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Monday, 12 July 1993

BY HAND

Ms Amanda Armstrong
***The Technical Committee on the
Independent Media Commission &
The Independent Telecommunications Authority***
WORLD TRADE CENTRE
KEMPTON PARK
1619

Dear Ms Armstrong

INDEPENDENT BROADCASTING AUTHORITY BILL

Herewith please find the comments of *Members of the SABC Board* for your kind attention.

Kind regards

Ina van Schalkwyk
Personal Assistant to the Chairperson
SABC BOARD





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6 July 1993

Ms Amanda Armstrong
The Technical Committee on the Independent Media Commission &
The Independent Telecommunications Authority
World Trade Centre
KEMPTON PARK
1619

Dear Ms Armstrong

INDEPENDENT BROADCASTING AUTHORITY BILL

I refer to the fourth working draft of the above Bill and comment as follows:

CHAPTER 1 : INTERPRETATION

1. Definitions

"Overlap area" - the wording does not effectively describe this definition.

"Private Broadcasting Service" - I suggest that (b), (c) and (d) be deleted as a commercial broadcasting service could also generate revenue from other sources.

"Public Broadcasting Service" - As some aspects of this Act overlap the Broadcasting Act, 1976, a new SABC Act should be promulgated simultaneously with this Bill.

The definitions of "Private Broadcasting Service", "Public Broadcasting Service" and "Community Broadcasting Service" overlap each other too much and should be re-worded to be more specific.

Provision should also be made for a definition for a Public Service Broadcaster vis à vis a Public Broadcasting Service.

"Television Broadcasting Service" - Delete the words "and includes a subscription television broadcasting service."



CHAPTER 2 : OBJECT & POLICY

3. Policy

- (5) The application of this sub-section should be changed according to the new definitions of private, public and community broadcasting services and a public service broadcaster.
- (5)(a) Delete the word "each".
- (5)(c) This paragraph should rather read "the need for the distribution of educational programmes".
- (6) I suggest that this rather reads: "ensure that broadcasting services in the Republic is not controlled by foreign persons".
- (8) This is too vague.
- (11) Delete the word "strive".

CHAPTER 3 : INDEPENDENT BROADCASTING AUTHORITY

5. Constitution of the Authority

- (1) Should the 3 year period stipulated in section 7 be negotiable, the members of the Authority should rather be part-time. Should it, however be a longer period, then the members could be full-time.

Schedule 1 is not practical. The process of appointment should be simplified. One must be cautious not to implement an Act for an interim phase, but to rather look at long-term objectives.

- (2)(b) Please add the following words before the word "qualifications":
"technical, broadcasting, financial and legal"
- (3) I suppose the word "chairman" in the second line should also read "chairperson".

6. Persons disqualified from being members of the Authority

- (d) Please add "or printed media" at the end of the sentence.

7. Term of Office of the member of the Authority

- (2) Please replace "simultaneously" with "in any one year".

14. Funds of Authority

- (4) It is unacceptable that the Authority may invest money in any manner it deems fit. There should be specific guidelines as to how money should be invested in an acceptable way.

17. Rules by Authority

This Act should allow for provisions on voting, voting rights of the Chair-person, etc.

(2) The rules should rather be made public.

19. Restriction on use of name or description implying connection with Authority

(2) What is the fine?

21. Delegations

(3) This is unclear and ambiguous and could be interpreted to be constitutionally impossible.

CHAPTER 4 : COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

26. Appointment of Experts

(1) Please add, after "may appoint", the words "or contract".

CHAPTER 5 : BROADCASTING FREQUENCY SPECTRUM MANAGEMENT

28. Assignment of the Broadcasting Services Frequency Bands

(1) The Radio Act, 1952 should be amended so that original powers can be delegated to the Authority in this Act.

30. Designation of Licence Areas

(1) & (2) The word order in both these sub-sections should be changed so that the Gazette's role is clearer.

31. Frequency Allotment Plan

The terms "allotment, allocation and assignment" should be replaced by other terms, because these terms have very specific meanings in frequency management.

CHAPTER 6 : BROADCASTING SIGNAL DISTRIBUTION LICENCES

35. Criteria for Broadcasting Signal Distribution Licence

The provisions of section 43 (2), except sub-section (i), should mutatis mutandis apply to broadcasting signal distribution licences.

36. Conditions of Broadcasting Signal Distribution Licence

(1) A broadcasting signal distribution licensee shall;

(a) comply with all the provisions of this Act, in particular the frequency plans and regulations of the Broadcasting Spectrum Management Committee;

- (b) not provide broadcasting signal distribution services to broadcasters not licenced by the Authority;
- (c) take due cognizance of the environmental impact of its activities and comply with the applicable Acts;
- (d) allow inspection of its facilities by the Authority;
- (e) be allowed to hold licences other than broadcasting signal distribution licences;
- (f) be allowed to provide broadcasting signal distribution services internationally.

38. Term of Broadcasting Signal Distribution Licence

The term of seven years seems too short. We propose a term of fifteen years.

CHAPTER 7 : BROADCASTING LICENCES

41. Granting and Renewal of Broadcasting Licences

I presume that Section 41 is not applicable to a Public Service Broadcaster. This should, however, be specifically stated, as the Public Service Broadcasters have statutory mandates which they must obey.

Should this section, (depending on the finalization of the new definitions mentioned under Chapter 1), however, be applicable to Public Service Broadcasters, the SABC should be allowed the opportunity to give its detailed comments to this section.

- (2)(b)(i) Change the word "frequency" to "technical parameters", as the term "frequency" could become too restrictive with new technical developments.

Footnote 8

The fact that interested parties can comment on this Act should suffice. I therefore support the view that the independence of the Authority should prevail.

- (15) Please add the following to this sub-section:

"The Authority may levy such fees for a broadcasting licence as it deems fit, including levies to assist in the financing of Public Broadcasting Services and which the Authority can make available to Public Broadcasting Services in a manner and for specific purposes as it deems fit".

43. Private Broadcasting Licences

- (2)(h) I find this kind of provision strange to appear in an Act. It should rather be in a Bill of Rights.

45. Limitations on Foreign Control of Private Broadcasting Services

- (3) At the end of the sentence, please add "in total".

47. Limitations on Cross Media Control of Private Broadcasting Services

(5) & (6) - It is not clear what the difference is between these two sub-sections.

(7), (8) and (9) - Please replace "more than one" with the word "a" and delete the word "private". Please add the word "any" before the words "company interests".

It is not clear what the difference is between the above three sub-sections and should rather be combined in one sub-section.

It is also not clear what the difference is between sub-sections (10), (11) and (12) and should also be combined.

(10) The percentage should be based on International Standards. The SABC proposes a figure of 20%.

(7)-(12) Is the average circulation figure of 300 000 "per year"?

49. General Broadcasting Licence Conditions

Please add in the third line after the words "the provisions of this Act" the following:

"or in the case of a Public Service Broadcaster (for which a definition is still required), then its Act"

50. Specific Broadcasting Licence Conditions on Local Television Content and South African Contemporary Music

Footnote 13

In my opinion this provision is not superfluous and I therefore support the opinion that section 50 should definitely form part of this Act. The policy obligation in section 3(14) is too vague so that detail provisions are necessary.

Section 50, however, is too prescriptive and over-regulated. Adequate provision is made in section 50(1) & (2) and sub-sections (3) & (4) should be deleted.

(1)(a) Replace the words "sports programmes" with "transmissions of sports events and compilations thereof" and delete the words "game shows".

(1)(a)(v) Please add in the third line after the words "prescribed by the Authority", "in the person's broadcasting licence".

(2)(a) "Gross revenue should rather be "nett revenue". Therefore a definition for "nett revenue" should be included in chapter 1.

("Nett revenue" shall mean the remaining balance after deduction from the gross revenue all commissions and discounts incurred in earning such revenue).

51. Amendment of Broadcasting Licence Conditions

- (1)(c) Does this imply that a licensee may request a change at any stage during the licence period or only at renewal. If it is at any stage, will it effect the term of the licence as stipulated in section 52 (in other words, will a new licence term start when the conditions are amended or, will the licensee simply apply the new conditions in the initial licence term?).
- (2) Please delete "the Chair-person" in line 2.

52. Term of Broadcasting Licence

It should be borne in mind that a Public Broadcasting Service is under a statutory obligation to provide a service and can therefore not find itself in a situation whereby its licence has expired or is invalid.

- (2) The period should rather be 15/10 years.
- (3) The period should rather be 10/7 years.

56. Record of Programmes Broadcast by Broadcasting Licensee

- (1)(b) This sub-section may cause problems with material from overseas suppliers as well as news agency contracts.

CHAPTER 8 : BROADCASTING PROGRAMMES

59. Party Election Broadcasts on Public Sound Broadcasting Services during an Election Period

Why is the section limited to Sound Broadcasting Services only? Television should be included.

Will these party election broadcasts be supplied free of charge? If so, the following should be added at the end of sub-section (3):

"provided that the public broadcasting services' financial limitations shall prevail".

- * If not, norms should be laid down to prevent bigger parties with financial backing to be in an advantageous position with the result that all political parties are not treated equitably.

A new sub-section (6) should be added stating the following:

"Party election broadcasts will be accommodated outside news and news related broadcasts, for in these programmes normal news norms will apply. Election items in news and news related programmes will be subject to the editorial code of the licensee."

60. Political Advertising on Sound Broadcasting Services during an Election Period

As previously mentioned, why is this limited to Sound Broadcasting Services only? Television should also be included.

- (3) This situation is difficult to always verify.

Please add the following at the end of the sentence:

"..... and shall abide by the norms agreed upon between the Authority and the various political parties". (see * above)

61. This section should be deleted completely. In other words, party election broadcasts and political advertisements should be allowed on television, subject to an agreement between the Authority and the political parties or the IMC/Electoral Commission.
62. Equitable Treatment of Political Parties by all Broadcasting Services during an Election Period
- (1) This sub-section contradicts sections 60 and 61 by using the term "any broadcasting service".
- (3) Delete sub-section (3) and replace it with the following:
 "In news and news related programmes news norms and the editorial code of the licensee will apply, ensuring fair treatment of all political parties.
 There will be a clear distinction between news and news related programmes in which news norms and editorial codes will apply, and other programmes such as special election programmes, party political broadcasts and political advertisements, in which special rules will apply as agreed upon by Authority, the political parties (TEC) and the IMC/Electoral Commission.

CHAPTER 9 - ENFORCEMENT

63. Broadcasting Monitoring and Complaints Committee

- (1) This section should be subject to the provisions of Section 57(2) as well.

67. Powers in case of a Breach of Broadcasting Licence Conditions

Footnote 20

This provision should not be debatable.

- (2) This provision should be adapted according to the new definitions of private, public and community broadcasting services as well as public service broadcaster.

68. Offences

- (2) I suppose the words "shall be guilty of an offence" should be added at the end of the sentence.

SCHEDULE 3

3. News

- (1) Please replace the word "objectively" with the word "fairly".

5. Controversial Issues of Public Importance

(2) Please add the following at the end of the sentence:

"..... provided such request is within reasonable time".

SCHEDULE 4

1. In view of sub-section (3), what is meant by "person"?

GENERAL

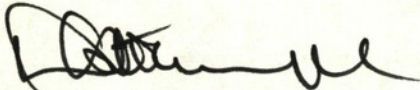
1. How is Public Broadcasting Services to be financed?

2. A situation that should be catered for in this Act, is that of the SABC. The SABC is a public service broadcaster with various commercial stations such as Radio 5 etc.

As previously mentioned, this can be catered for by re-wording the definitions of private, public and community broadcasting services and by adding a definition for a public service broadcaster.

3. A situation that should be considered by the Authority, is that of confidentiality of some documents which should not be open for public scrutiny.

Thank you



D. ESTERHUYSE
ACTING GROUP CHIEF EXECUTIVE