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**F. INDEPENDENT MEDIA COMMISSION  
AND INDEPENDENT  
TELECOMMUNICATIONS AUTHORITY**

**VOLUME TWO**

**F: INDEPENDENT MEDIA COMMISSION AND INDEPENDENT TELECOMMUNICATION AUTHORITY**

**SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE: INDEPENDENT MEDIA COMMISSION AND INDEPENDENT TELECOMMUNICATION AUTHORITY BY 10.00 A.M. ON FRIDAY 21 MAY (AND NOT INCLUDING SUBMISSIONS AND DOCUMENTATION DISTRIBUTED TO THE NEGOTIATING COUNCIL ON TUESDAY 18 MAY 1993)**

12.	Gender Advisory Committee		Report to Codesa
13.			Draft Telecommunications regulatory framework
14.	Government		Independent Media Commission Bill (Fourth Draft)
15.	Government		Independent Broadcasting Commission Bill
16.	Intando Ye Sizwe Party	19/05/93	Submission.
17.	Conservative Party	19/05/93	Heads of arguments and position.
18.	Bophutatswana	19/05/93	Submission.
19.	Government	19/05/93	Publikasies van die SA Kommunikasiediens.
20.	Transkei	20/05/93	Transkei Broadcasting Corporation and the Technical Committee on Media deciding its future at present.
21.	PAC	21/05/93	Submission: Relationship between the Independent Media Commission (IMC) and the Transitional Authority (TA)



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**GENDER  
ADVISORY  
COMMITTEE**



## 1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

### 1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (r), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

### 1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.
- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendoes or language of a defamatory or offensive nature, in all spheres, including political, social and economic life and in the media.

### 1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):



- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 5.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

#### 1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police;
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);
- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

#### 1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

\*The amendment and/or repeal of any remaining laws militating against free political



activity including the elimination of racial and gender discriminatory laws

1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- include gender conscious persons;
- facilitate media access for women;
- monitor and discourage sexist programmes, articles and advertising;
- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

## 2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 02

### 2.1 Constitutional Principles

The GAC advises that:

- 2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the Constitution.
- 2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.
- 2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.
- 2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.
- 2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

### 2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

### 2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

- 2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."
- 2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."
- 2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."
- 2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."
- 2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective

participation of minority political parties consistent with democracy, non-racialism and non-sexism.

#### 2.4 Constitution Making Body Process

- 2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.
- 2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.
- 2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.
- 2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.



3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.

In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear of pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

3.2.1 In addition to Item 7.1 of the report:

\* Shall include women in its composition.\*

3.2.2 Item 10 of the report should state:

\*The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . . .

3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

3.2.4 Line 5 of Item 14 of the report should read:

\*Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . . .

3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.

Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.

3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- \* include gender conscious persons;
- \* facilitate media access for women;
- \* monitor and discourage sexist programmes, articles and advertising;



- \* encourage non-sexist, non-discriminatory publications;
- \* ensure the participation of women on all media bodies, at all levels;
- \* organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

### 3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as from the interim government women should be trained, employed, promoted and recognised on an equal basis with men within the diplomatic service. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.

### 3.6 Land and Women

The GAC wishes to place on record that no consensus could be reached on the following proposals concerning land and women:

**Proposal 1:** That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

**Proposal 2:** That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transference of all state property to private or corporate individuals and organisations.

4. **General Recommendations to Codesa (to all Working Groups)**

4.1 **Non-Sexist Language in CODESA documentation**

The GAC recommends that CODESA documents should explicitly define the word 'person' as referring to both men and women.

4.2 **Gender Discriminatory Legislation**

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC. We advise Working Groups 1, 2, 3, 4 and 5 to assist in the identification of such legislation.

5. **Conclusion and The Way Forward**

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.

## ***DRAFT TELECOMMUNICATIONS REGULATORY FRAMEWORK***

### **Introduction:**

The specific regulatory structure and processes are conditioned by several country specific factors:

- (a) The countries political system and institutions, as well as its political, economic and social objectives;
- (b) The structure of the existing telecommunications industry and the expected direction of change (e.g. full or partial monopoly)
- (c) The specific matters that are subject to regulatory action, namely, WHAT is being regulated (e.g. technical standards, interconnection, tariffs profit and prices, licensing carriers type approval of customer premises equipment CPE, frequency spectrum matters Human Resource activities and manufacturing.

### **The regulatory policy issues may include among others:**

1. Universal Service.
2. Define the distinction between public and private services.
3. Interpret the law and reconcile policy objectives.
4. To ensure that manufacturers provide appropriate CPE for the disabled.
5. Ensure efficient procedures for interconnecting between new and existing service providers.
6. Check on reasonable pricing to cost ratios and relate this to quality of service.
7. Authorise and assure transparency of schemes for subsidies where required.
8. Establish clear-cut dispute resolution procedures.
9. Monitor research and development in relation to turnover and GDP.
10. Monitor Human Resource Development within telecommunications sector.



11. Regulate technical standards and use of frequency spectrum and geo-stationary orbit.
12. Regulate transiting procedures (Lesotho and Swaziland etc).
13. Promote technology and know how transfer.
14. Regulate cross ownership of broadcasting and telecommunications.

**Notes:**

**A. The Political Context of a Regulatory Structure.**

The basic design of a regulatory structure is country-specific feature. The choice of a regulatory structure must be seen within a broader framework of the country's political and governmental system and institutional arrangements.

The political system and institutions shape what regulatory are viable and their likely effectiveness. **The regulatory body also depends on the country's broad political, economic and social objectives.** In particular the arrangements required to support telecommunications development in an open, pro-competitive enterprise environment or quite different from those adapted to a monopolistic or state owned telecommunication environment or a combination of both.

In general the regulatory entity should be seen to have expertise, stature integrity and commitment to public interest. This means it must be impartial. Its processes must be transparent, open to all industry and consumers, and set out publicly the bases for its actions.

**B. Factors Affecting the Choice of Structure**

1. **WHAT** activities are being regulated?  
e.g. **The inclusion of broadcasting within jurisdiction of the entity generally may call for a collegial body rather than a single regulatory decision-maker.**



2. The degree of "independence" sought : The term does not mean "independence" from the laws and policy goals of the country. It can variously refer to the separation of regulatory and operational functions, neutrality, insulation from external pressure or simply the designation of an official publicly identified as having the regulatory responsibility and not subservient to the rest of the ministry.
3. The degree of "simplicity" and "independence" are not necessarily irreconcilable. Moreover, simplicity may be regarded as inexpensive or efficient or a combination of both. Whether a " simple " structure is possible will also depend on what is to be regulated and the political environment.
4. The lack or absence of a long term telecommunications policy (Master-Plan) which is a pre-requisite to deciding what and how to regulate might hinder the process of regulation.
5. Lack of expertise may also be critical in structuring the regulator. One possibility may be to husband scarce resources in order to discharge regulatory issues of a policy nature while finding other means to assist (contracting out) in the discharge of regulatory issues of technical nature.

## **C. What Issues are to be Addressed by the Regulator Entity**

### **1. General considerations**

- I) In view of rapidly developing technologies and changing markets, the regulatory entity must anticipate developments and not merely deal reactively with particular matters brought before it. At the time, the transitory nature of needs recognition: a set of seemingly current rules may be made quickly outdated by a rapid developing telecommunications sector;

- II) The global market place in which telecommunications increasingly participates means that regulatory entities will in future possess in practice less autonomy in deciding on some issues to be addressed by them; there will be a greater commonalty of issues on the regulatory agendas of different countries.

## 2. Specific Themes

- I) The source for setting the agenda should be established in the authorising statutes for the regulatory entity;
- II) Various specific source can be identified submissions by applicants, generic hearings and public notices, informal contacts, consumer complaints, and competition-policy "antitrust" agencies or courts.

## 3. Some Cautions

While access to the regulatory process for outside parties, and the right to submit information to the regulator is important in helping to establish the agenda, it is also critical to protect the integrity of the regulator under these circumstances and to safeguard the transparency of the regulatory process.

## 4. How does the Regulatory Entity Consider and Decide Issues?

At the "macro" level would be the basic design of the regulatory regime in terms of the country's political system and objectives, while the "micro" level would reflect the detailed design of ways, tools and guidelines to carry out regulation. For example, the "macro" level might contain such issues as structural framework, what extent of competition is desirable, how licenses are to be granted, while the "micro" level might contain the administrative processes and decisions within this framework.

Other distinctions are regulatory policy visus administration, and legislative visus executive decisions. It is obvious that there is no simple correspondence among these three sets of distinctions.



- (I) The distinction may be of less relevance without a governmental system based on separation of powers, although it may nevertheless retain some value.
- (II) The distinction does not reflect two different worlds: in reality they interact closely. For example, legislative or ministerial policy makers take decisions on the basis of information and advice from regulators, while a seemingly minor technical matter may give rise to a fundamental policy issue.
- (III) It may not be clear which type of decision is taken and at which level, leading to a lack of transparency and consequent delays, for this reason, it may be useful, before a country introduces the regulatory framework to have an open debate on the issues, taking into account the needs of consumers and investors, and the need for flexibility.

## **5. The need for Transparency**

- I) Whatever the particular process selected, there is a need for clear "rules of the game", predictability, mechanisms for input by interested parties, including input from the average citizen, and also mechanisms to provide more information to the public.

## **D. Implementing and Enforcing Regulatory Decisions**

- I) What are the various types of enforcement mechanisms: e.g. penalties, forfeitures, criminal violations?
- II) How severe should the penalty be? Criminalization (e.g. going to prison for installing the wrong telephone) may well be inappropriate. Providing only draconian penalties may be counterproductive because of the regulators' unwillingness to apply them.
- III) When should decisions be enforced? Lack of resources may force a regulatory entity to limit its enforcement of certain types of decisions in the face of widespread violations, a better approach may be not to have a regulation if it cannot be enforced.

- IV) Public pressure and moral persuasion may be more effective than strict enforcement, but this is dependent upon the transparency, stability and integrity of the regulatory process.
- V) An educational process may be essential to explain to the public the basic concepts of regulatory decisions, the kinds of action which violate such decisions, and the resulting penalties.

### **E. Resources**

- I) Sources of revenue to meet regulatory costs: a principal means is to obtain the funds from those being regulated, e.g. through franchise or license fees.
- II) The costs of regulation need to be put in perspective. The costs of lost opportunities and failure to achieve economic efficiency resulting from the lack of clear rules and processes may greatly exceed the regulatory costs normally constitute a very small of the cost of PTO operations in most countries.

### **F. The Scope and Objectives of Regulation**

A regulatory system for telecommunications at the national level contains four main elements:

The basic legal instrument(s) establishing the regulatory body or bodies, defining the regulator's powers, rights and obligations, and defining the rights obligations of the regulated PTOs and other entities in relation to telecom regulation.

#### **1. The regulatory organisation itself.**

The linkages of the regulatory organisation to other parts of the government structure, including Ministers or equivalent office-holders, legislature and the courts.



## 2. The working methods of the regulatory organisation.

However, before embarking on the design or redesign, or even refinement (fine tuning) of a regulatory system, some fundamental choices must be made. These choices can usefully thought of as the answers to three basic questions:

- Why regulate?
- What to regulate?
- How to regulate?

### I). Why Regulate?

Any effective regulatory system must be charge with one or more clear fundamental "mission" that define the results that regulatory decision-making and intervention is intended to achieve. A statement may include one or more of the following elements:

- Achieving progress towards the social goals typically include some concept of "**Universal Service**" designed to ensure that no geographic area or social group is deprived of access to telecommunications service on reasonable terms. They may include goals concerning the availability of service to rural, limited-income households, or the disabled.
- Protecting user interest even beyond these types of social goals. The regulator may have a general obligation to protect the interests of telecommunications users, and to consider their complaints.

- Moving towards "level playing field" - regulatory policy may call for a transition towards conditions of participation in the market which are non-discriminatory as between different carrier, including the major established carrier.
- Supervising the dominant PTO - where the incumbent PTO retains either a monopoly or a dominant market share, control of its activities may be a major mission, or even the mission, for the regulator. Such control may be exercised for varying ends, e.g.:
  - Achieving the maximum rate of reduction of prices compatible with desire levels of service quality.
  - Enforcing "**Universal Service**" obligations.
- Stimulating innovation. The regulator may be required to identify opportunities for service innovation, and take action designed to remove obstacles to such innovations (as in the case of frequency allocations/assignments for Personal Communications Networks - PCN) or even to actively promote such innovations.
- Assuring technical preconditions for effective operations - for example, controlling and updating the numbering plan, or defining technical and financial conditions for the interconnection of different carriers' networks.
- To ensure standard safety levels with respect human exposure to radio frequency electro magnetic fields and any other related radiation.
- Managing common resources effectively. Use of certain physical resources and related right, such as the radio spectrum or public rights-of-way, may be controlled by the regulator.
- Stimulating investment in the public network. A pressing need to accelerate investment in expanding and upgrading the public network infrastructure may mean that creating favorable conditions for this is a key responsibility of the regulator.

## NOTES:

- \* The specific definition of the telecom regulator's mission in each country will reflect varying national circumstances, for example, the state of development of the public telecommunications network, the level of economic development, and the institutional framework, constitutional provisions, the legal system and the national tradition of public administration.
- \* The roles of a variety of different interest groups (for example, business telecom user, residential users, or PTOs) in each national situation will also shape the definition of the regulatory mission. Pressure from dissatisfied users, and/or from government agencies concerned about the economic consequences of failing to meet user needs, may for example, shape the definition of the regulatory mission.
- \* In the case of S.A - apartheid ought to influence the mission. These various factors, and hence the way the telecom regulator's "mission" is defined, are likely to differ between advanced industrial countries and less-developed or newly-industrialised countries.

## II). What to regulate?

A national regulatory policy may provide for the regulator to:

- Set technical standards.
- License carriers
- Regulate carriers' prices (tariffs) for service.
- Approve carriers' programmes of construction and capital investment.
- Set the terms (financial, administrative and technical) for the interconnection of different carriers' networks.
- Control the type-approval of customer premise equipment (CPE) and its connection to the public network.



- Control ,allocation, notification on the use of radio frequencies and geo-stationary satellite orbit.

### III). How to Regulate?

#### Alternative Approaches to Regulation.

- Given a defined "mission" or "missions" and a decision on what to regulate, the regulator can still choose (or be directed) to fulfill the mission(s) using widely differing regulatory approaches.
- Terms like "light touch" regulation are sometimes used. A useful way of defining different regulatory approaches or style distinguishes two kinds of choices that must be made:
  - How far the regulator will exercise control routinely, and how far the regulator will act "by exception"?
  - How far the regulator controls outcomes directly, or indirectly. For example, if one goal of regulation is low prices for service, will the regulator control prices directly, or promote an industry structure that is considered to be favorable to achieving low prices? Or to take another example, will the regulator directly impose particular targets for network expansion and modernization, or concentrate on establishing incentives designed to encourage carriers to pursue these goals?

### G. Division of Authority/Relationship with other Agencies

In defining the role of the telecom regulatory body, it is necessary to specify two key aspects of its place within the overall structure of government:

- The degree of independence the regulatory body possesses and the extent to which responsibility for regulating telecommunications is assigned to a separate and autonomous organisational entity.
- The working relationship and linkages of the regulatory body with other parts of the government structure.

## **Degree of Independence/Autonomy**

Independence of the regulatory body (by which we mean whatever individual, board or administrative unit makes decisions on regulatory questions) has three distinct aspects:

- Independence from the operational organisation or organisations responsible for building and operating the public telecommunications infrastructure and providing telecommunications services (the PTO)
- Independence from other interested parties, such as industrial interests.
- Independence from Ministers (or other elected office-holders) in dealing with day-to-day matters, once the general framework of telecommunications policy has been set, by legislation or otherwise (depending on the national constitutional framework).

It is widely recognised that, while some regulatory functions (such as CPE type approval) can be carried out by a decision maker without any of these three types of independence, each of them provides important advantages.

The organizational structure for telecom regulation can take several different forms, with different implications for the question of independence.

- A distinct regulatory body within the government Ministry department responsible for telecommunications, as in France Germany, Mexico or Spain. The Ministry may or may not also have one or more operational entities (i.e. a "PTT") within it, or under its control, as is the case in France Germany and Mexico.
- A fully autonomous regulatory body empowered to make regulatory decisions not subject to review by Ministers (or their equivalents), although the decisions may be subject to appeal to the courts, as in the case of the US.

- A regulatory agency whose decisions are subject to review by Ministers in some circumstances but which may be highly independent in practice. We refer to this type of regulatory body for brevity as a semi-autonomous agency". This type of arrangement applies in:
  - \* Canada, where the CRTC's decisions are subject to review by the cabinet but where the cabinet only rarely exercises this prerogative.
  - \* Argentina, where the Commission Nacional de Telecomunicaciones (CNT) regulates the PTOs, subject to a right of appeal to the executive branch of government.
  - \* The UK, where the Director General of Telecommunications (the head of Oftel) exercises substantial independent powers on certain matters. On other matters the Director General advises the relevant Minister, the President of the Board of Trade, and this advice normally becomes government policy.
- "Self-regulation" by the PTO, and regulation of other parties (e.g. for CPE type-approval or radio frequency assignments) by the PTO. This is the situation in many developing countries, and a few industrialised countries.
- No telecom-specific regulation, the approach which has been attempted is New Zealand.

## **H. Relationship between the Regulator and other Government Agencies**

The key features determining the overall structure of relationships between the regulatory body and other parts of the total government structure are:

- Whether the main regulatory body for telecommunications manages radio spectrum matters or must work with another agency which has this responsibility.
- Whether the telecom regulatory body's jurisdiction will be limited to telecommunications according to a narrow definition, or whether it will include related areas such as broadcasting or cable television.



- The degree to which regulatory decisions are constrained by the decisions of competition policy ("antitrust") agencies.
- The degree to which the regulatory agency's decisions are subject to the courts or to other review bodies.
- \*Whether the telecom regulatory body has jurisdiction over broadcasting infrastructure.
- In cases where the regulatory agency is "semi-autonomous", as defined above, the extent to which any rights of other government bodies (e.g. Cabinet review in Canada) to review regulatory decisions are intended to be activated in practice - for example, are these intended only to apply exceptionally in matters affecting national security?
- The relative roles of the telecom regulatory body and executive government agencies, including the Ministry of Foreign Affairs (or its equivalent), in dealing with international relationships and issues.

The following are major points that merit consideration when reviewing these matters:

- \*The role of radio-based technologies in public telecommunications has substantially increased: it is increasingly difficult to consider general telecommunications policy separately from radio-spectrum policy.
- \*"Media" areas such as broadcasting or cable TV are often regulated separately because of the social and political issues raised by their programming content. However, this separation is less and less satisfactory in the case of convergence of cable TV with the telephone service business and common use of satellite and other terrestrial networks.

## I. Process of Consideration and Decision Making

I have conceptually divided the sequence of steps leading to the making of a decision into two stages:

**Stage 1:**        *"The process of Consideration"*, which :

- Clarifies and defines the problem to be solved and the objectives that the ultimate regulatory decision should serve.
- Identifies the available policy alternatives.

- Obtain information needed to assess this alternatives.
- Develops an understanding of the advantages and disadvantages of the alternatives.

**Stage 2 :** *Making and Justifying the Decision.*

Alternative approaches to these two stages are defined and discussed in detail in Chapter 5 of the report. The issues have to be considered separately for two types of decision, which have different requirements :

- Licensing decisions.

Other regulatory decisions. These comprise :

- Regulatory policy decisions, such as policy decisions about whether PTO's pricing for specific services, or 'bundles' of services, will be regulated .
- Decisions on matters of detail, e.g. decision on whether to allow or disallow specific pricing levels or structures for a carrier's services.

**"Process of Consideration"**

The principal choice to be made here concerns how far the regulator will use extensive formal procedures open to outside intervenors and 'transparent' to the public (the 'due process' approach) , or alternatively how far the 'process of consideration' will take place informally and privately within the regulatory agency.

The case for extensive formal procedures rest on :

- Their ability to mobilize an extensive body of argumentation, data and analysis.
- Their perceived fairness to all concerned parties.
- The 'transparency' of the process.

The case against rests on :

- The complexity and cost of such formal procedures.



- The relatively long delays sometimes involved.

The extent to which complexity, cost and delay are significant problems with formal consultative procedures depend on the detailed design and management of the procedures. Timeliness, simplicity and low cost are achievable. One set of important choices that must be made concerns whether and how the regulator will use the following regulatory "tools":

- *Public Consultative Documents*, which specify a problem to be solved, and may also present data, analyses or points of view about it.
- *Public hearings* in which verbal testimony is taken from interested parties ("intervenors").
- *Structured Consultative Proceedings* based on the submission of written comments by intervenors.
- *Use of Analytic Findings by Intervenors*: Some countries' regulatory systems encourage intervenors to perform and submit extensive data-collection efforts and/or analytical studies.
- *Reply Comments*: where structured consultative proceedings are used, intervenors may be given an opportunity to review "first round" written submissions by other intervenors, and submit replies, rebuttals or supplementary comments and analyses.
- *Use of Legal Authority to Obtain Information*: national regulatory bodies vary in the degree to which they possess and use mandatory legal powers to require disclosure of information from PTO's and other regulated entities.
- *Analytical Work* by the regulatory body's staff or contractors.

### **Making and Justifying a Decision**

Where the decision itself is concerned, the design of the regulatory system must specify:



- Who exactly has decision-making authority? (If the answer is a group of regulatory commissioners, voting rules must be specified).
- Will the draft decision be made available for public comments before being finalised?
- Is there a right of appeal? Under what circumstances? To what body?
- Whether the regulator will announce each decision publicly in writing, whether the regulator will provide a written justification of the decision, and what level of detail will be given in the justification?
- A collegiate body of decision-makers is especially appropriate in politically-sensitive situations where the regulatory body must be seen to be broadly representative (e.g. where decisions are made about broadcasting licenses). However, many observers argue that speed, decisiveness and economy are important arguments for appointing a single regulatory decision-maker for telecommunications, as in France and the UK.
- The case for easy access to mechanisms of appeal against regulator's decisions rests on the need to take account of human fallibility, and the through "checks and balances". On the other hand, if such access is very easy, the costs and delays involved in the regulatory process may be greatly increased.
- The case for publishing written, reasoned and analytical-based justifications of the regulator's decisions, in considerable detail, is strong. It reinforces the "transparency" of the regulatory process, explaining the considerations on which decisions are based, and enhances the regulator's reputation for professionalism and objectivity.

In the special case of the licensing of carriers, e.g. the licensing of new cellular operators or new long-distance telephone companies, further choices present themselves. The licensing decision may be made by:

- Case-by-case ad-hoc decision-making.
- Comparative qualitative evaluation of bids ( a " beauty contest ")
- Comparative hearings
- Lottery
- Auction
- Grant of a franchise license by legislative action.
- Combinations of the above, e.g. an auction among bidders who succeeded in the initial "beauty contest".

The case for and against the alternative methods of assigning licenses depends very critically on the varying policy goals and economic philosophies prevalent in individual countries .

## **J. Implementation and Enforcement Mechanisms**

The appropriate mechanisms for implementation or enforcement of the telecom regulator's decisions depend on the type decision ( a decision to require compliance with a technical standard, for example, or to control the prices to be charged by a particular carrier ). In general, however, the key choices are :

- Whether the regulatory body itself has the power to make legally binding orders, either initially (when a policy decision is made), or when the regulator determines that some party is violating the terms of a regulatory decision, license or other regulatory "instrument". If not, the regulatory body must be able to apply to some other authority (e.g. a Minister or a court) for a legally binding order.
- Whether the regulatory body has legal powers of investigation, and investigative personnel and resources, to detect and prove violations, or whether it relies on other governmental bodies and/or public complaints in order to detect violations.
- What role is played by "self certification", for example, CPE vendors certifying that they comply with standards .



- What recourse the regulator has if legally binding decisions are persistently violated.

It is worth noting that the implementation of telecom regulations (as for almost any kind of law that is effective in practice), must rely heavily on voluntary compliance, with enforcement mechanisms "held in reserve" for exceptional situations. This observation focuses attention on:

- The need for the regulator to inform and educate the relevant parties (including, for certain matters, the general public) about their rights and obligations arising from telecom law and regulation, and about the very real benefits arising from compliance with these.
- The extensive scope for "self-policing", for example through CPE self-certification.

## K. Resources

Operating an effective telecom regulatory agency, though far from being one of the costliest undertakings of national governments, does require significant resources in terms of both budgets and specialized professional personnel. The report :

- Indicates the level of budgets and staffing that has been found necessary in certain "case study" countries.
- Notes that it is often possible to finance the regulatory body via a modest levy on the revenues of the PTO's. This is done, for example, in the UK. and also in Argentina, where PTO's are required to pay 0.5% of their revenues for this purpose.
- Argues that the quality of professional work performed by or for the regulatory body is critical to the credibility of the regulatory process and the validity of the decisions it produces. The resulting economic impact (favorable or unfavorable) on the PTO's and their users - which means the entire economy - is likely to vastly exceed the relatively modest direct cost of the telecom regulatory process.



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE ONAFHANKLIKE MEDIAKOMMISSIE

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(Soos ingedien)  
-----

(MINISTER VAN.....)

[W -93 (AS)]

REPUBLIC OF SOUTH AFRICA

THE INDEPENDENT MEDIA COMMISSION BILL

-----  
(As introduced)  
-----

(MINISTER OF.....)

[B -93 (GA)]

FOURTH DRAFT  
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**Arrangement of the Act**

<u>Section of the Act</u>	<u>Subject</u>
section 1	Definitions
section 2	Establishment of Independent Media Commission
section 3	Objects of Independent Media Commission
section 4	Appointment of members of Independent Media Commission
section 5	Persons qualified to be members of Independent Media Commission
section 6	Persons disqualified from being members of Independent Media Commission
section 7	Terms of office of members of Independent Media Commission
section 8	Vacation of office of members of Independent Media Commission and the filling of such vacancy
section 9	Remuneration of members of Independent Media Commission
section 10	Meetings of Independent Media Commission
section 11	Establishment of committees
section 12	Constitution and employment of institutes
section 13	Staff of Independent Media Commission
section 14	Powers and functions of Independent Media Commission
section 15	Status of Independent Media Commission
section 16	Powers of Independent Media Commission for purposes of inquiry
section 17	Referral of disputes to Independent Media Commission and the mediation and/or adjudication of such disputes
section 18	Expenditure in connection with functions of Independent Media Commission
section 19	Limitation of liability in respect of anything done under this Act

section 20 Regulations  
section 21 Offences and penalties  
section 22 Short title and commencement

SCHEDULE I: BROADCASTERS' ELECTORAL CODE OF CONDUCT

A: Political Broadcasts on Sound Broadcasting Services  
B: Political Advertising on Sound Broadcasting Services  
C: Fairness Guidelines for all Broadcasting Services

SCHEDULE II: CODE OF CONDUCT FOR STATE INFORMATION SERVICES AND  
STATE-FINANCED PUBLICATIONS



## BILL

To provide for the establishment of a Commission to promote and create a broadcasting climate favourable to free and fair elections; to provide for fairness by broadcasting services in their election coverage; to provide for equitable treatment of political parties by broadcasting services; to provide for the auditing, monitoring and and review of state information services and state-financed publications;

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

1. **Definitions:** - In this Act unless the context otherwise indicates -

"**Authority**" means the Independent Broadcasting Authority established by section.... of the Independent Broadcasting Authority Act.

"**Boards**" means the Board of the South African Broadcasting Corporation appointed in terms of sections 4 and 5 of the Broadcasting Act No.73 of 1976; the Board of the Bophututswana Broadcasting Corporation appointed in terms of sections....of the.... Act No....of....; the Board of Radio Ciskei appointed in terms of ..... of the .....Act No...of....; the Board of Radio Thohoyandou appointed in terms of ..... of the .....Act No..of .....; (1)

"**broadcasting service**" means a telecommunication service of transmissions consisting of sounds, images, signs or signals which takes place by means of radio and is intended for reception by the general public; and which shall include the broadcasting services operated by the South African Broadcasting Corporation, the Bophututswana Broadcasting Corporation, the Transkei Broadcasting Corporation, Radio Ciskei, Radio Thohoyandou, the Electronic Media Network, Radio 702 and other broadcasting services licensed by the Authority; (2)

1. Note: This definition is subject to the re-incorporation of the TBVC states or, alternativley, the enactment by the TBVC states of the Commission Bill.
2. Note: This definition is also subject to the re-incorporation of the TBVC states or, alternativley, the enactment by the TBVC states of the Independent Media Commission Bill.



"**Commission**" means the Independent Media Commission established by section 2;

"**election**" means a national or regional election held in terms of the Electoral Act, No....of.....

"**executive**" means the executive of the Authority mentioned in section....of the Independent Broadcasting Authority Act.

"**Independent Electoral Commission**" means the body established in terms of the.....Act, No....of 1993.

"**Independent Broadcasting Authority Act**" means the Act that provides for the regulation of broadcasting activities in South Africa;

"**licensee**" means a the holder of a licence to operate a broadcasting service;

"**Multi-Party Forum**" means the multi-party constitutional negotiating forum which conducts its work at the World Trade Centre, Kempton Park, Johannesburg;

"**party representative**" means any person who is a spokesperson, official or who appears on a national or regional list of any political party or who has made a substantial showing of bona fide involvement with a political party, including activities normally associated with political campaigning, such as making election speeches, distributing election material, organising marches and rallies, issuing press releases.

"**political party**" means a political party, organisation or movement which is participating in regional or national elections and has registered as a political party in terms of the Electoral Act, No.. of 19..;

"**political broadcast**" means a broadcast programme produced by a political party for broadcasting on a sound broadcasting service;

"**political advertisement**" means an advertisement produced by a political party for broadcasting on a sound broadcasting service;

"**Republic**" means the Republic of Bophututswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda;

"**sound broadcasting service**" means

"**state**" means the Republic of Bophututswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda;

"**state information service**" means an information service that is operated by a state department;

"state-financed publication" means a publication that is partly or wholly financed by the state;

"TEC" means the Transitional Executive Council established in terms of the Transitional Executive Council Act, No....., of 1993

"television broadcasting service" means

2. **Establishment of Commission** - There is hereby established a juristic person called the Independent Media Commission and which shall also be known as IMC;

3. **Objects** - The objects of the Commission shall be :

- (1) the promotion of freedom of expression in order to create a levelling playing field as regards broadcasting services, state information services and state-financed publications in the period leading up to and including the elections.
- (2) the promotion of equitable treatment by broadcasting services of political parties;
- (3) the monitoring of broadcasting services to ensure compliance with fairness guidelines on the coverage of issues with regard elections and political parties; and issues related thereto;
- (4) the monitoring of broadcasting services to ensure compliance by broadcasting services and political parties with provisions on political broadcasts and political advertising;
- (5) the auditing, monitoring and review of all state information services and state-financed publications to ensure their impartiality;
- (6) to perform such other functions as may be assigned to the Commission by or under this Act or any other law.

#### **4. Appointment of Members of the Commission**

- (1) The Commission shall consist of:
  - (a) A chairperson;
  - (b) A deputy chairperson; and
  - (c) Not more than five other members,
- (2) The members of the Commission, including the chairperson and the vice-chairperson, shall be appointed by the State President upon the recommendation of the Transitional Executive Council/Multi-Party Forum.



- (3) The State President shall, at least thirty days prior to the appointment by him of members of the Independent Media Commission in terms of subsection (1), or the filling of a vacancy in terms of section 8(2) of this Act, give notice in the Gazette of his intention to make such appointments or to fill such vacancy.
- (4) At the same time as giving such notice, the State President shall invite all interested persons, bodies and organisations to submit written nominations for appointment as members of the Commission or for the filling of a vacancy, accompanied by representations in support of such nominations, to the Transitional Executive Council/Multi-Party Forum within fifteen days of such notice.
- (5) The Transitional Executive Council/Multi-Party Forum shall consider these nominations, and the representations in support thereof, in the context of the provisions of sections 5 and 6 of this Act, and shall thereafter recommend to the State President the appointment of members of the Commission in terms of subsection (1) or the filling of a vacancy in terms of section 8(2) of this Act, so as to enable the State President to appoint the members of the Commission or to fill such vacancy by notice in the Government Gazette within thirty days of the publication of the notice referred to in subsection (2).

#### **5. Persons Qualified to be Members of the Commission**

- (1) The chairperson and vice-chairperson of the Commission shall be:
  - (a) A judge or former judge of the Supreme Court of the Republic; or
  - (b) An advocate or attorney who has been admitted to practice as such for a period of not less than ten years.
- (2) A third member of the Commission shall be a person who in the opinion of the Transitional Executive Council/Multi-Party Forum is fit for appointment on account of such person's tenure of any judicial office, or on account of such person's experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institution in the Republic.
- (3) One of the members of the Commission, other than the chairperson or vice-chairperson, may be a person seconded from an international organisation.
- (4) At least three of the members of the Commission shall have experience in the field of media, whether it be broadcasting and/or the print media.



(5) All members of the Commission shall be:

- (a) Subject to the provisions of subsection (3), citizens of and permanently resident in the Republic;
- (b) Persons who, in the opinion of the Transitional Executive Council/Multi-Party Forum, are of high standing and merit and are fit for appointment on account of the fact that by reason of such persons' experience or any other qualifications which they have, they will promote the effective exercise or performance of the objects, powers and functions of the Commission;
- (c) Persons who are committed to openness and accountability in public life, the right to equality of opportunity and of access, peace, democracy, freedom of expression, a free and unrestricted flow of information and high ethical and moral standards; and
- (d) Persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic.

**6. Persons Disqualified from being Members of Independent Media Commission**

No person shall be appointed as a member of the Commission if that person:

- (a) Is a member of the present parliament or of the Transitional Executive Council/Multi-Party Forum or of a regional government body or a local government body, the latter being defined in section 1 of the Interim Measures for Local Government Act, No. 1991 (Act No. 128 of 1991) or referred to in section 15(a) of that Act;
- (b) Is a person referred to in section 7 of the Public Service Act, 1984 (Act No. 111 of 1984);
- (c) Holds office in any political party, organisation or movement or has a high political profile of a partisan nature, except insofar as such person declares such political office and agrees to remove himself/herself from such office in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (d) Is a political party representative;
- (e) Holds any other office which may give rise to a conflict of interest which is likely to prejudicially affect the discharge by such person of his/her functions as a member of the Commission;



- (f) Has a financial or any other interest in the media, including the print media and broadcasting, or any telecommunications-related enterprise or matter, which is likely to prejudicially affect the discharge by such person of his/her functions as a member of the Commission, except insofar as such person declares such financial or other interest and agrees to divest himself/herself of such interest in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (g) Is an un-rehabilitated insolvent;
- (h) Is of unsound mind; or
- (i) Has been convicted, whether in the Republic or elsewhere, of an offence and sentenced to a term of imprisonment without the option of a fine.

#### **7. Term of Office of Members of Commission**

- (1) Subject to the provisions of section 8 of this Act, a member of the Commission shall hold office until the completion of the elections.
- (2) The Commission established in section 2 of this Act shall dissolve and cease to exist upon the completion of the elections.

#### **8. Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy**

- (1) A member shall vacate his/her office if that member:
  - (a) Resigns in writing to the Transitional Executive Council upon the giving of not less than one month's notice;
  - (b) No longer meets the qualifications referred to in section 5 of this Act;
  - (c) Becomes subject to a disqualification referred to in section 6 of this Act;
  - (d) Has been absent from three consecutive meetings of the Commission without leave of the chairperson, unless the Commission condones his/her absence on good cause shown;
  - (e) Is unable to perform his/her duties as a member due to continued ill-health; or
  - (f) Is removed from office by virtue of a decision of the majority of the members of the Transitional Executive Council/Multi-Party Forum on the basis that he/she is incompetent to fulfil his/her duties or is guilty of misconduct.



- (2) If a member dies or vacates his/her office in terms of subsection (1), such member shall be replaced for the unexpired term of office of members of the Commission in accordance with the process for the appointment of members of the Commission as contained in section 4 of this Act.

#### **9. Remuneration of Members of Commission**

- (a) A member shall be paid from the funds of the Commission remuneration and such travelling expenses and subsistence allowances incurred in connection with the business of the Commission as may be determined by the State President from time to time, after consultation with the Transitional Executive Council/Multi-Party Forum.
- (b) The remuneration and allowances referred to in paragraph (a) may differ according to the office held by a member or the functions performed by such member.

#### **10. Meetings of Commission**

- (1) The Commission shall meet at least once a calendar month at such times and places as the Commission may determine: provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) A majority of the members of the Commission as constituted at any time shall form a quorum for a meeting of the Commission.
- (3) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings of the Commission.
- (4) When both the chairperson and the vice-chairperson are absent from a meeting of the Commission, the members present at the meeting shall elect from among their number an acting chairperson who, while he/she so acts, shall have all the powers and perform all the duties and functions of the chairperson.
- (5) The decision of a majority of the members present at a meeting of the Commission shall constitute the Commission's decision and, in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his/her deliberative vote.
- (6) (a) A member who is in any way directly or indirectly interested in any matter that is considered at a meeting of the Commission shall disclose the nature of his/her interest to the meeting, and where such a disclosure is made, the disclosure shall be recorded in the minutes of the meeting, and the members shall not take part in any deliberation or decision of the Commission with respect to that matter.



- (b) Paragraph (a) shall not apply in relation to any meeting of the Commission at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (7) The Commission shall keep a record of the proceedings of its meetings.
- (8) The Commission may make rules in relation to the holding of, and procedures at, meetings of the Commission and the convening of special meetings.

#### **11. Establishment of Committees**

- (1) The Commission may establish as many committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties.
- (2) The following initial two committees of the Commission are hereby established:
  - (a) A broadcasting committee which shall monitor all broadcasting services in the Republic and enforce compliance by the broadcasting services with the guidelines on:
    - (i) Political broadcasts and political advertising as contained in Schedule I of this Act; and
    - (ii) Fairness concerning broadcasts related to the elections, as contained in Schedule I of this Act.
  - (b) A state information services and state publications committee which shall audit, monitor and review state information services and state publications in accordance with the provisions of Schedule II of this Act.
- (4) (a) A committee shall be chaired by a member of the Commission who shall be designated as such by the Commission.
  - (b) A committee shall consist of one or more additional members as may be determined and appointed by the Commission and may be members of the Commission and/or such other persons who, in the opinion of the Commission, have the necessary expert knowledge and experience to promote the effective exercise and performance of the powers, functions and duties of the committee.
- (5) Each committee of the Commission shall submit a quarterly written report to the Commission of its activities in the three months preceding such report.



- (6) The provisions of sections 5, 6, 7, 8(1), 9 and 10 of this Act shall mutatis mutandis apply to each committee of the Commission, provided that a reference to the Commission shall be interpreted as a reference to the committee concerned.
- (7) Whenever a position of a member of a committee becomes vacant before the expiration of his/her period of office, the Commission shall appoint a person to fill the vacancy for the unexpired portion of the period of office of the previous member of the committee.
- (8) The Commission may at any time dissolve or re-constitute a committee.
- (9) The Commission shall not be absolved from the performance of any power, function or duty entrusted by the Commission to any committee in terms of this section.

## **12. Constitution and Employment of Institutes**

- (1) (a) The Commission may appoint, either separately or jointly, as many institutes as it may deem necessary to assist it in the exercise and performance of its powers, functions and duties.  
(b) For the purpose of paragraph (a) an institute shall constitute one or more persons attached thereto and as determined by the Commission.  
(c) An institute shall perform the functions agreed to by it and the Commission.
- (2) An institute, after the conclusion of its functions and duties, shall submit a report to the Commission for its consideration.
- (3) The Commission, on receipt of the report referred to in sub-section (2), may refer the matter back to the institute
  - (a) For such further inquiry as may be determined by the Commission;
  - (b) To perform such further functions as the Commission may deem necessary or desirable.
- (4) A member of an institute referred to in sub-section (1) shall receive such remuneration and allowances as the Transitional Executive Council/Multi-Party Forum may determine.

## **13. Staff of Commission**

- (1) The Commission shall employ such staff as it deems necessary to assist it and the committees of the Commission in the exercise and performance of its powers, functions and duties under this Act.



- (2) The Commission may pay from the funds of the Commission to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, gratuities, pension and other employment benefits (whether contributory or not) as the Commission considers as being appropriate.
- (3) Every person employed in the exercise and performance of the powers, functions and duties of the Commission, including any person referred to in this section, shall assist in preserving secrecy in regard to any matter or information that may come to his/her knowledge in the performance of his/her duties in connection with the said powers and functions, except insofar as the publication of such matter or information shall be necessary for the purposes of this Act.

#### 14. Powers and Functions of Commission

The Commission, in order to achieve its objects as contained in section 3 of this Act, shall have the following powers and functions:

- (1) To monitor all broadcasting services in the Republic so as to ensure and enforce compliance by these broadcasting services with the guidelines on political broadcasts and political advertising as contained in Schedule I of this Act.
- (2) To monitor all broadcasting services in the Republic so as to ensure fair and equitable treatment by all political parties to these broadcasting services and so as to ensure and enforce compliance by these broadcasting services with the guidelines on fairness concerning broadcasts in relation to the elections, as contained in Schedule I of this Act.
- (3) To audit, monitor and review all state information services and state publications so as to ensure and enforce compliance with the provisions as contained in Schedule II of this Act.
- (4) To establish committees in accordance with the provisions of section 11 of this Act.
- (5) To appoint as many institutes as it may deem necessary to assist in the exercise and performance of its powers, functions and duties, in accordance with the provisions of section 12 of this Act.
- (6) To conduct whatever inquiries it may deem necessary in accordance with the provisions of section 16 of this Act.
- (7) To mediate and/or adjudicate disputes referred to it in accordance with the provisions of section 17 of this Act.

- (8) In performing the functions referred to in subsections (1), (2) and (7), be empowered to:
- (a) Require a broadcasting service to broadcast a political broadcast and/or political advertisement;
  - (b) Require a broadcasting service to broadcast a counter-version of a particular programme or facts and/or opinions expressed within a particular programme;
  - (c) Impose financial penalties on broadcasting services for non-compliance with the provisions of this Act;
  - (d) Recommend to the Authority the suspension or revocation of a broadcast licence should the licence holder consistently fail to comply with the provisions of this Act.
- (9) In the performance of its functions as set out in subsections (3) and (7), be empowered to:
- (a) Publish a counter-version of a particular statement or article or facts and/or opinions expressed within a particular statement or article;
  - (b) To suspend a state information service and/or state publication should the state information service or state publication consistently fail to comply with the provisions of this Act.
- (10) In performing the functions referred to in subsections (1), (2), (3), (6), (7), (8) and (9), be empowered to require all broadcasting services and/or state information services and/or state publications to broadcast the findings of the Commission;
- (11) To inform the Transitional Executive Council/Multi-Party Forum and/or the Independent Electoral Commission should the Commission become aware of any matter which, in its opinion, may have an adverse impact upon the creation and achievement of a climate favourable to free political participation and the holding of free and fair elections;
- (12) To perform such other functions and exercise such other powers as may be assigned to it by or under this Act or any other law.



**15. Status of Commission**

- (1) The Commission shall operate as an independent body.
- (2) The Commission shall liaise with the Transitional Executive Council/Multi-Party Forum and the Independent Electoral Commission on any matters related to the objects, powers, functions and duties of these bodies.

**16. Powers of Commission for Purposes of Inquiry**

- (1) In the performance of its functions and duties as contained in section 14(1), (2) and (3), the Commission may conduct any inquiry which it deems necessary and shall determine the nature and extent of such inquiry.
- (2) In conducting such inquiry, the Commission may:
  - (a) Through the chairperson, or any member or staff member of the Commission authorised thereto in writing by the chairperson, request from any person such particulars and information as it may deem necessary in connection with an inquiry;
  - (b) By notice in writing under the hand of the chairperson or a member or staff member of the Commission authorised thereto in writing by the chairperson, addressed and delivered by such member or a sheriff to any person, require such person, in relation to an inquiry, to appear before it at a time and place specified in such notice and produce to it all documents or things in the possession or under the control of any such person and which the Commission may deem necessary in connection with that inquiry;
  - (c) Through the chairperson, or a member of staff member of the Commission authorise thereto in writing by the chairperson, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question such person under oath or affirmation in connection with any matter which it may deem necessary in connection with that inquiry.
- (3) Any person appearing before the Commission in terms of subsection (1)(b) who is not in the public service, shall be entitled to receive as witness fees an amount equal to the amount which such person would have received as witness fees had he/she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question, and the payment of such fees shall be made from the funds of the Commission.



- (4) Any person questioned under subsection (2) shall, notwithstanding the provisions of any law or the common law to the contrary, but subject to the provisions of subsection (5) -
- (a) Be competent and compelled to answer all questions put to him/her regarding any fact or matter connected with the inquiry of the commission notwithstanding that the answer may incriminate him/her;
  - (b) Be compelled to produce to the Commission any document or thing in his/her possession or under his/her control which the Commission may deem necessary in connection with that inquiry.
- (5) The provisions of sub-section (4) shall not be interpreted as meaning that an incriminating answer referred to in subsection (4)(a) shall be admissible as evidence against the person in any proceedings in a court of law before any body or institution established by or under any law.
- (6) The chairperson or any member or staff member of the Commission may, for the purposes of an inquiry, at all reasonable times enter upon and inspect any premises and demand and seize any document on or kept on such premises.
- (7) (a) No person shall, without the written permission of the chairperson, disseminate any document submitted to the Commission by any person in connection with an inquiry or publish the contents or any portion of the contents of such document.
- (b) No person may without the written permission of the chairperson peruse any document, including any statement, which is destined to be submitted to the chairperson or intercepted while it is being taken or forwarded to the chairperson.
- (8) No person shall, except insofar as it shall be necessary in the performance of the functions of the Commission, publish or furnish to any other person any report of the Commission or a copy or part thereof or information regarding the consideration of evidence by the Commission, unless and until the Commission has released the report for publication.

**17. Referral of Disputes to Commission and the Adjudication of such Disputes**

- (1) Before exercising its powers in terms of subsections (8), (9) and (10) of section 14, the Commission or a committee of the Commission shall affording a broadcasting service an opportunity to make representations to the Commission following a complaint by a political party on a matter relating to the provisions of Schedule I of this Act.



- (2) Representations in terms of subsection (1) shall be made within twenty four (24) hours of a notification received by a broadcasting service.
- (3) Representations shall be made to the Commission either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex and telefax.
- (4) The Commission shall determine a date, time and venue for the adjudication of a complaint from a political party and shall be entitled to convene the hearing as a matter of urgency leaving sufficient time to for a representatives of the broadcasting service and the political party to travel by air to the hearing.
- (5) The broadcasting service and the political party shall be entitled to legal representation when appearing before the Commission.
- (6) The proceedings shall take the form of a round-table discussion and not a trial.
- (7) On completion of the discussion the parties shall leave and the Commission shall make its adjudication.
- (8) If the Commission finds against a broadcasting service who is present, the broadcasting service shall be given an opportunity to address the Commission in mitigation action that may be taken by the Commission in terms of subsections (8), (9) and (10) of section 14.
- (9) The chairperson of the Commission, may, if satisfied that no injustice will result, and upon conditions as he/she may impose:
  - (a) Extend any time period contemplated in these rules;
  - (b) At any stage require any allegation of fact that has been filed to be verified on oath;
  - (c) Call upon the broadcasting service to furnish such further information as the chairperson may consider necessary;
  - (d) Dispense with the usual forms and procedures and give such directions as he/she deems fit for the adjudication of the matter under this section.
- (10) The chairperson shall cause any findings, reasons for a finding and/or requirements of the Commission to be sent to the broadcasting service who shall carry out the Commission's directions and put into effect any decision which the Commission may have taken in terms of this section.
- (11) The Chairperson shall keep on record all findings and reasons for findings by the Commission: Provided that, except where the chairperson has otherwise directed, the records shall be public documents.



**18. Expenditure in connection with functions of the Commission**

- (1) The expenditure in connection with the exercise and performance of the Commission's powers, duties and functions shall be paid out of money appropriated by the Transitional Executive Council/Multi-Party Forum for such purpose.
- (2) The Commission shall report to the Transitional Executive Council/Multi-Party Forum in writing on a quarterly basis concerning the expenditure of such monies.

**19. Reporting Responsibility of Commission**

Without in any way derogating from its independence, the Commission, on a quarterly basis, shall report in writing to the Transitional Executive Council/Multi-Party Forum and the Independent Electoral Commission on its activities.

**20. Limitation of Liability in Respect of Anything Done Under this Act**

The Commission or any staff member or an institute or a person referred to in section 12(1)(b) shall not be liable in respect of anything done in good faith under any provision of this Act.

**21. Regulations**

- (1) The State President, only acting on the recommendation of the Commission, may make regulations as to:
  - (a) Any matter required or committed to be prescribed in terms of this Act; and
  - (b) Generally, all matters which in his opinion are necessary or expedient to be prescribed to achieve the objects of this Act.
- (2) Regulations under sub-section (1) affecting State expenditure shall be made only with the concurrence of the Transitional Executive Council/Multi-Party Forum.

**22. Offences and Penalties**

A person who -

- (a) Refuses or fails to comply with a notice under section 16(2)(b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 16(2)(c) or refuses to answer any question put to him/her under that section, or gives to such question an answer which to his/her knowledge is false, or refuses or fails to furnish particulars or information required from him/her under that section;



- (b) Insults, disparages or belittles the Commission, or anticipates the proceedings at an inquiry or the findings of the in a manner calculated to influence such proceedings or findings;
- (c) Wilfully hinders or obstructs the Commission or a member of its staff in the exercise of its or his/her powers or the performance of its or his/her duties or functions;
- (d) Wilfully interrupts the proceedings at an inquiry of the Commission or misbehaves himself/herself in any other manner in the place where such inquiry is held;
- (e) In connection with any inquiry of the Commission does anything which, if such inquiry were proceedings in a court of law, would have constituted contempt of court;
- (f) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an inquiry;
- (g) Contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding one year to both such fine and such imprisonment.

### **23. Short Title and Commencement**

This Act shall be called the Independent Media Commission Act, 1993 and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

[7]  
[F]

**F. INDEPENDENT MEDIA COMMISSION  
AND INDEPENDENT  
TELECOMMUNICATIONS AUTHORITY**

**VOLUME THREE A**



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**SCHEDULE I: BROADCASTERS' ELECTORAL CODE OF CONDUCT**

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*Compliance with guidelines on political broadcasts and political advertising on sound broadcasting services and the fairness guidelines by all broadcasting services will be monitored and enforced by the Commission's broadcasting committee.*

**A. Political Broadcasts on Sound Broadcasting Services**

1. Subject to the provisions of this section, a sound broadcasting service, shall in each election period with regard to an election in respect of which its audience have the right to vote, permit political parties participating in the election, to make political broadcasts free of charge: Provided that no political broadcasts shall be made on television broadcasting services.

2. The Commission shall determine the time to be made available to the political parties for purposes of section 1.

3. The time made available in terms of section 2 shall be divided equally between the political parties participating in the election.

4. In making time available for political parties, no sound broadcasting service shall discriminate in practices, facilities or services for or in connection with the service rendered pursuant to this section, or make or give any preference to any political party or subject such political party to any prejudice or disadvantage; nor shall any sound broadcasting service make any contract or other agreement which shall have the effect of permitting any political party to broadcast to the exclusion of other political parties.

5. The Commission shall prior to making a determination in terms of paragraph 2 of this Schedule consult with the relevant sound broadcasting service and political parties concerning the determination.

6. The Commission may impose conditions requiring the sound broadcasting service to observe such rules with respect to political broadcasts as the Commission may determine in a programme standard, having regard to the fundamental underlying principle that all political parties must be treated fairly and impartially by the license holder.

7. The Commission shall determine the length and frequency of the broadcasts referred to in paragraph 1 of this Schedule unless the political parties prior to such determination come to terms with the broadcasters themselves.



8. Any sound broadcasting service who fails to grant access to a political party, shall be liable to a financial penalty as may be prescribed by the Commission.

9. The Commission may recommend the revocation of a broadcasting licence should the holder of that licence wilfully and repeatedly fail to allow reasonable access to a political party.

10. Should a dispute arise between a political party and a sound broadcasting service in respect of the provisions of Part A of this Schedule, then section 17 of the Act shall apply.

#### **B. Political Advertising on Sound Broadcasting Services**

1. A broadcasting service shall comply with the following requirements in respect of political advertisements:

(a) a licensed television broadcasting service shall not include -

(i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(ii) any advertisement which is directed towards a political end, or

(iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);

(b) a licensed sound broadcasting service shall not include -

(i) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);

(c) a licensed sound broadcasting service may include -

(i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(ii) any advertisement which is directed towards a political end, or

Provided that a licensed sound broadcasting service shall have no power of censorship over such advertisements.

(d) No licensed sound broadcasting service is required to permit the use of its facilities for advertisements mentioned in paragraph (c)(i) and (ii), but if any licensed sound broadcasting service shall permit any political party to use its facilities for such advertisements, it shall afford other political parties the opportunity to use its facilities for advertisements contemplated in paragraph (c)(i) and (ii)



2. Should a dispute arise between a political party and a broadcasting service with respect to the provisions of Part B of this Schedule, section 17 of the Act shall apply.

**C. Fairness Guidelines for all Broadcasting Services**

*Compliance with the Fairness Guidelines shall be monitored and enforced by the Commission's broadcasting Committee. The aim of the Fairness Guidelines is to ensure fairness by broadcasting services in their coverage of the national and regional elections and political parties and issues related thereto.*

1. All broadcasting services shall afford reasonable opportunity for the discussion of conflicting views in their coverage of the national elections and political parties.

2. A broadcasting service shall be obliged to broadcast a counter-version presented by any political party affected by an assertion of fact in a programme transmitted in the event that such assertion is false.

3. A broadcasting service shall not be obliged to transmit a counter-version referred to in paragraph 1 if -

(a) the political party has no direct interest in the transmission of the counter-version; or

(b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.

4. The counter-version contemplated in paragraph 1 shall -

(a) be limited to a factual account;

(b) not contain any material which may reasonably be anticipated to expose the broadcasting service to legal action if such material were to be broadcast;

(c) be made in writing;

(d) specify the programme and the assertions to which objection is raised; and

(e) be signed by the general secretary of a political party.

5. The political party affected shall not be entitled to insist on the transmission of a counter-version as contemplated in paragraph 1 if the counter-version is presented to the broadcasting service after the expiry of a period of thirty days from the date of broadcast of the false assertion of fact.

6. The broadcasting service shall, subject to the provisions of paragraph 3(a) and (b) and 5 -

(a) at the first opportunity, but not later than five days from receipt of a counter-version referred to in paragraph 1, broadcast the counter-version within the same programme or programme section as the one in which the false asertion was made and at the same time of day or, should that not be possible, at a time equal in value to that of the programme objected to;

(b) broadcast the counter-version without any omissions and interruptions; and

(c) broadcast the counter-version free of charge except in the event that the counter-version concerns assertions made in a commercial broadcast.

7. A broadcasting service shall immediately upon receipt of a counter-version referred to in paragraph 1, inform the Commission thereof, and shall keep and store the programme objected to and the counter-version until notice to the contrary by the Commission.

8. Should the broadcasting service and political party not reach agreement on the counter-version, the complainant shall inform the Commission which shall apply the adjudication procedcure as set out in section 17 of this Act.

**SCHEDULE II: CODE OF CONDUCT FOR STATE INFORMATION SERVICES AND STATE-FINANCED PUBLICATIONS**

TO BE COMPLETED.



## INDEPENDENT BROADCASTING COMMISSION BILL

To provide for the regulation and promotion of broadcasting and to provide for matters connected therewith.

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BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

### Arrangement of Act

<u>Chapter or Schedule</u>	<u>Subject</u>	<u>Sections</u>
Chapter 1	<b>INTERPRETATION</b> Definitions	1
Chapter 2	<b>APPLICATION OF ACT AND POLICY</b> Application of Act Policy	2 3
Chapter 3	<b>INDEPENDENT BROADCASTING COMMISSION</b> Establishment Constitution Terms of office of members of Commission Persons disqualified from being members of the Commission Vacating of office by member of the Commission Filling of casual vacancy in the Commission Functions, powers and duties of the Commission Meetings of the Commission	4 5 6 7 8 9 10 11

Chapter 4	<b>STANDING COMMITTEES</b>	
	Establishing of Standing Committees	12
	Constitution of Standing Committees	13
	Powers, functions and duties of Standing Committees	14
Chapter 5	<b>MANAGEMENT</b>	
	Staff of Commission	15
	Remuneration, allowances, and pensions	16
	Funds of Commission	17
	Accountability	18
	Rules by Commission	19
	Inquiries by Commission	20
	Annual report	21
	Limitation of liability	22
	Restriction of use of name of Commission	23
	Liquidation	24
	Delegations	25
Chapter 6	<b>PROHIBITED ACTS</b>	
	General prohibition	26
	Transmissions and apparatus	27
	Prohibition on the provision of a broadcasting or television programme service without a licence	28
	Prohibition regarding possession or use of TV sets	29
Chapter 7	<b>RADIO STATIONS AND TRANSMISSIONS</b>	
	Objectives	30
	Spectrum management committee	31
	Spectrum plan and frequency band plans	32
	Issuing of licences and certificates	33
	Permit for possession of radio apparatus	34



## Chapter 8

## Part I

**BROADCASTING**

Objectives	35
Frequency allotment plans	36
Granting and renewal of broadcasting licences	37
Criteria	38
Access to broadcasting programmes by political parties	39
General code for programmes	40
Control of advertisements	41
Specific licence conditions	42
Licencees of broadcasting services to undertake own technical planning	43

## Part II

**MONITORING OF BROADCASTING PROGRAMMES**

Broadcasting Monitoring Committee	44
Monitoring and evaluation of programmes	45
Exemptions	46

## Chapter 9

**GENERAL PROVISIONS REGARDING LICENCES,  
LICENCE CONDITIONS AND PROCEDURES**

Term of licence	47
Transfer of licence	48
General licencing conditions	49
Revoking of licence	50
Amendment of licence conditions	51
Licences granted in terms of repealed legislation	52
Register of licences	53
Complaints and disputes	54
Directions concerning accounts and records	55
Suspension of licences, certificates and permits	56

Chapter 10	<b>ENFORCEMENT</b>	
	Production of licences, certificates, permits for inspection	57
	Commission may inspect licensee's books and records	58
	Powers of authorised persons	59
	Powers in case of a breach of licence conditions	60
	Offences and penalties	61

Chapter 11	<b>REGULATIONS, JURISDICTION OF COURT OF LAW, AMENDMENT AND REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT</b>	
	Regulations	62
	Regulations made in terms of repealed laws	63
	Jurisdiction of court of law	64
	Amendment of laws and savings	65
	Short title and commencement	66

#### SCHEDULES

Schedule 1	Procedure for appointing the members of the Commission
Schedule 2	Pension rights of officers and employees
Schedule 3	Code of conduct for South African Broadcasters
Schedule 4	Amendment of laws



## CHAPTER 1

## INTERPRETATION

## Definitions

1. In this Act, unless the context otherwise indicates -

**"apparatus"** means any apparatus or equipment that is used or intended to be used in connection with broadcasting;

**"broadcasting monitoring committee"** means the committee referred to in section 12(a);

**"broadcasting service"** means a telecommunications service of transmissions consisting of sounds, images, signs, data or signals which take place by means of a radio and are intended for reception by the general public or a section of the public or any category or group of persons;

**"chief executive officer"** means the officer referred to in section 15;

**"commission"** means the Independent Broadcasting Commission referred to in section 4;

**"election period"** means the period commencing on the date on which an election is proclaimed up to the polling date of that election;

**"Minister"** means the Minister responsible for the administration of this Act;

**"prescribe"** means prescribe by regulations;

**"radio"** means electromagnetic waves of frequencies lower than 3 000 GHz propagated in space;

**"radio apparatus"** means any radio receiving or transmitting apparatus which is capable of receiving or transmitting by radio any sound, image, sign or signal, except a sound radio set if it is only used for the reception of what is broadcast in a broadcasting service, and includes an earth station.

**"radio dealer"** means the holder of a radio dealers registration certificate issued under section 33(1)(b);

**"Republic"** means the Republic of South Africa;

**"sound radio set"** means a device capable of receiving by radio the transmission broadcast in a broadcasting service and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals;

**"spectrum management committee"** means the Standing Committee referred to in section 12(b);

**"standing committee"** means any Standing Committee referred to in section 12;

**"television licence"** means a licence issued in terms of this Act for the use of a television set to receive anything broadcast in a broadcasting service;

**"television set"** means a device which is capable of receiving, by radio, transmissions broadcast in a broadcasting service, and reproducing them in the form of images or other visible signals, with or without accompanying sounds; and

**"this Act"** includes the regulations.



## CHAPTER 2

## APPLICATION OF ACT AND POLICY

**Application of Act**

2. This Act is applicable to all broadcasting services in the Republic.

**Policy**

3.(1) The object of this Act is to regulate and promote broadcasting in the Republic, in the public interest.

(2) In achieving this object the instances entrusted with the management of this Act, shall as far as possible in their respective fields endeavour to -

- (a) promote the provision of a wide range and diversity of broadcasting services, including public broadcasting programme services, throughout the Republic to all cultural and language groups on a national and regional level, that will provide in a balanced equitable and expert manner recreation, education and information;
- (b) ensure the impartiality of the electronic media regarding political issues and fair treatment of political parties;
- (c) promote the best possible use of the electro-magnetic frequency spectrum;
- (d) strive to limit interference in commercial activity to a minimum;

## CHAPTER 3

## INDEPENDENT BROADCASTING COMMISSION

## Establishment of the Independent Broadcasting Commission

4. There is hereby established a juristic person to be known as the Broadcasting Commission.

## Constitution of the Commission

5.(1) The Commission shall, subject to the provisions of section 14(2), consist of -

- (a) a chairman; and
- (b) ten other members,

appointed by the State President in the manner contemplated in Schedule 1.

(2) The members of the Commission shall be persons who are not subject to any disqualification referred to in section 7 and who, on account of their expertise, experience, impartiality and general acceptability, are suited to serve on the Commission.

(3) If the chairman is for one or other reason not available to perform his duties, a member of the Commission will serve as acting chairman at every meeting on a rotational basis in alphabetical order according to their surnames.



### Terms of office of a member of the Commission

6.(1) Subject to the provisions of subsection (2) a member of the Commission shall hold office for a period of 5 years, from the date of his appointment but shall be eligible for re-appointment.

(2) The membership of a person appointed before the first general election held after the date on which this Act has come into operation shall be subject to review by Parliament upon the recommendation of the State President and may be terminated for any of the reasons referred to in section 8(c).

### Persons disqualified from being members of the Commission

7. No person shall be appointed as a member of the Commission -
- (a) unless he is a citizen of, and permanently resident in the Republic;
  - (b) if he is an officer or employee in the Public Service;
  - (c) if he is a member of Parliament or any other legislative authority, including any regional or local government body;
  - (d) if he is holding an office in any political party;
  - (e) if he has a financial or other material interest in an industry which is related to telecommunications;
  - (f) if he holds an office in, or is in the employment of a body or organisation having a financial or other vested interest in an industry referred to in paragraph (e);
  - (g) if he is an unrehabilitated insolvent;

- (h) if he is of unsound mind;
- (i) if he has at any time been convicted, whether in the Republic or elsewhere, of any offence for which he has been sentenced to imprisonment without the option of a fine.

#### **Vacating of office by member of Commission**

8. A member of the Commission shall vacate his office
- (a) if he becomes subject to a disqualification referred to in section 7;
  - (b) if he tenders his resignation in writing to the State President; or
  - (c) if, upon the recommendation of the State President, Parliament declares that he be removed from office on the ground of misconduct or inability to perform efficiently the duties of his office.

#### **Filling of casual vacancy in the Commission**

9. A casual vacancy in the membership of the Commission shall be filled by the appointment of a member for the unexpired period of the term of office of the member in whose stead he is appointed, by the State President on the recommendation of the Commission.

#### **Functions, powers and duties of the Commission**

10. The Commission shall ensure that the policy, as set out in section 3 of this Act be complied with, and may for that purpose, and with the means at its disposal -



- (a) enter into agreements with any person or, with the approval of the Minister, with any government or administration, upon such conditions as the Commission and that person, government or administration may agree;
- (b) hire, purchase, possess or otherwise acquire movable and immovable property and encumber such property;
- (c) let, sell or otherwise dispose of movable or immovable property;
- (d) acquire or alienate rights in incorporeal things or otherwise dispose thereof;
- (e) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (f) borrow, lend or invest money with the written approval of the Minister, granted with the concurrence of the Minister of State Expenditure;
- (g) make donations;
- (h) exercise or perform any other power, function or duty conferred upon, assigned to or imposed upon the Commission by or under this Act or any other law; and
- (i) in general do anything which is not inconsistent with the provisions of this Act and which is necessary or expedient to perform its functions and duties.

### Meetings of the Commission

11.(1) The meetings of the Commission shall be held at such times and places as the Commission may determine: Provided that the first meeting shall be held at such time and place as the chairman may determine.

(2) The chairman, or in his absence the acting chairman, may at any time in his discretion convene a special meeting of the Commission, which shall be held at such time and place as the chairman or the acting chairman, as the case may be, may direct.

(3) The quorum for a meeting of the Commission shall be the majority of its members.

(4) A decision of the Commission shall be taken by resolution of the majority of the members present at any meeting of the Commission, and, in the event of an equality of votes on any matter, the person presiding at that meeting shall have a casting vote in addition to his deliberative vote as a member of the Commission.

(5) No decision taken by the Commission or act performed under the authority of the Commission shall be invalid merely by reason of a casual vacancy on the Commission or of the fact that any person not entitled to sit as a member of the Commission sat as such a member at the time when the decision was taken or the act was authorised, if that decision was taken, or that act was authorised by the majority of the members of the Commission who were present at the time and entitled to sit as members.



## CHAPTER 4

## STANDING COMMITTEES

**Establishing of Standing Committees**

12. The following standing committees of the Commission are hereby established -

- (a) the spectrum management committee;
- (b) the broadcasting monitoring committee.

**Constitution of Standing Committees**

13.(1) Each standing committee shall consist of -

- (a) a chairman; and
- (b) such number of members not exceeding 4 but at least 2 as the Commission may determine from time to time,

appointed by the State President on the recommendation of the Commission.

(2) The members of the standing committees shall be persons who are not subject to any disqualification referred to in section 7 and who, on account of their expertise, experience, impartiality and general acceptability, are suited to serve on a committee.

### Powers, functions and duties of Standing Committees

14.(1) A standing committee shall, with due regard to the policy directives as set out in section 3 of this Act, exercise and perform such powers, functions and duties as may be -

- (a) conferred upon, assigned to or imposed upon the committee by or under this Act;
- (b) delegated to the committee by the Commission.

(2) The chairman of a standing committee shall be an *ex officio* member of the Commission.

## CHAPTER 5

### MANAGEMENT

#### Staff of the Commission

15.(1) The Commission shall in the performance of its functions be assisted by -

- (a) a chief executive officer appointed by the Commission and who shall be responsible for the management of the affairs of the Commission;
- (b) personnel appointed by the chief executive officer.

(2) The chief executive officer shall perform his functions subject to the directions of the Commission, and shall report on the affairs of the Commission as may be required of him by the Commission.



### Remuneration, allowances and pensions

16.(1) A member of the Commission and a member of any committee of the Commission shall be paid such remuneration and allowances out of the funds of the Commission as the Minister, after consultation with the Minister of State Expenditure may determine.

(2) The Commission may, with the concurrence of the Minister, pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the Commission may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market for the manpower concerned.

(3) The pension rights of officers and employees shall be in accordance with the provisions as set out in Schedule 2 of the Act.

### Funds of Commission

17.(1) The funds of the Commission which shall consist of -

- (a) moneys levied in respect of services rendered by the Commission in the performance of its functions under this or any other Act, or levies imposed by the Commission under a power conferred upon by this or any other Act;
- (b) money borrowed by the Commission in terms of section 8(1)(f); and
- (c) money received from any other source.

(2) (a) The Commission may accept money and other goods donated or bequeathed to the Commission, provided that no condition is attached to such donation or bequest.

(b) Details of any such donation or bequest shall be specified in the annual report concerned of the Commission.

(3) The Commission shall utilise its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.

(4) The Commission shall open an account with a bank registered under the Bank Act, 1990 (Act No. 94 of 1990), and shall deposit in that account all money referred to in subsection (1).

(5) The Commission may invest money deposited in terms of subsection (4) which is not required for immediate use, in any manner it deems fit.

(6) Any money standing to the credit of the Commission in the account referred to in subsection (4) at the close of any financial year of the Commission, as well as money which has been invested in terms of subsection (5), shall be paid into the Post Office Fund.

### **Accountability**

18.(1) The chief executive officer shall be the accounting officer of the Commission charged with accounting for all money received and payments made by the Commission.

(2) The financial year of the Commission shall end on 31 March in each year.

(3) The accounting officer shall -

(a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of the Commission; and



(b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (2), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the Commission during, and its assets and liabilities at the end of, the financial year concerned.

(4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor-General.

#### Rules by Commission

19.(1) The Commission may make rules which are not inconsistent with the provisions of this Act, regarding -

- (a) the manner in which the meetings of the Commission shall be convened;
- (b) the manner in which the meetings of any committee of the Commission shall be convened, the procedure at, the functions of and the quorums for such meetings and the manner in which minutes of such meetings shall be kept;
- (c) the good management of the affairs of the Commission and the effective performance of its functions;
- (d) in general, any matter which the Commission may deem necessary or expedient to prescribe or to regulate in respect of the performance of its functions and duties.

(2) The Commission may make any such rules known in such manner as it may deem fit.

### Inquiries by Commission

20.(1) The Commission shall -

- (a) before it considers an application for a licence, permit, certificate or authorisation, or the suspension, cancellation, withdrawal or amendment of such licence, permit, certificate or authorisation, whether under this Act or any other law, by notice in the Gazette, make known the place where and the time at which it will consider such application, suspension, withdrawal or amendment;
- (b) give any interested party in the matter and who is present at the proceedings referred to in paragraph (a) the opportunity to be heard; and
- (c) give reasons for its decision with regard to any matter referred to in paragraph (a).

(2) The Commission shall record the proceedings referred to in subsection (1)(a) in the prescribed manner.

(3) The proceedings referred to in subsection (1)(a) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.

(4) A member of the Commission shall not participate in proceedings referred to in subsection (1)(a) if he has a financial interest in those proceedings.

(5) The provisions of this section shall *mutatis mutandis* apply when any committee of the Commission or any person acting under delegated powers of the Commission considers a matter referred to in subsection (1)(a).



## Annual report

21.(1) The Commission shall within three months after the end of each financial year hand to the Minister an annual report on the Commission's affairs and functions in respect of that financial year, which shall, inter alia, include -

- (a) an audited balance sheet, including any notes thereon or a document annexed thereto providing information required by this Act;
- (b) an audited income statement, including any similar financial statement, where such form is appropriate, and including any notes thereon or a document annexed thereto providing the information required by this Act;
- (c) an audited statement of the source and application of funds;
- (d) information regarding licences granted, suspended, cancelled or revoked; and
- (e) such information as may be prescribed by regulation.

(2) The financial statements referred to in subsection (1)(a), (b) and (c) shall -

- (a) be in conformity with generally accepted accounting practices;
- (b) fairly reflect the state of affairs and functions of the Commission and the results thereof; and
- (c) refer to any relevant matters not specifically prescribed by this Act which affect or is likely to affect the affairs of the Commission.

(3) A report referred to in subsection (1) shall be printed in both official languages.

(4) As soon as practicable after a report has been handed to the Minister in terms of subsection (1), he shall Table it in Parliament.

#### **Limitation of liability**

22. The Commission, a member of the Commission or any committee or any officer or employee in the employment of the Commission shall not be liable in respect of anything done in good faith in terms of this Act in the exercise of his or its powers or the performance of his or its functions.

#### **Restriction on use of name or description implying connection with Commission**

23.(1) No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between such company, body, firm, business or undertaking and the Commission.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding one year.

#### **Liquidation**

24.(1) The Commission shall not be placed in liquidation except by Act of Parliament.

(2) In the event of the liquidation of the Commission, the surplus assets of the Commission (if any) shall accrue to the State.



## Delegations

- 25.(1) The Commission may -
- (a) in writing delegate to a standing committee any power conferred upon the Commission by or under this Act; or
  - (b) in writing authorise a standing committee to perform any duty assigned to the Commission by or under this Act.

(2) Any delegation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Commission and may at any time, be withdrawn by the Commission.

(3) The Commission shall not be divested of any power delegated under subsection (1) and may alter or repeal any decision made in terms of such delegated power.

## CHAPTER 6

### PROHIBITED ACTS

#### General Prohibition

26. No person shall do anything for which a licence is required under this Act, unless it is done under and in accordance with a licence issued to that person by the Commission.

#### Transmissions and apparatus

27.(1) No person shall -

- (a) use or operate any apparatus for the transmission of telecommunications by radio, unless it is operated under and in accordance with a licence issued to that person by the Commission in terms of section 33;
  - (b)
    - (i) subject to the provisions of subparagraph (ii), receive by radio any telecommunications, unless it is done under and in accordance with a licence issued by the Commission in terms of section 33; and
    - (ii) the provisions of subparagraph (i) shall not apply to a sound radio set.
- (2) (a) No person shall have in his possession any radio apparatus unless he is entitled to possess it by virtue of -
- (i) a permit issued under section 34 in respect of such radio apparatus; or
  - (ii) a licence issued in terms of section 33 (1)(a); or
  - (iii) a radio dealer's registration certificate referred to in section 33(1)(b).
- (b) The provisions of paragraph (a) shall not apply to a sound radio set or a television set.
- (3) No person shall sell, give or in any manner whatever supply any radio transmitting set to any person, unless he is -
- (a) entitled thereto in terms of a radio dealer's registration certificate referred to in section 33(1)(b); or



- (b) in possession of a permit issued by the Commission in terms of section 34.

(4) No radio dealer shall sell, hire out, give or in any manner supply any radio apparatus to any person, or effect any repairs to any radio apparatus other than a television set, for any person, unless that person in terms of section 34, is entitled to have that radio apparatus in his possession.

(5) Every radio dealer shall, in respect of any radio apparatus which belongs to a category prescribed by regulation and which has been sold, hired out, given or in any manner supplied by him to, or repaired by him for, any person -

- (a) complete or make and retain such registers or other records as may be prescribed by regulation; and
- (b) make and send to the Commission such copies of or extracts from those registers or records, at such times and in such manner as may be so prescribed.

(6) No radio dealer shall -

- (a) buy, sell, hire out, exchange, give or in any manner supply;
- (b) offer or display for sale, lease or exchange;
- (c) repair; or
- (d) have in his possession,

any radio apparatus which belongs to a category prescribed by regulation.

### Prohibition of the provision of a broadcasting or television programme service without a licence

28.(1) No person shall provide a sound or television broadcasting service unless such service is provided under and in accordance with a licence issued to that person by the Commission.

(2) Without derogating from the generality of subsection (1) the provisions of subsection (1) apply in respect of a service transmitted by radio and cable.

### Prohibitions regarding possession or use of TV sets

29.(1) No person shall be in possession of, or use any television set unless he -

- (i) is entitled to possess or use it by virtue of the provisions of a television licence issued in terms of section 16 of the South African Broadcasting Corporation Act, 1976;
- (ii) is entitled to do so by virtue of an exemption in terms of the regulations made under the South African Broadcasting Corporation Act, 1976;
- (iii) is a person to whom a television set has been hired out or has otherwise been made available by a radio dealer under a television licence issued to that radio dealer in terms of the South African Broadcasting Corporation Act, 1976.

(2) No person shall use any television set for the reception of anything broadcast in a broadcasting service by the holder of a broadcasting licence for the provision of a pay television broadcasting service issued in terms of this Act, unless such person is entitled to do so by virtue of an authority granted to him by the holder of such broadcasting licence.



(3) The provisions of subsection (1) shall not apply to a person who manufactures television sets as a business, or who acts in the execution of his duties in the service of such a person, in so far as he uses any television set manufactured by him, in or on the premises where it was manufactured, or on any other premises approved by the South African Broadcasting Corporation, and for the purposes of testing such set, for the reception of anything broadcast by the South African Broadcasting Corporation.

(4) If, in any prosecution for a contravention of any provision of subsection (1), it is proved that the accused had a television set in his possession at any time, or that he was the occupier of any premises in or on which a television set was found at any time, he shall be presumed, unless the contrary is proved, to have used such television set, while it was in his possession or in or on those premises.

(5) In the application of this Act and for the purposes of the South African Broadcasting Corporation Act, 1976, the transmission of programmes by means of cables, wires or by space station shall be deemed to be a broadcasting service, and "broadcast" shall be construed accordingly, and any device which is used to receive such transmissions and which is capable of reproducing them in the form of images and other visible signs, with or without accompanying sounds, shall be deemed to be a television set.

(6) Notwithstanding the preceding provisions of this section, no person who uses a television set for the reception of anything, whether or not it is broadcast in a broadcasting service, shall utilise a parabolical antenna which is larger than 2 meter in diameter for such reception, unless he is in possession of a licence issued in terms of section 33 for the use of that station.

## CHAPTER 7

## RADIO STATIONS AND TRANSMISSIONS

## Objectives

30. In addition to the policy directives contained in section 3, the Commission shall as far as possible when exercising its powers, functions and duties under this chapter, endeavour -

- (a) to ensure that the radio frequency spectrum is planned in such a way as to ensure the economic and efficient use thereof;
- (b) to fairly and reasonably cater for the needs of -
  - (i) the defence force, the police and other security services;
  - (ii) medical and other emergency services;
  - (iii) aviation and maritime services;
  - (iv) the business community;
  - (v) community and social services;
  - (vi) individual users; and
  - (vii) broadcasters;
- (c) to endeavour to minimize interference;
- (d) to assist a licence holder in protecting his uninterfered use of the frequencies allocated to him.



## Spectrum Management Committee

31. The Spectrum Management Committee shall with the view of attaining the objectives as set out in section 30, and for the better carrying out of the Commission's powers, functions and duties under this chapter, advise the Commission with regard to the preparing of a spectrum and frequency band plan.

### Spectrum plan and frequency band plans

32.(1) The Commission shall prepare a spectrum plan in writing.

(2) Such plan shall -

- (a) divide the spectrum into such number of frequency bands as it may deem fit, having due regard to the way in which such plans are prepared world wide and the views of experts in the field;
- (b) designate a band to be used primarily for defence purposes, having due regard to the needs of the defence force; and
- (c) specify the purpose for which each band may be used having due regard to the trends world wide and the views of experts.

(3) The Commission shall prepare for each frequency band a plan not inconsistent with the spectrum plan.

(4) The frequency band plan shall specify the purpose for which each part of the band may be used.

(5) Before preparing a spectrum and frequency band plan, the Commission shall -

- (a) by notice in the *Gazette* publish for comment the plans it proposes;

- (b) duly consider all comments before finally preparing the spectrum and frequency band plans.

#### Issue of licences and certificates

33.(1) Subject to the provisions of the South African Broadcasting Corporation Act, 1976, and the provisions of this Act, the Commission may, on such conditions and for such purposes as it may in any case specially prescribe -

- (a) issue to any person or organisation approved by it a licence conferring on such person the right to use, or cause any person in its employ or under its control to use a station, or to establish and operate stations and transmitters on behalf of authorized parties;
- (b) issue to any person a radio dealer's registration certificate conferring on such person the right to follow a trade or carry on business in a shop, store or any other place whereby radio apparatus is bought, sold, leased or exchanged, or is offered or displayed for sale, lease or exchange or is repaired;
- (c) issue a certificate of proficiency to any person who passes the examination referred to in subsection (5), or who qualifies therefor under the regulations, to use a station for any purpose prescribed in terms of paragraph (a) or to maintain a station in a category which may in terms of the regulations only be maintained by the holder of such certificate;
- (d) issue to any person approved by it or who is the holder of a certificate referred to in paragraph (c) an authority conferring on such person the right to use any station which under the conditions of any licence issued under this Act or under the provisions of the regulations, may only be used by the holder of such an authority.



(2) The Commission shall not issue a licence in terms of subsection (1) without the advice of the Spectrum Management Committee given in general terms or with reference to a particular instance.

(3) The conditions prescribed in subsection (1) in respect of a licence shall inter alia relate to -

- (a) the frequencies that may be used in the operation of a station, the radiation limitations in respect of a station and the technical servicing and inspection of a station;
- (b) the prevention of electric and other disturbances of radio reception or of transmissions over any telecommunications line;
- (c) the persons by whom or under whose supervision a station may be used or maintained.

(4) Every licence issued under this section is subject to the condition that the holder thereof shall observe the provisions of any international telecommunications convention to which the Republic is a party, and of the regulations framed in terms thereof.

(5) The Commission may conduct examinations, or cause examinations to be conducted, to determine the proficiency of any person to use a station for any purpose prescribed in terms of paragraph (a) of subsection (1) or to maintain such station.

### Permit for possession of radio apparatus

34. The Commission may, on request, grant to any person a permit for a limited or an indefinite period for the possession by such person of any radio apparatus on condition that such apparatus is not during such period used for the purpose of transmission or reception, and, may in its discretion, seal that apparatus in order to prevent the use thereof for the purpose of transmission or reception.

## CHAPTER 8

### PART I

### BROADCASTING

#### Objectives

35. In addition to the policy directives contained in section 3 the Commission shall in exercising its powers, functions and duties under this chapter, as far as possible endeavour -

- (a) to ensure the efficient use of the broadcasting frequency spectrum;
- (b) to promote the availability of a diverse range of sound and television broadcasting services offering entertainment, education and information catering in a balanced way in the public broadcasting service for -
  - (i) the need to protect and develop a national identity, culture and character;
  - (ii) the needs of each cultural and language group to preserve and develop its language and culture;



- (iii) the needs of each regional and local community to develop a regional and local identity, culture and character;
- (iv) the need for regular -
  - news services;
  - actuality programmes on matters of public interest;
  - programmes on political issues of public interest;
  - programmes on matters of international, national, regional and local significance;
- (c) to promote a diversity of holders of sound and television broadcasting licences in terms of services and audiences catered for;
- (d) to encourage the development of a broadcasting industry in South Africa that is efficient, competitive and responsive to consumer needs, and to enable South African broadcasters to compete internationally;
- (e) to ensure that providers of broadcasting services shall respect prevailing community attitudes of taste and decency;
- (f) to ensure that the broadcasting licensee shall have adequate expertise, experience and financial resources available to render the relevant service;

- (g) to, with due regard to economic considerations, prevent any person or group of persons, to have control of or a substantial financial interest in more than one competing broadcasting licence within the geographical area of service;
- (h) to prevent a person or group of persons to have control of or a substantial interest in an undue number of the communications media within the geographical area of the service;
- (i) to promote the rendering of sound broadcasting services and television broadcasting services on a regional and local basis;
- (j) to ensure that a licensee shall comply with the technical broadcasting standards concerned;
- (k) to avoid that the conditions of a broadcasting licence other than a public broadcasting licence shall unjustly benefit one holder of a broadcasting licence above another;
- (l) to promote the stability of the broadcasting industry.

#### **Frequency allotment plans**

36.(1) The Commission shall prepare a frequency allotment plan that determines the number of channels that are available to provide broadcasting services in particular areas and publish such plan in the Gazette.

(2) The Commission shall review the frequency allotment plan referred to in subsection (1) annually and publish any amendment to such plan in the Gazette.



(3) Before preparing a frequency allotment plan, the Commission shall determine tentative priorities as between particular areas and as between different parts of the broadcasting services bands and publish such determinations in the Gazette for comment.

(4) The Commission shall keep a record of and make available for public inspection all comment received and all assumptions made by the Commission in performing its functions in terms of this section.

#### Granting and renewal of broadcasting licences

37.(1) Subject to the provisions of this Act, the Commission may on such conditions as it may in any case determine, issue to a person referred to in subsection (2) a broadcasting licence to provide within a specified geographical area -

- (a) a sound broadcasting service in one or more of the following categories of services:
  - (i) a public sound broadcasting service;
  - (ii) a private sound broadcasting service;
  - (iii) any other category of broadcasting service the Commission may wish to identify;
  
- (b) a television broadcasting service in one or more of the following categories of services:
  - (i) public television broadcasting service;
  - (ii) private television broadcasting service; or

- (iii) any other category television broadcasting service the Commission may wish to identify;
- (2) A sound or television broadcasting licence may only be granted to-
- (a) a South African citizen ordinarily resident in South Africa;
  - (b) a company -
    - (i) which is incorporated in the Republic; and
    - (ii) whose foreign shareholding does not exceed 40% of the issued equity shares of the Company.
- (3) (a) When the Commission intends granting a sound or television broadcasting licence, it shall give notice of this intention in the *Gazette*.
- (b) Such notice shall state -
- (i) the nature and frequency of the proposed service to be provided, as well as the geographical range and the times, if any, of the proposed broadcasting service;
  - (ii) the period within which an application has to be lodged;
  - (iii) the application fee payable on application;
  - (iv) the security, if any, required.
- (c) Every application which is made pursuant to such notice shall be made in the form prescribed by regulation, and shall be accompanied by -



- (i) the amount payable on application as aforesaid;
- (ii) the applicant's proposals in relation to the nature of the service;
- (iii) such other information as the Commission may deem necessary in order to properly consider the application.

(d) All applications to the Commission which are made other than pursuant to a notice referred to in paragraph (a), shall comply with the requirements referred to in paragraph (c), and the Commission shall determine the amount of the payments and the security which are payable in each particular case.

(e) On receipt of an application for a licence, the chairman of the Commission shall give notice of the application in the *Government Gazette*.

(f) Any person shall be entitled within fourteen days after publication of such notice to lodge written representations opposing the granting of the relevant broadcasting licence to the applicant with the Commission.

(4) The Commission shall not issue a licence in terms of subsection (1) without the favourable recommendation of -

- (i) the spectrum management committee if the service is to be transmitted by radio; or
- (ii) the telecommunications committee if it is to be transmitted by way of a network.

(5) As soon as the Commission has decided to grant a sound broadcasting licence or a television broadcasting service, it shall give notice thereof -

- (a) in the *Gazette*;
- (b) to the successful applicant;
- (c) to the persons who made representations pursuant to paragraph (e) of subsection (3); and
- (d) to the other applicants, if any.

(6) The Commission may in granting a sound or television Broadcasting licence claim security from the licence holder which is sufficient to guarantee the performance of the service for the term of the licence.

(7) Where a licence holder fails to provide the required security within thirty days after the granting of a licence, the licence shall automatically lapse.

(8) A sound or television broadcasting licence other than a licence issued under the Broadcasting Act, 1976, may be renewed by the Commission.

(9) An application for the renewal of a sound or television broadcasting licence may be made to the Commission by the broadcasting licence holder not earlier than six months, and not later than thirty days, before the date on which it would otherwise expire.

(10) For the purpose of a renewal of a sound or television broadcasting licence the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission, or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.



(11) Pending any final decision on such application, the relevant broadcasting licence shall continue to be of force and effect.

(12) Where an application for the renewal for a sound or television broadcasting licence has been duly made to the Commission, the Commission may only refuse the application if it is not satisfied that the applicant would, if his licence were renewed, comply materially with the duties imposed upon it by such licence or the provisions of this Act.

(13) The Commission may levy such fees for a broadcasting licence as it deems fit.

#### Criteria

38. In considering an application for a broadcasting licence the Commission shall have due regard to its objectives and inter alia apply the following criteria:

- (a) the demand for the relevant broadcasting service within the licence area;
- (b) the need for the service concerned within the licence area having due regard to the existing services within the licence area;
- (c) the expected technical quality of the service having due regard to developments in broadcasting technology;
- (d) the capability, expertise and experience of the applicant;
- (e) the financial means and business record of the applicant;

- (f) the business record of each person who is, or would be, if a licence were allocated to the applicant, in a position to control the conduct of the applicant either in his individual capacity or as a member of the board of directors or its top management structure;
- (g) the applicant's record and the record of each person referred to in (f) in situations requiring trust and candour;
- (h) whether the applicant, or a person referred to in paragraph (f) has been convicted of an offence provided for in this Act.

#### **Access to broadcasting programmes by political parties**

39.(1) Subject to the provisions of this section, the holder of a public broadcasting service licence, shall in each election period with regard to an election in respect of which its audience have the right to vote, permit political parties participating in the election, to broadcast election programmes.

(2) The Commission shall, subject to the provisions of subsection (3), determine the time to be made available to the political parties for purposes of subsection (1).

(3) The time made available in terms of subsection (2) shall be divided on an equitable and fair basis between the political parties participating in the election.

(4) The Commission shall before to making a determination in terms of subsection (2), consult with the broadcasters and political parties concerned.

(5) The Commission may in the broadcasting licence of any broadcaster referred to in subsection (1) impose conditions requiring the licence holder to observe such rules with respect to political broadcasts as the Commission may determine in a programme standard, having regard to the fundamental underlying principles that all political parties must be treated fairly and impartially by the licence holder.



(6) The Commission shall determine the length and frequency of the broadcasts referred to in subsection (1) unless the political parties and the licensee prior to such determination come to terms amongst themselves with regard thereto.

#### **General code for programmes**

40.(1) There is a General Code of Conduct for South African Broadcasters as set out in Schedule 3 of the Act.

(2) Subject to the provisions of section 46, every holder of a broadcasting licence shall comply with the code.

#### **Control of advertisements**

41.(1) The Commission shall include in the licence of applicant who is not a member or is no longer a member of the Advertising Standards Authority of South Africa, the condition of adherence to the Code of Advertising Practice as administered by that Authority.

(2) Advertising complaints and disputes shall be subject to adjudicating by that Authority in terms of the Code of Advertising Practice and the Authority shall in final recourse refer any finding it might make with regard to a licensee who is not a member or is no longer a member, to the Broadcasting Monitoring Committee.

(3) The Broadcasting Monitoring Committee shall deal with the finding referred to in subsection (2) in accordance with the provisions of section, 44(2).

#### **Specific licence conditions**

42.(1) Without derogating from the power of the Commission to impose licence conditions, the Commission may in a public broadcasting service licence include conditions requiring the licence holder -

- (a) to broadcast news, actualities, educational and other programmes of high quality dealing with local, regional, national and international matters;
- (b) to observe such rules with respect to political broadcasts as the Commission may determine having due regard to the fundamental underlying principle that all political parties must be treated fairly and impartially by a licence holder.

#### **Licencees of broadcasting services to undertake own technical planning**

43. A licensee providing a broadcasting service shall undertake his own technical planning: Provided that such planning must be consistent with the relevant frequency allotment plan.

## **CHAPTER 8**

### **PART II**

#### **MONITORING OF BROADCASTING PROGRAMMES**

##### **Broadcasting Monitoring Committee**

- 44.(1) The Broadcasting Monitoring Committee shall -
- (a) monitor the programme content of the broadcasters for breaches of licencing conditions and the provisions of any code;
  - (b) serve as adjudicator for the receiving and hearing of complaints against inaccuracies or partiality or the denial of fair access on the part of the broadcasters, and shall have the power to order the rectification of any transgression;



(c) function and execute its powers in a manner determined by itself and which it considers as effective and may whenever it deems it necessary -

(i) consult any person for the purposes of obtaining expert advice on any matter; and

(ii) appoint sub-committees to perform such functions and duties as determined by the Committee from time to time.

(2) The Broadcasting Monitoring Committee may in its discretion, refer any matter involving a transgression by a licensee of its licensing conditions to the Commission for such action as it may deem fit.

#### **Monitoring and evaluation of programmes**

45.(1) For the purpose of the provisions of section, 44(1)(a) the Broadcasting Monitoring Committee may make and use recordings of programmes included in a licence service or any part thereof.

(2) For the purpose of subsection (1) a licence holder shall -

(a) retain, for a period not less than 45 days, a recording of every programme included in the service concerned;

(b) at the request of the Committee, produce to it any such recording for examination or reproduction;

(c) at the request of the Commission, produce to it any script or transcript of a programme included in the service concerned which he is able to produce to them.

(3) The Broadcasting Monitoring Committee may -

- (a) evaluate the news and information programmes of the holders of broadcasting licences for their fairness and impartiality applying scientifically based methodology; and
- (b) publish its findings periodically.

(4) Nothing in this Act shall be construed as requiring or authorising the Commission or the Broadcasting Monitoring Committee, in the discharging of its duties, to view programmes in advance of their being included in a service.

### **Exemptions**

46. The provisions of sections 44 and 45 shall not apply to any member of an association of broadcasters, if that association has proved to the satisfaction of the Commission that its members have voluntarily subscribe to a code of conduct which will be enforced by that association by means of its own disciplinary mechanisms.

## **CHAPTER 9**

### **GENERAL PROVISIONS REGARDING LICENCES, CONDITIONS AND PROCEDURES**

#### **Term of licence**

47. Subject to the provisions of this Act and the Broadcasting Act, 1976, a licence shall only be valid and in force for the period specified in that licence.

#### **Transfer of licence**

48. No licence issued under this Act shall be transferable to any other person without the authorization of the Commission.



### General licencing conditions

49. Notwithstanding any specific conditions which the Commission may prescribe under the Act, the Commission may include in a licence any other condition not inconsistent with the provisions of this Act, which it considers to be appropriate in order to ensure that the licensee renders a service within the scope of the licence and in accordance with prescribed norms and standards.

### Revoking of a licence

50.(1) The Commission may, subject to the provision of subsection (2), revoke a licence issued under this Act, if the licence is a body corporate, and -

- (a) any substantial change affecting the nature or characteristics of the body corporate;
- (b) any substantial change in the persons having control over or interests in the body corporate; or
- (c) any material change in the shareholding of the body corporate,

has taken place after the licence was issued.

(2) No licence shall be revoked under subsection (1) unless the licence holder was afforded a reasonable opportunity for making representations.

(3) The Commission may also revoke a licence if requested by the licensee.

### Amendment of licence conditions

51.(1) The Commission may amend any licence conditions, including the conditions in respect of a broadcasting licence, if-

- (a) it is in the interests of orderly frequency management and such amendment will not cause substantial prejudice to the licensee;
- (b) a material change in the shareholding of the licensee took place;
- (c) any international treaty to which the State is a party, and which related to broadcasting necessitate such change;
- (d) it is in the interest of national defence;
- (e) it is necessary for the safety of the public or of property;
- (f) the licence holder has requested such change.

(2) The amendment referred to in subsection (1) may only be made if the licence holder has been granted the opportunity to make oral and written representations to the Commission in that regard.

(3) The Commission shall publish any amendment of the conditions of a broadcasting licence in the Gazette.

#### **Licences granted in terms of repealed legislation**

52. Licences which were immediately prior to the establishment of the Commission in force in terms of legislation repealed by this Act, shall be deemed to have been granted in terms of this Act, and such licences shall accordingly in all respects be subject to the provisions of this Act.

#### **Register of licences**

53.(1) The Commission shall keep a register of all licences and amendments to such licences granted in terms of this Act at the premises of the Commission and in such form as it may determine.



(2) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by the Commission.

(3) Any person may, on payment of such fee as may be prescribed by an order so made, require the Commission to supply to him a copy of or extract from any part of the register, certified by the Commission to be a true copy or extract.

### **Complaints and disputes**

54. The Commission shall have the power to hear complaints and arbitrate in disputes concerning an alleged violation by a licence holder of a provision of this Act or a condition of his licence, other than complaints which must be adjudicated by the Broadcasting Monitoring Committee or adjudicated upon by a mechanism referred to in section 46.

### **Directions concerning accounts and records**

55.(1) The Commission may direct a licence holder to keep such accounts and records of its business as it may reasonably deem fit.

(2) The Commission may in such directive prescribe the form in which the accounts or records must be kept.

(3) The Commission may from time to time review such determination.

### **Suspension of licences, certificates and permits issued under this Act**

56.(1) The Commission may at any time after written notice to the holder, suspend any licence, certificate, permit or authority (other than a broadcasting licence) issued under this Act, if requested by the licence holder, or if it is satisfied that such suspension will be -

(a) in the interest of orderly frequency management; or

- (b) in the interests of the safety of the public or of property; or
- (c) necessary to give effect to any international treaty to which the Republic is a party.

(2) The Commission may in its discretion, seal a radio apparatus to which a suspended licence relates in order to prevent the use thereof during such suspension.

(3) No holder of a licence, certificate or authority shall on the suspension or cancellation of his licence, certificate or authority in terms of subsection (1), be entitled to any refund of any fees paid in respect of such licence, certificate or authority.

(4) A person whose licence is suspended in terms of subsection (1) shall during the period of suspension of his licence be deemed, for the purposes of this Act not to be the holder of such licence.

## CHAPTER 10

### ENFORCEMENT

#### **Production of licences, certificates, permits or authorities for inspection**

57. Every person who is required to possess any licence, certificate, permit or authority, under this Act, shall produce his licence, certificate, permit or authority for inspection on demand by any member of the South African Police or of any other person who is duly authorised by the Commission to make such demand.



### Commission may inspect licensee's books and records

58.(1) The Commission may, by notice in writing require the licensee who is not a public broadcaster -

(a) to produce or furnish (as the case may be) at a time and place specified in the notice to the Commission -

(i) any documents which are specified or described in the notice and are in the licensee's custody or under his control; and

(ii) such estimates, returns or other information as may be described in the notice, including the manner and the form in which any such estimates, returns or information are to be furnished;

(b) to allow the Commission to inspect, and to make copies of, or take extracts from, specified books of account or other records of the licensee to determine whether the public network operator is complying with its licence obligations and the provisions of this Act and any other purpose connected with achieving the objects of this Act.

(2) This sections does not limit the Commission's powers under any other provision of this Act.

(3) The provision of subsection (1) and (2) shall mutatis mutandis apply to a standing committee established under this Act, provided that a reference to the Commission shall be interpreted as a reference to the standing committee concerned.

### **Powers of authorised persons**

59. A person duly authorised thereto by the Commission may at all reasonable times -

- (a) inspect the records of a licensee and make such extracts therefrom as he may deem necessary;
- (b) inspect the plant and apparatus used by any person licensed or authorised under this Act to receive or transmit by radio;
- (c) inspect any licence, certificate, permit or authority issued to any person under this Act;
- (d) inspect any plant and apparatus which are, or are suspected to be, in the possession of or used by any person in contravention to this Act; and
- (e) trespass any premises for the purposes of subparagraphs (a) to (d).

### **Powers in case of a breach of licence conditions**

60.(1) The Commission may, when it makes a finding that the licence holder has materially breached a licence condition or a duty imposed under this Act -

- (a) issue the licence holder an appropriate warning;
- (b) order the licence holder to comply with such conditions or duty;
- (c) in the case of a broadcasting licence, order the broadcasting licence holder to effect a programme change within a reasonable period;



- (d) in the case of a broadcasting licence, order the broadcasting licence holder to disclose free of charge and in such manner as the Commission may stipulate, the finding of the Commission;
- (e) suspend the licence for a period not exceeding 30 days;
- (f) revoke the licence; or
- (g) take such action as is prescribed by regulation.

(2) If a licence is suspended or revoked in terms of subsection (1) the Commission may -

- (a) seize and detain any apparatus until possession thereof is authorised in terms of this Act, or the apparatus is disposed of in accordance with a court order;
- (b) in its discretion, seal any apparatus or any part thereof in order to prevent the use of that apparatus for the purpose of transmission or reception.

(3) A broadcasting licence may only be cancelled or suspended under subsection (1) -

- (a) if the licence holder intentionally made a false statement in his application for such licence;
- (b) if the licence holder repeatedly and intentionally or in a grossly negligent manner has failed to adhere to the same provision of the Act or the same licence condition: provided that if he has been found guilty of having failed to adhere to any provision of the Act or any condition of the licence and that his failure was intentional for the third time during the current term of the licence, the

commission may, if the failure is regarded as gross, revoke the licence.

(4) A failure by the holder of a broadcasting licence to comply with an order given by the Commission in terms of subsection (1), shall be deemed to constitute a breach of a licence condition or duty imposed under this Act, entitling the Commission to take further action in terms of subsection (1).

#### Offences and penalties

61.(1) Any person who -

- (a) contravenes or fails to comply with any provision of section 27;
- (b) contravenes or fails to comply with a condition of any licence, certificate, permit or authority issued to him under this Act or the South African Broadcasting Corporation Act, 1976 (Act No. 73 of 1976);
- (c) fails or refuses to produce any licence, certificate, permit or authority issued to him under this Act or the South African Broadcasting Corporation Act, 1976, or any document referred to in section 33 on demand by any person authorised by the Commission in terms of section 62 make such demand;
- (d) contravenes or fails to comply with a duty or requirement imposed upon him by this Act;
- (e) obstructs or hinders any officer in the exercise of his powers under section 59;
- (f) contravenes or fails to comply with any provision of any regulation;



- (g) transmits or causes to be transmitted by radio any false or fraudulent distress signal, message, call or telegram of any kind, or who, without lawful excuse, interferes with or obstructs the transmission or reception of any radio communication;
- (h) intercepts any radio communication other than which he is authorised to receive, or which is capable of being received by means of a sound radio set or, where such radio communication is involuntarily received, reproduces or communicates it to any other person or uses it for any other purposes whatsoever;
- (i) after any radio communication has been reproduced or communicated to him in contravention of the provisions of paragraph (g), reproduces that radio communication or communicates it to any other person, or uses it for any purpose whatsoever;
- (j) without authority breaks the seal of radio apparatus sealed under sections 34 and 60(2), shall be guilty of an offence and on conviction any competent court may impose, in its discretion, a fine or imprisonment, or a fine and imprisonment, or any other suitable punishment within its jurisdiction and the court convicting him may in addition to any penalty that it may impose, order -
  - (i) the confiscation to the State of any apparatus in connection with or by means of which the offences was committed; provided that no such order of confiscation shall be made if it is proved that the apparatus in question does not belong to the person so convicted and that its owner was unable to prevent its unlawful use by the person so convicted;

- (ii) the cancellation of any licence, certificate, permit or authority held under this Act by the person so convicted, and prohibit him from holding for a specified period any licence, certificate, permit or authority under this Act;
- (iii) the payment of all arrear licence fees owing by the person so convicted.

(2) Any order made under paragraph (j)(iii) of subsection (1), shall have the same effect as and may be executed as if it were a civil judgment in favour of the Commission.

(3) The holder of a broadcasting licence shall not be prosecuted for an offence under this section, except with the written authorisation by the Attorney-General.

## CHAPTER 11

### REGULATIONS, JURISDICTION OF COURT OF LAW, AMENDMENT AND REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT

#### Regulations

- 62.(1) The Minister may on advice of the Commission make regulations regarding -
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) the procedure applicable at proceedings in terms of section 20;



- (c) the powers of the Commission with regard to the summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects;
- (d) the resolution and adjudication of complaints and disputes concerning alleged violations of this Act and licence conditions and the establishment or appointment of a person, body of persons or association to assist in the monitoring and ensuring of adherence to the provisions of this Act, the conditions and provisions of licences, codes, permits and related provisions;
- (e) the licences, certificates of proficiency or authorities, which may be issued for the use of stations for specified purposes, the certificates of proficiency which may be issued for the maintenance of stations of specified categories, and the conditions subject to which such licences, certificates or authorities may be issued;
- (f) consultation between the Commission and the telecommunications industry, as well as accreditation of associations representing the industry;
- (g) the fees that shall be payable in respect of a licences authorities and permits as well as the conducting of the examinations referred to in section 33(1)(c);
- (h) the experience and qualifications to be possessed by persons to whom certificates of proficiency referred to in section 33(1)(c) may be issued;
- (i) the operation of radio installations on board ships within the territorial waters of the Republic and on aircraft in or flying over the Republic;

- (j) the control and prevention of electrical or other interference with radio reception: the conferring on specified persons or classes of persons or persons employed and designated by bodies established by law or persons designated by the Commission, of the power to examine apparatus causing or capable of causing such interference, and to issue certificates in connection with such examinations or the issue of such certificates: the disposal of such fees: the entering on premises and examination of premises and things and the interrogation of persons by the said persons for the purpose of the performance of their functions in terms of this Act: the effect, with reference to roadworthiness, of apparatus in or on motor vehicles not complying with the requirements of the regulations;
- (k) any additional powers of an authorised person referred to in section 61 and the procedures to be followed by such a person;
- (l) in general, the technical control of radio activities and the possession and use of apparatus; and
- (m) any other procedural matter which may be necessary or desirable in order to achieve or promote the objects of this Act.

(2) A regulation may for any contravention thereof or failure to comply therewith, prescribe a penalty which shall not exceed a fine or imprisonment of ..... or both such fine and such imprisonment.

(3) Different conditions or fees may be prescribed under subsection (1)(g) in respect of different licences, authorities or certificates, or in respect of licences issued for stations situated in different geographical areas.



### Regulations made in terms of repealed Acts

63. A regulation made in terms of the Radio Act, 1952, and the Post Office Act, 1958, that has been in force immediately prior to the repeal of the act in terms of which it was made, shall remain in force and be deemed to have been made in terms of this Act, until repealed.

### Jurisdiction of court of law

64. The activities of the Commission, or the Broadcasting Monitoring Committee do not detract from the right of any person to institute legal proceedings for the adjudication by a competent court of law.

### Amendment of laws and savings

65.(1) The laws mentioned in the Schedule 4 are hereby amended to the extent indicated in Parts I, II and III thereof.

(2) Up to the date of the commencement of section 15 -

- (a) all the powers, functions and duties of the chief executive officer shall be exercised and performed by the Postmaster General; and
- (b) the Commission shall be assisted by officers and employees of the Department in the performance of its functions.

(3) Up to the date of the commencement of section 17, all expenses shall be defrayed, and all moneys received, from whatever source, shall be deposited, in the Post Office Fund established by section 12D(1) of the Post Office Act, 1958 (Act No. 44 of 1958).

- (4) (a) Any licence, permit, certificate or authority issued before the commencement of this section under the Radio Act, 1952 (Act No. 3 of 1952), shall be deemed to have been issued by the Commission subject to any condition applicable on that licence, permit, certificate or authority, and a reference in such a licence, permit, certificate or authority to a Minister or the Postmaster General shall be deemed to be a reference to the Commission.
- (b) All moneys collected in terms of the Radio Act, 1952, and which have been paid into the Post Office Fund, shall from the date of the commencement of section 17 be paid into the fund contemplated in that section.
- (5) (a) Any licence issued or authority granted in terms of section 78 or 90A of the Post Office Act, 1958, shall, from the date of the commencement of section 4, be deemed to have been issued by the Commission.
- (b) If a fee is payable in respect of a licence or authority referred to in paragraph (a), that fee shall, from the date of the commencement of section 17, be paid into the fund contemplated in that section.

#### **Short title and commencement**

66.(1) This Act shall be called the Independent Broadcasting Commission Act, 1993, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Government Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of the Act.



[7]  
[F]

**F. INDEPENDENT MEDIA COMMISSION  
AND INDEPENDENT  
TELECOMMUNICATIONS AUTHORITY**

**VOLUME THREE B**

## SCHEDULE 1

## (Section 5)

**Procedure for appointing the members of the Commission**

1. The State President on the recommendation of the competent Authority, referred to in paragraph 8, appoints four judges or retired judges who, by way of a majority of votes, co-opt 11 persons to form an electoral college with them and to provide the State President with a short list of 14 names (including one name for chairman) to fill the 11 seats of the Commission within such a period as specified by the State President.
  
2. The co-opted members are subject to the disqualifications enumerated in section 7 and shall represent or have experience of the following:
  - (a) 2 members: the organized broadcasting industry,
  - (b) 1 member: the telecommunications industry,
  - (c) 1 member: the organized business sector,
  - (d) 1 member: broadcasting and telecommunications technology,
  - (e) 1 member: education,
  - (f) 1 member: communications science,
  - (g) 1 member: sport organisations,
  - (h) 1 member: cultural organisations, and
  - (i) 1 member: linguistic organisation,



3. Before co-opting the said members, the judges decide upon a procedure according to which nominations would be called for from the said organisations or fields of knowledge: provided that nominations from political parties or organisations with similar aims, Parliament, the public service and local, regional and national government will not be acceptable.

4. The electoral college determines a procedure according to which it will call for nominations from the public and determine which nominated persons will qualify for seats on the commission: Provided that nominations from political parties or organisations with similar aims, Parliament the public service and local, regional and national government will not be acceptable.

5. The electoral college may, in its call for nominations, stipulate the kind of expertise that is required: provided that no political party or organisation with similar aims, Parliament, local, regional, or national government or the Public Service may nominate a person for consideration by the electoral college.

6. A quorum of the electoral college shall be constituted by 8 members including the chairman, who is chosen by the electoral college and who shall be one of the judges.

7. Decisions of the electoral college shall be taken by way of a majority of votes and the chairman has a casting vote if the votes are equal: Provided that if in the election of a chairman, the votes are equal, the matter is decided by casting the lot.

8. For the purpose of the paragraph 1. "Competent authority" means -
- (a) the Multi Party Conference with regard to the first appointment of members of the commission after this Act has come into operation;  
and

- (b) the Transitional Executive Council established in terms of the Preparatory Structures Act, 1993, for every subsequent appointment of members of the Commission until such time as the Authority referred to in paragraph (c) has been established; and
- (c) the Authority established after the first general election held after the date on which the Act came into operation, and who will be responsible for the administration of this Act.



## SCHEDULE 2

## (Section 16(3))

**Pension Rights of Officers and Employees**

1. An officer or employee who is a member of the Government Service Pension Fund, the Temporary Employees Pension Fund or any other pension fund or scheme administered by the Department of National Health and Population Development or the pension funds established by section 9 of the Post Office Act, 1958 (Act No. 44 of 1958), and who is employed by the Commission may

- (a) choose to remain member of such fund, and from the date of exercising such a choice, such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be dormant member of the fund concerned as contemplated in section 15(1)(a) of the General Pensions Act, 1979 (Act No. 29 of 1979); or
- (b) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), if the Commission has under section 4 of the said Act been declared to be an associated institution; or
- (c) request to become a member of any other pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956).

2. In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of subparagraph (b) or (c) of paragraph (1) -

- (a) the fund of which he was a member shall transfer to the fund of which he becomes a member an amount equal to the funding level of the first-mentioned fund multiplied by the actuarial liability of

the fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee by the Commission, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of transfer of the amount;

- (b) his membership of the fund of which he was a member shall lapse as from the date of the commencement of his employment by the Commission and he shall thereafter, except as is provided by subparagraph (a), not have any further claim against the said fund; and
- (c) the fund of which he was a member shall transfer any claim it may have against such officer or employee to the fund of which he so became a member.

3. In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of subparagraph (c) of paragraph (1) the State shall pay to such fund an amount equal to the difference between the actuarial liability of the fund of which he was a member, in respect of such an officer or employee, as on the date of the commencement of his employment by the Commission, and the amount transferred in terms of subparagraph (c) of paragraph (2) to the first-mentioned fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of the transfer of the amount.

4. The provisions of paragraphs (2) and (3), shall mutatis mutandis apply in respect of an officer or employee who has by virtue of a choice in terms of subparagraph (a) of paragraph (1) become a dormant member and thereafter requests that his accrued pension benefits be transferred in terms of the provisions of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a pension fund registered in terms of the Pension Funds Act, 1956.



5. Where, in the case of any officer or employee referred to in paragraph (1) who has in consequence of a request in terms of subparagraph (c) of that subsection become a member of any other pension fund, any lump sum benefit has become payable by such pension fund in consequence of the death of such officer or employee or on his retirement, withdrawal or resignation from such pension fund or on the winding up of such pension fund, such pension fund shall for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed in relation to such officer or employee to be a fund referred to in paragraph (a) of the definition of "pension fund" in the said section 1.

6. For the purpose of this schedule -

**"actuarial liability"** of a pension fund in respect of a particular member or a group of members of such fund means such actuarial liability as determined by an actuary nominated for that purpose by the Minister;

**"funding percentage of a pension fund"** means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the Minister of National Health and Population Development; and

**"prime rate"** means the average amount prime rate of the three largest banks in the Republic.

## SCHEDULE 3

(Section 40(1))

## CODE OF CONDUCT

## South African Broadcasters

1. Preamble

The basic principle to be upheld is that the South African Broadcasters are subject to the same restraints as that of the individual with regard to the fundamental right of freedom of speech and other forms of expression, and the right to obtain and disseminate information and that the broadcasters' primary responsibility rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions.

2. Reporting of News

2.1 The South African Broadcasters shall be obliged to report news truthfully, accurately and objectively.

2.2 News shall be presented in the correct context and in a balanced and impartial manner, without an intentional or negligent departure from the facts whether by:

2.2.1 distortion, exaggeration or misrepresentation; 2.2.2 material omissions; or

2.2.3 summarisation.

2.3 Only what may reasonably be true having regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is founded on



opinion, allegation, rumour and supposition, it shall be presented in such manner as to indicate this clearly.

- 2.4 Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where it has not been practicable to verify the correctness of a report, this shall be mentioned in such report.
- 2.5 Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified spontaneously and without reservation or delay. The correction shall be presented with a degree of prominence and timing which is adequate and fair so as readily to attract attention.
- 2.6 Reports involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate. In particular, the television services shall avoid the broadcasting of obscene and lascivious matter.
- 2.7 The identity of rape victims and other victims of sexual violence shall not be broadcast without the consent of the victim.

### 3. Comment

- 3.1 The South African Broadcasters shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.
- 3.2 Comment shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.
- 3.3 Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.

4. Access to air time and political interviews

4.1 The South African Broadcasters shall ensure equitable and fair access for all political parties to air time.

4.2 Political interviews shall be treated in a fair, balanced and impartial manner.

5. Privacy

5.1 In so far as both news and comment are concerned, the South African Broadcasters shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

6. Payment for material

6.1 No payment shall be made for feature programmes to persons that were or are still engaged in crime or other notorious misbehaviour.

7. General

7.1 Due care and responsibility shall be exercised by the South African Broadcasters with regard to:

7.1.1 subjects that may cause enmity or give offence in racial, ethnic, religious or cultural matters, or incite persons to contravene the law;

7.1.2 matters that may detrimentally affect the peace and good order, the safety and defence of the Republic and its people;

7.1.3 the presentation of brutality, violence and atrocities.



8. Religion

- 8.1 The South African Broadcasters shall recognize the right of freedom of religion and conscience and due care shall be taken for the accommodation of religious programmes that will as far as possible serve the diverse needs.

9. Cultural and language diversity

- 9.1 The South African Broadcasters shall recognize the cultural and language diversity in South Africa and shall ensure that such diversity be accommodated in programmes.

## SCHEDULE 4

(Section 65(1))

Laws Amended

## PART 1

Amendment of the Radio Act, 1952 (Act No. 3 of 1952), as follows:

1. The amendment of section 1 by the insertion after the definition of "broadcasting licence" of the following definition:

"Commission' means the Broadcasting and Telecommunications Commission established by section 4 of the Broadcasting and Telecommunications Act, 1993;"

2. The substitution for section 2 of the following section:

**Control of radio activities**

2. Radio activities within the Republic [and the territory of South-West Africa] shall, subject to the provisions of this Act and the Broadcasting Act, [1936 (Act No. 22 of 1936) 1976 (Act No. 73 of 1976), be under the control of the Commission [Postmaster-General who shall exercise his powers and perform his functions under this Act under the control and direction of the Minister]."
3. The repeal of section 3.
4. The amendment of section 7 -
  - (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:



"Subject to the provisions of [section 12(2) of the Broadcasting Act, 1976 (Act No. 73 of 1976), and] subsection (2) of this section, the [Postmaster-General] Commission may, on such conditions as he may in any case [specially] prescribe or as may be generally prescribed by regulation, and against payment of the fees prescribed by regulation, if any -";

- (b) by the deletion of the proviso to subsection (1);
- (c) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (2) of the following words:

"The conditions prescribed under subsection (1) in respect of a broadcasting licence shall relate [only] to -";

- (d) by the addition to paragraph (a) of subsection (2) of the following subparagraphs:

"(v) the nature of the reports, announcements, news or other information which may be broadcast;

(vi) any other condition which the Commission deems necessary."

- (e) by the deletion of paragraph (b) of subsection (2); and
- (f) by the insertion after subsection (2) of the following subsections:

"(2A) The holder of a broadcasting licence shall -

(a) present news and comment accurate and impartial;

(b) see to it that in transmitting any discussion of any news, comment or other information a reasonable and fair opportunity is granted to all person taking Part in that discussion to Put their viewpoints:

(c) .....

(2B) The conditions mentioned in subsection (2A) shall also apply to a broadcasting licence issued before the commencement of that subsection."

5. The substitution for section 9 of the following section:

**"Duration of licenses, certificates and authorities**

9.(1) Subject to the provisions of subsection 2 and section 14 of this Act [and section 12 of the Broadcasting Act, 1976 (Act No. 73 of 1976)] any licence referred to in section 7 shall be valid for the period prescribed by regulation or for such shorter period as may be determined by the [Postmaster-General] Commission in any particular case and shown on the licence at the time of the issue thereof, and any certificate or authority referred to in section 7 shall remain of force and effect for an indefinite period.

(2) (a) Notwithstanding the provisions of subsection (1) a broadcasting licence shall not exceed a period of -

(i) 10 years in the case of a broadcasting licence concerning television: and

(ii) seven years in the case of a broadcasting licence concerning radio.



(b) A broadcasting licence issued under this Act before the commencement of paragraph (a) shall be valid from the date of the commencement of that paragraph for a period of 10 years in the case of a licence referred to in paragraph (a)(i) and seven years in the case of a licence referred to in paragraph (a) (ii)."

6. The substitution for section 10 of the following section:

**"Production of licences, certificates, permits or authorities for inspection**

10. Every person who is by the provisions of this Act required to possess any licence, certificate, permit or authority shall produce his licence, certificate, permit or authority for inspection on demand by any member of the South African Police or by any [officer in the public service] person duly authorized by the tPostmaster-General] Commission to make such demand."

7. The amendment of section 11 by the deletion of subsection (3).
8. The amendment of section 12 by the repealing of subsection (2).
9. The amendment of section 14 -

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary in this Act contained, but subject to the provisions of subsection (2), the [Postmaster-General] Commission may at any time after due enquiry and after written notice to the holder, suspend or cancel any licence, permit, certificate or authority issued under this Act if he is satisfied that such suspension or cancellation is necessary under the circumstances, and may in his discretion seal radio apparatus to which a suspended licence relates in order to prevent the use thereof during such suspension."

- (b) by the insertion after subsection (1) of the following subsection:

"(2) A broadcasting licence may only be cancelled or suspended under subsection (1) -

- (a) if the licence holder intentionally made a false statement in his application for such licence:
- (b) if the licence holder repeatedly failed to adhere to the provisions of this Act or the licence conditions applicable to such licence."; and

- (c) by the insertion for subsection (5) of the following subsection:

"(5) Notwithstanding anything to the contrary of this Act or in any other law contained, the Commission may at any time after issuing any licence, permit, certificate or authorization amend the conditions applicable to that licence, permit, certificate or authorization, provided that such amendment -

- (a) is necessary for orderly frequency management;
- (b) is necessary to give effect to any international treaty;
- (c) is necessary for the safety of the public or the protection of property
- (d) takes place at the request of the licend holder."

10. The repeal of section 19A.



11. The repeal of the Fourth Schedule.
12. The substitution for the expression "Postmaster-General", wherever it occurs, excluding section 4, of the expression "Commission".

## PART II

Amendment of the Post Office Act, 1958 (Act No. 44 of 1958), as follows:

1. The amendment of section 1 by the insertion after the definition of "Companies Act" of the following definition:

"Commission" means the Broadcasting and Telecommunications Commission established by section 4 of the Broadcasting and Telecommunications Act, 1993.

2. The amendment of section 7 -

- (a) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"The telecommunications company shall, subject to the provisions of any other law, have the exclusive power to conduct the telecommunications service, but the approval of the [Minister] Commission shall, subject to the provisions of subsection (3), be required for -"; and

- (b) by the substitution for subsection (3) of the following subsection:

"(3) [The Minister may] Notwithstanding the provisions of subsections (1) and (2), the Minister may authorize the postal company or the Commission may authorize the telecommunications company to exercise any power referred to in subsection (1) or (2) in all cases or in cases of a particular category or in cases where particular circumstances apply, without the approval of the Minister or the Commission, as the case may be.

3. The amendment of section 78 by the substitution for subsection (3) of the following subsection:

"(3) (a) (i) The telecommunications company shall not under subsection (2) authorize the use of a telecommunications line for the transmission of images or other visible signs, without attendant sounds, except with the approval of the [Minister responsible for the administration of the Broadcasting Act, 1976 (Act No. 73 of 1976), granted after consultation with the South African Broadcasting Corporation] Commission.

(ii) The provisions of subparagraph (i) shall not apply where the [said] South African Broadcasting Corporation has been authorized to use a telecommunications line, or in any case in which the images or signs, in the opinion of the telecommunications company, fall within a class of images or signs the transmission of which is the function of the telecommunication company.

(b) Where the authority of the telecommunications company for the use of a telecommunications line is subject to the approval of the [Minister responsible for the administration of the Broadcasting Act, 1976 (Act No. 73 of 1976), the said Minister] Commission, the Commission may grant this its approval subject to such conditions relating to the said use, and fix such fees in respect thereof, as



the] it may deem fit, and direct that such fees shall be disposed of in the manner determined by thim] it."

4. The amendment of section 90A by the substitution for the words following paragraph (c) of subsection (2) of the following words:

"shall as from a date mentioned in the notice vest in the Postmaster-General in the case of the postal company or in the Commission in the of the telecommunications company."

### PART III

**Amendment of the Broadcasting Act, 1976 (Act No. 73 of 1976), as follows:**

1. The amendment of section 12 by the deletion of subsection (2).

**SUBMISSIONS OF THE INTANDO YESIZWE PARTY TO THE INDEPENDENT MEDIA COMMISSION:**

1. The Independent Media Commission deals only with the State-controlled Broadcasting Services and other radio services.
2. The IYP is concerned about the restrictive interpretation that the IMC gives to the word "Media". We believe that during the transitional phase the entire political playing field should be levelled. It is therefore our view that the IMC should deal with the entire spectrum of the media.
3. On the 17th of May 1992, the State held a whites only referendum. Whilst the SABC subtly supported the referendum, it is the newspapers who came out strongly advocating for a "Yes" vote.

We have also seen that during the past whites only elections newspapers coming out in support of one political party or another.

While not arguing the merits of the newspaper's decisions, it is clear that they are not neutral when it comes to political matters. This begs the question: "Will they be neutral during the coming elections?" Who is therefore going to guard against them coming out in support of one party or another?.

4. The issue of the South African Press Association is a headache which we cannot ignore with hope that it will go away of its own. As the national news agency, it is responsible for collecting and distributing news to newspapers throughout the country. Its method of news gathering and operation also ensures that the SABC is able to follow up news items, and give same the prominence that SAPA accords news. SAPA incidentally was in the past, the main recipient of government statements.



SAPA is therefore in a very powerful position to decide what readers should receive. Who is there to ensure that SAPA does not come out in support of one political party or another, and pushes out the statements of all other parties fighting the elections, on the ground of political ideology?

5. We appreciate the fact that the printing media should have the freedom of collecting information and publishing same, and we do not want to interfere with this right. Whilst we do not believe in censorship of the press, it is our view that the IMC should draw up a code of conduct by which SAPA and the newspapers should abide.

TECHNICAL SUBCOMMITTEE 5  
HEADS OF ARGUMENTS AND POSITIONS OF THE CONSERVATIVE PARTY ON AN  
INDEPENDENT MEDIA COMMISSION AND INDEPENDENT TELECOMMUNICATIONS  
AUTHORITY.

1. TELECOMMUNICATIONS AUTHORITY AND THE FORM OF STATE.

The formulation of a media policy for the future of our region can only be done once the form of state is decided.

1.1 A Unitary state with a strong central government will have strong central control and one regulating body or telecommunications authority. This is not acceptable for the CP.

1.2 In a confederation the different confederal states would prefer to have their own telecommunications authorities and media commissions. Without this real selfdetermination and autonomy is not possible. Through broadcasting it must be possible for your people (volk) to develop its identity, culture and character. (Even in a federation with very strong regional autonomy as proposed by the NP, own telecommunications authorities will be needed to ensure maximum autonomy.)

1.3 An umbrella body may be formed in confederal context but then only to discuss those matters that effects all the different countries or interested groups.

1.4 The CP is in favour of a structure as formulated in 1.2 and 1.3 above.

2. MONOPOLIES AND CROSS-OWNERSHIP RESTRICTIONS.

Against this background:

2.1 We agree that the airwaves are a public resource accessible to all. Because this resource has limitations a controlling body will be required to ensure fair access to the airwaves to all.

2.2 In an effort to promote a diversity of voices in a democracy diversity of ownership must be promoted. No company or individual should be allowed to own a majority interest in a newspaper, a TV station and a radio station. There must be cross-ownership restrictions. This is the only way to prevent the over concentration of power as embodied in the ownership of the media.

3. PUBLIC BROADCASTING VS COMMERCIAL BROADCASTING.

3.1 Where the commercial broadcaster only caters for popular tastes the CP believes that you will always need a public broadcasting service as well. Public service programmes would in the future be essential in order to counteract the commercial impact.

3.2 Internationally it is clear that public service broadcasts is held in high esteem. The Public service broadcaster needs to set an example of product quality and should meet the needs of sophisticated viewers with special interests. For quality viewing and education we need more of this.

3.3 For the public broadcaster countrywide transmitter coverage is essential (read countrywide against the point of departure in 1.2 above).

3.4 The state must take the responsibility of financing a high



percentage of public service broadcasting.

RESERVATIONS

The CP has submitted the foregoing heads of arguments to indicate its general positions and perspective on the issues before this Technical Sub-Committee. The CP reserves the right to submit a more comprehensive and detailed position paper on the foregoing subject matter.

REPABOLEKI YA BOPHUTHATSWANA



REPUBLIC OF BOPHUTHATSWANA

REPUBLIEK VAN BOPHUTHATSWANA

TONA YA MIERO YA PUSO, YA PHEMELO LE YA DIPHOFO TSA SELEGAE  
THE MINISTER OF STATE AFFAIRS, OF DEFENCE AND OF CIVIL AVIATION  
DIE MINISTER VAN STAATSAANGELENTHED, VAN VERDEDIGING EN VAN BURGERLIKELUGVAART

Nr. Tahup./Ref. No./Verw. Nr.  
Nr. Mog./Tel. No. (0140) 29-2002/3  
Fax No. (0140) 84-2733

Kgatsana Poso/Private Bag/  
Private Sak X2172  
Mmebatho 8881

FAX TRANSMISSION

TO: Administration, DTC

FOR ATTENTION: Dr. T. Eloff

FROM: JOHAN FERREIRA, TEL 0140-841327

DATE: 19 May 1993 FAX NO: 011-3972211

SUBJECT: Submission to TC on  
Media Commission

NO OF PAGES: 2  
(INCLUDING THIS ONE)

MESSAGE:



**GOVERNMENT OF BOPHUTHATSWANA**

**SUBMISSION TO TECHNICAL COMMITTEE ON MEDIA COMMISSION**

The primary responsibility of the media is to inform the public of events in a responsible way and, in time of an election, to thereby assist the electorate in making an informed decision. This applies to all media.

Disturbing, however, is the bias the media in general reveal in respect of parties or groups holding different views. This fact has of late even been criticised by the media itself.

Without implying control or censorship, we are of the opinion that the solution to this problem will be to grant the existing Media Council more powers, i.e. "teeth", to be able to act effectively in the event of unethical or improper reporting by any member of the media.

F19

FAKSVOORBLAD/FAX COVER SHEET

SUID-AFRIKAANSE KOMMUNIKASIEDIENS  
(HOOFKANTOOR - ADMINISTRASIE)  
SOUTH AFRICAN COMMUNICATION SERVICE  
(HEAD OFFICE - ADMINISTRATION)

FAKS/FAX NO.: (012) 212360

DATUM/DATE: 93 - 05 - 19

LÆRVERWYSING: 515/6  
FILE REFERENCE: (I.W. MOET TE ALLE TYE INGEVUL WORD)  
(N.B. TO BE COMPLETED AT ALL TIMES)

LEWER ASB. DIE VOLGENDE BLADSYE AAN:  
PLEASE DELIVER THE FOLLOWING PAGES TO:

MEDIA TEGNIESE KOMITEE  
KAMER U 101 WORLD TRADE CENTRE

FAKS/FAX NO.: 011 - 397 2211

VAN/FROM: Hoof: SA Kommunikasiediens TEL.NO.: 012-3142154

AANTAL BLADSYE 6 MET VOORBLAD  
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PUBLIKASIES: SA KOMMUNIKASIEDIENS

BOODSKAP/MESSAGE: Inligting soos deur u  
verreik aan wnr. D.P. Verste, Hoof:  
SAKD op 19/5/93

Indien u nie al die bladsye ontvang het nie, kontak asb. so gou moontlik by Telefoon: (012) 325 3160 X 2128

If you did not receive all the pages, please call as soon as possible at Telephone: (012) 325 3160 X 2128

Geniet die dag! Have a nice day!

HANDTEKENING/SIGNATURE  
VERAFW.:  
RESPONSE: 1

07 92



## PUBLIKASIES VAN DIE SA KOMMUNIKASIEDIENS

Die Direkoraat Publikasies is onderverdeel in die subdirektorate Tydskrifte, Boeke en Brosjures, Beleidskommunikasie en Massakommunikasie.

### BOEKE EN BROSJURES

Die subdirekoraat het vanjaar weer eens die Amptelike Jaarboek in albei amptelike tale uitgegee. 'n Oplaag van 13 100 teen 'n drukkoste van R179 560, dit wil sê R13,71 per eksemplaar, is gedruk. Hiervan het die Departement van Buitelandse Sake 7 600 aangekoop vir verspreiding in die buiteland. Die res is binnelands bemark.

Deur die bladuitleg self in-huis met behulp van 'n rekenaar te doen kon die Jaarboek vanjaar gelyktydig in Afrikaans en Engels uitgegee word. Daarbenewens is ongeveer R60 000 drukkoste bespaar en die redaksie is met een personeellid verminder.

Hierbenewens is die volgende brosjures en voubiljette op versoek van die SAKD en ander staatsdepartemente geproduseer:

TEL	GETAL P'S	OPLAAG	DRUKKOSTE	KOSTE/EKS
is in SA '92	190	98 000		
ssenaarkalender '93	58	7 000	R 392 000	R 4,00
arverslag '91	24	750	R 119 000	R17,00
Profile	40	25 000	R 10 500	R14,00
nhuys [A/E-herdruk]	56	5 000	R 31 250	R 1,25
slims of SA	12	10 000	R 30 000	R 6,00
- invest in mineral ndustry	44	10 000	Gefinansier deur Buite- landse Sake R 30 000	R 3,01
servation in SA	20	10 000	Gefinansier deur Buite- landse Sake	
Ou Raadsaal [A/E] rosjure en pamflet]	40	4 000	Gefinansier deur Onderwys en Kultuur	
ote Schuur [A/E]	36	5 000	Gefinansier deur Kantoor van die SP R 5 200	R 6,50
over SA's Wild Flo- rs and the National tanical Gardens	16	800 30 000	Gefinansier deur Buite- landse Sake	
A country of con- asts	8	10 000	Gefinansier deur Buite- landse Sake	

-2-

FITEL	GETAL P'S	OPLAAG	DRUKKOSTE	KOSTE/EKS
The SA Nurserymen's Association	6 panele	10 000	Gefinansier deur Buitelandse Sake	
Stelling vir die verkiesing	10 panele	25 000	Gefinansier deur SOD	
Women reach out in SA	8 panele	1 000	R 3 060	R 3,06
Die Regering se benadering tot grondwetlike prosedure [A/E]	10 panele	25 000	R 7 950	R 0,32
Nasionale Kommunikasiebeleid en Strategie [A/E]	18 panele	6 000	R 6 000	R 1,00
Gelykheid vir vroue [11 tale]	14 panele	108 700	Gefinansier deur Justisie	
Grondwettelike regte vir almal [11 tale]	14 panele	239 850	Gefinansier deur Justisie	
Die A Glimpse	2	6 000	R 600	R 0,10
Reports: A new approach [E/A]	10 panele	16 000	Gefinansier deur Vervoer	
Die SA '93	116	97 000	R 300 000	R3,09

**TYDSKRIFTE**

Die subdirektoraat het twee tydskrifte SUID-AFRIKAANSE PANORAMA/SOUTH AFRICAN PANORAMA en SOUTHERN AFRICA TODAY gepubliseer. 'n Derde temagerigte publikasie, AKSENT/ACCENT, het in April 1993 verskyn met 'n aanvanklike oplaag van 37 000.

**SA PANORAMA**

Ses uitgawes van SA PANORAMA in albei amptelike tale met 'n totale oplaag van 238 942 se drukkoste was R1 453 514, dit wil sê R6,00 per eksemplaar.

Publikasie van SA PANORAMA is met die uitgawe Januarie/Februarie 1993 gestaak.

**SA TODAY**

Agt uitgawes met 'n totale binnelandse oplaag van sowat 180 000 se drukkoste was R448 550, dit wil sê R2,49 per eksemplaar. Sowat 58% van die totale oplaag van die tydskrif is deur die Departement van Buitelandse Sake aangekoop vir verspreiding in die buiteland.

Publikasie van SA TODAY is met die uitgawe van Desember 1992 gestaak.

L	GETAL P'S	OPLAAG	DRUKKOSTE	KOSTE/EKS
PANORAMA	484	238 942	R1 453 514	R6,08
TODAY	336	180 000	R 448 550	R2,49



-3-

Twee publikasies is in die verslagjaar deur dié subdirektoraaat bedryf naamlik RSA-BELEIDSOORSIG/POLICY REVIEW en BELEIDSGIDS/POLICY GUIDE. Die Afrikaanse en Engelse taalredakteurs wat verantwoordelik is vir die taalversorging van alle geskrewe inligting van die SAKD ressorteer ook onder hierdie subdirektoraaat.

#### RSA-BELEIDSOORSIG/POLICY REVIEW

RSA-BELEIDSOORSIG/POLICY REVIEW is 'n publikasie waarin, soos die titel aandui, regeringsbeleid en -inisiatiewe in die vorm van onderhoude en artikels uitgedra word. Dit bied 'n oorsig van beleidsrigtings en belangrike beleidsverklarings en -dokumente word hierin vervat.

Die publikasie is veral van nut vir politici, akademici, navorsingsinstansies, die media en staatsdepartemente. Artikels en belangrike onderhoude word dikwels reeds voor verskyning in die blad, aan die media beskikbaar gestel.

Tot Julie 1991 het die publikasie tien keer per jaar in die afsonderlike Engelse en Afrikaanse uitgawes verskyn. Van die Augustus-uitgawe af is die twee uitgawes tot een saamgevoeg met artikels in een amptelike taal en 'n opsomming in die ander.

Die samevoeging van die twee tydskrifte het onder meer meegebring dat die personeel minder tyd aan vertalings en meer aan die samestelling van die publikasie kon bestee.

Die tydskrif se oplaag beloop sowat 3 500. Die Departement van Buitelandse Sake het ongeveer 1 000 eksemplare vir verspreiding aan Suid-Afrikaanse missies gekoop maar dié reëling is in Julie gestaak.

Die begroting vir die publikasie beloop R203 000. Die eenheidskoste was R6,50.

#### BELEIDSGIDS/POLICY GUIDE

Dié nuusblad, wat tweeweekliks verskyn, hou senior staatslui op die hoogte van ontwikkelinge op die gebied van regeringsbeleid, die staatkundige proses en ander beleidsake wat vir hulle van belang is.

Die blad is wyd in aanvraag en die oplaag, wat steeds groei, is ongeveer 9 500.

Die begroting beloop R115 000. Die eenheidskoste was R0,44.

#### SUBDIREKTORAAT MASSAKOMMUNIKASIE

Ten einde die hoogste mate van finansiële doeltreffendheid en koördinerings van bestuurs- en joernalistieke aktiwiteite binne die SAKD se sewe streekkoerante te verseker, is die subdirektoraaat Massakommunikasie met ingang 1 April 1992 by die hoofkantoor gevestig.

Gesentraliseerde beheer oor die begroting van R3 370 507 (waarvan R1 790 600 bestem is vir die drukkoste van die koerante) is so-  
doende bewerkstellig.

Personeel



-4-

Benewens redaksieledes by die SAKD-koerante beskik die sub-direktorat op hoofkantoor oor 'n sentrale redaksie van drie lede wat die SAKD-koerante van sentrale temas voorsien, asook die SAKD-Nuusdiens met 'n redaksie van vier wat veral die plaaslike pers en streekradio een keer per week van nuus aangaande staats-aangeleenthede voorsien. 'n Stuk of 150 koerante word sodoende bereik. Sapa word ook van tyd tot tyd by wyse van rekenaar van nasionale nuus voorsien.

#### Finansies

Die onderskeie streekkantore van die SAKD was tot einde Maart 1992 verantwoordelik vir hul eie begrotings om koerante en nuusbriewe in die betrokke etniese gebiede uit te gee. Teen die einde van die 1991/1992-boekjaar het die gesamentlike drukkoelers van die streekkantore en die nuusbriewe op R3 352 389 gestaan.

Met die aanbreek van die 1992/93-boekjaar was die onderskeie begrotings vir die SAKD-koerante reeds toegeken aan die streekkantore. Die gesamentlike drukfondse van R2 190 600 [waarvan R400 000 vir nuusbriewe by die streekkantore gelaat is] is in die loop van die jaar hertoegedeel aan die subdirektorat Massakommunikasie.

Die posisie ten opsigte van die SAKD-koerante was op 1 April 1992 soos volg:

- \* Light/Khanya - Pretoriase streekkantoor. Voertaal Engels vir verspreiding in Noord- en Oos-Transvaal. Redaksie van drie. Oplaag 170 000. Begroting R417 000. [Oplaag gerasionaliseer na 90 000 teen Desember 1992.]
- \* Metropolitan Digest - Johannesburgse streekkantoor. Voertaal Engels vir verspreiding in die swart metropolitaanse gebiede van die Witwatersrand. Redaksie van drie. Oplaag 130 000. Begroting R214 000. [Oplaag gerasionaliseer na 60 000 teen Desember 1992.]
- \* Vision - Durbanse streekkantoor. Voertaal Engels vir verspreiding onder die Asiatiese bevolking. Redaksie van drie. Oplaag 40 000. Begroting R190 000. [Oplaag gerasionaliseer na 35 000 teen Desember 1992.]
- \* Izindaba - Durbanse streekkantoor. Voertaal Zoeloe vir verspreiding onder die Zoeloe-sprekendes van Natal. Redaksie van drie. Oplaag 40 000. Begroting R166 000. [Oplaag gerasionaliseer na 35 000 teen Desember 1992.]
- \* Umso - Port Elizabethse streekkantoor. Voertaal Engels en Xhosa gemeng vir verspreiding in Oos-Kaapland. Redaksie van drie. Oplaag 110 000. Begroting R289 500. [Oplaag gerasionaliseer na 60 000 teen Desember 1992.]
- \* Karat - Kaapstadse streekkantoor. Voertaal Afrikaans vir verspreiding onder die Kleurlingbevolking. Redaksie van vier waarvan een ook parlementêre diens verrig. Oplaag 120 000. Begroting R294 900. [Oplaag gerasionaliseer na 90 000 teen Desember 1992.]
- \* Puisano - Bloemfonteinse streekkantoor. Voertaal Afrikaans,



-5-

Engels en Sotho gemeng vir verspreiding in die Vrystaat en gedeeltes van Noord-Kaapland. Redaksie van drie. Oplaag 90 000. Begroting R219 100. [Oplaag gerasionaliseer na 80 000 teen Desember 1992.

'n Nuwe korporatiewe beeld is in die loop van die jaar deur al sewe koerante getrek, onder meer deur die ontwerp van nuwe mas-  
hoofde. 'n Aantal nuwe rubrieke, waaronder 'n verbruikersrubriek  
wat handel oor staats- en ander verbruikersprobleme, is terself-  
dertyd gevestig.

'n Maandelikse koerant, SHARE, word ook deur dié subdirektoraaat  
ten behoeve van die Departement van Buitelandse Sake saamgestel.  
Die koerant word in Afrikalande versprei.

93030301.vsg/HDV3/jk

F20

TELEFAX COVER SHEET

DATE : 20<sup>TH</sup> MAY 1993

RECIPIENT'S FAX NO.: (011) - 3972211

RECIPIENT : DR. THEUNS ELOFF.  
THE SECRETARIAT

ATTENTION : THE TRANSKEI GOVERNMENT  
REPRESENTATIVES

SENDER : MR. ANWAR ISMAIL  
TEL: (021) 644-365 SOUTH AFRICA

ENCLOSURES : TRANSKEI BROADCASTING  
CORPORATION'S LICENCE  
AND ITS FUTURE.

WE ARE TRANSMITTING ELEVEN PAGES INCLUDING THIS PAGE.

FAX OPERATOR : MRS. M. ISMAIL

PLEASE NOTE : MR. ISMAIL IS ONLY CONTACTABLE AT  
TELEPHONE 644-365 CAPE TOWN, RSA.



20 May 1993

By Fax

Representatives  
Transkei Government  
PO Box 307  
Isando  
1600

Dear Sirs / Madam

Re: Transkei Broadcasting Corporation and the Technical  
Committee on Media deciding it's future at present.

I would like to bring to the attention of the Transkei Government that I have documents in my possession which imply that the Transkei Government will have to re-negotiate it's broadcasting licence once an independent authority has been established.

Could you kindly inform me if the Transkei Broadcasting Corporation has given a mandate to any party or person or body to represent it on this very important Technical Committee which will be finalising a report within the next week.

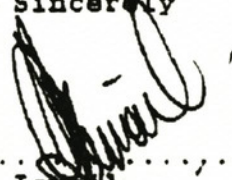
Your urgency in regard hereto would be greatly appreciated as it could adversely affect the future of the Transkei Broadcasting Corporation. ( See attached documents. )

I do not see why the SABC, M-Net and Bop-TV don't have to re-negotiate a broadcasting licence in terms of " The Grandfather " clause discussed by the Technical Committee and where the Transkei Broadcasting Corporation might have to. Also see attached documents pertaining to the National Party of SA i.e. the Government controlling M-Net indirectly.

Please note, I am only contactable via telephone number Cape Town - 644365 South Africa.

Thanking You

Yours Sincerely

  
.....  
Anwar Ismail.



- 9.16.2.8 A specialised Broadcasting Court should be established as set out in section 9.12 of this report. This would greatly enhance the impartiality and fairness of the new broadcasting control system.
- 9.16.3 A new Broadcasting Act for South Africa should contain specific stipulations on the local content of broadcasts, cross-ownership, classes of broadcasting licences to be issued, restrictions on the tenure of licences, the general principles of a code for programmes, general provision for advertisements, monitoring of programmes, etc. so as not to leave any discretion to the licensing authorities or broadcasters.
- 9.16.4 So as not to have to amend the proposed new Broadcasting Act every time a new situation arises, several aspects of broadcasting should be accommodated in regulations, e.g. those relating to the cost of broadcasting licences (if they are continued).

---

## 9.17 POSITION OF THE SABC

---

### RECOMMENDATIONS:

- 9.17.1 The SABC should retain its separate legislative provisions, which could be incorporated in the proposed new Broadcasting Act.
- 9.17.2 The SABC should be under the control of the IBA, as should all other broadcasters operating within South Africa.
- 9.17.3 The SABC should remain entitled to its existing licence and continue to be a national, open public service broadcaster providing for the general broadcasting needs of the people of South Africa. (The criterion should be provision of the maximum of service within the financial means at its disposal. It should be contracted by the IBA to fulfil the PSB functions.)

---

## 9.18 GRANDFATHER CLAUSE

When entering a new broadcasting dispensation such as this report is proposing it is considered acceptable and the least disruptive to carry over the rights of existing broadcasters into a new dispensation. The existing broadcasters could then fall under jurisdiction of the regulatory authority and in future negotiate their licence conditions with that authority.

The Task Group could not find an existing agreement giving Radio 702 and Capital Radio a specific right to broadcast transborder into South Africa. It can therefore not recommend the inclusion of these two radio stations in the grandfather clause.

At the time of writing this report, the political future of the TBVC countries was not clear.

---

### RECOMMENDATIONS:

- 9.18.1 The "grandfather clause" should be applied to the existing South African broadcasters, the SABC and M-Net.

NB.  
 ↓  
 |||  
 |||



9.18.2 The existing agreement for relaying the Bop-TV signal to agreed target areas within South Africa should be honoured under the proposed "grandfather clause".

NB → 9.18.3 If the TBVC countries were to become part of South Africa again, TBVC broadcasters should fall under the jurisdiction of the current South African regulatory authority, broadcasting laws and regulations, and this matter should be specifically negotiated.

## 9.19 SPECIAL LICENCE CATEGORIES

The Task Group received requests for the right to broadcast from student campuses. It felt that there is a legitimate need as well as suitable technology.

The leaky feeder (cable) system described in Chapter 4 (see 4.3.2) is ideal for radio broadcasts to relatively closed areas such as campuses, drive-in cinemas and individual buildings such as hospitals. Such a leaky feeder system does not use the electro-magnetic spectrum and is not receivable outside the immediate target area.

### RECOMMENDATIONS:

9.19.1 A special class of broadcasting licences should be introduced for restricted leaky feeder broadcasting services. For universities, the licence should be granted to the responsible authority, i.e. the Senate.

9.19.2 Anyone qualifying for such a special class of licence who wants to broadcast to a wider audience should apply to the IBA for an ordinary broadcasting licence.

9.19.3 The special licence category should fall under the jurisdiction of the IBA.

## 9.20 TRANSMITTING OF PROGRAMMES BY CABLE, OR REDIFFUSION

### 9.20.1 Telecommunications lines

The technology of cable transmissions and rediffusion is discussed in Chapter 4. The Post Office Act stipulates that the Postmaster General may approve the use of telecommunications lines for the transmission of sounds, images, signs, signals, communications or other information with or without sound only after approval by the Minister for Broadcasting and after consultation with the SABC. Routine requests for use of these lines is thus referred to the Minister. This procedure is aimed at preventing uncontrolled and unregulated private cable networks. SAPT is willing to supply these telecommunications lines, since income is derived in this way. In keeping with the aim to depoliticise broadcasting and establish an independent broadcasting authority, it would make sense to give the IBA the authority to deal with applications for the use of telecommunications lines in future.

### RECOMMENDATION:

9.20.1.1 Applications for the use of telecommunication lines for broadcasting purposes should be addressed to the IBA, who should be given the authority to grant permission subject to the proviso in 9.5.3.



## M-NET'S CONTROL BY NASIONALE PERS AND IT'S IMPLICATION FOR AFRICA AND THE BBC

---

In 1984 Nasionale Pers approached the Government for a licence for television broadcasting. They argued that the revenue of the Press in South Africa was being eroded and that their economic viability for survival was being threatened by the growth of advertising on the South African Broadcasting Corporation, from one television channel to two.

The government granted M-Net (Electronic Media Network Ltd) a broadcasting licence in 1986. The license being granted specifically on condition that ONLY Nasionale Pers Ltd. MAY MANAGE M-NET. (See Report of the Task Group On Broadcasting in South and Southern Africa by Professor C Viljoen - State Printers Aug 1991 Par.6 Page 45.)

M-Net's licence conditions were changed on numerous occasions by the government, always creating a favourable climate for M-net's long-term viability. The Nationalist Party via Dagbreek Trust, Servgro International Limited, Nasionale Pers, Telkom, Rembrandt Group and the Perskor Group are at the moment planning, with the Government, at the World Trade Centre and the Multi-Party Negotiations for M-Net to be more accessible to audiences, thereby spreading Nasionale Pers influence inter alia the National Party of South Africa; not just in South Africa, but also in Africa. (See Argus Tonight 6th May 1993 Page 2)

The government is also vigorously attempting at present to grant additional licences to M-Net so that it may use Telkom's fibre optic cable, which is connected to the rest of the world's major television program distributors, allowing M-Net to receive, and in turn broadcast Globally Syndicated Programs ensuring that a future S.A.B.C. becomes insignificant by not being able to acquire many international programs of high quality. This serious manipulation by the government has vast implications for the long term economical viability of the S.A.B.C. (South Africa's Public Broadcasting Corporation) which will be regulated shortly by a democratic and independent body. i.e from 1st June 1993.

The government of SA having taken cognisance of the aforementioned fact have established M-NET with a very low profile to date, to avoid attention nationally.

The most disturbing fact about M-Net's control by the Nasionale Pers and Perskor is that the world's most prestigious broadcasting system, the B.B.C., have signed joint broadcasting agreements with M-Net to broadcast into the rest of Africa.



-3-

The big question is whether the British Government and or the relevant British Broadcasting Authority after being made aware of M-Net's licence conditions with the management clause will take up the issue with the B.B.C. World Television News Service.  
(See article attached about BBC's involvement)

The B.B.C., by having a joint service with M-Net, has given the Nasionale Pers of South Africa credibility to infiltrate the rest of Africa. The B.B.C. therefore must be held responsible as having indirectly assisted the National Party Of South Africa to spread it's propaganda and ideology into Africa. M-Net todate owns 50% of the Kenya Television Network and is expanding into Sub-Saharan Africa as well.

Issued By:  
Anwar Ismail  
1003 Doncaster  
Marlborough Park  
Claremont  
Cape Town  
Rep. of South Africa  
7700  
Telephone: 644365  
Fax : 644365

PERTAINING TO M-NET & GOVERNMENT CONTROL

18 MAY '93 16:22 J S E 833 6580

P. 1-1



The Johannesburg Stock Exchange

Own a share of South Africa's future

**F A C S I M I L E M E S S A G E**

**TO :** MR ANWAR ISMAIL - CAPE TOWN  
**FAX NO:** (021) 644-365  
**FROM :** MR R J CONNELLAN - GENERAL MANAGER -  
 LISTINGS & EQUITY MARKETS DIVISION  
**DATE :** 17 MAY 1993

**ELECTRONIC MEDIA NETWORK (PTY) LTD ("M-NET")**

I hereby acknowledge receipt of your telefax dated 13 May 1993 regarding the listing of M-Net and wish to advise as follows.

Firstly, I am unable to comment on the broadcasting licence agreement as this does not fall within the ambit of the Johannesburg Stock Exchange.

Regarding the fact that an agreement exists between Nasionale Pers ("Nasionale") and M-Net, I wish to draw your attention to M-Net's prospectus dated 27/06/90, in particular to paragraph 17.2 which states :

"17.2 A management agreement exists between M-Net and Nasionale, whereby Nasionale provides general managerial, secretarial, technical and other specialist services to M-Net for a management fee based on the company's turnover. For the three audited financial periods ended 31 March 1990, M-Net paid Nasionale approximately R0,1 million, R2,0 million and R2,5 million respectively in terms of this agreement."

As far as the JSE is concerned, as long as a company discloses all material contracts in its prospectus, it falls within the listings requirements of the JSE.

Thank you.

**J E BURKE**  
 SENIOR CORPORATE FINANCE OFFICER  
 LISTINGS & EQUITY MARKETS DIVISION

FOR AND ON BEHALF OF : **MR R J CONNELLAN**  
 GENERAL MANAGER



## M-Net to broadcast in Ghana

IAIN MACDONALD

M-NET will be broadcasting its international service in Ghana from August, the pay-TV channel has announced.

It has linked up with a newly-formed company called Hi-Tech Vision Limited, to offer a service comprising a daily 11 hours of BBC World Service Television news and information and M-Net International programmes.

The development would "further the market for our shared service" according to BBC World Service Television Chief Executive Christopher Irwin.

The service will initially cover Accra and Tema, and later this year it will extend to Kumasi and Takoradi.

M-Net International with BBC World Service Television has established a following in over 30 countries since its launch in Botswana, Namibia, Lesotho and Transkei.

Negotiations are taking place to establish more pay television operations in Africa, and M-Net has received enquiries for its service from as far afield as Kuwait.

M-Net's domestic and international service currently has some 780 000 subscribers, and is one of the largest pay-TV operations outside North America.

PAGE TWO  
ARGUS TONIGHT  
6TH MAY 1993.

EXCERPT FROM

STATE PRESS

AUG - 1991

## CHAPTER 6

## M-NET AND OTHER COMMERCIAL BROADCASTERS

## 6.1 COMMERCIAL BROADCASTERS IN SOUTH AFRICA

South Africa has had commercial broadcasters for some years. In the international community the difference between national and commercial broadcasters used to be clearer than it is now. In Southern Africa this blurring of the old demarcations is also apparent. The distinction is becoming less clear as national broadcasters become more and more commercial in order to be able to afford their previously high levels of service. In some countries PSB content requirements for commercial broadcasters have conversely affected the nature of commercial broadcasting.

As in any other business, the purpose of commercial broadcasting is to make a profit. Revenue is derived from advertising, sponsorship and subscription fees, but not from licence fees, which accrue to PSB broadcasters.

Where commercial broadcasters have open (non-encoded) services, revenue is usually made up of advertising income and some sponsorships. Open commercial broadcasters compete directly with PSB broadcasters for the same audiences. Since advertising and sponsorship are used as sources of income, the level of regulation and conditions for programme content are less stringent than those demanded of PSB broadcasters funded from licence fees.

Other categories of commercial broadcasters include subscription and cable television. Programmes are broadcast in scrambled format, requiring a decoder to unscramble the signal. Viewers enter into a contract with the pay television channel, acquiring the right to decode the service.

Since it is a private contract between a willing buyer (the viewer) and a willing seller (the television station), encoded television broadcasting is usually regulated lightly.

## 6.2 M-NET

In 1984 the management of Nasionale Pers approached the government with a request to allow a pay television station in South Africa, owned and operated by a newspaper consortium. The delegation argued that the revenue base of the Press was being eroded rapidly by the growth of advertising on SABC television and expansion by the broadcasting corporation from one television channel to two.

The government responded by appointing a Task Group under the chairmanship of Dr F. J. Hewitt to investigate the desirability of allowing subscription television in South Africa.

Nasionale Pers, along with the main Press groupings, submitted a proposal for jointly owning and operating the proposed pay television station. Other proposals were also investigated, and the Task Group finally recommended awarding the licence to a combination of two proposals: that of the newspaper consortium as the major shareholder, and one of a consortium consisting of entertainment companies led by Ster-Kinckor, Sathel and Kersat.

The government, however, decided to award the concession exclusively to the Press consortium known as Electronic Media Network (M-Net), with six participating groups. The management responsibility was awarded to Nasionale Pers. NS.

M-Net is a subscription service television station, which began operating on 1 October 1986. It now provides about 120 hours a week of films, entertainment, documentaries, series and mini-series and, since July 1991, news documentaries. It has grown rapidly, increasing the number of subscribers to some 590 000 by June 1991.

M-Net covers all the main metropolitan areas of South Africa by microwave links and terrestrial transmitters. Figure 6.1 shows M-Net's coverage. By agreement with the SABC, it co-locates its own transmitters (39 to date) with those of the corporation, and rents or leases SABC capacity where it does not have its own equipment. Since June 1991, M-Net has leased a C-band transponder on the Intelsat Y satellite. It is now installing antennas in the more prominent rural areas in order to expand its service.



BUSINESS DAY, Thursday, May 6 1993

## —INFORMATION TECHNOLOGY—

# Telkom picks UK cellular phone firm

BUSINESS DAY

THURS: 6<sup>th</sup> MAY 1993

PAGE: 7.

Reports by  
MELANIE SERGEANT

TELKOM has decided to share its cellular network licence with one of the world's biggest independent cellular phone network operators and SA conglomerate Rembrandt.

It is understood that the Cabinet last week gave Telkom the go-ahead to take UK-based Vodafone and Rembrandt on board, with Vodafone taking a 35% stake.

Rembrandt will take 15%, because government granted Telkom 50% of one network licence. The second is open to tenders. The M-Net/Cable and Wireless consortium, and Cellstar are among those vying for the second licence.

The names of the four adjudicators who will decide on the second network operator, were released yesterday. They are former IDC chairman Koos van Rooy, IDC senior GM responsible for commercial ventures Gerhard Morse, State Tender Board chairman Koos Coetzer, and Durban-based lawyer Linda Zama, who serves on the board of the SA Post Office.

The tenders will be adjudicated under the chairmanship of recently appointed telecommunications regulator Ters Oosthuizen, who says: "In selecting the adjudicators, we did not look at political affiliations, but rather at expertise."

A priority now is adjudicating and granting the licences, and also the legislation procedure which is being negotiated in multiparty talks.

Telkom's choice of Vodafone means a significant investment by the UK-based company in SA. A Telkom source says Vodafone will be required to invest a proportional share of the infrastructure cost

of the network, and that this will be a "substantial investment".

He says Rembrandt was selected because it will bring finance, and marketing acumen, to the deal.

KATHRYN STRACHAN reports the ANC rejected the unilateral appointment of the telecommunications regulator and called for an immediate review of the operation through negotiations.

It called on government "to suspend with immediate effect the unilateral call for tenders and the award of licences for the proposed cellular telephone system".

The organisation claimed the new system was motivated by the need to provide a cheap telephone service for the rural areas, but proper analysis was essential to determine if it was in fact the best system for the rural areas.

The ANC argued a proper planning and consultative process, aimed at providing an affordable telephone service to all areas of the country, had to be developed. The current plan for a cellular system would provide a service only to the "urban privileged" at a cost of R2bn for the country. "This huge investment, which would be spent mainly outside the country, would absorb most of the funds available for investments in a telephone system and would preclude any other strategy to provide telephones."

The programme should also be carried out in a way which would stimulate the electronics industry in SA.

**ANC slams  
phone proposal**

**Staff Reporter**

A ROW has erupted over the government's decision to issue licences for two cellular phone networks which the ANC says will only provide a service to the "urban privileged at a cost of R2 billion".

The ANC called yesterday for the suspension of the government's unilateral call for tenders and the awarding of licences for the system.

6-05-93 CAPG TIMES

CAPG Times  
6th May 1993.



**F21****PAN AFRICANIST CONGRESS OF AZANIA INPUT REGARDING:****THE TECHNICAL COMMITTEE DEALING WITH THE INDEPENDENT MEDIA COMMISSION****1. RELATIONSHIP BETWEEN THE INDEPENDENT MEDIA COMMISSION (I.M.C.) AND THE TRANSITIONAL AUTHORITY (T.A.):**

The proposals of the PAC with regard to a truly independent T.A. (with fully-fledged executive and legislative powers in its areas of jurisdiction - including the media) was dealt with fully in the paper on the PAC input with regard to the Technical Committee dealing with the T.E.C. According to the said PAC proposals, the T.A. is truly independent and there is therefore no need for the I.M.C. to be independent of the T.A. in terms of accountability. The I.M.C. must act as an independent commission but it is accountable to the T.A. to which it must report regularly. The I.M.C. is not a permanent watchdog over all affairs of the media but a temporary commission with a specific task relating to elections meaning that its functions are political and since it is not an authority but a commission it has to report to the T.A. Unlike the CODESA T.E.C., which has a sub-council on the media and which sub-council may not interfere with the work of the I.M.C., the T.A. has no such sub-council and the I.M.C. reports directly to the T.A.

**2. TERMS OF REFERENCE:**

The PAC supports the terms of reference and wish to add that in addition to attending the electronic media and communications, the Technical Committee must also attend to the print media as it may cause problems as serious in nature as the electronic media. The body supervising the print media, namely the Media Council, is a voluntary association to which some newspapers are not affiliated and from which others may resign. This leaves a vacuum of an agency to which complaints on biased reporting by the print media can be made. The Technical Committee should investigate:

- how the Media Council can have jurisdiction over all print media, or
- how a body can be created to which complaints about the reporting of the print media can be made, or
- how the I.M.C. can attend to complaints about the reporting of the print media.

**3. COMPOSITION OF THE I.M.C.:**



It shall consist of 7 members appointed by the Multi-Party negotiating process. The State President shall not have anything to do with these appointments.

We support the following criteria for appointment:

Organs of civil society shall be invited, inter alia, by advertisement in the press to nominate names to either the Multi-Party negotiating process or the T.A., whichever is appropriate at that time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the I.M.C. can be appointed.

**4. POWERS, FUNCTIONS AND DUTIES:**

We support the following powers, duties and functions, subject to additions on the print media):

**Functions:**

The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.

The appointment of a suitable structure to monitor the proper exercise of licence conditions.

**Powers:**

The powers of the Postmaster General must be transferred to the I.M.C.

**Further:**

To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout SA.

To ensure fair and effective competition in the provision of ~~and~~ and related services.

To ensure fair and equitable opportunity to opinion formers to express their views freely.

To ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.

To ensure impartial control of all broadcasting by laying down norms and standards.