

29.04.93
SAS Government

F6

GOVERNMENT'S AMENDMENT TO PROPOSAL TWO: REGULATION AND PROMOTION OF BROADCASTING AND TELECOMMUNICATIONS AND MONITORING OF THE ELECTRONIC MEDIA

In view of the fact that a free and fair election has to be held as soon as possible, it is necessary that credible structures to regulate telecommunications and to monitor the electronic media be created urgently to, *inter alia*, ensure the levelling of the political playing field. Such structures should be statutorily enacted and it is therefore proposed that a technical committee be appointed to formulate draft legislation for consideration by the Negotiating Council.

The technical committee should consist of 5 suitably qualified persons and the following guidelines should be used as points of departure in drafting the aforesaid legislation:

1. The structures should consist of:

1.1 A Licensing Authority

- to regulate the utilisation of the electromagnetic spectrum, including the allocation of licences and the determining of licence conditions, standards and codes of conduct.

1.2 An Independent Media Commission

- to monitor the electronic media to ensure compliance with licensing conditions, standards and codes of conduct.

2. Regulating Policy

The Act should set out the broad policy guidelines in terms of which the Licensing Authority must perform its functions. Such policy guidelines should *inter alia* compel the Licensing Authority to as far as possible ensure:

- (i) that there will be a diversity of sound and television broadcasting services available for 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; and
- (ii) the impartiality of the electronic media regarding political issues and fair treatment of political parties.

3. Establishing of Licensing Authority

The Act should contain a procedure for the appointment of the members of the Licensing Authority that will ensure that they will generally be regarded as impartial and independent, as well as having the required expertise.

It is envisaged that the members of the Licensing Authority shall be appointed by the State President on the recommendation of the TEC.

4. Powers, duties and functions of Licensing Authority

The Licensing Authority shall -

- (i) apply the policy guidelines embodied in the Act;
- (ii) formulate criteria to be applied in considering applications for licences;
- (iii) prescribe and enforce licencing conditions (including prescribed standards and codes of conduct);
- (iv) with the aid possibly of sub-committees, *inter alia*, perform the following functions -
 - (a) administering the electromagnetic broadcasting spectrum;
 - (b) issuing and withdrawal of broadcasting licences;
 - (c) monitoring the technical standard of broadcasting;
 - (d) advising the government of the day on broadcasting matters;
 - (e) settling disputes and acting as arbiter between broadcasters;
 - (f) application of the code of conduct and the punitive measures for transgressions thereof with the aid of Independent Media Commission; and
 - (g) determining guidelines for programme content of broadcasters regarding offensive, slanderous and racist material.

5. Establishing of Independent Media Commission

- (i) Provision should be made that the members of the Independent Media Commission be appointed by the State President on the recommendation of the TEC.
- (ii) The chairman should be a jurist with 10 years' experience in a legal environment such as an advocate, attorney, lecturer in law or a judicial office.

6. Powers, duties and functions of Independent Media Commission

The Independent Media Commission shall -

- (i) monitor -
 - (a) the programme content of the electronic media for breaches of licencing conditions and the provisions of any code of conduct;

- (b) government publications for such favour or prejudice to any party that could jeopardize free elections.
- (ii) serve as adjudicator for the hearing of complaints against inaccuracies or partiality or the denial of fair access on the part of the electronic media, and shall have the power to order the rectification of any offensive conduct.
- (iii) function and execute its powers in a manner determined by itself and which it considers as effective and may whenever it deems it necessary -
 - (a) consult any person for purposes of obtaining expert advice on any matter; and
 - (b) appoint sub-committees to perform such functions and duties as determined by the Independent Media Commission from time to time.

Provisions should also be made that the Independent Media Commission may, in its discretion, refer any matter involving a transgression by a licensee of its licensing conditions to the Licensing Authority for such action as it may deem fit.

7. CODE OF CONDUCT

- 7.1 A keystone of and pre-condition for the proper functioning of the Independent Media Commission is the existence of a Code of Conduct (COC) for all licensed broadcasters.
- 7.2 Such a COC could form part, together with other conditions, as licensing conditions by the Licensing Authority.
- 7.3 Matters which could be contained in any COC, could refer to the following:
 - (a) The broadcasting of obscene and lascivious matter and the protection of moral standards.
 - (b) The privacy of sources of information.
 - (c) Impartiality in dealing with news, news commentary and political interviews.
 - (d) Equitable and fair access for all political parties to air time.
 - (e) The exercising of due care and responsibility with regard to the reporting of crime, violence, brutality and atrocities.
 - (f) The recognition of the cultural and language diversity of South Africa and its accommodation in programmes.
 - (g) The recognition of the right of freedom of religion and conscience and the accommodation of the need for religious programmes.

8. Financing and structures

The Licensing Authority and the Independent Media Commission shall have a budget to perform their duties as allocated to them from time to time and shall be accountable to the executive of the interim constitutional authority, provided that once a representative Parliament comes into being, it shall be accountable to Parliament.