioning from analogue to digital television, while others have just begun this process. Beyond issues concerning the technological standard each country chooses, it is important—from the standpoint of the rights to freedom of expression and access to information—to define guiding principles to ensure that the digitalization of television signals becomes an opportunity to guarantee freedom of expression, universal access to all types of information and ideas, media diversity, and pluralism of information and opinions.
4. Digital transmission is a technical process by which data, sounds, and images are converted into a series of digits in binary code (i.e., 0s or 1s) and transmitted. The digits can be compressed and then re-expanded on arrival, thus economizing on transmission capacity.⁶ Digitalization enables content and platforms to converge, as the original signals can be retransmitted through common means of support, converging through many types of networks, whether Hertzian waves, optic cables, or satellite broadcasts. The digitalization of broadcasting saves space on the broadcast spectrum, which makes it possible to have more television signals with less bandwidth.⁷ This process involves a trade-off between the number of channels and the level of quality of the desired transmission.⁸
5. Nevertheless, the process does not involve only technical transformations. As has been observed, because of the function of the media in a democratic society, any decision concerning the transition to digital television must observe aspects related to guarantees for the exercise of freedom of expression and the promotion of diversity. To this effect, it is necessary to establish principles that guide the issuance and implementation of laws regulating this process, in order to regulate technical aspects but also to promote pluralism and remove cultural or linguistic barriers to access to different sources of information and prevent or reduce the concentration of media in the hands of a few operators.
6. Moreover, in the transition process, the possibility of obtaining more television signals with less bandwidth offers opportunities to increase the flow of information and diverse perspectives to the public, to ensure that current broadcasters can continue their operations, and to diversify access by new actors to the ownership and management of media outlet. Nonetheless, the transition to digital can also produce negative effects, if it is not guided by the requirements necessary to guarantee freedom of expression. This would result in less pluralism and new barriers to cultural and linguistic diversity and to the free flow of information. That would mean the loss of a rare opportunity to meet the objectives of diversity and pluralism established in the inter-American legal framework, through a transition which enables different sectors or types of media outlets to coexist, based on the type of media ownership or management, and to promote greater programming diversity.

⁶ European Commission. Digital Agenda for Europe. [Glossary](#).

⁷ In an analogue environment, “signal” is used as a synonym of “channel,” as it occupies the entire bandwidth of that frequency. However, with digitalization these two concepts are different. In this report, then, “television signal” will be understood to mean a TV service with an identity, brand, and programming of its own which once it is digitalized should not necessarily be identified with a “television channel.” In analogue transmission involving land-based television, it is possible to send only one TV signal via a broadcast channel or frequency; therefore, a “channel” is always the same as a “signal.” In digital transmission, it is possible to broadcast either one ultra-high-definition TV signal or several high-definition or standard-definition signals. See, for example, Consejo Consultivo de Radio y Televisión (ConcorTV). [Televisión digital para todos](#). Poder Legislativo. [Ley No. 19.307](#). Article 3.

⁸ European Commission. Digital Agenda for Europe. [Glossary](#).

7. In this document the Office of the Special Rapporteur offers States and civil society in the region general principles for the protection of the right to freedom of thought and expression in the context of the transition to digital broadcasting. These principles aim to serve as a guide to governments, legislative and administrative bodies, the courts, and civil society, so as to pave the way for handling this conceptually and technologically groundbreaking situation and to promote the review and adoption of legislation and practices with a view to ensuring full respect for the right to freedom of thought and expression, along with the inclusion of more participants in this process.

CHAPTER 2
ESTABLISHMENT OF AN EXPLICIT,
CLEAR AND PRECISE LEGAL
FRAMEWORK

ESTABLISHMENT OF AN EXPLICIT, CLEAR AND PRECISE LEGAL FRAMEWORK

8. The digitalization of television presents regulatory challenges that are not always addressed correctly in the legal frameworks for analogue broadcasting, and therefore it may be necessary to review current legislation. In this regard, the transition from analogue to digital television requires specific norms that take into account the adoption of new technical standards for signal transmission; establish requirements, procedures, and criteria so that current or new operators can access the new technology; and approve the plans, deadlines, and stages that should be followed until the so-called analogue switch-off,⁹ among other aspects.
9. The new regulatory framework should contemplate the conditions and requirements for all broadcast regulations. As the Office of the Special Rapporteur has indicated, because the regulation of broadcasting can involve a limitation to the exercise of the right to freedom of expression, it must meet the three-part test established in Article 13(2) of the American Convention. The limitation must be previously established in law that is explicit, restrictive, precise, and clear, both in a material and in a formal sense; be designed to achieve imperative objectives authorized by the American Convention; and be necessary in a democratic society to meet the objective it pursues, and strictly proportional for meeting that objective.¹⁰ This principle holds true with respect to the digital transition and the laws governing this process, as well as the decisions and administrative actions that actualize or govern this transition for the media outlets involved.
10. Along these same lines, the Council of Europe has recommended that States create adequate legal and economic conditions for the development of digital broadcasting¹¹ and adapt “their regulatory framework to economic, technological and social developments taking into account, in particular, the convergence and the digital transition and therefore include in it all the elements of media production and distribution.”¹² Meanwhile, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) has also observed that “States should develop a legislative framework and strategy for digital

⁹ This is defined as the moment when analogue TV signals will no longer be sent, and so those who do not have equipment that can receive digital signals will not be able to watch television services as they are able to now. See: The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE). 2010. [Guide to the Digital Switchover](#), p. 112-114.

¹⁰ IACHR. 2009 Annual Report. [Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 15-45.

¹¹ Council of Europe. [Recommendation Rec\(2003\)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting](#). May 28, 2003. Recommendation a.

¹² Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation 1.3.

broadcasting.”¹³ Based on these recommendations, many States in Europe have adopted specific laws regarding the digital transition.¹⁴

11. In addition, the Office of the Special Rapporteur has noted that it is crucial that the legal framework provide people with legal certainty and set forth in the clearest and most precise terms possible the conditions for exercising the right and the limitations to which broadcasting is subject. Thus, for example, in regulating the integration of enforcement authorities, or procedures for accessing or revoking licenses, or the power of the public authorities, the language of the statute must avoid vagueness or ambiguities that would allow for potential arbitrary actions that discriminate against an individual, group, or sector in broadcasting. The law must establish the substantive aspects of regulation; that is, it should not delegate the definitions of policies central to broadcasting to the enforcement authority. The enforcement authority may only interpret or specify the substantive aspects defined clearly and beforehand in the law.¹⁵
12. In several countries of the region there already exists general legislation on broadcasting already. To the extent that these meet the requirements that have been laid out, any technical regulations, decrees, or resolutions must be issued by the government or the regulatory authority assigned to regulate the transition to digital television must not go beyond such legislation. By contrast, if no legal framework exists that is compatible with standards for broadcasting and freedom of expression, or if it does not make it possible to meet the goal of ensuring the greatest possible diversity and plurality, “the States should establish specific legal mechanisms to advance the switchover to digital broadcasting services”¹⁶ or substantially modify the existing legal framework on audiovisual services, to bring it in line with democratic requirements and with the American Convention.
13. Up until now, the adoption of mechanisms in the hemisphere to govern digital television has been established both at the legal and supra-legal level. Thus, for example, in 2005 the United States approved the Digital Television Transition and Public Safety Act¹⁷, while in Chile, the regulation on digital television was established through a specific law approved by the National Congress in 2014.¹⁸ In the rest of the region, some countries have approved government decrees on the subject, such as Brazil in 2003¹⁹ and 2006,²⁰ Argentina in 2009,²¹ Mexico in 2010,²² and Uruguay in

¹³ The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE). 2010. Guide to the Digital Switchover, p. 23.

¹⁴ Some of these laws are: United Kingdom (Communications Act 2003), Hungary (Act LXXIV of 2007 on the rules of broadcasting and digital switchover), Slovakia (Digital Broadcasting Act 2006), Ireland (Broadcasting Act 2001), Italy (Broadcasting Act No. 112/2004), Czech Republic (on Radio and Television Broadcasting and on Amendment to Other Acts), among others.

¹⁵ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 18.

¹⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

¹⁷ United States of America. Public law 109-171. February 8, 2006. Title III—Digital Television Transition and Public Safety. Sec. 3005.

¹⁸ Library of the National Congress of Chile. Law No. 20.750. Permite la introducción de la televisión digital terrestre, May 6, 2014.

¹⁹ Office of the President of the Republic. Decree No. 4.901 of November 26, 2003. Institui o Sistema Brasileiro de Televisão Digital - SBTVD, e dá outras providências.

²⁰ Office of the President of the Republic. Decree No. 5.820 of June 29, 2006. Dispõe sobre a implantação do SBTVD-T, estabelece diretrizes para a transição do sistema de transmissão analógica para o sistema de transmissão

2012.²³ In addition, some States have regulated the issue through rules issued by regulatory authorities, such as Peru in 2010,²⁴ Mexico in 2004 and 2012,²⁵ and Colombia in 2012.²⁶

14. As was indicated earlier, State regulation of broadcasting in general and of digital television in particular must have as one of its objectives “to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and guarantee the right of society to access all types of information and ideas.”²⁷ Along these lines, in the Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, adopted in 2013, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the OAS Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR) maintained that “States should ensure that respect for freedom of expression, including diversity in the airwaves, is ensured in the digital terrestrial transition process.”²⁸ This does not rule out the fact that other general objectives of interest may be included in such regulations, such as universal access to new technology, the promotion of educational and cultural content or the local audiovisual production.
15. Thus, for example, Argentina’s regulations include as an objective “to promote social inclusion, cultural diversity, [and] the country’s language through access to digital technology, as well as the democratization of information.”²⁹ Peru’s regulations, meanwhile, include as an objective “to procure access for television viewers to a

digital do serviço de radiodifusão de sons e imagens e do serviço de retransmissão de televisão, e dá outras providências.

²¹ InfoLeg. Decree No. 1148 of 2009. Créase el Sistema Argentino de Televisión Digital Terrestre.

²² Official Federal Record. Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre. September 2, 2010.

²³ IMPO. Center for Official Information. Decree No.153/012. May 11, 2012. Reglámentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación.

²⁴ El Peruano. Supreme Decree 017-2010-MTC. Decreto Supremo que aprueba el Plan Maestro para la implementación de la Televisión Digital Terrestre en el Perú y modifica el Reglamento de la Ley de Radio y Televisión, aprobado por Decreto Supremo N° 005-2005-MTC.

²⁵ Federal Telecommunications Commission. ACUERDO por el que se reforman, adicionan y derogan diversas disposiciones del Acuerdo por el que se adopta el estándar tecnológico de televisión digital terrestre y se establece la política para la transición a la televisión digital terrestre en México. May 4, 2012.

²⁶ Board of Directors of the National Television Commission. Agreement 002, April 4, 2012. Por medio del cual se establece y reglamenta la prestación del servicio público de televisión abierta radiodifundida digital terrestre –TDT.

²⁷ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 12.

²⁸ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the OAS Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition. Principle 1.a.

²⁹ InfoLeg. Decree No. 1148 of 2009. Créase el Sistema Argentino de Televisión Digital Terrestre.

wider variety and quality of content in the areas of information, knowledge, culture, education, and entertainment, raising the quality of life for the population.”³⁰

16. Ultimately, broadcasting rules should aim to create a framework that allows for the most extensive, free, and independent exercise of freedom of expression, facilitating access to the most diverse number of groups or people, in order to ensure that this power will not be used as a form of indirect censorship and to guarantee diversity and pluralism in broadcasting. As the Office of the Special Rapporteur has stated, the States should evaluate the broadcasting possibilities arising from the use of the digital dividend, and consider this technological change an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.”³¹
17. Rules and plans for the digital transition should be developed under public scrutiny, with public participation,³² and should be open to civil society to ensure pluralism in television services, public access to a wide variety of programs, and the protection of the interests of the population, especially those of minority and vulnerable groups. Along these lines, in their 2013 Joint Declaration, the UN Special Rapporteur, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur, and the ACHPR Special Rapporteur maintain that “States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard. One option here is to create a multi-stakeholder forum to oversee the consultative process.”³³

³⁰ El Peruano. Supreme Decree 017-2010-MTC. Decreto Supremo que aprueba el Plan Maestro para la implementación de la Televisión Digital Terrestre en el Perú y modifica el Reglamento de la Ley de Radio y Televisión, aprobado por Decreto Supremo N° 005-2005-MTC.

³¹ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

³² OSCE Representative on Freedom of the Media. 2010. Guide to the Digital Switchover, p. 70.

³³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition. Principle 1.b.

CHAPTER 3
PROMOTION OF DIVERSITY AND
PLURALISM IN DIGITAL
BROADCASTING

PROMOTION OF DIVERSITY AND PLURALISM IN DIGITAL BROADCASTING

18. As indicated earlier, technological development provides a critical opportunity to guarantee access to frequencies for people or sectors that are generally marginalized or excluded.³⁴ As was noted by the OAS, UN, OSCE, and ACHPR Special Rapporteurs, “if not carefully planned and managed, the digital transition can exacerbate the risk of undue concentration of ownership and control of the broadcast media.”³⁵ The challenge now, and in the immediate future, is to transform the current inequality in the exercise of the right to freedom of expression into a digital opportunity for all.³⁶ To do that, as will be shown below, in the process of converting to digital television States should observe the need to ensure: (i) an increase in the diversity of television media and promotion of new operators; (ii) plurality and diversity of content; (iii) recognition of three digital television sectors; and (iv) promotion of plurality and diversity through regulation of concentration of media control and ownership.

A. Increase in the Diversity of TV Media and Promotion of New Operators

19. One aim of the process of implementing digital television should be to bring about a more diverse and plural system of television media than the one that exists with analogue technologies. For this, the States should evaluate the broadcasting possibilities that result from the bandwidth savings made possible by digitalization and the use of the various digital dividends that become available when the transition is complete, considering this technological change as an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.³⁷ Likewise, the OAS, UN, OSCE, and ACHPR Rapporteurs have

³⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.

³⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition.

³⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.

³⁷ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80. The Declaration of Principles of the World Summit on the Information Society (WSIS, approved in Geneva in 2003), which was convened by the UN General Assembly via Resolution 56/183 of December 21, 2001, states, “We are...fully aware that the benefits of the information technology revolution are today unevenly distributed between the developed and developing countries and within societies. We are fully committed to turning this digital divide into a digital opportunity for all, particularly for those who risk being left behind and being further marginalized” (Principle 10). The resolution adds, “In building the Information Society, we shall pay particular attention to the

established that States should ensure that the digital terrestrial transition process ensures respect for freedom of expression, “including diversity in the airwaves.”³⁸ Along these lines, the Rapporteurs have established that “State policies and licensing processes relating to the digital terrestrial transition should promote media diversity.”³⁹

20. The Office of the Rapporteur has stated emphatically that freedom of expression and diversity must be guiding principles in the regulation of broadcasting: “The State’s authority to regulate broadcasting is based on, *inter alia*, the ‘duty to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.’ In this way, the broadcasting regulation that the State can and should create would form a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.”⁴⁰
21. These guiding principles also apply to the transition to digital television. In this process, governments and national regulators should adopt public policies to increase diversity in the media, pluralism of content and prevent concentration in broadcasting. Under these new conditions, it is possible and desirable for regulations and implementation plans for digital television to facilitate the entry of new television operators, both in the public sector as well as in the community and commercial sectors. It is desirable for these measures to be adopted without waiting for the analogue switch-off, unless it is clearly and plainly evident that the technical conditions do not exist to do so from the very start of the implementation of digital television.
22. In this regard, States should adopt measures to guarantee the exercise of freedom of expression, plurality, and diversity in the transition to digital. Such measures could include, among others, adapting to inter-American standards governing procedures to access, renew, or revoke licenses; recognizing the various sectors within the media; encouraging diverse and new operators; setting limits on media ownership concentration; promoting programming diversity among operators; decentralizing the production of content geographically; and establishing rules to provide more

special needs of marginalized and vulnerable groups of society, including migrants, internally displaced persons and refugees, unemployed and underprivileged people, minorities and nomadic people. We shall also recognize the special needs of older persons and persons with disabilities” (Principle 13).

³⁸ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.a.

³⁹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.a.

⁴⁰ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 12.

diversity in television for subscribers and allowing for universal coverage of public-interest television (through so-called “must-carry”⁴¹ rules).

23. Opening up the airwaves to new operators allows for a greater diversity of voices from the time digital is switched on, and at the same time provides a direct incentive for new technologies to be spread throughout the country faster and more efficiently. While new actors are interested in a fast transition so as to reach the entire population, having a larger number of operators makes it more attractive for people to buy reception devices, as they can access more signals. For the United Nations Educational, Scientific and Cultural Organization (UNESCO), one positive step the State should take to promote a media environment in which freedom of expression, independence, and media pluralism can flourish would be to “allocate digital licenses to a diverse range of commercial and non-commercial operators.”⁴² Along these lines, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression maintain that “consideration should be given to providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, to those wishing to establish new media outlets.”⁴³
24. Thus, for example, the specific rules on digital television established by the Uruguayan government in 2012 enable access by new operators at the very outset of the digital switch-on, through public, open competitions.⁴⁴ In the capital, Montevideo, three commercial analogue stations and one public station are currently on the air, but once new authorizations are granted the public will have free access to five commercial stations, two public ones, and, for the first time, to a community TV channel. A channel was also made available for shared use by various community initiatives, subject first to a call going out to interested parties. Several of these channels will carry more than one television signal, so there will be broader diversity not only of operators but also of content.⁴⁵

B. Plurality and Diversity of Content

25. The digitalization of broadcasting will make it possible to have more television channels. But more channels does not imply diversity if they simply produce more of

⁴¹ “Must-carry” rules refer to “the legal obligation of cable companies to carry the analogue or digital signals of over-the-air local and public broadcasters.” OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 30.

⁴² UNESCO. [Media Development Indicators: A framework for assessing media development](#). March 2008. Indicator No. 2.2.

⁴³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁴⁴ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 8; IMPO. Center for Official Information. Decree No. 144/013. May 22, 2012. [Reanúdase el llamado a interesados en obtener autorización para brindar el servicio de televisión digital abierta comercial con estación transmisora principal en el departamento de Montevideo, suspendido por Decreto 28/013](#).

⁴⁵ Ministry of Industry, Energy, and Mining. [Resolution](#). 2013; Ministry of Industry, Energy, and Mining. [Resolution IE/981](#). October 24, 2013; Ministry of Industry, Energy, and Mining. [Resolution No. IE/984](#). October 25, 2014. IMPO. Center for Official Information. [Resolution No. 664/013](#). October 25, 2013; Televisión Digital Abierta. October 28, 2014. [TV Digital: Ejecutivo concedió nuevos canales comerciales, comunitarios y públicos en todo el país](#).

- the same.⁴⁶ In this sense, “competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television.”⁴⁷ In addition to promoting a diversity of media outlets, States should also consider adopting public policies to actively promote diversity of content among and within media outlets, “where this is consistent with international guarantees of freedom of expression.”⁴⁸
26. In its recommendations on achieving greater media diversity, the Council of Europe has also considered the need to establish measures for internal diversity within the media. In this regard, it has stated, “Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public.” Therefore, it goes on to say, States “should, while respecting the principle of editorial independence, encourage the media to supply the public with a diversity of media content capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and generations.”⁴⁹
 27. The UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that States should consider “providing support, based on equitable, objective criteria applied in a non-discriminatory fashion, for the production of content which makes an important contribution to diversity,”⁵⁰ and consider adopting measures to promote independent content producers, “including by requiring public service broadcasters to purchase a minimum quota of their programming from these producers.”⁵¹
 28. Countries such as Argentina,⁵² Brazil,⁵³ and Canada⁵⁴ have created public funds to produce and broadcast audiovisual content, and have established minimum requirements for airing national, local, or independent productions.
 29. For its part, Chile has promoted the production and broadcasting of content through funds open to competition, such as the Fondo CNTV, with more than \$6 million in

⁴⁶ Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation II.1.

⁴⁷ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 52.

⁴⁸ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁴⁹ Council of Europe. [Recommendation CM/Rec\(2007\)2 of the Committee of Ministers to member states on media pluralism and diversity of media content](#). January 31, 2007. Recommendation II. 2.1.

⁵⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁵¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁵² Office of the President. [Ley 26.522](#). Audiovisual Communication Services and Rules. Articles 65 and 97; [Decreto 1225/2010](#). [Reglaméntase la Ley 26.522](#). Annex I; Televisión Digital Abierta. [Fomento](#); Televisión Digital Abierta. [Acceda al Banco Audiovisual de Contenidos Universales Argentino](#); Televisión Digital Abierta. [Polos](#).

⁵³ Office of the President of the Republic. Decree No. 8.281. [Dispõe sobre o Programa de Apoio ao Desenvolvimento do Audiovisual Brasileiro - PRODAV, institui o Prêmio Brasil Audiovisual e dá outras providências](#). July 1, 2014; Office of the President of the Republic. Law No. 12.85. [Dispõe sobre a comunicação audiovisual de acesso condicionado; altera a Medida Provisória nº 2.228-1, de 6 de setembro de 2001, e as Leis nºs 11.437, de 28 de dezembro de 2006, 5.070, de 7 de julho de 1966, 8.977, de 6 de janeiro de 1995, e 9.472, de 16 de julho de 1997; e dá outras providências](#). September 12, 2011. Articles 16, 17, 19, and 27.

⁵⁴ See, for example: Canadian Media Fund. [FAQ](#); Canadian Radio-television and Telecommunications Commission. [Ensuring a Place for Canadian Programs](#).

2013. The funds are managed by an autonomous agency, established in the constitution, called the National Television Council.⁵⁵ According to the legal text of the statute on digital television, this agency must give priority to the allocation of benefits for programs by regional, local, and community media outlets, though content for free-to-air national television and pay television platforms is also eligible for funding.⁵⁶

30. As mentioned earlier, Argentina has also developed an active policy along these lines, through various tools to promote audiovisual production and interactive applications for digital television. These include a competitive fund, the “Operational Plan to Develop and Encourage Digital Audiovisual Content”⁵⁷; the “Argentine Universal Audiovisual Content Bank” (BACUA), a “source of digital audiovisual content available for both new and existing free-to-air broadcast venues”⁵⁸; and “Audiovisual Technology Poles,” a program that seeks to create and strengthen capacities for national content production for digital television and to decentralize national audiovisual production through the creation of a network of centers at national universities. These centers work in tandem with different actors in the broadcasting sector and civil society organizations in their sphere of influence.⁵⁹
31. It should be noted that public service television, because of its mandate and purpose, should contribute to plurality of content. As will be seen in greater detail in this report, the mandate of public service television includes strengthening democracy, building citizenship, encouraging political pluralism and cultural pluralism, providing reliable information that is pluralistic and balanced, and providing educational, cultural, and entertainment programs for the whole of society.⁶⁰ In this sense, as was indicated earlier, one measure that can help promote diversity of free content and universal access to free-to-air television is the establishment of must-carry rules⁶¹ that apply primarily to subscription television providers in the area where the signals are transmitted.

⁵⁵ National Television Council (CNTV). Fondo CNTV.

⁵⁶ Library of the National Congress of Chile. Law No. 20.750. Permite la introducción de la televisión digital terrestre, May 6, 2014. Article 1.8.

⁵⁷ Televisión Digital Abierta. Fomento.

⁵⁸ Televisión Digital Abierta. Acceda al Banco Audiovisual de Contenidos Universales Argentino.

⁵⁹ Televisión Digital Abierta. Polos.

⁶⁰ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83. Parliamentary Assembly of the Council of Europe. Recommendation 1641 (2004)1. Public Service Broadcasting. January 27, 2004. Recomendación No. 2.

⁶¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition. Principle 3.b; OSCE Representative on Freedom of the Media. 2010. Guide to the Digital Switchover, p. 13.

C. *Recognition of Three Digital TV Sectors*

32. One measure to promote diversity and pluralism in the media is to expressly recognize that there are at least three sectors in broadcasting—commercial, public, and community—and to reserve part of the digital television spectrum for community and other nonprofit initiatives.
33. The Office of the Special Rapporteur has indicated that the right of the public to receive the maximum variety of information and ideas possible means that “the regulation of broadcasting should include setting aside space on the spectrum for a diverse system of media outlets that can together represent a society’s diversity and plurality of ideas, opinions, and cultures.”⁶² Therefore, it has insisted on the “need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.”⁶³ In this sense, “different types of broadcasters—commercial, public service and community—should be able to operate on, and have equitable access to, all available distribution platforms...including the new digital dividend.”⁶⁴ Similarly, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression recognized that different types of broadcasters (commercial, public service, and community) as well as broadcasters of different reach (local, national, regional, and international) contribute to diversity in freedom of expression.⁶⁵
34. Several countries in the region have legislation expressly recognizing the existence of three broadcasting sectors, though opportunity for equal access is not always actually guaranteed and discriminatory conditions of use are often established.
35. Thus, for example, the new law on digital television in Chile for the first time recognizes community local television, in addition to educational and cultural television, and general-interest regional and local television.⁶⁶ In Uruguay, analogue and digital community radio and TV outlets are now recognized and promoted as a sector that complements public and commercial media, without limits on coverage, since the approval of the 2007 Law on Community Broadcasting Service.⁶⁷
36. Argentina, for its part, in 2009 approved the Law on Audiovisual Communication Services, which recognizes public, commercial, and nonprofit media, including community media.⁶⁸ Bolivia’s Telecommunications Law, approved in 2011, recognizes four radio and television sectors: commercial, public, “social community,” and that of “native peasant indigenous peoples and intercultural and Afro-Bolivian

⁶² IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 68.

⁶³ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

⁶⁴ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 107.

⁶⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁶⁶ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

⁶⁷ Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 5.

⁶⁸ InfoLeg. [Servicios de Comunicación Audiovisual](#). Law No.26.522. October 10, 2009. Article 89.

communities,”⁶⁹ although it applies only to analogue TV. Ecuador’s 2013 Communication Law also recognizes three media sectors,⁷⁰ while Peru’s Radio and Television Law of 2004 recognizes the existence of for-profit commercial broadcasting, as well as public, educational, and community broadcasting.⁷¹ Meanwhile, Mexico’s constitutional reform recognized the existence of social media, which include community and indigenous broadcasting stations.⁷²

D. Promotion of Plurality and Diversity through Regulation of Concentration of Media Control and Ownership

37. Another measure States should adopt to promote plurality and diversity is to regulate the concentration of media ownership and control. The main way to encourage greater diversity of information and opinion in the broadcast media is to open up the system to new commercial and community broadcasters and to strengthen and diversify public stations. However, to guarantee a pluralistic and diverse environment, it will not be enough to facilitate the entry of new operators if measures are not adopted to limit and reduce the concentration of media ownership in countries where elevated levels of concentration are found.
38. The concentration of the media in a few hands has a negative impact on democracy and freedom of expression, as laid out in Principle 12 of the IACHR Declaration of Principles on Freedom of Expression: “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” Along these lines, since its first ruling on the subject the Inter-American Court has held that any monopoly on media ownership or administration is prohibited, regardless of the form it takes, and has recognized that States must actively intervene to prevent ownership concentration in the media sector.⁷³
39. In this regard, the IACHR has indicated that “if [the] media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.”⁷⁴ Moreover, as the Office of the Special Rapporteur has reiterated, one should not lose sight of the

⁶⁹ Official Gazette of Bolivia. Law No. 164. Ley General de Telecomunicaciones, Tecnologías de Información y Comunicación. Law No. 164. August 8, 2011. Article 10.

⁷⁰ Official Record of the Government of Ecuador. Ley Orgánica de Comunicación. June 25, 2013. Article 106.

⁷¹ Peru. Law No. 28.728. Ley de Radio y Televisión. June 23, 2004.

⁷² Chamber of Deputies. Constitución Política de los Estados Unidos Mexicanos. Provisional section III.

⁷³ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 33-34. IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 117.

⁷⁴ IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII: The Situation of Freedom of Expression, para. 419.

fact that the rejection of media concentration does not refer solely to private ownership concentration; it also applies—and in a particular way—to processes that concentrate media ownership or control in the hands of the State.⁷⁵

40. In fact, the Office of the Special Rapporteur has repeatedly pointed to the need to apply anti-monopoly laws to prevent concentration of media ownership and control as a priority issue for the defense of freedom of expression in the hemisphere.⁷⁶ In this regard, the Office of the Rapporteur has expressed its concern “over the danger that the concentration of media ownership may pose to the formation of public opinion”⁷⁷ in the countries of the region. Therefore, the Office of the Special Rapporteur has urged the States to “adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.”⁷⁸ In their 2007 Joint Declaration, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression also expressed their concern and opposition to the formation of monopolies and oligopolies, and said that “special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical.”⁷⁹
41. Along these same lines, UNESCO has found that “in Latin America and the Caribbean, where a commercial model has traditionally predominated, media ownership has been highly concentrated among very few owners. In much of the region, on average, almost half of the products and services of the information and communications markets of each country were controlled by one provider.”⁸⁰ According to UNESCO, recent country-specific studies have indicated that “high levels of concentration in media ownership persist” in much of the Latin American and Caribbean region.⁸¹
42. Especially in terms of the switch to digital, UNESCO has noted that “there have remained many unresolved questions related to how the television sector—historically oligopolies—will adapt to digitalization. It remains to be seen whether the switch is facilitating the entry of new communications and technology providers and consequently [promoting] pluralism, or instead resulting in consolidation and concentration.”⁸² This concern was also raised by the OSCE Representative on Freedom of the Media, who has indicated that existing monopoly problems “tend to

⁷⁵ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 27.

⁷⁶ IACHR. 2008 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc 5, rev. 1. February 25, 2009, paras. 98-108. IACHR. 2004 Annual Report. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. Chapter V (Indirect Violations of Freedom of Expression: The Impact of the Concentration of Media Ownership). OEA/Ser.L/V/II.122. Doc 5, rev. 1. February 23, 2005.

⁷⁷ IACHR. 2004 Annual Report. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. Chapter V (Indirect Violations of Freedom of Expression: The Impact of the Concentration of Media Ownership). OEA/Ser.L/V/II.122. Doc 5, rev. 1. February 23, 2005, para. 25.

⁷⁸ IACHR. 2013 Annual Report. Annual Report of the Inter-American Commission on Human Rights 2013. Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 22.

⁷⁹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

⁸⁰ UNESCO. World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean. 2014.

⁸¹ UNESCO. World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean. 2014.

⁸² UNESCO. World Trends in Freedom of Expression and Media Development: Regional overview of Latin America and the Caribbean. 2014.

increase by digitalization” and that therefore “such issues must be addressed without delay.”⁸³

43. Consequently, the regulation of digital television should aim “to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity.”⁸⁴ The goal should be to turn this into an opportunity to limit and reduce, or at least not to increase, the undue concentration of media in the hands of individuals, companies, or associated economic groups seen in the analogue environment, both in the form of ownership or operational control and the programming of new television services.
44. Along these lines, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression have noted that “special measures should be put in place, as necessary, to prevent the digital terrestrial transition from promoting greater or undue concentration of media ownership or control.”⁸⁵ This might include “regulatory measures regarding the way in which multiplexes⁸⁶ are run, clear pricing and competition rules regarding multiplexes and distribution networks, and the separation of distribution and content operations within the same business, among other things.”⁸⁷
45. In this context, it is essential to have mechanisms in place to ensure transparency of media ownership at all levels,⁸⁸ mechanisms that should be taken into account in designing procedures for granting new digital television licenses. Pre-existing situations involving concentration of media ownership or control should also be taken into consideration.
46. Measures taken should “involve active monitoring, taking ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place.”⁸⁹
47. Legislation regulating the transition from analogue to digital television should include mechanisms and rules to ensure continuity of broadcasting for current operators, with provisions that take into account the situation at the outset. On this point, the UN, OAS, OSCE, and ACHPR Rapporteurs for Freedom of Expression have established

⁸³ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), pp. 14 and 51.

⁸⁴ IACHR. 2009 [Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

⁸⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.h.

⁸⁶ A multiplex merges several data streams to form one unified stream, which can be separated again later. OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 29.

⁸⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.h.

⁸⁸ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

⁸⁹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

- that “as a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services. Nevertheless, regulations on the switch to digital may include special measures to prevent further concentration of current operators of free-to-air analogue television, either directly or indirectly (relatives or other individuals or businesses that belong to the same economic group or that in one way or another enable control by the same individuals or businesses), in order to prevent undue media concentration in the new digital environment. Reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place to promote this goal.”⁹⁰
48. In Uruguay, for example, the law establishes that three of the channels designated for providing commercial, free-to-air digital TV service in Montevideo may be allocated to the current license holders of free-to-air television broadcasting services, “in view of their track record as broadcasters and for the purpose of facilitating continuity of their services in the digital transition,”⁹¹ as long as they comply with the law’s requirements. The law also specifies that interested parties who do not have “real independence” from current license holders of free-to-air analogue TV broadcasting services may not participate in new competitions for additional licenses for new digital dividend channels. This includes license holders, their relatives, and directors, administrators, or managers or others who belong to economic groups made up of individuals or businesses that are license holders.⁹²
49. For its part, Chilean law ensures that current analogue TV license holders have the right to request a new concession for digital TV broadcasting. However, the law determines that they may hold only one digital terrestrial television concession in each region of service, with their current analogue concessions coming to an end to enable the migration to digital technology. Under the law, only one operator may hold two concessions: the public National Television of Chile. However, under the second concession, this operator may only broadcast its regional signals and provide transmission services to carry signals from third parties, which will be licensed to provide free-to-air television services but without having a designated part of the spectrum.⁹³
50. Finally, it is important that the issue of so-called “mirror signals” be exempted, only for a specified time, from laws to prevent ownership concentration. During the gradual implementation of digital television, in the period of time known as the “digital transition” or “digital switchover,” analogue television services should coexist with the transmission of a “mirror” digital signal (that is, with identical content), located on another channel on the spectrum that is allocated by the regulatory body. In this way, people can continue to receive TV signals, both on new equipment and on analogue sets, until they acquire digital reception devices.

⁹⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

⁹¹ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 10.

⁹² IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 12.

⁹³ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Articles 14 and 15, and the second and third provisional articles.

51. Therefore, between the time when digital is first switched on and analogue is switched off, limits to the number of concessions and use of frequencies that an individual, business, or economic group may accumulate in a particular location or nationally may be exceeded only with rare exception. For this situation to be legitimate and not circumvent the limits imposed on undue media concentration, this type of decision must be both an exception and temporary, remaining in effect only until analogue is switched off; it must have a reasonable, planned, non-arbitrary, and never indefinite time frame; and the license holder of the analogue service must be obligated to give back the frequency used originally, at least once analogue is switched off.

CHAPTER 4
AWARDING OF DIGITAL TV
LICENSES

AWARDING OF DIGITAL TV LICENSES

A. *Licensing procedures*

52. The IACHR and the Office of the Special Rapporteur have recognized that States have the authority to regulate broadcasting activity. This authority includes not only the possibility of defining the method of handling concessions, renewals, or revocation of licenses, but also the planning and implementation of public policy related to broadcasting.⁹⁴ However, this authority must be exercised bearing in mind the international obligations the State has taken on with respect to the right to freedom of expression—particularly the prohibition established in Article 13(3) of the American Convention, prohibiting the restriction of the right of expression by indirect methods or means, such as the abuse of the authority to regulate or administer radio broadcasting frequencies.⁹⁵
53. As the Office of the Rapporteur has indicated, “the assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent” and that “serve as a check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part.”⁹⁶ On this subject, Principle 12 of the Declaration of Principles states that “the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”
54. The requirements and mechanisms to obtain a concession to establish a new digital TV broadcasting station should follow the same inter-American standards required for analogue broadcasting services, as these principles are not subject to change depending on the technology used (analogue or digital). In this regard, in its report Freedom of Expression Standards for Free and Inclusive Broadcasting, the Office of the Special Rapporteur has indicated that in the process of allocating radio and television licenses States should, at a minimum: (i) provide for affirmative measures so that the three broadcasting sectors can access licenses under equitable conditions; (ii) include democratic standards and transparent procedures for assigning licenses; and (iii) establish conditions for use of the concessions that are reasonable and non-discriminatory.⁹⁷

⁹⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para.9; IACHR. May 25, 2007. Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela.

⁹⁵ IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 139.

⁹⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 58; IACHR. May 25, 2007. Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela.

⁹⁷ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

55. Under inter-American standards, the process of assigning licenses “must be strictly regulated by law, characterized by transparency, and guided by objective, clear, public, and democratic standards”⁹⁸ and must include “sufficient guarantees against arbitrary actions, including the obligation to justify decisions that grant or deny requests, as well as adequate judicial review of these decisions.”⁹⁹
56. The criteria for assigning licenses must be limited to establishing only those requirements that are necessary to achieve a legitimate aim, and one of the goals must be to foster plurality and diversity of voices. Moreover, the requirements may not constitute a disproportionate barrier to achieving this goal. In this regard, the Office of the Special Rapporteur has indicated that when the economic criterion is the sole or principal reason for granting radio or television frequencies, “it jeopardizes equal access to the radio spectrum and discourages pluralism and diversity.”¹⁰⁰ Along these lines, the IACHR has stated that “auctions that contemplate only economic criteria or that award concessions without offering equal opportunity for all sectors, are incompatible with democracy and with the right to freedom of expression and information.”¹⁰¹
57. Other disproportionate barriers that should not be applied to procedures for assigning licenses include technical or administrative requirements that are unreasonable and that indirectly raise an economic barrier to access to frequencies, or geographic distance that serve as a barrier by, for example, requiring travel to the capital to file an application.¹⁰²
58. In addition to granting legal access to a license by public, private, and community media, States should also ensure that provisions establishing conditions for the use of the license are not arbitrary or discriminatory. That is, administrative, economic, and technical requirements for the use of a license must be strictly necessary for guaranteeing its proper functioning, clearly and precisely provided for in the

⁹⁸ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 61; and UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting. Along these same lines, the Committee of Ministers of the Council of Europe indicated the following: “13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licenses. The basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law.” Also: “14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.” Council of Europe. Committee of Ministers. Appendix to Recommendation No. R (2000) 23 of the Committee of Ministers to Member States. Rules 13-14. December 20, 2000.

⁹⁹ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 61.

¹⁰⁰ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 60-65.

¹⁰¹ IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII: The Situation of Freedom of Expression, para. 414; IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 65.

¹⁰² IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 66-67.

regulations, and not subject to unwarranted modification during the term of the license.¹⁰³ Thus, for example, the Office of the Special Rapporteur has maintained that:

“[E]xcessively short time limits on concessions would be arbitrary, as they make it difficult for commercial media to recoup their investment or establish a profitable business. Likewise, excessively short time limits would make it difficult for community or social radio stations to truly carry out their projects. Also, concessions that do not lead to contracts that expressly include the rules of use of the license or the conditions under which the rules can be amended can open the door to arbitrary decisions. Some examples of discriminatory limitations would include those provided for by law or established in practice that allow certain kinds of restrictions regarding content, broadcasting power, territorial reach or access to financing, without sufficient, objective and reasonable justification in pursuit of one of the legitimate ends provided for in the American Convention.”¹⁰⁴

59. Finally, in the event the regulations include the possibility of renewing or extending the terms of licenses, the process should have sufficient guarantees in place to prevent licenses from being assigned, withdrawn, or not renewed for discriminatory or arbitrary reasons. Such a procedure must therefore be carried out by body that is independent from political power and sectors linked to broadcasting, and it must be regulated by law; be transparent; be guided by objective, clear, and democratic criteria; and ensure due process. Such regulations must include set time periods, provide for prior notice sufficiently in advance, and guarantee that all interested parties may participate in the competition. In this sense, it is crucial to allow for the right of those who wish to renew their licenses to be heard and to offer evidence before any decision is made. The right to access to a well-founded decision within a reasonable period of time should be guaranteed, as should subsequent judicial review.¹⁰⁵
60. Lastly, as the Office of the Special Rapporteur has indicated, “the decision of whether to renew a license must be analyzed in each case according to its compatibility with the objective of fostering plurality and diversity of voices, particularly in countries or regions with media outlets concentrated in a few hands, with a prohibition on punishment for the editorial stance or reporting of a media outlet.”¹⁰⁶
61. In the Case of Marcel Granier et al. v. Venezuela, the Inter-American Commission found that “the granting of radio and television broadcast frequencies with the objective of putting pressure on and punishing or rewarding and providing privileges to social communicators and media outlets because of the information they provide constitutes an indirect restriction of freedom of expression as prohibited by Article 13(3) of the American Convention. It also has the effect of silencing other media

¹⁰³ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 70-73.

¹⁰⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 71-72.

¹⁰⁵ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 74-78; IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 123.

¹⁰⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 77.

outlets, which severely impacts the social dimension of freedom of expression.”¹⁰⁷ From the IACHR’s standpoint, when a State adopts a decision regarding the allocation of a frequency, the decision should be based on a law that establishes quotas, procedures, and sufficient reasons to support this action, in order to avoid discrimination and the creation of public monopolies. In situations in which an adequate legal framework in this area exists, the State should also verify that there is no other frequency that would serve to meet the aims being pursued without affecting the possibility that the existing media outlets continue to operate normally.¹⁰⁸

62. The application of the principles laid out in the preceding paragraphs to the digital television transition has been noted by the UN, OAS, OSCE, and ACHPR Special Rapporteurs, who stated, “The process for allocating broadcasting licenses should be strictly regulated by law and be guided by clear, objective, transparent and democratic criteria. This includes the need for the legal framework to be sufficiently clear to prevent arbitrary actions, including actions based on the editorial line of a broadcaster, to require decisions to be justified and published, and to allow for judicial review of decisions.”¹⁰⁹
63. In this regard, the rules on digital broadcasting in Uruguay include open, public competitions in which the evaluation and selection criteria give priority consideration to the communication proposal the applicants commit to provide. Applications are evaluated based on a series of prerequisites, including commitments to local and independent audiovisual production, which would include the creation of direct jobs and commitments to serve persons with hearing and visual disabilities and to provide a variety of signals.¹¹⁰ In the case of Chile, its legislation establishes that competitions will be held based on the “beauty contest” system.¹¹¹ Thus, for example, under the law concessions for applicants with their own means to broadcast will be assigned to those “whose proposal, having met the ground rules for the respective competition and being in strict compliance with the requirements related to a financial plan and the personal conditions required by law to be a license holder...offers the best technical conditions to ensure an optimal transmission.”¹¹²

¹⁰⁷ IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 126.

¹⁰⁸ IACHR. Report No. 112/12. Case 12,828. Merits. Marcel Granier et al. Venezuela, para. 150.

¹⁰⁹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.e.

¹¹⁰ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

¹¹¹ “Under a beauty contest, or comparative selection, applicants set out their cases for being awarded licenses on the basis of the criteria set out in the conditions for a licensing bid. In other words a beauty contest allows the allocation of licenses on the basis of detailed plans submitted by applicants. The essential feature of the other procedure, an auction, is that licenses are awarded to those that bid the highest price.” OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 103.

¹¹² Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 15.

B. Continuity of Over-the-Air Television as a Free Service

64. The implementation of digital television involves a technological upgrade of television services and related signals that were already being broadcast, so continuity should be ensured in the most similar conditions possible for all operators, as well as for the public. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have stated, “As a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services.”¹¹³ This is so that families can continue to be able to receive television services until the switch-off, while they obtain new television equipment that can receive digital signals, and so that the technological change does not mean that people who had been receiving these services end up being left out because of financial, technical, or coverage factors.
65. In this regard, these services should remain free of charge, and the establishment of reasonable implementation deadlines should be considered, along with minimum requirements to not discourage access to these services, such as an obligation to maintain at least the same geographic area of service covered by the analogue operator. Along these same lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs recommend that States should, as necessary, put in place “reasonable and proportionate must-carry and must-offer rules for multiplexes” to promote the continued provision of existing broadcasting services.¹¹⁴ They also recommend taking steps “to ensure that, by the time the switch-off takes place, the geographic reach of digital services is, overall, at least comparable to and preferably greater than the reach of pre-existing analogue services.”¹¹⁵
66. From the standpoint of being able to receive free-to-air television services in the digital environment, processes underway in the region have respected the principle of free access to service. Thus, for example, the rules in Argentina determine that one of the aims of the Argentine System for Digital Terrestrial Television is “to plan for the transition from analogue to digital television so as to guarantee that all users can gradually join, free of charge.”¹¹⁶ In Uruguay, meanwhile, the rules earmark a certain number of channels “to provide free-to-air, gratis, and accessible digital television broadcasting services throughout the country.”¹¹⁷

¹¹³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

¹¹⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

¹¹⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 4.d.

¹¹⁶ InfoLeg. Decree No. 1148 of 2009. [Créase el Sistema Argentino de Televisión Digital Terrestre](#). Article 1.d.

¹¹⁷ IMPO. Center for Official Information. Decree No.153/012. May 11, 2012. [Reglámenanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 1.

67. For its part, Chile’s digital television law provides for maximum periods of two to five years for current license holders to achieve 100 percent digital coverage of all analogue concessions they had been awarded.¹¹⁸ Moreover, the law determines that in the case of licenses with national coverage, the technical proposal presented may “include complementary solutions to provide free-to-air services in order to achieve the required coverage in geographically isolated regions or areas where reception is difficult.” However, the law guarantees that these complementary solutions “may not affect the free and direct nature of broadcasts for users” and states that concession holders must “guarantee that the required broadcast receivers are able to receive all signals, both primary and secondary, of concession holders that have national coverage in the respective area of service and that opt to implement complementary solutions.”¹¹⁹

C. Transition for Current Operators to Digital Television

68. As indicated earlier, the process of digitalizing television does not involve merely upgrading technology and keeping the operators who are already authorized; it can also mean significantly expanding free-to-air broadcasting services, in terms of both the number of signals and the possibility of providing services other than television broadcasts. Making better use of the new television spectrum would make it possible to multiply the number of authorized television signals for a single operator along the same bandwidth where it used to be possible to carry only one signal; expand the “screens” or platforms for receiving such services (on mobile telephones); and even provide services other than the originally authorized broadcasting services as a result of digitalization (interactivity and related services).
69. In regulating the transition for current operators, States should take into account, as mentioned earlier, that as a general principle the digital transition should enable the continued provision of all existing broadcasting services.¹²⁰ However, it is important to note that the State’s obligation to provide broadcasting continuity is limited to maintaining conditions as similar as possible to analogue conditions, using as much bandwidth as is strictly necessary.
70. The fact, then, that the State must ensure that existing operators are able to continue broadcasting in the new digital environment does not necessarily mean that these operators have a vested right to have automatic access to a completely new channel or frequency for their exclusive use, without a competition and at no cost. In this regard, it is recommended that operators’ track record as broadcasters be taken into account for obtaining new licenses for use of the spectrum. But the notion of “vested rights” should not assume a right to ownership of the spectrum that is used, but rather the legal certainty that operators can continue to broadcast under equal or

¹¹⁸ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#), May 6, 2014. Second provisional article.

¹¹⁹ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#), May 6, 2014. Article 15.

¹²⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.b.

similar conditions as before, on another part of the spectrum designated for television services, depending on countries' technical plans.

71. States should analyze with particular attention how decisions concerning the allocation of new licenses for exclusive use of whole channels or frequencies might affect the ownership concentration and diversity of the free-to-air television system in the new digital environment, especially in contexts in which it had previously been determined—through a process that provided all guarantees—that monopolies or oligopolies existed. In fact, this aspect must be addressed with particular attention so that the greater amount of services and frequencies held by current operators are taken into account in the design of the transition from analogue to digital free-to-air television. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that “the promotion of diversity should be a mandatory criterion to be taken into account in decision-making in relation to the specific services that are provided on digital multiplexes, whether, or to the extent, that these decisions are taken by multiplex operators or regulators.”¹²¹
72. Indeed, regulations should take an approach that balances the existence of individuals and corporations that already have licenses to provide television services with the entry of new license holders, from the time the digitalization process and plans for its implementation begin, so as to expand diversity and pluralism in the national media system.
73. Existing operators who are interested in exclusive access to a channel or multiplex should participate in the same public competition as new applicants and present a communication plan for the new enterprise, although with different prerequisites, including special consideration of their track record. Finally, if these operators are awarded an entire channel through public competition, they should be given a new authorization with conditions of use (time frames, renewals, etc.) in line with the expansion of business and new services from which they will be able to benefit.
74. In addition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have stated that “consideration of the impact on access to the media, and on different types of broadcasters, should be taken into account in planning for a transition from analogue to digital broadcasting.”¹²² As the Office of the Rapporteur has indicated, “these regulations should provide for a migration program that takes into account the needs and capacities of the different actors involved in this process, as well as the level of application of the new technologies.”¹²³
75. In this regard, transition mechanisms and conditions for use of the new broadcast frequencies assigned to licensees of new or current digital television services should respect the principle of non-discrimination, so as not to give some operators favorable treatment to the detriment of others, for example national broadcast

¹²¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.e.

¹²² UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

¹²³ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

stations or networks as opposed to local stations. Along these lines, States should provide equality of opportunities for access to new licenses and frequencies to all operators authorized to provide analogue TV services, striving to adopt a flexible transition design that allows operators to make choices within their own possibilities, but without discriminating against them in advance. The different forms the transition process takes should stem from operators' own voluntary decisions, based on their economic capacity or on their communication objectives and plans.

76. To do that, States should consider appropriate measures that ensure equality of opportunities to address the challenges of technological change for all actors, in such a way that not only enables but also, as much as possible, facilitates and supports the continuity of these transmissions. They should especially take measures “to prevent the cost of the transition from analog to digital technology from limiting the capacity of the communications media in terms of the financial costs,”¹²⁴ for example by providing access to the necessary infrastructure so as not to be left out of the transition. In this regard, States should study the possibility of including actions such as providing subsidies and creating public funds open to competition or offering access to loans with reasonable financing terms so that community and public television stations, as well as local or regional commercial stations, can tackle the digital transition. Along these lines, the Council of Europe has recommended that “member states should take any financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media,¹²⁵ including “support and encouragement aimed at facilitating the digital switchover for traditional broadcast media.”¹²⁶
77. Thus, for example, the United States gave local low-power television (LPTV) stations more time to complete the digital transition,¹²⁷ and since 2009 funding has been provided to these local stations through the Low-Power Television and Translator Upgrade Program, to help them update their technology. The fund made available \$44 million, with grants of up to \$6,000 available for the modification of analogue equipment or up to \$20,000 for the purchase of digital equipment.¹²⁸
78. For its part, Chile's program on “Development of Regional Technical Capacity for Free-to-Air Digital Television” is a mechanism used to support the transition for regional and local television stations located outside the metropolitan area, with populations of over 100,000 people. They are provided with equipment and support

¹²⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

¹²⁵ Council of Europe. Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content. January 31, 2007. Recommendation No. 6.1.

¹²⁶ Council of Europe. Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content. January 31, 2007. Recommendation No. 6.2.

¹²⁷ Even though the United States Congress established a deadline of June 12, 2009, for the termination of analogue broadcasts, this legal deadline was not applied to local, low-power television stations. The Federal Communications Commission (FCC) established September 1, 2015, as the final deadline for ceasing analogue broadcasts in the country. Federal Communications Commission. February 24, 2014. Low Power Television (LPTV) Service.

¹²⁸ National Telecommunications & Information Administration. United States Department of Commerce. Low-Power Television and Translator Program; National Telecommunications & Information Administration. United States Department of Commerce. Low-Power Television and Translator Program: About the Upgrade Program.

for six months to start broadcasting experimental or demonstration transmissions of digital signals.¹²⁹

79. Brazil facilitates the construction and acquisition of digital TV transmission equipment via tax incentives and lines of credit. To that end, Brazil's National Economic and Social Development Bank (BNDES) created the "*Programa Apoio à Implantação do Sistema Brasileiro de TV Digital*" (PROTV D), with funds provided for low-cost financing of transmission infrastructure and digital equipment.¹³⁰
80. In Uruguay, the law set aside sufficient frequencies for current analogue operators, but authorized automatic continuation of their broadcasts at no cost and under the same conditions only for a "mirror" digital signal and not an entire channel, for which they had to apply.¹³¹

¹²⁹ Government of Chile. Sub-Secretariat for Telecommunications. Ord. No. 0214/G No. 18. [Informa sobre el Proyecto "Desarrollo de las Competencias Técnicas Regionales para Televisión Digital de Libre Recepción."](#) January 11, 2012.

¹³⁰ BNDES. [Programa BNDES de Apoio à Implantação do Sistema Brasileiro de TV Digital - BNDES PROTV D; BNDES. PROTV D Radiodifusão.](#)

¹³¹ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación.](#) Article 6.

CHAPTER 5
DIGITAL DIVIDENDS AND NEW
USES FOR THE SPECTRUM

DIGITAL DIVIDENDS AND NEW USES FOR THE SPECTRUM

81. The broadcast spectrum is a public good which States are required to administer efficiently and equitably, as it is a limited resource and one that serves to support the exercise of freedom of expression and information through the audiovisual media. As has already been noted, the IACHR and the Office of the Special Rapporteur have recognized the State's regulatory role as manager of the spectrum. This authority includes not only the possibility of defining how concessions are handled or licenses renewed or revoked, but also the planning and implementation of public policy related to broadcasting, as long as guidelines governing the right to freedom of expression are followed.¹³²
82. That is why media outlets that require the use of the spectrum "should be subject to clear, transparent, and democratic regulation that ensures the greatest enjoyment of this right by the greatest number of people, thereby also ensuring the greatest circulation of information and opinions."¹³³ As the Office of the Rapporteur has stated, "the regulation of the radioelectric spectrum must simultaneously guarantee freedom of expression of the greatest number of people or perspectives, equality of opportunities in media access, and the right of contemporary societies to plural and diverse information."¹³⁴
83. Limitations in access to a resource that can at times be scarce, particularly in capital cities or densely populated areas, has been one of the obstacles identified by the Office of the Rapporteur, particularly when it comes to facilitating new players' access to television. That is why the Rapporteur has insisted that States have an obligation to set aside spectrum for access by excluded sectors, particularly by community media and media outlets created by those who have been excluded from society or indigenous peoples.¹³⁵
84. As has been noted, with the arrival of free-to-air digital television, less of the spectrum is needed to broadcast television signals than required with analogue television. Accordingly, significant segments of the spectrum are freed up once the transition is complete, which opens up a historic opportunity to achieve the objective of greater media diversity. This is the case as long as States adopt appropriate

¹³² IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 9; IACHR. May 25, 2007. Press Release No. 29/07. IACHR Concerned about Freedom of Expression in Venezuela.

¹³³ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

¹³⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 8.

¹³⁵ IACHR. 2008 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc 5, rev. 1. February 25, 2009, paras. 98-108.

regulatory frameworks and public policies to use the additional room available on the spectrum.

85. The “digital dividend,” in the strictest sense, is the amount of spectrum freed up by current analogue television operators once they migrate to new digital channels. But in a broader sense, the digital dividend should be understood as any freeing up or savings of the spectrum as a result of optimization of use of the spectrum produced by digitalization and the compression of terrestrial television signals.¹³⁶ This savings should include the additional frequencies the State itself ends up having at its disposal once the analogue switch-off has occurred. Decisions on this greater amount of space available on the spectrum can be made once the switch-off is complete, or from the time digital is switched on, or during the transition from one system to the other.
86. State decisions on the ultimate use of these digital dividends become a key aspect of the digitalization process. As has already been noted, the Office of the Special Rapporteur considers this technological change “an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.”¹³⁷ The goal should be “to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity.”¹³⁸ Along these same lines, the European Parliament called for “a balanced approach to the allocation of the digital dividend to ensure equitable access for all players, thereby safeguarding media pluralism.”¹³⁹
87. The UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression elaborated on this concept in their recent Joint Declaration on Universality and the Right to Freedom of Expression, in which they recommended that States put in place “a legal and regulatory framework that promotes the rights of different individuals and groups to access and use media and digital technologies to disseminate their own content as well as to receive relevant content produced by others.”¹⁴⁰

A. New Frequencies Available and Reservation of Spectrum

88. The various technical standards were designed so that digital television could be broadcast on frequencies located on the UHF (Ultra High Frequency) band.¹⁴¹ This

¹³⁶ See, for example: European Commission. Digital Agenda for Europe. [Glossary](#); European Commission. [Delivering the digital dividend](#); OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 28.

¹³⁷ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

¹³⁸ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

¹³⁹ European Parliament. [Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union \(2007/2253\(INI\)\)](#), para. 47.

¹⁴⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression](#). Recommendation 1.a.iv.

¹⁴¹ UHF or Ultra High Frequency is the portion of the radio spectrum located between 300 MHz and 3,000 MHz. International Telecommunication Union. [Definition](#). It has been allocated by the International

forces States to assign new frequencies to current television operators to proceed with the digital transition. This portion of the spectrum has been assigned to analogue, free-to-air, or pay television services, to a greater or lesser degree, but in several countries in the region, to date, it has been unused or underused.¹⁴²

89. In addition, improvements in the quality and security of broadcasts with the new technology allow for greater efficiency in the use of the spectrum. For example, analogue TV broadcasting does not allow the use of two consecutive channels in the same location, due to interference problems that would arise between stations.¹⁴³ With digital television, meanwhile, all available channels can be used—even consecutive ones—which doubles the capacity of the current spectrum.
90. From the standpoint of encouraging freedom of expression, the criteria adopted to distribute this new spectrum become public policy decisions (not merely technical decisions) and, as mentioned earlier, can be used as opportunities to correct injustices or imbalances in access to the spectrum or to achieve greater diversity in the television sector.¹⁴⁴
91. As the Office of the Special Rapporteur has observed a number of times, the right to freedom of expression demands that States adopt measures to guarantee its exercise in conditions of equality and non-discrimination. That includes the obligation to remove “obstacles preventing certain sectors of society from accessing the media [...]”. At the same time, the State must actively promote the bringing of disadvantaged or currently marginalized groups into the media.¹⁴⁵ In addition, “the States must take positive measures to include the non-commercial sectors in the communications media,” such as “ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum.”¹⁴⁶ Along these lines, the OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have recommended that States create “an enabling legal framework for community media, including so it can serve the information and expressive needs of different individuals and groups.”¹⁴⁷

Telecommunication Union, among others, for mobile communication and television services (between Channels 21 to 51, and even between 14 and 20 in some countries in the region).

¹⁴² See, on this point, GSMA. November 29, 2010. [Situación del dividendo digital en el mundo](#); Fucatel. June 3, 2013. [Fucatel en exclusiva da a conocer cálculo de disponibilidad de concesiones. De confirmarse, el resultado es alarmante](#); Consejo Consultivo de Radio y Televisión (ConcorTV). [Estadísticas de la radio y televisión en el Perú](#). 2014.

¹⁴³ For example, if there is a station on Channel 21, there cannot be another on Channel 22—not until 23 and then 25, and so on.

¹⁴⁴ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 79.

¹⁴⁵ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 96; IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 230. In general, for more on States’ obligation to guarantee rights without discrimination, see: I/A Court H.R. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paras. 103-104.

¹⁴⁶ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

¹⁴⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression](#). Recommendation 1.a.ii.

92. In this regard, it is necessary to conduct studies to determine how frequencies are actually being used throughout the country. Sometimes their use may be speculative, with concessions granted to individuals or businesses that do not use them effectively. This presents obstacles not only in terms of diversity and freedom of expression, but also in terms of economic competition, as it involves an abuse intended to impede access by other competitors and a misuse of a space that is as valuable as it is scarce. For this reason, States should make publicly available—in a way that is clear, adequate, and timely—all information related to current use and availability of frequencies assigned to free-to-air and pay television, as well as technical plans for their future use.

B. Spectrum Savings and New Potential Uses

93. As this report noted earlier, as a result of digitalization, analogue broadcast transmissions are compressed and need to use less spectrum or bandwidth to transmit the same quality of audio and video as a current TV signal. This results in a significant savings of bandwidth.
94. This benefit can be used in different ways, for example by improving the signal quality of current TV stations (to broadcast in high definition, or HD¹⁴⁸), or by broadcasting more digital signals on the same channel or frequency on which it used to be possible to broadcast only one analogue signal—or a combination of both possibilities. That does not depend on technology alone but on the regulatory decisions the States must consider with respect to the use of each new channel or “multiplex” in the new digital television format.¹⁴⁹
95. States must ultimately consider what an appropriate balance would be as they define their priorities in terms of conditions for use of each of the channels or frequencies earmarked for digital television. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have said that “States should make sure that the digital terrestrial transition takes place in a planned, strategic manner which maximises the overall public interest, taking into account local circumstances. This may include decision-making which involves trade-offs between quality (such as the availability of high-definition television) and quantity (such as number of channels), depending on the degree of pressure on the spectrum.”¹⁵⁰

¹⁴⁸ High-definition television (HDTV) consists of digital television signals with a higher audio and video quality than traditional analogue systems. HDTV features a 16:9 aspect ratio (a wide screen, as in the movies) instead of the 4:3 format of analogue televisions. In general, based on the type of compression of audiovisual content, it is estimated that two HD signals can be included on the same channel or frequency. So-called ultra-high-definition television is the highest quality signal, which can take up all or most of the channel or frequency, not enabling it to be shared with another signal. See also: ITU. ITU Terms and Definitions. [Ultra high definition television and High definition television \(HDTV\) system](#).

¹⁴⁹ A multiplex (MUX) is a channel or frequency that, once television broadcasts are digitalized, can be used to broadcast one or more radio and television signals, as well as related services. It use can be awarded to a single license holder or several license holders. See also: OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 29.

¹⁵⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.c.

96. It should be taken into account that technical decisions made by governments and regulatory bodies in these matters have an impact on freedom of expression, as they serve to limit or enable diversity in television. Moreover, such decisions should be made prior to the process of granting licenses and authorizations, using criteria of universality and fairness for all operators located in the same area. As the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have stated, “the promotion of diversity should be a mandatory criterion to be taken into account in decision-making in relation to the specific services that are provided on digital multiplexes, whether, or to the extent, that these decisions are taken by multiplex operators or regulators.”¹⁵¹
97. In this sense, multiplexing or multiprogramming—in other words, the capacity to broadcast several television signals on the same channel or frequency—is a tool that allows for a greater number of signals, but it can be used in different ways, depending on the context of the country.
98. So for example, if a decision is made to allow for only one ultra-high-definition or UHDTV signal to be broadcast on a channel or frequency, the same structure with regard to use of the spectrum and to content will probably be maintained as with analogue, since the same number of television signals and the same license holder will remain. In that case, current operators will be the only beneficiaries of TV digitalization. This means that in countries with high levels of media concentration, allowing only current operators to broadcast several signals on their channel would result in these same operators having a greater concentration of signals, audience, and revenues. Multiplexing takes on another meaning, though, if the possibility is provided for different operators, who hold licenses to different signals, to share the same channel.

C. Intended Use of the Digital Dividend

99. There has been a growing demand of the broadcast spectrum by mobile bandwidth services for the Internet and web-based services. This led the International Telecommunication Union (ITU) to recommend assigning part of the UHF band for mobile services (voice and data) in the Americas.¹⁵²
100. The countries of the region have been adopting regulatory decisions along these lines, reserving UHF Channels 52 to 69 for that purpose. Industry has done the same, producing equipment, antennas, and receivers for these frequencies. Several States have already put out bids to assign this spectrum with the goal of strengthening access to mobile bandwidth, and others are planning to do so in the near future. In fact, various countries have had to orchestrate plans to adjust the current use of this

¹⁵¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.e.

¹⁵² Article 5 of the ITU Radio Regulations, establishing that the portions of the 698-806 MHz band (Channels 52-69) is allocated in Region 2 to mobile service on a primary basis. International Telecommunication Union. [Radio Regulations](#): Articles. Edition of 2012. Article 5, RR5-56. 460-890 MHz. Allocation to services.

band to relocate free-to-air or pay-television operators to lower frequencies on the UHF spectrum.¹⁵³

101. This is the spectrum that telecommunications regulatory authorities, experts, and businesses in the sector typically refer to as the “digital dividend.” However, this definition is not appropriate for the Americas, since here the spectrum to be freed up following the analogue switch-off is located on the VHF band,¹⁵⁴ the space currently held by analogue TV stations. In this sense, the migration of current analogue channels to digital will have an impact in freeing up frequencies where Channels 2 to 13 are located, which should be given back by current television operators once the transition has been completed.
102. In the coming years, then, States in the region will have to adopt a regulatory decision that will have a major impact on broadcasting. They can assign these frequencies exclusively to data services or keep all or some of them for radio and television services. It is true that there is a need to ensure greater bandwidth access for data services, but broadcasters in the region—both from the commercial and community sectors—are demanding an increase in the frequencies available on the FM band.¹⁵⁵
103. For that reason, it is recommended that States consider the use of such frequencies for various technologies and services, maintaining sufficient availability of broadcasting and mobile bandwidth services, so as to meet goals to promote broadcasting diversity and digital inclusion, close the digital gap, and make Internet services universal.
104. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have stated, “Where appropriate, consideration should be given to reserving part of the spectrum for analogue radio broadcasting for the medium-term. At least part of the spectrum released through the ‘digital dividend’ should be reserved for broadcasting uses.”¹⁵⁶ Such decisions should be adopted in a way that is transparent and non-discriminatory, and should address the need to harmonize services with bordering countries in areas of coordination.
105. In addition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have found that “the need to promote diversity in broadcasting should be an important consideration to be taken into account in decision-making in relation to the broad reallocation of the spectrum freed up by the switch-off of analogue

¹⁵³ See, for example, the case of Uruguay, where there were frequencies that had already been assigned to pay and free-to-air (State-run) television, respectively: Center for Official Information (IMPO). [Decree No. 73/2012](#), March 8, 2012.

¹⁵⁴ VHF or Very High Frequency is the portion of the radio spectrum located between 30 MHz and 300 MHz. International Telecommunication Union. [Definition](#). This band is allocated by the States to services such as maritime and aeronautical services, amateur services, and also FM radio broadcasting services (from 88 to 108 MHz) and free-to-air television stations numbered from 2 to 13. International Telecommunication Union. [Radio Regulations](#), Article 5.

¹⁵⁵ The Inter-American Broadcasting Association (Asociación Internacional de Radiodifusión, AIR) has insisted on the need to preserve VHF Channels 5 and 6 for FM (frequency modulation) radio. [Radiodifusión Data](#), January 11, 2011. [La AIR pide que tras la transición a digital la banda de VHF de la TV sea destinada a radio](#); Radio Maniacos, January 11, 2011. [La AIR pide que tras transición a TV digital, la parte de VHF que ocupaba sea destinada a Radio](#).

¹⁵⁶ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

broadcasting (the digital dividend).” Considerations that should be taken into account include:

“(i) The extent to which the broadcasting environment caters to the interests of all groups in society, including cultural and linguistic minorities, and people living in different areas and regions. (ii) The diversity of types of content which are available through the broadcasting system. (iii) The interest in and capacity of existing and aspirant broadcasters to provide new channels. (iv) The financial resources available within the broadcasting system as a whole, including any public or cross-subsidies, to support new content production. (v) The diversity benefits of requiring multiplex operators to carry local, community and/or independent broadcasting services. (vi) The diversity benefits of allocating new channel and other capacity to public service broadcasters. (vii) The possibility of providing public funding for the development of new broadcast content or channels.”¹⁵⁷

D. Access to Transmission Infrastructure

106. The costs and complexity of the transition to digital, along with the implications for the diversity and pluralism of television media systems, require careful consideration of aspects related to access to infrastructure for the transmission of gratis free-to-air TV signals. Regulations concerning procedures and access to the broadcast spectrum, as well as to networks and equipment to transmit digital signals, should be adopted in such a way that they do not indirectly hamper the exercise of the right to free expression, either for current or for new operators. Along these lines, a decision to establish an environment conducive to greater media diversity should consider the possibility of adopting a model in which access and management of the transmission infrastructure for digital television is handled solely or on a shared basis by companies other than the individuals or companies authorized to provide television services.
107. In the Americas, the management model for analogue TV transmission has been traditional; it assumes that the same license holders for television services also own and operate their own transmission infrastructure. Digital television, by contrast, makes it possible to differentiate these roles, with the appearance of the so-called “network operator,” which manages the transmission infrastructure for TV signals and is not necessarily the same operator that handles programming and airs audiovisual content.
108. The OSCE Representative on Freedom of the Media has observed that content issues should be looked at separately from transmission, and broadcasters must have access to transmission. The international agency maintains that the regulator “must balance the needs of the infrastructure owner and other users of the infrastructure, meaning the broadcasters or other service providers that get to use the infrastructure.”¹⁵⁸

¹⁵⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.g.

¹⁵⁸ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 52.

109. Along these lines, the existence of a network operator different from the television license holder has at times been a good practice, since it has allowed for the transition to take place more quickly and more efficiently and has avoided major investments that television stations often are not able to make. There are countries in which TV broadcast licenses and spectrum use authorizations are awarded to the same license holder, which also manages the channel or multiplex assigned to the service. In other countries, however, broadcast and spectrum use licenses may not be held by the same individual or business; this is the case, for example, in the United Kingdom¹⁵⁹ and France.¹⁶⁰ Spain, for its part, awards television licenses and spectrum use authorizations to the same license holder, but management of the multiplex is handled by a different company, one that has a telecommunications license.¹⁶¹
110. States should also consider whether it is necessary and viable to have a national transmission network for free-to-air digital television signals, in order to facilitate access by different operators to the new technologies, optimize use of the spectrum, and ensure that the public has universal access to the signals.
111. In Europe, several countries provide for a single network operator, which can be privately owned, public, or public-private; in general, these are telecommunications companies. Thus, for example, in Spain the digital TV network operator is a commercial company (Abertis),¹⁶² in Serbia it is State-owned (*Emisiona tehnika I veze*),¹⁶³ while in Latvia the network operator is a public-private enterprise whose majority shareholder is the State (Lattelecom).¹⁶⁴
112. In addition, existing infrastructure should be used as much as possible, which would also help to keep down costs.¹⁶⁵
113. Regulators should establish conditions so that all categories of television operators can have access to digital technology. If operators cannot have access to infrastructure under reasonable conditions, digitalization will limit plurality and diversity instead of encouraging it. Moreover, any State assistance for the media to access the transmission infrastructure should be carefully designed so as not to give undue preference to one commercial operator over others. Governments should refrain from giving preference or facilitating the transition to digital technology only to State-run broadcasters or only to a particular group of privately owned operators.¹⁶⁶
114. One way to guarantee access to the infrastructure needed to provide free-to-air digital television services is by adopting “must-carry” rules for pay television services. This is a way to support and accelerate the digital TV transition process and facilitate the entry of new operators into the market, as well as to universalize access to free-to-air TV services through complementary technological platforms.

¹⁵⁹ Open Society Foundations. [Mapping Digital Media: United Kingdom](#). December 9, 2011.

¹⁶⁰ Open Society Foundations. [Mapping Digital Media: France](#). February 17, 2013.

¹⁶¹ Open Society Foundations. [Mapping Digital Media: Spain](#). November 27, 2012.

¹⁶² Abertis. [Business areas](#).

¹⁶³ Emisiona tehnika I veze. [ETB](#).

¹⁶⁴ Lattelecom. [About Lattelecom](#).

¹⁶⁵ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 15.

¹⁶⁶ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), pp. 96-99.

115. As noted earlier, the Special Rapporteurs for Freedom of Expression have stated that “different types of broadcasters—commercial, public service and community—should be able to operate on, and have equitable access to, all available distribution platforms.” Along these lines, the Rapporteurs have indicated that specific measures to promote diversity may include, among others, reserving adequate frequencies for different types of broadcasters and having must-carry rules.¹⁶⁷ The Rapporteurs have also indicated that “reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place” to enable the continued provision of existing broadcasting services.¹⁶⁸
116. For its part, the European Parliament developed this principle in its 2007 directive on audiovisual communications and its 2002 directive on universal service. In this regard, the European Parliament established that “Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.... Member States shall review ‘must carry’ obligations on a regular basis.”¹⁶⁹ For its part, UNESCO has also understood that “there should be some ‘must-carry’ obligations on satellite and cable carriers, at a minimum, to carry PSB [public service broadcasting] channels among the choices they offer as well as the possibility of must-carry obligations to promote diversity (e.g. in favour of minority channels).”¹⁷⁰
117. Must-carry obligations should also be considered for digital television network operators or license holders of free-to-air TV services, as a mechanism to reduce market dominance. This model has been tried in cases in which the major television stations had access to management of an entire channel under advantageous conditions, but with must-carry obligations to enable them to carry other signals and content for public, community, or local commercial stations, or stations with relevant social interest that lack the economic resources to have their own access to transmission equipment and networks.

¹⁶⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

¹⁶⁸ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.b.

¹⁶⁹ Official Journal of the European Communities. [Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services \(Universal Service Directive\)](#). Article 31.1; Official Journal of the European Union. [Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities](#).

¹⁷⁰ UNESCO. [Media Development Indicators: A framework for assessing media development](#). March 2008. Indicator No. 2.7.

118. Thus, for example, the Italian regulator *Autorità per le garanzie nelle comunicazioni (AGCOM)* required the two most important media groups in the country to set aside 40 percent of their channels' capacity to carry signals of independent television or "content providers."¹⁷¹ Guarantees of access to signals independent from the operator or transmission network can also be found in Finland, the United Kingdom, Austria, and the Netherlands.¹⁷²
119. Chile, for its part, provides that operators of subscription television services must broadcast, where technically feasible, at least four regional, local, or local community stations in their respective lineups. The specific channels will be defined by the National Television Council for a five-year period, with a mandate to "maintain a representative diversity among them and give preference to educational and cultural channels."¹⁷³ The Uruguayan Audiovisual Communication Services Bill [*Ley de Servicios de Comunicación Audiovisual (LSCA)*] has included a must-carry rule.
120. It is important to note that in adopting must-carry rules, providing for shared use of channels, or approving the existence of a single network operator, States should establish specific obligations in the law to prevent those who use the transmission and distribution infrastructure from engaging in discriminatory practices in access and use through abusive management, particularly if the operators hold dominant market positions. On this point, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated that special measures that could be put in place might include "regulatory measures regarding the way in which multiplexes are run, clear pricing and competition rules regarding multiplexes and distribution networks, and the separation of distribution and content operations within the same business, among other things."¹⁷⁴
121. Regulations should also establish conditions for use that are fair, transparent, and non-discriminatory, such as: pricing that is appropriate, publicly accessible, and non-discriminatory, though taking into account the particular characteristics of community and public media outlets; and a prohibition on direct or indirect interference in the content broadcast over the television signals. Regulatory agencies should also have sufficient authority and resources to provide oversight and act in response to complaints regarding violations of these conditions. Along these lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression have indicated the following: "Where multiplexes are run by content service providers or independent operators, clear rules should be in place regarding the allocation of capacity (or additional capacity) on the multiplex, including, as appropriate, to ensure that this is done in a fair, transparent and non-discriminatory manner. This takes on particular importance in countries with only one multiplex."¹⁷⁵

¹⁷¹ *Autorità per le garanzie nelle comunicazioni (AGCOM)*. [Delibera AGCOM N°264/05/CONS de 2005](#).

¹⁷² Working Group on Digital Terrestrial Television in EPRA Countries. [Final Report](#), 2004. Table 5.4.

¹⁷³ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#), May 6, 2014. Article 15, paragraph 4.

¹⁷⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.h.

¹⁷⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 2.c.

122. Several European countries have established requirements to prevent abuse in management of the infrastructure, with caps on prices that can be charged or a direct ban on interference in the content of the TV broadcast license holder. Thus, for example, Slovenia has allowed a new commercial operator to use a digital channel, but that operator has major coverage obligations (85 percent of the population), and it must leave spectrum available for other operators' signals, with a maximum imposed on the price it can charge.¹⁷⁶ Serbia's public network operator, *Emisiona tehnika iveze*, is expressly required to guarantee access to the public television station *RTS* and other existing operators, without interfering in their content.¹⁷⁷
123. Uruguay explicitly establishes in its particular regulations that public network operators (the telecommunications company *Administración Nacional de Telecomunicaciones* and the public television channel *Televisión Nacional Uruguay*) should charge a "reasonable" price and "be completely neutral as to the content transmitted by the broadcast license holders that contract for infrastructure services, who are the only ones responsible for content."¹⁷⁸
124. For its part, Chile's digital television law, approved in 2014, entitles the public channel *Televisión Nacional de Chile* to a second frequency in each location where it provides services, to broadcast both its own regional signals and those of other licensees that do not have their own means of broadcasting,¹⁷⁹ through "public and non-discriminatory offerings to any license holder of free-to-air television broadcasting."¹⁸⁰
125. Finally, it is critical in the digital environment to encourage cooperation among operators and ensure interoperability,¹⁸¹ so that all equipment can communicate with each other and interrelate, regardless of brands or manufacturers. In this regard, the Special Rapporteurs for Freedom of Expression have recommended that States put in place "regulatory measures to ensure the interoperability and compatibility of reception, decoding and decryption devices."¹⁸²

¹⁷⁶ Open Society Foundations. Mapping Digital Media: Slovenia. August 5, 2012.

¹⁷⁷ Republic of Serbia. Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia.

¹⁷⁸ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. Reglamentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación. Article 12.

¹⁷⁹ Library of the National Congress of Chile. Law No. 20.750. Permite la introducción de la televisión digital terrestre. May 6, 2014. Article 14.

¹⁸⁰ Library of the National Congress of Chile. Law No. 20.750. Permite la introducción de la televisión digital terrestre. May 6, 2014. Article 17.

¹⁸¹ Council of Europe. Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. May 28, 2003. General principle 2.

¹⁸² UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, Principle 4.a.ii.

CHAPTER 6
RECOGNITION AND PROMOTION OF
COMMUNITY DIGITAL TELEVISION

RECOGNITION AND PROMOTION OF COMMUNITY DIGITAL TELEVISION

126. The IACHR and the Office of the Special Rapporteur have stated that community broadcasting media, including community television, “perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information.”¹⁸³ In this regard, the Office of the Rapporteur has stressed that community media must be recognized legally and explicitly as a broadcasting sector and must have the right to establish analogue or digital media outlets under conditions that are appropriate and non-discriminatory, a necessary condition for all segments of society to be able to effectively exercise these rights.¹⁸⁴ In addition, the Special Rapporteurs for Freedom of Expression have emphasized that “community broadcasting should be explicitly recognized in law as a distinct form of broadcasting” and “should be able to operate on, and have equitable access to, all available distribution platforms... including the new digital dividend.”¹⁸⁵
127. The Office of the Special Rapporteur has maintained that “legal provisions regulating community broadcasting must recognize the special nature of these media and contain, as a minimum, the following elements: (a) simple procedures for obtaining licenses; (b) no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the State; and (c) the possibility of using advertising to finance their operations.”¹⁸⁶
128. To that end, regulations on digital television should also include the community broadcasting sector and provide adequate measures to create fair access opportunities for real equality in the exercise of the right to freedom of expression.
129. Thus, for example, Colombia explicitly provided for the support and strengthening of community and nonprofit local television—a sector that had been nonexistent in the analogue environment—in its 2010-2013 development plan for television, prepared by the National Television Commission.¹⁸⁷ This decision was reaffirmed in April 2012 with Agreement 003, which specifically regulates nonprofit local television service.¹⁸⁸ Likewise, the strategic agenda of the new regulatory agency (National Television

¹⁸³ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 414.

¹⁸⁴ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 97.

¹⁸⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

¹⁸⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 101.

¹⁸⁷ National Television Commission (CNTV). Lineamientos del Plan de desarrollo de la Televisión 2010-2013. Point 5.4.4.

¹⁸⁸ National Television Commission (CNTV). Acuerdo 003 de 4 abril de 2012.

- Authority, ANTV) stipulates the allocation of resources and the opening of specific competitions for collectives that provide community television service and local nonprofit channels.¹⁸⁹
130. In the case of Chile, as part of the competition process for community television, the National Television Council must hear from an advisory committee in public hearings, in which social organizations that wish to participate will be included.¹⁹⁰ For its part, Uruguay provides for different procedures for the community sector, with public hearings held in the local area where the service will be provided. Before the State makes a decision, it must have a nonbinding report from an independent organization made up of, among others, community media associations (Honorary Advisory Council on Community Broadcasting, CHARC).¹⁹¹
 131. States not only have the obligation to legally recognize community television broadcasting but also to “take positive measures to include the non-commercial sectors in the communications media,”¹⁹² in order to ensure “basic conditions of dignity, security, subsistence, and development.”¹⁹³
 132. Requirements and procedures for new community television operators to obtain access, or for analogue community TV stations to make the transition to digital, should be established in a way that is distinct from the public and commercial sectors, recognizing the specific characteristics and objectives of community media and creating fair conditions for access to licenses and to the spectrum.
 133. One measure for regulating digital television that is compatible with the American Convention is to establish spectrum set-asides to ensure real access to one of the essential technical supports for the exercise of freedom of expression. As has already been mentioned in this regard, the Office of the Special Rapporteur has insisted on “the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.”¹⁹⁴
 134. Legislation in several countries in the region reserves part of the spectrum for this sector. For example, Uruguay was the first country in the region to establish a set-aside for community media outlets of “at least one third of the broadcast spectrum for each location on all analogue and digital frequency bands, both for radio and for television.”¹⁹⁵ The country’s specific regulations on digital television also include this provision, establishing that 7 of the 20 frequencies available for these services will be reserved for the community sector.¹⁹⁶

¹⁸⁹ National Television Authority (ANTV). *Agenda Estratégica 2013*. December 2012.

¹⁹⁰ Library of the National Congress of Chile. Law No. 20.750. *Permite la introducción de la televisión digital terrestre*. May 6, 2014. Article 8.

¹⁹¹ Republic of Uruguay. Legislative Branch. Law No. 18.232. *Servicio de Radiodifusión Comunitaria*. December 22, 2007. Article 7.

¹⁹² IACHR. *2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009*. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

¹⁹³ IACHR. 2002 Annual Report. *Annual Report of the Special Rapporteur for Freedom of Expression 2002*. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003, para. 41.

¹⁹⁴ IACHR. *2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009*. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 109.

¹⁹⁵ Republic of Uruguay. Legislative Branch. Law No. 18.232. *Servicio de Radiodifusión Comunitaria*. December 22, 2007. Article 5.

¹⁹⁶ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. *Reglamentanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación*. Article 2.

135. Argentina also reserves spectrum for nonprofit media—33 percent of “planned broadcasting locations, on all audio broadcast and terrestrial television bands, in all coverage areas for nonprofit legal entities.” It also reserves one AM radio frequency, one FM radio frequency, and one free-to-air television frequency “for Native Peoples in the areas where each of the peoples is based.”¹⁹⁷ For its part, Bolivia’s Telecommunications Law provides a spectrum set-aside for analogue television of up to 17 percent for social community broadcasting stations and up to 17 percent for “native peasant indigenous peoples and intercultural and Afro-Bolivian communities.”¹⁹⁸ Meanwhile, in 2013 Ecuador approved a set-aside of 34 percent of broadcast frequencies for “community media operations.”¹⁹⁹ In the case of Chile, the law sets aside 40 percent of the available spectrum capacity, once analogue operators have migrated, for regional, local, and local community free-to-air channels, “or for those national or regional channels the Council has characterized, by resolution, as cultural or educational.”²⁰⁰
136. In terms of the impact of the change in technology on community television stations that broadcast before the switch to digital, the Special Rapporteurs have stated that “measures should be taken to ensure that digital transition costs do not limit the ability of community broadcasters to operate,”²⁰¹ and even that States should “ensure that community and local broadcasting services are able to continue through and after the digital terrestrial transition.”²⁰²
137. As indicated earlier, among the measures adopted toward that end, States might consider the approval of public funding to support access to the infrastructure needed to transmit digital signals; tax incentives or accessible loans; and the establishment of must-carry rules so that other digital television license holders or operators of transmission networks have to carry community broadcast signals, at accessible and non-discriminatory prices or at no cost.
138. In addition, in their Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, the UN, OAS, OSCE, and ACHPR Special Rapporteurs for Freedom of Expression point to various measures that should be considered to ensure that community television stations can make the transition:

“(i) Allowing certain types of broadcasters—in particular low power local and community services—to continue to distribute via analogue terrestrial signals, insofar as this is consistent with international standards. (ii) Allowing certain types of broadcasting services to be provided without a licence in certain designated spectrum bands. (iii) Regulatory measures to reduce and/or spread the costs of digital terrestrial dissemination, for example by prescribing shared

¹⁹⁷ Office of the President. [Ley 26.522](#). Audiovisual Communication Services and Rules. Article 89.

¹⁹⁸ Official Gazette of Bolivia. Law No. 164. [Ley General de Telecomunicaciones, Tecnologías de Información y Comunicación](#). Law No. 164. August 8, 2011. Article 10.

¹⁹⁹ Official Record of the Government of Ecuador. [Ley Orgánica de Comunicación](#). June 25, 2013. Article 106.

²⁰⁰ Library of the National Congress of Chile. Law No. 20.750. [Permite la introducción de la televisión digital terrestre](#). May 6, 2014. Article 30.

²⁰¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

²⁰² UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.d.

or otherwise more efficient distribution networks. (iv) The provision of subsidies or other forms of support to assist community and local broadcasters to obtain the necessary equipment to be able to distribute their terrestrial signals digitally, provided that subsidies should be allocated by an independent body, based on objective criteria. (v) Measures to use the resources generated by the digital dividend to defray infrastructure costs.”²⁰³

139. Both Uruguay and Argentina have approved regulations so that State-owned telecommunications companies and public television operators can share their infrastructure with community stations and even commercial broadcasters and other public broadcasting signals. The Uruguayan public telecommunications company is authorized “to provide access to transmission infrastructure to license holders of digital television broadcasting services who do not have such infrastructure available,” such as nonprofit organizations.²⁰⁴ Uruguayan law also provides for shared use of a channel among several community or nonprofit organizations, to facilitate access by social enterprises that lack the financial capacity to make use of a channel of their own. The transmission equipment and antenna are provided by the Ministry of Education and Culture (MEC), and access to the use of the shared frequency is implemented via public competitions that are open to proposals for community programming.²⁰⁵

²⁰³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.d.

²⁰⁴ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#). Article 20. For community television, up to 60 percent of the costs for transportation and broadcasting may be traded for advertising and up to 30 percent for assignment of content broadcasting rights or for production of audiovisual recorded announcements. Antel. [Productos y condiciones en Area Metropolitana de Montevideo](#); Antel. [Productos y Condiciones Interior](#).

²⁰⁵ Republic of Uruguay. Legislative Branch. Law No. 18.232. [Servicio de Radiodifusión Comunitaria](#). December 22, 2007. Article 13.

CHAPTER 7
PROMOTION AND
STRENGTHENING OF PUBLIC
DIGITAL TELEVISION

PROMOTION AND STRENGTHENING OF PUBLIC DIGITAL TELEVISION

140. States should ensure that public television has an essential role in the new digital environment.
141. Public service television has a different purpose than purely commercial or political television, as it operates independently of those who handle economic or political power. The role of public service television is to promote the values of democratic societies, in particular respect for human rights, cultures, and political pluralism and the protection of human dignity and minority rights.²⁰⁶
142. Toward that end, as the Office of the Special Rapporteur has already reaffirmed, public television should be universally accessible.²⁰⁷ It should also be universal in terms of content, ensure editorial independence and impartiality, offer quality programming to all groups in society, and be responsible to the public. Public service media should offer news, information, and educational, cultural, and entertainment programs that appeal to people's different interests.²⁰⁸
143. The Office of the Special Rapporteur has also observed that the mandate for public service radio and television must be established clearly by law. This law should ensure: (1) the independent or non-governmental nature of the public media system; (2) programming aspects geared toward the public interest; (3) that the public media system is free of charge; (4) coverage throughout the State's territory; and (5) the regulation of its form of financing.²⁰⁹
144. The Office of the Special Rapporteur has also emphasized that for public media really to be able to perform their role, "they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate

²⁰⁶ Council of Europe. Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. January 31, 2007. Preamble and II.e.23.

²⁰⁷ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91. In addition, the Council of Europe, in Recommendation Rec(2003)9 proclaims universality as a fundamental principle for the development of public service broadcasting. Council of Europe. Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. May 28, 2003. Principle 2. The same council, in Recommendation CM/Rec(2007)3, recommends that States ensure universal access to all individuals, including minority and disadvantaged groups, through a range of technological means. Council of Europe. Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. January 31, 2007. Recommendation II.b.

²⁰⁸ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83. Council of Europe. Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society. January 31, 2007. Recommendation II.a.

²⁰⁹ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 85-87.

- provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution and receipt.”²¹⁰
145. The digitalization of public television signals poses a significant challenge for this sector, as it can provide both an opportunity to better meet its obligations and a risk to its continued ability to provide services, if adequate, timely measures are not taken.
146. In this regard, even though a number of statements have emphasized that public service broadcasters will continue to play an important role in promoting diversity in the new digital environment, the Special Rapporteurs for Freedom of Expression have expressed their concern “about the growth of a number of threats to the viability of public service broadcasting in different countries, which undermine its ability to fulfil its potential to contribute to media diversity.”²¹¹
147. In light of that, regulations should not simply recognize public television but also ensure that it can continue to broadcast in the new digital environment. They should foster a legal environment and active public policies with appropriate, simplified mechanisms so that public broadcasting stations can make the transition to digital television quickly and effectively, as well as take advantage of the change in technology to expand, improve, and diversify the services they provide to the public.
148. To do that, States should adopt special measures “to protect and preserve public service broadcasting in the new broadcasting environment” and “a clear plan for switchover that promotes, rather than limits, public interest broadcasting.”²¹² They should ensure that “independent public service broadcasters are able to continue to distribute their existing services terrestrially through and after the digital transition (and that any government or State broadcasters are transformed into public service broadcasters).”²¹³ The Special Rapporteurs for Freedom of Expression recommended that States include measures to ensure that independent public service broadcasters “have the necessary legal, technological, financial and organisational resources for this. Where necessary, special financial or other measures may be needed to ensure that public service broadcasters are able to obtain or use the necessary equipment to disseminate their signals digitally.”²¹⁴ UNESCO, for its part, has proposed automatically granting licenses to public service stations for digital broadcasting.²¹⁵

²¹⁰ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 83.

²¹¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

²¹² UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

²¹³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, Principle 3.c.

²¹⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, Principle 3.c.

²¹⁵ UNESCO. Media Development Indicators: A framework for assessing media development. March 2008. Indicator No. 2.3.

149. Along these lines, various organizations in Europe, such as the European Parliament, have made recommendations as to how public broadcasters can fulfill their mission and develop in the new digital environment.²¹⁶ For its part, the Committee of Ministers of the Council of Europe has proposed a number of principles to be taken into account by the member countries in their national plans for implementing digital television. One of those principles indicates that Member States “should create the financial, technical and other conditions required to enable public service broadcasters to fulfil this remit in the best manner while adapting to the new digital environment.”²¹⁷
150. One interesting initiative is being studied in Brazil, where plans are reportedly underway to implement a digital network to carry Brazilian public television signals, financed by the public budget but administered by a private network operator. The project, called the National Digital Public Television Network (RNTPD), will aim to facilitate a shared infrastructure so that public broadcasting agencies can broadcast on a shared network.²¹⁸
151. For its part, Mexico’s Public Broadcasting System (SPR) has a public network of retransmission antennas “strategically located throughout the length and breadth of the country, providing the possibility for audiences to have access to more public television channels.”²¹⁹ The SPR administers 16 frequencies with multiple programming; it broadcasts its own digital signal but also carries the signals of a number of public and university channels, which has enabled these stations’ coverage to expand to 56 percent of the population.²²⁰
152. As indicated earlier, another appropriate measure is the establishment of must-carry rules so that operators of public or private free-to-air television networks or operators of subscription television carry public signals free of charge. On this point, the Council of Europe has found that in the transition to digital television, “the must-carry rule should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and

²¹⁶ “[The European Parliament] considers that, in order to enable the public audiovisual media to fulfil their task in the era of digital technology, it is necessary for them to develop new information services and media over and above traditional programmes and to be able to interact with every digital network and platform.” European Parliament. Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI)), para. 40.

²¹⁷ Council of Europe. Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. May 28, 2003, para. 19.

²¹⁸ This network would house, among others, four public channels with multiple programming, as provided for under Decree No. 5.820 of 2006: Education Channel: for broadcasting geared toward the development and improvement of distance education students, among others, and teacher training; Culture Channel: to broadcast scheduled cultural productions and regional programs; Citizenship Channel: for local communities to broadcast, and for information to be disseminated on public works, employment, projects, meetings, and events (under a March 2013 ordinance, space on educational channels connected to the States may also be used); and the Executive Branch Channel: to broadcast ceremonies, projects, events, and meetings of the executive branch. Office of the President of the Republic. Decree No. 5.280 of June 29, 2006. Dispõe sobre a implantação do SBTVD-T, estabelece diretrizes para a transição do sistema de transmissão analógica para o sistema de transmissão digital do serviço de radiodifusão de sons e imagens e do serviço de retransmissão de televisão, e dá outras providências; Citizenship Channel. Portaria 57.13 de março de 2013; Article 13; EBC. June 14, 2011. TVs e entidades do Campo Público cobram definição governamental sobre Operador Único da Rede Pública Digital.

²¹⁹ Public Broadcasting System of the State of Mexico (SPR). Acerca De.

²²⁰ In 2014, the network had a presence in 14 states, covering 56 percent of the national population. Public Broadcasting System of the State of Mexico (SPR). Cobertura.

- programmes via these platforms.”²²¹ The European Parliament has also expressed itself along these same lines, in welcoming “the implementation in certain Member States of provisions requiring cable television providers to include state-run channels and to allocate a section of the digital spectrum to public providers.”²²²
153. In this regard, Brazil’s 2011 Conditional Access Service Law, which establishes rules for subscription television in all its forms, provides that public digital signals, both for terrestrial and satellite services, must be carried free of charge.²²³ In Mexico, all operators of pay television are required to retransmit the public television signals of federal institutions, including universities.²²⁴ In Hungary, as well, legislation requires network operators to carry public television signals.²²⁵
 154. The challenges of digitalization mean that public broadcasters must have adequate budgets, both for infrastructure investments—for the switch from analogue transmission and the costs of new audiovisual digital production and diversification of content—and for the eventual addition of new public broadcast signals that add diversity to non-commercial offerings.
 155. Accordingly, the Office of the Special Rapporteur has said that “the State must ensure that these media have sufficient and stable public funds,” as adequate funding not only ensures that public broadcasters can fulfill their mandate but also “is a guarantee against the arbitrary interference of the public and private sectors.”²²⁶ The Special Rapporteurs for Freedom of Expression have also stated, “Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.”²²⁷
 156. For its part, the European Parliament has also addressed this issue, urging the application of “a broad understanding of the remit of public service broadcasters..., in particular with regard to an unconstrained participation of public service broadcasting in technological developments and deriving forms of content production

²²¹ Council of Europe. Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. May 28, 2003, para. 21.

²²² European Parliament. Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI)), para. 41.

²²³ Office of the President of the Republic. Law No. 12.485 of September 12, 2011. Dispõe sobre a comunicação audiovisual de acesso condicionado: altera a Medida Provisória nº 2.228-1, de 6 de setembro de 2001, e as Leis nºs 11.437, de 28 de dezembro de 2006, 5.070, de 7 de julho de 1966, 8.977, de 6 de janeiro de 1995, e 9.472, de 16 de julho de 1997; e dá outras providências. Article 32.

²²⁴ Official Federal Record. July 14, 2014. DECRETO por el que se expiden la Ley Federal de Telecomunicaciones y Radiodifusión, y la Ley del Sistema Público de Radiodifusión del Estado Mexicano: y se reforman, adicionan y derogan diversas disposiciones en materia de telecomunicaciones y radiodifusión. Articles 232 and 233; Official Federal Record. May 6, 2014. LISTADO y características técnicas de las señales radiodifundidas de las instituciones públicas federales que se consideran disponibles para su retransmisión de conformidad con el artículo 12 de los lineamientos generales en relación con lo dispuesto por la fracción I del artículo octavo transitorio del Decreto por el que se reforman y adicionan diversas disposiciones de los artículos 6o., 7o., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en Materia de Telecomunicaciones, publicado el 27 de febrero de 2014.

²²⁵ Hungary. Act LXXIV on the Digital Switch-Over. 2007. Article 25.

²²⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 93.

²²⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

and presentation (in the form of both linear and non-linear services); whereas this should also include adequate funding for new services as part of the public service broadcasting remit.”²²⁸ The Committee of Ministers of the Council of Europe recommends that “member states should give public service broadcasters the possibility of having access to the necessary financial means to fulfil their remit.”²²⁹

157. Thus in Colombia, for example, Law 1.507 of 2012 created the Fund for Television and Content Development (FONTV), at least 60 percent of whose resources must be earmarked for the development and strengthening of public television, both to produce content and to ensure national operations and coverage. Its budget comes from tariffs, fees, and rights that private television operators must pay for the concession and use of the spectrum, with part of its revenues generated by the new allocation of frequencies freed up after the analogue switch-off.²³⁰ FONTV is managed by the National Television Authority (ANTV) and includes support for production and transmission of public-interest content developed by nonprofit educational and cultural operators.²³¹
158. Support for the digital transition of the public airwaves should be accompanied by greater obligations and responsibilities than those for other television media, particularly with respect to helping to meet the objectives of universal access to gratis free-to-air television signals for the entire country. As the Office of the Special Rapporteur has already stated, “the system of public radio and television channels must strive to be free and reach the State’s entire territory in order to guarantee the rights to freedom of expression and access to information for all people under its jurisdiction, without discrimination based on social, economic or geographic conditions.”²³²
159. Argentina has made significant investments to ensure national coverage of public broadcasting throughout the country. Since 2010, it has developed a public network for carrying digital television signals, called the National Platform for Digital Terrestrial Television, which is administered by the State-owned telecommunications company Empresa Argentina de Soluciones Satelitales S.A. (AR-SAT).²³³ Through 82 repeater antennas throughout the country, called “digital transmission stations” (Estaciones Digitales de Transmisión, EDT), 82 percent of the population is covered²³⁴

²²⁸ European Parliament. Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI)), para. 42.

²²⁹ Council of Europe. Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting. May 28, 2003, para. 22.

²³⁰ “To strengthen public television and digital and audiovisual content, the Fund for Information and Communication Technologies (FONTIC) shall allocate to the Fund for Television and Content Development at least 10% of the revenues derived from the assignment of permits for use of the frequencies freed up by the transition from analogue to digital television.” Colombia. Law No. 1.507 of January 10, 2012. “Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones”. Article 18.

²³¹ Colombia. Law No. 1.507 of January 10, 2012. “Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones”. Articles 16-18.

²³² IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

²³³ The government declared the National Platform for Digital Terrestrial Television to be of public interest, and designated the Empresa Argentina de Soluciones Satelitales S.A. (AR-SAT) to be responsible for guaranteeing services for transmission of signals and their respective links for the development, implementation, and operation of the infrastructure. InfoLEG. Decree 364/2010 of March 15, 2010. Declarase de interés público la Plataforma Nacional de Televisión Digital Terrestre. Articles 1 and 2.

²³⁴ Argentina. Televisión Digital Abierta; Televisión Digital Abierta. Mapa de cobertura.

and a number of public broadcast signals are carried, along with commercial television signals being broadcast on an experimental basis.²³⁵ In order to increase coverage, “digital satellite television” (Televisión Digital Satelital, TDS) was also created, a system which broadcasts and receives television signals transmitted from an AR-SAT communications satellite.²³⁶

160. Colombia also approved plans to provide—for the first time, thanks to the entry of digital television—100 percent coverage in the country for public free-to-air television, via an expansion of its public broadcasting network.²³⁷
161. In Europe, there are a number of similar cases, in which access to digital channels has been facilitated for public media, but they in turn have stringent requirements for service coverage. Slovenia public television (*RTV SLO*), for example, was granted automatic access to an entire channel, but when it was awarded its license it was required to provide coverage to 95 percent of the population with its digital signals and to allow its infrastructure to be used by other operators.²³⁸ In Spain, *Radiotelevisión Española* was automatically given the same two channels it already had in the analogue environment, and it expanded its offering to eight signals, but it was required to cover up to 98 percent of the population by the time of the analogue switch-off.²³⁹

²³⁵ Argentina. *Televisión Digital Abierta. Guía de Señales.*

²³⁶ Argentina. *Televisión Digital Abierta; Televisión Digital Abierta. Mapa de cobertura.*

²³⁷ MINTIC. October 4, 2014. *En 2015 Colombia tendrá el 100% de cobertura de TV digital.*

²³⁸ DVBT Terrestrial. *Digital Terrestrial Television.*

²³⁹ Ministry of Industry, Tourism, and Commerce. *Real Decreto 944/2005.* July 29, 2005. Third additional provision and National Technical Plan for Terrestrial Television. Article 6.

CHAPTER 8
UNIVERSAL ACCESS TO DIGITAL
TELEVISION SERVICES

UNIVERSAL ACCESS TO DIGITAL TELEVISION SERVICES

162. In many countries in the region, gratis free-to-air television continues to be the main means of receiving information and entertainment. The arrival of digital television expands the quantity and quality of these services; that can lead to a significant increase in the information and opinions people receive—especially those who do not have the financial means to pay for subscription TV services.
163. However, digitalization of TV signals implies changes in usage patterns, as well as costs and investments for the families who receive these services. Being able to take full advantage of the democratizing potential of the new digital technology depends on the effective capacity of the entire population to access equipment that can receive digital TV signals; to be fully informed about how to make the technological change and what the cost of doing that is; and to acquire the appropriate knowledge and skills to use the technology effectively.
164. To that end, States should consider free-to-air television as an essential service that should be universal. Everyone—particularly families of lower economic means and from areas located far from urban centers—should be able to receive television services, at least a basic package or public TV signals. Regulations and implementation plans should include, among other things, measures such as maintaining free-to-air television services at no cost for the entire population and guaranteeing national coverage for public television signals, even supplementing terrestrial broadcasts with free-to-air satellite services.
165. Along these lines, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have indicated that “States should put in place measures to limit the cost to end users of the digital terrestrial transition, specifically with a view to limiting the number of individuals and households which are unable to afford to make the transition and to ensuring that these costs do not lead to a ‘digital divide’ between those who can afford to access new services and those who cannot.” Such measures, they said, may include: “(i) The imposition of technical standardisation to lower the production costs of devices such as set top boxes (STBs). (ii) Regulatory measures to ensure the interoperability and compatibility of reception, decoding and decryption devices. (iii) Subsidy programmes for poorer households. (iv) Appropriate trade-offs between, and technological solutions for, meeting the interests of better and less well-off end users.”²⁴⁰

²⁴⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.a.

166. Addressing the issue of subsidies for digital terrestrial television, the European Commission recognized that “the digital switchover may be delayed if left entirely to market forces and that public intervention can be beneficial, through for example regulation, financial support to consumers, information campaigns or subsidies to overcome a specific market failure or to ensure social or regional cohesion.”²⁴¹ It gave specific indications of acceptable forms of public support for the digital switchover within the European legal system, based on respect for the principles of transparency, necessity, proportionality, and technological neutrality. The forms of support it listed include: “funding for the roll-out of a transmission network in areas where otherwise there would be insufficient TV coverage; financial compensation to public service broadcasters for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate; subsidies to consumers for the purchase of digital decoders as long as they are technologically neutral, especially if they encourage the use of open standards for interactivity; financial compensation to broadcasters which are required to discontinue analogue transmission before the expiry of their licences, provided this takes account of granted digital transmission capacity.”²⁴²

A. Universal Access to Digital TV Receivers

167. States should include appropriate measures such as the creation of public funds, tax incentives, and total or partial subsidies to low-income families, among other measures, to encourage access to digital television receivers.
168. As mentioned earlier, in their Joint Declaration the Special Rapporteurs for Freedom of Expression warned of the risk that less advantaged segments of the population may be affected by diminished access to broadcasting services.²⁴³ There is even a risk that in some countries of the region the analogue switch-off means that less advantaged segments will end up with no access to one of the only types of media they have available, free-to-air television. Because of that, many countries have implemented plans for total or partial subsidies, or loans for the purchase of set top boxes.
169. A number of relevant good practices stand out in the Americas. For example, the United States adopted program which provided up to two \$40 coupons to some families toward the purchase of TV converter boxes. A government fund of up to \$990 million was earmarked for the purchase of the equipment.²⁴⁴
170. Meanwhile, although concrete implementation plans have yet to be carried out, all revenues collected by ANTV of Colombia for television service licenses are allocated by law “to support the technological modernization process for low-income users to

²⁴¹ European Commission. November 9, 2005. [State aid: Commission rules subsidy for digital terrestrial TV \(DVB-T\) in Berlin-Brandenburg illegal; explains how digital TV can be supported.](#)

²⁴² European Commission. November 9, 2005. [State aid: Commission rules subsidy for digital terrestrial TV \(DVB-T\) in Berlin-Brandenburg illegal; explains how digital TV can be supported.](#)

²⁴³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.a.

²⁴⁴ United States of America. [Public law 109-171](#). February 8, 2006. Title III—Digital Television Transition and Public Safety. Sec. 3005. Digital-to-Analog Converter Box Program.

receive digital terrestrial television broadcasts.”²⁴⁵ The State is reportedly studying plans to ensure universal access to digital television via satellite services known as “DTH Social” (the acronym stands for “direct to home”), with the aim of covering households that do not currently have analogue television service due to geographic reasons or a lack of coverage by terrestrial stations.²⁴⁶

171. Argentina has made a significant investment to provide more than one million set top boxes, at no charge, as part of a universal access policy called the “My Digital TV” Operational Access Plan.²⁴⁷ The plan specifically aims to help families and organizations from the poorest segments of society.²⁴⁸ Through 2013, more than 1.2 million devices to receive terrestrial TV signals had been handed out. In addition, digital satellite television antennas were installed in 12,000 rural and border-area schools and 5,000 in rural areas.²⁴⁹
172. Europe also has some interesting examples of plans to facilitate access to digital receiver equipment. Serbia’s digital television strategy provided that the cost of buying receivers would be guaranteed by the State; a budget of around €120 million was estimated for total or partial subsidies needed, or €25-€50 per household.²⁵⁰ Italy, for its part, developed various policies to assist in the purchase of receivers, ranging from direct subsidies for senior citizens from the lowest-income households to tax deductions of up to 20 percent of the price of the equipment (converter boxes or TV sets with integrated tuners), up to a maximum €200 deduction per piece of equipment, with a budget of €40 million.²⁵¹
173. Spain also implemented active assistance policies, providing 150,000 receivers to seniors over 80 years old or over 65 with a high degree of dependence, or to people with a more than 33 percent hearing or visual impairment. It also created an assistance fund geared toward communities at risk of exclusion (Plan de Apoyo a Colectivos con Riesgo de Exclusión), to install satellite receivers in mountainous areas that lacked terrestrial TV coverage.²⁵² Meanwhile, the United Kingdom established the Digital Switchover Help Scheme, a fund managed by the BBC to provide assistance to people aged 75 or older, those who have lived in a care home for six months or more, or people who have severe disabilities and those who are blind or partially sighted. The program provided equipment to decode digital television signals, as well as installation, for an affordable cost of £40 for the equipment and service, or free for

²⁴⁵ Colombia. Law No. 1.507 of January 10, 2012. “Por la cual se establece la distribución de competencias entre las entidades del Estado en materia de televisión y se dictan otras disposiciones”. Article 18.

²⁴⁶ MINTIC. October 4, 2014. En 2015 Colombia tendrá el 100% de cobertura de TV digital.

²⁴⁷ Televisión Digital Abierta. Mi TV Digital.

²⁴⁸ End users of the Plan Mi TV Digital are: a) Households with families who are beneficiaries of social plans or receive social benefits such as child allotments (AUH), or mothers with 7 or more children; b) Heads of household who receive old-age pensions (over 70 years of age), persons with a more than 76 percent impairment or disability and who receive retirement pay or pensions and have minimal assets; c) State establishments, social organizations, nonprofit civil associations, foundations, or cooperatives whose purpose or function is to develop social, cultural, or educational activities or to promote audiovisual content. Televisión Digital Abierta. TV Digital.

²⁴⁹ Televisión Digital Abierta. Mi TV Digital.

²⁵⁰ Republic of Serbia. Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Programs in the Republic of Serbia, p. 26.

²⁵¹ OSCE Representative on Freedom of the Media. 2010. Guide to the Digital Switchover, p. 73; Open Society Foundations. Mapping Digital Media: Italy. August 10, 2011.

²⁵² Impulsa TDT. Final Report. 2010. Available for consultation at: <http://es.scribd.com/doc/31884214/Informe-Final-TDT-2010#scribd>.

people who participate in government-run social programs because of their economic circumstances.²⁵³

B. Accessibility of Digital TV Services

174. States should include regulations and incentives to ensure that digital television is inclusive and accessible to everyone. The new digital technology facilitates the use of devices, services, and applications that make audiovisual content accessible to persons with hearing and visual disabilities.
175. In the context of promoting “low-cost technologies that are widely accessible [...] with a view to ensuring broad access to new communications platforms,”²⁵⁴ the Special Rapporteurs have stressed that “due priority” should be given to “the potential of digital broadcasting to improve access for people with hearing and visual disabilities,”²⁵⁵ by exploring and promoting appropriate technological solutions. They have also stated that “support services, including electronic programme guides, should be available in user-friendly and non-discriminatory formats, including availability in different languages spoken in the coverage area.”²⁵⁶
176. The European Commission has noted, on this point, that the switchover to digital television also has “the potential to contribute to better serve the specific needs of older people and of people with disabilities by providing assistive services such as improved subtitling, audio commentary and signing. Attention should be given to the inclusion of accessibility requirements in the user interface e.g. EPGs (electronic programming guides) and receivers.”²⁵⁷
177. Legislation approved in Spain, meanwhile, provided that all necessary measures would be adopted to ensure accessibility by persons with disabilities.²⁵⁸ Uruguay provided that new contracts for digital TV license would require operators, in return for the use of the broadcast spectrum, to “progressively provide accessibility for

²⁵³ BBC. [Switchover Help Scheme](#); The National Archives. [Help scheme](#).

²⁵⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

²⁵⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 3.f.

²⁵⁶ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.e.

²⁵⁷ Commission of the European Communities. [Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on accelerating the transition from analogue to digital broadcasting](#). May 24, 2005.

²⁵⁸ State Agenda Official State Bulletin. [Ley 10/2005, de 14 de junio, de Medidas Urgentes para el Impulso de la Televisión Digital Terrestre, de Liberalización de la Televisión por Cable y de Fomento del Pluralismo](#). June 15, 2005. Second additional provision.

persons with visual and hearing disabilities to all or part of the services offered, based on the binding communications plan.”²⁵⁹

178. In addition, as has been indicated, States should ensure that all people and social groups, including minorities and disadvantaged groups, have universal access to digital public service broadcasting through various technological means. Vulnerable groups should be given support to obtain access to the necessary receiver equipment.²⁶⁰

C. Analogue Switch-Off and Non-Exclusion

179. The transition to the analogue switch-off should respect the principle of universal coverage and free access to digital public television for all citizens. Toward this end, the date for disconnecting analogue television services should be established very carefully, so that no segment of the population is excluded from digital terrestrial television. The switch-off date should take into consideration the potential for universal access and take steps so as not to alter this goal. Rigid deadlines, therefore, should not be established, and appropriate indicators should be included on effective penetration and public access to digital television signals.²⁶¹
180. As has been observed, at least the public television system should reach the State’s entire territory in order to guarantee the rights to freedom of expression and access to information for all people under its jurisdiction, without discrimination based on social, economic, or geographic conditions.²⁶²
181. Along these lines, the Special Rapporteurs for Freedom of Expression maintain that “States should make an effort to ensure that, by the time the switch-off takes place, the geographic reach of digital services is, overall, at least comparable to and preferably greater than the reach of pre-existing analogue services.”²⁶³

D. Information and Outreach for the Digital Transition

182. Technological change also requires States to carry out active information and educational campaigns concerning the purchase and proper use of new equipment, throughout the entire process of implementing digital television. This campaign should be intensified in the final stages of analogue, so that no household is left out. An appropriate information campaign explaining how to use the new technology will

²⁵⁹ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglaméntanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación.](#) Article 15d.

²⁶⁰ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009.](#) Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

²⁶¹ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 112.

²⁶² IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009.](#) Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 91.

²⁶³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.d.

significantly help to accelerate the process of implementing digital television. These obligations include the protection both of people's right to access information and of consumers' rights vis-à-vis the companies operating in the television market.

183. Plans for educating and informing the public should include information about how the new service will be delivered, as well as the technical features of the new receivers; the conditions in which the equipment should be produced and sold on the market, to ensure continuous signal reception; and basic guidelines to help users access the new services.
184. In this regard, the UN, OAS, OSCE, and ACHPR Special Rapporteurs have indicated that "States should create and support a multi-strand public educational outreach programme throughout the digital transition process to ensure that users are aware of the process and of what they need to do to prepare for it, and have at least the basis technical knowledge they need." The Rapporteurs noted that such a campaign should give consideration to: "(i) Special outreach efforts to ensure appropriate information is provided to hard-to-reach users. (ii) Special outreach efforts to ensure that users who may be technologically challenged—for example elderly or rural users—have the knowledge and understanding they need. (iii) Support programmes, such as call centres or training programmes, for people who need help. (iv) More intensive outreach as the analogue switch-off approaches."²⁶⁴

²⁶⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 4.c.

CHAPTER 9
TRANSPARENCY, SOCIAL
PARTICIPATION AND ROLES OF
STATE AGENCIES

TRANSPARENCY, SOCIAL PARTICIPATION AND ROLES OF STATE AGENCIES

A. *Transparency and Participation in the Process*

185. States should adopt measures and procedures to ensure that the entire process is transparent and to enable everyone involved—not just businesses from the broadcasting sector, but also civil society organizations—to participate in the process of drafting regulations and policies on digital television. Such consultations should cover everything from technical aspects to critical strategic regulatory decisions, as well as plans for implementing the new services.
186. Along these lines, the Special Rapporteurs for Freedom of Expression have indicated that States “should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard. One option here is to create a multi-stakeholder forum to oversee the consultative process.”²⁶⁵ Likewise, the OSCE Representative on Freedom of the Media has stated, “The digitalization strategy should not be drafted and adopted as a result of closed-door negotiations between the businesses and the government, but be under constant scrutiny of a wide public discussion to guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes.”²⁶⁶
187. There should also be participation by society and by business in the implementation phases and in promotion and outreach activities associated with digital television.
188. In Uruguay, citizen participation with regard to digital television included public consultations in 2011, prior to the approval of the specific regulatory framework.²⁶⁷ The implementation plan also provides for the creation of a “Consultative Forum on Digital TV” to track the digital transition.²⁶⁸
189. For its part, Colombia’s National Television Commission held 13 forums in different regions of the country in 2009, with close to 4,000 people in attendance. In 2010, it

²⁶⁵ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.b.

²⁶⁶ OSCE Representative on Freedom of the Media. 2010. [Guide to the Digital Switchover](#), p. 75.

²⁶⁷ Ministry of Industry, Energy, and Mining. 2012. [Dividendo Digital y TV Digital en Uruguay](#); Panorama Audiovisual. October 4, 2011. [Uruguay abre consulta pública para la televisión digital](#).

²⁶⁸ IMPO. Center for Official Information. Decree No. 153/012. May 11, 2012. [Reglámenanse los procedimientos para conceder autorización para brindar servicios de radiodifusión de televisión digital, de acceso abierto y gratuito, asociada a la asignación de espectro radioeléctrico para su prestación](#), Article 21.

- aired special TV programs on the implementation process for digital terrestrial television in Colombia.²⁶⁹
190. The first draft of Hungary's digital TV strategy was put to public consultation for one month, beginning in October 2006, before the government turned it into the National Strategy for Digital Switchover.²⁷⁰
 191. Several countries around the world have created specific agencies for publicizing, tracking, and supporting the digitalization process. This has happened, for example, in the United Kingdom, with the nonprofit organization Digital UK,²⁷¹ and in Spain, with the association Impulsa TDT,²⁷² where the main operators involved -though not civil society- developed the 2005 Technical Plan for Digital Terrestrial Television.²⁷³
 192. The principle of government transparency in these matters should be expressed in terms of the most comprehensive and accurate information on regulatory processes—such as the process of granting authorizations to providers of digital TV services—as well as information concerning owners or license holders. Information should also be available concerning the allocation, use, and availability of the broadcast spectrum and plans for managing it, particularly the part of the spectrum allocated for free-to-air television services. This information is extremely necessary when considering the real possibility of opening up to new television operators or establishing set-asides for different types of media outlets.²⁷⁴

B. Characteristics of State Agencies

193. Institutions related to the implementation of digital television should be designed to meet the standards and recommendations that apply to all broadcasting services, which have been recognized by the IACHR and the Office of the Special Rapporteur on numerous occasions. Among other things, the characteristics and roles of the various State players in the process must be clearly defined, both in terms of the preparation, approval, implementation, and oversight of regulations and public policies for the transition process and in terms of actual digital television services.²⁷⁵

²⁶⁹ Observacom. [Colombia. Regulación y políticas públicas para la TV digital](#). 2014.

²⁷⁰ Database on legal information relevant to the audiovisual sector in Europe. 2006. [Hungary. Consultation on Strategy for Digital Switchover](#).

²⁷¹ DigitalUK. [About Digital UK](#).

²⁷² Impulsa TDT. [¿Quiénes somos?](#)

²⁷³ Formula TV. October 19, 2005. [Constituida la Asociación para la Implantación y Desarrollo de la TDT](#); Ministry of Industry, Tourism, and Commerce. [Real Decreto 944/2005](#). July 29, 2005. National Technical Plan for Terrestrial Television.

²⁷⁴ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 54 and ff.; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#), Principle 1.b; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

²⁷⁵ IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 46-57.

194. States have the legitimate authority to define policies for the sector based on the general interest, in a way that is transparent and participatory, following legitimate aims and principles, and in the context of fully respecting and promoting freedom of expression, so that their actions are compatible with the American Convention. Nevertheless, the IACHR and the Office of the Rapporteur have stressed that regulatory agencies in charge of enforcement and oversight over broadcasting legislation should be independent of both government and economic interests. In this regard, the Office of the Rapporteur has indicated that the enforcement and oversight agency “must be a deliberative body that ensures plurality in its composition. It must be subject to clear, public and transparent procedures, as well as to the imperatives of due process and strict judicial review. Its decisions must be public, in accordance with existing legal norms, and adequately justified. Finally, the body must be accountable for and give public account of its activities.”²⁷⁶
195. The Special Rapporteurs for Freedom of Expression have stated, “While key policy decisions regarding the digital terrestrial transition need to be taken by government, implementation of those decisions is legitimate only if it is undertaken by a body which is protected against political, commercial and other forms of unwarranted interference, in accordance with international human rights standards (i.e. an independent regulator).”²⁷⁷
196. This recommendation is particularly significant considering that several countries in the region do not have these types of agencies in terms of structure and areas of competence. There are some exceptions, such as the case of Chile and its National Television Council (CNTV)²⁷⁸ and Mexico, with the Federal Telecommunications Institute (IFT).²⁷⁹
197. Regulatory agencies should, moreover, have the budget, resources, capabilities, and authority to provide effective oversight and enforcement, particularly to monitor and apply appropriate sanctions to prevent undue media concentration.²⁸⁰ In this regard, the Special Rapporteurs for Freedom of Expression have stated, in their Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, that “regulators should have the necessary mandate and resources—in terms of human and technological capacity, and monitoring and enforcement powers—to implement core policy decisions.”²⁸¹

²⁷⁶ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 48.

²⁷⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, Principle 1.d. See also: UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. December 12, 2007. Joint Declaration on Diversity in Broadcasting.

²⁷⁸ National Television Council. ELCNTV.

²⁷⁹ Federal Telecommunications Institute (IFT). ¿Quiénes somos?

²⁸⁰ IACHR. 2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 46-57.

²⁸¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition, Principle 2.c.

