

INDEPENDENT BROADCASTING COMMISSION BILL

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

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

Arrangement of Act

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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.

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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.

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(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;

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- (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;

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- (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;

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- (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

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- (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 -

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- (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.

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(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.

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(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;

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- (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.

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(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;

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- (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-

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- (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.

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(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.

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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

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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 telecommunicatoins 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.

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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.

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.

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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.

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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

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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.

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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:

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"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.

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(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 [Postmaster-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.

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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: