[DE] Allocation of Broadcasting Time for Terrestrial Programmes Must Not Depend on Cable Capacities

IRIS 2004-2:1/16

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The relevant regional regulatory body, the Landesmedienanstalt Berlin-Brandenburg (Berlin-Brandenburg Regional Media Authority MABB), must make a fresh decision over the allocation of broadcasting time to the Berlin TV company, Fernsehen aus Berlin GmbH (FAB). In a judgment of 13 November 2003 the Berlin Verwaltungsgericht (Administrative Court VG) set aside the MABB 's initial decision and instructed it to make a fresh decision, in which it was to take account of the Administrative Court's interpretation of the law.

The FAB had applied for a seven-year extension of its broadcasting permit for the terrestrial transmission of its programmes 24 hours a day. The MABB decided, however, to grant the seven-year permit only for the twelve hours from noon to midnight each day. For the rest of the day the permit would be extended only on a yearly basis and would depend on the capacity of the Berlin cable network. The Berlin cable network was already at full capacity and so a 24-hour permit for FAB was out of the question. Other applicants also had to be given a chance of obtaining a broadcasting slot at a suitable time.

The Administrative Court could not agree with the MABB. The Court saw no basis under existing legislation to determine the extension of broadcasting permits for terrestrial services according to the availability of places on the cable network. The law set much more store by the availability of capacity for "appropriate programmes" or "the selection criteria best suited to the existing capacity". Since, however, the law made a clear distinction between terrestrial broadcasting and cable broadcasting, it was only relevant to the decision in the FAB 's case whether there was sufficient terrestrial broadcasting capacity. This was unquestionably the case and so the arguments raised by the MABB were not legally justifiable.

Verwaltungsgericht Berlin, Urteil vom 13. November 2003, Aktenzeichen VG 27 A 125.02

Berlin Administrative Court, judgment of 13 November 2003, Case no. VG 27 A 125.02

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