[DE] New Baden-Württemberg Media Law Includes Must-Carry Rule

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A new Landesmediengesetz (media law - LMedienG) was passed in Baden-Württemberg on 19 July 1999. The law takes into account the amendments to the Dritter Rundfunkänderungsstaatsvertrag (the Third Agreement to Amend the Agreement between Federal States on Broadcasting - see IRIS 1996-8: 12), which came into force on 1 January 1997, particularly those concerning the guarantee of diversity. Furthermore, the provisions for the regulation of broadcasting-type communication services, which were no longer needed following the entry into force on 1 August 1997 of the Mediendienstestaatsvertrag (the Agreement between Federal States on Media Services - see IRIS 1997-8: 11), were excluded from the new law. Moreover, the law aims to strengthen the broadcasting landscape in Baden-Württemberg and to improve the economic situation of private broadcasters. The introduction of a must-carry rule for the utilisation of transmission capacity is particularly significant. Under the previous regulations, if transmission capacity was insufficient, frequencies on cable networks were assigned according to an order of priority fixed by the Landesanstalt für Kommunikation (Regional Communications Authority

- LfK). Under the new media law of Baden-Württemberg, no distinction is made between different forms of broadcasting, i.e., the regulations apply to terrestrial as well as to cable broadcasting, both analogue and digital. According to §20 of the new law, transmission capacities are only identified if the must-carry sphere described in §21 is affected or if such identification would foster market access for new services, support non-commercial broadcasting services or promote pilot projects. As far as the remaining capacity is concerned, operators who broadcast to 250 or more subscribers are merely obliged to register. Insofar as transmission capacities are not identified, according to §22 LMedienG, the operator decides how they should be used. In so doing, the operator, under the terms of §22.1 LMedienG, must ensure that consideration is given to a variety of programme makers, that a diverse range of channels is guaranteed, including full programmes, non-commercial channels, specialist channels and foreign language channels, and that local and regional programme makers are also given reasonable broadcasting opportunities. Provided the LfK is satisfied, at the request of the operator, that sufficient effort has been made to meet the conditions set out in §22.1, the operator is free to decide how the remaining transmission capacity should be used. Hence, Baden-Württemberg is now the

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second Bundesland, alongside Saxony, to bring in a must-carry rule.

With regard to digital broadcasting, the Direktorenkonferenz der Landesmedienanstalten (the Conference of Regional Media Authority DirectorsDLM) decided on 29/30 June 1999 to invite cable network operators to make a concrete proposal concerning the allocation of digital hyperband channels. This decision was taken in response to the draft Fourth Agreement to Amend the Agreement between Federal States on Broadcasting (4. Rundfunkänderungsstaatsvertrag - see IRIS 1999-5:11). Under §52.4.1 of the draft Agreement, cable operators may decide how to utilise one-third of their transmission capacity available for digital broadcasting in accordance with various criteria, such as the diversity of programmes offered. Cable operators were expected to issue a statement by 7 September 1999.

Landesmediengesetz Baden-Württemberg (LMedienG) vom 19. Juli 1999.

Baden-Württemberg Land media law, 19 July 1999.

Beschluß der DLM zur Fortentwicklung der digitalen Kabelkapazitäten.

Decision of the DLM on future development of digital cable capacities.

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