[DE] Analogue transmission of ARD-Alpha not compulsory for Kabel Deutschland

IRIS 2015-4:1/5

Gregor Euskirchen
Institute of European Media Law (EMR), Saarbrücken/Brussels

Following an application from Kabel Deutschland Vertriebs und Service GmbH & Co. KG, the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office - BLM) has decided that there are no grounds in media law to prevent the ARD-Alpha analogue feed being withdrawn from the cable network.

In accordance with the official procedure for programme reassignment in the cable network, Kabel Deutschland had announced its intention to withdraw the analogue feed of the ARD-Alpha (previously BR-Alpha) TV channel from its cable service in Bavaria at the end of 2014 and requested confirmation that there would be no objections to this decision under media law. Kabel Deutschland did not consider ARD-Alpha a priority channel as defined by law. It claimed that Bayerische Rundfunk, once it had changed the name of BR-Alpha to ARD-Alpha, could no longer rely on the must-carry status of BR-Alpha, which was laid down in law.

In a decision of 8 January 2015, the BLM, the regional media authority concerned, confirmed this legal opinion, since the channel's name change from BR-Alpha to ARD-Alpha had coincided with a change of programming that had not been agreed upon. However, the BLM, while confirming that the decision was acceptable under media law, thought it was up to the legislative body to decide how much importance should be attached to the decision to replace the "Rundschau" news programme with "Tagesschau" in the ARD-alpha schedules, for example.

The BLM nevertheless ruled that the legislative body should decide whether the new ARD-Alpha, which was primarily aimed at a national audience, should be given must-carry status, a decision that would restrict the cable network operator's choice of which channels to carry.

Furthermore, under the Bayerische Mediengesetz (Bavarian Media Act), the retransmission of a channel was expressly dependent on copyright. The system governing which TV channels were carried via the cable network therefore did not intrude on the private-law relationships between broadcasters and cable network operators, but depended on them being in agreement with each other.

© European Audiovisual Observatory (Council of Europe) 2026

In the BLM's view, cable network operators are only obliged to offer to carry must-carry channels under reasonable conditions; they are not obliged to provide cable transmission as a telecommunications service without request. Since Bayerische Rundfunk has declared orally and in writing that it is not asking Kabel Deutschland to provide a telecommunications service, the BLM cannot force Kabel Deutschland to provide such a service.

Bayerische Rundfunk has criticised the decision and announced its intention to appeal.

Pressemitteilung der BLM vom 12. Januar 2015

http://www.blm.de/de/infothek/pressemitteilungen/2015.cfm?object_ID=4332

BLM press release of 12 January 2015

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026