

AUGUST 31ST, 1993

SUBMISSION TO THE TECHNICAL COMMITTEE
ON THE INDEPENDENT MEDIA COMMISSION

(1) INTRODUCTION:

This submission is made pursuant to Minute 6.1.3 read with 6.1.23 of the draft minutes of the meeting of the Negotiating Council held on Monday 23 August 1993 at the World Trade Centre.

The Commission is reminded that the delegation of the Republic of Bophuthatswana specially reserved its position and noted that it would be making this submission.

This submission deals with the issue of whether or not Bophuthatswana Commercial Radio (Radio 702) should fall under the jurisdiction of the Independent Broadcasting Authority.

(2) FACTUAL AND LEGAL POSITION

The following incontrovertible facts apply with regard to Radio 702:

2.1 It is a private broadcasting company incorporated in Bophuthatswana under the laws of that State;

2.2 It therefore follows that it is a Bophuthatswana entity whose business is regulated under the laws of that State;

2.3 It broadcasts on the medium wave frequency by virtue of a licence issued to it by the Postmaster General of Bophuthatswana pursuant to a Founding Agreement to which the Government of the Republic of Bophuthatswana is a party (signatory).

2.4 Although its studios are situated in Johannesburg, its signal is broadcast from masts jointly owned by the company and the Government of the Republic of Bophuthatswana. Those masts are situated in the Odi region of Bophuthatswana. Johannesburg is therefore only a facilities residence and market venue.

2.5 We submit that this Bophuthatswana entity should be dealt with on exactly the same principle as public broadcasters in the TBVC states, whose position is in reserve pending the outcome of the talks on the constitutional future of each of those states. The principle of the legal inability of the Independent Broadcasting Authority Bill to have extra-territorial effect applies mutatis mutandis to Radio 702.

2.6 It must also be realised that Bophuthatswana, as Radio 702's licensor, may

Without a frequency on which the station broadcasts its services. Without a frequency, there cannot be any broadcasts.

(ends)