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DEPARTMENT OF INFORMATION
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MESSAGE: Additional proposals from ANC -
in addition to CIB submission. Also
includes a number of queries

ANC SUBMISSION**DRAFT INDEPENDENT BROADCASTING AUTHORITY BILL**

(1)

I. GENERAL:

1. As indicated in the accompanying letter of the Campaign for Independent Broadcasting (CIB) the ANC is a member of this body. We concur with the proposals made in the CIB submission. However the ANC wishes to submit a few additional comments and raise a number of queries.

II. IBA AND CURRENT GOVERNMENTAL STRUCTURES:

2. In its operation, the IBA will necessarily have to relate to both executive and legislative bodies. While this relationship will be easier to regulate after the election of the interim government, mechanisms will be needed in the pre-election period to ensure that the playing field is truly levelled.
3. Given the narrow base of the present legislature and executive and perceptions of their illegitimacy, a clear distinction will have to be made between their formal role as a de facto administration and the status of transitional structures set up precisely to level the playing fields. Therefore, formulations dealing with the relationship between the IBA and governmental structures need to be sensitive to this reality.
4. In this respect, the following sections need amendment:
 - 4.1. Chapter 3: Section 8 (c):
Should be amended to read: "if Parliament, In consultation with the TEC/IMC, declares..."
 - 4.2. Chapter 3: Section 10 (2) (a):
Should be amended to read: "...with any person, or with approval of the Minister, acting in consultation with the TEC/IMC, with any government..."
 - 4.3. Chapter 3: Section 13 (1):
Add the following sentence at the end: "In determining this, the Ministers shall act in consultation with the TEC and the Sub-council on Public Finance."
 - 4.4. Chapter 10: Section 70 (1):
Amend to read: "The Minister may, only on the recommendation of..."
 - 4.5. Chapter 10: Section 72 (1):
Amend to read: "...shall come into operation on a date fixed by the State President, in consultation with the MPF/TEC, by proclamation..."

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- 4.6. Schedule 1: Section 5 (10):
The MPF/TEC "shall cause the list" to be published in the Government Gazette. But for this to happen, the formal appointment would still have to be made by the State President. The formulation as it stands does not completely rule out the latter exercising a "presidential prerogative" to amend the list. The Bill should clearly obviate this.

NB: The formulations proposed above can be improved to take into account the fact that, while the Act will operate beyond elections, the TEC/IMC will have been dissolved.

III. OTHER COMMENTS:

5. Chapter 1: Section 1 (Definitions):

- 5.1. "Community Broadcasting Service": This definition needs to include control of the broadcasting service by the community, not just by a non-profit entity. This will obviate the danger of "external" franchises invading areas in the name of communities and yet not allowing community participation in the determination of policy. One mechanism for this would be Trusts involving community representatives.
- 5.2. "Newspaper": Should the definition exclude magazines of a given regularity (eg monthly) and circulation (eg 100 000 and "only" magazine - as with newspapers - in a license area)?

6. Chapter 3:

6.1. Section 7:

- * (1) There should be a limitation on the number of terms that IBA members can serve: this should not exceed three (3) terms. While this would ensure carrying over of experience, it would at the same time obviate the institutionalisation of individuals and the attendant problems such as complacency and corruption that may arise.
- * (2) Agree with sentiment; but need to:
 - redraft if the proposal to increase the number of IBA members is accepted; and
 - change "simultaneously" to a given time frame, e.g., six months or a year.

6.2. Section 15 (2):

Amend to read: "...end on 31 March in each year, or any other date determined by Parliament". This is because the new parliament could have new schedules for budget allocation.

7. Chapter 5: Section 31:

- 7.1. In addition to the proposals contained in the CIB submission, the mandate for the IBA's investigation into the frequency allocation plan should address the dearth of resources among deprived communities.

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8. Chapter 7:

8.1. Section 41 (General):

Agree with the current formulation vis-a-vis interference by regional/federal legislatures. The following factors motivate against the proposal in the footnote:

- * the electromagnetic spectrum is a national resource and should be allocated nationally in accordance with what SA is afforded by international conventions;
- * broadcasts in regions/localities do straddle the boundary lines contained in maps;
- * allocation of licenses is the prerogative of the IBA as an independent body, and legislative and executive interference should be eschewed; and
- * even in such federal states as the USA, the licensing authority is a centrally-based structure.

8.2. Section 41 (7):

In claiming security from licensees, the IBA should be sensitive to the problem of availability of resources among various communities. A mechanism of ensuring that the IBA is sensitive to this situation should be found.

8.3. Section 47 (General):

Clarification is needed on the limitations on cross-media control and its implications in SAn conditions:

- * Should the limitation apply only to those who control "the only" newspaper or newspapers in a license area? Is this realistic given that major national/regional papers circulate in virtually all localities? Does it mean that owners of these major national/regional papers will be allowed to set up regional/local broadcasting services? Does it also mean that an owner of a major paper in a license area could open a broadcasting service in that area - on the basis of the argument that it is not the only one - and thus virtually monopolise all media in that area?
- * The circulation figure of 300 000 seems more or less arbitrary. Given the artificial unbundling accompanied by "loans" from the newspaper monopolies, does this mean that the "individual papers" can then clog the spectrum with commercial stations and thus monopolise all major forms of media?

Such anomalies are certainly not what the new dispensation is meant to create!

8.4. Section 48: (General):

Does this exclude bodies such as civics/ratepayers associations which historically stood against apartheid and therefore the governing party? This should not be the case.

- * Otherwise, we might end up with a situation in which white rate-payers associations are granted licenses and civic organisations in

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townships discriminated against for their opposition to a system which is now being eradicated.

- * At the same time, both (1) and (2) do not refer to bodies that may have ambitions of political power but may not take part in elections nor support any of the electoral parties.

* Further, who determines "objects" that are not "expressed"? The Technical Committee needs to reformulate both sections taking these factors into account. The best solution could be to reduce the whole section to the following formulation: "No political party or political organisation shall be granted a broadcasting license." The definition of a political party/organisation in the first Chapter will therefore have to be amended to mean: "a party/organisation which has as its object or one of its objects the pursuit of political office".

8.5. Section 50 (2) (d):

Amended to read: "...which have been produced in, cover matters within or matters related to the region or locality...". This would address the following concerns:

- * deprived communities in a given region or locality might not have facilities to produce programmes;
- * the integration and migration of communities might result in a situation in which a "regional programme" on Natal may entail coverage of the situation of migrant workers from there who are based in Welkom; or, a "local programme" on Soweto straddling both Soweto and Central Johannesburg where most Sowetan work.

9. Chapter 9: Section 65:

- 9.1. Shouldn't the IBA also have an obligation to ensure confidentiality of information that would prejudice a licensee in its competition with others - as long as such information has no material bearing on the dispute around licensing conditions?

16 July 1993

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