

AGENDA FOR THE DISCUSSION OF THE 7TH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

Covering Note

The State Law Adviser and the Technical Committee would like to inform the Negotiating Council that, due to the extreme haste in which this Bill has been revised and the extent of revision required, it was not possible to ascertain the extent to which consequential, typographical and technical errors appear in the Bill. This draft will therefore be subject to another technical revision.

The following issues have been referred to and dealt with by the Technical Committee:

1. Definitions

"broadcasting" - the same change has been made to this definition as was made in the Independent Media Commission Bill (after discussions with the Postmaster General).

"broadcasting services" - removal of "text material" from the definitions. See the new section 40(2) which permits licensees to broadcast text. This was done on the advice of the Postmaster General who correctly pointed out that non-broadcasters who transmit teletext might be hit by the definition.

"broadcasting signal distribution" - amended to ensure that the use of non-broadcast frequency bands remains under the control of the Postmaster General.

"broadcasting signal distribution licence" - limited to "broadcasting" (after discussion with Postmaster General).

"community" - same as Independent Media Commission Bill

"election" - different to Independent Media Commission. No need for reference to the Constitution Act as elections are not, except in the case of the first election, required by the Constitution Act to be held.

"election period" - different to Independent Media Commission Act because period ends once the candidates have been appointed and not from the dissolution of the Independent Electoral Commission. It conforms with the definition of the IMC Act.

"political party" - the definition applies only to sections 59, 60 and 61 and the term has its ordinary meaning in respect of the remainder of the Act.

"sound broadcasting services", "sound radio set", "telecommunications", "TV broadcasting services" and "TV set" - these definitions have all been adapted after input from the Postmaster General.

2. Sections

2(3)(a) - The South African Government would like to see regional identity referred to as well.

2(5)(b) - Reference to SPR's has been corrected to "constituent regions of the Republic".

3(1) - addition of further empowerment of the Independent Broadcasting Authority as a juristic person.

5(1)(d) - "movement, organisation or body" added to the disqualification. "Political party" has its ordinary meaning here. Same provision as that in the IMC Act.

6(2)(c) - 'determination of different terms of office by lot' - this procedure is set out in Schedule 6 with a view to avoiding any irregularities in the drawing of lots.

13 - This section has now been finalised bearing in mind the changes to section 3(1). We believe that the Independent Broadcasting Authority is now sufficiently empowered. There is no longer a reference to the Minister of State Expenditure in this section.

17 and 18(b) - Minister of Finance changed to Minister of State Expenditure.

19(4) - provision for auditing by Auditor General.

26(2) - provision for differentiation between remuneration of chairman and ordinary members.

28(8) - addition of the words "as a matter of urgency".

28(9) - new provision to provide for a moratorium on the granting of new licences while this special inquiry is taking place.

29(1) - After discussion with the Postmaster General we have now provided for the transfer of frequencies in the broadcasting services frequency bands to the Postmaster General if such transfer is requested by him and if such request is reasonable.

29(2) - We have provided for an obligation to consult with the Postmaster General.

29(3) - We have provided for limitations on interference levels. There should be a reciprocal provision in the Radio Act.

Regarding section 29, these are the Technical Committee's formulations as a response to the Postmaster General's proposals. We have not accepted the concept, which has been argued for by the Postmaster General, namely that the IBA should be in a subservient position to the Postmaster General in relation to the use of the broadcasting services frequency bands (see Special Report on the Respective Roles

of the Postmaster General and the Independent Broadcasting Authority).

30(g) - we have provided for the Broadcasting Technical Committee to be responsible for giving effect to the provisions of section 29(2) and (3).

30(h) - assisting, not participation, but attending the ITU conferences.

30(i) - "negotiation" has been replaced by "consultation".

40(2) - We have provided for the broadcasting of text by broadcasting licensees to be permissible.

41(9) - We have provided for a determination by the Authority in the case of competitive licence applications.

43 - We have now provided for specific technical entitlements conferred by or arising from the issuing of a broadcasting licence, namely the use of the radio frequency spectrum and the establishment of a broadcasting station.

45(1) - This section has been amended so as to allow the tabling in the TEC and Parliament of the the Authority's recommendations in relation to public broadcasting.

46(2) - This section now provides for the protection of the economic rights of grandparented licensees, and specifically provides for 702 to be a deemed licensee in the event of the appropriate bilateral arrangements not having been concluded at the time of the commencement of the Act.

48(3) - This section provides for deemed licensees to be exempted from the foreign ownership provisions.

49(6) - This section provides for the IBA to deviate from the provisions of section 49 on good cause shown. This provision will only become operational two years after the commencement of the Act.

50(1) - Amended to provide for TEC/Parliament to make the final determination in respect of cross-media ownership limitations in accordance with instructions of the Negotiating Council.

50(3) - Cross-media ownership determinations will not affect the licensee during the currency of the term of the licensee at the time of the determination.

An alternative formulation of section 50 has been put up by the South African Government. It provides as follows:

- "(1) Subject to the provisions of subsection (2) no newspaper, either alone or in association with any other person in control of such newspaper, may own, directly or indirectly, more than 35 percent of the shareholding of a private broadcasting service.
- (2) The Authority may on good cause shown and taking into account the primary objects referred to in section 2, permit such newspaper, either alone or so associated, to own more 35 percent of the shareholding of a private broadcasting service.
- (3) The Authority, may whenever it deems it necessary in view of developments in broadcasting technology or for the purposes of advancing the primary objects referred to in section 2, institute and conduct a public enquiry and make recommendations to the Minister regarding the amendment of any of the preceding subsections.

(4) The recommendations contemplated in subsection (3) shall be tabled in Parliament by the Minister within 14 days of receipt thereof in Parliament is then in ordinary session or within 14 days after the commencement of its next ensuing session."

51 - We have simplified the previous formulation which relied on primary objects.

53 (5) and (6) - Grandfathered licensees can have local television content, independent television production and South African music conditions imposed upon them after the regulations have been made. All licensees will have a minimum period of one year within which to comply with local television content and independent television production regulations.

66(5) - This section has been added to deal with the reference under section 24(2) of the IMC Act.

77 - This is a new, standard 'confidentiality' section.

Schedule 1 - We have provided two alternative formulations after full consideration of the Planning Committee's recommendations in this regard and discussions with the *ad hoc* Committee.

Schedule 2 - This Schedule has not been finally approved by the State Law Adviser.

Schedule 4 - This Schedule is now cross-referenced to the new definition of control.

Entrenchment in the Constitution

Another matter that the Technical Committee wishes to raise for the consideration by the Negotiating Council is the question whether the fundamental principles of the Bill should be entrenched in this Constitution, particularly the independence of the regulatory authority and the policy to be applied. We would strongly recommend that this be done as the independence of the regulatory authority and the policy to be applied presently guarantee objective regulation and **inter alia** fair treatment of the interests of all language and cultural groups, the stability of the broadcasting industry and the fair treatment of political parties during election periods.

Amendments to existing legislation

The Negotiating Council should be aware that certain consequential amendments will have to be made to the Radio Act, 1952 (Act No.3 of 1952), the Post Office Act, 1958 (Act No.44 of 1958), and the Broadcasting Act, 1976 (Act No.73 of 1976) in order to give effect to the provisions of this Bill.

**EMBARGOED UNTIL DELIVERY/TABLING
IN THE NEGOTIATING COUNCIL**

INDEPENDENT BROADCASTING AUTHORITY BILL

(WORKING DRAFT 7)

Prepared by the Technical Committee on the Independent Media Commission and the Independent Telecommunications Authority, Multi-Party Negotiation Process, for discussion.

31 August 1993

INDEPENDENT BROADCASTING AUTHORITY BILL

To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish the Independent Broadcasting Authority; to define its powers, functions and duties; 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

SECTION NO.	SUBJECT MATTER OF SECTIONS, CHAPTERS AND SCHEDULES
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CHAPTER 1: INTRODUCTORY PROVISIONS

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| 1 | <i>Definitions</i> |
| 2 | <i>Primary objects of Act</i> |

CHAPTER 2: INDEPENDENT BROADCASTING AUTHORITY

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| 3 | <i>Establishment of Independent Broadcasting Authority</i> |
| 4 | <i>Constitution of Council</i> |
| 5 | <i>Persons disqualified from being or remaining councillors</i> |
| 6 | <i>Terms of office of councillors</i> |

7	<i>Remuneration and allowances of councillors</i>
8	<i>Removal from office</i>
9	<i>Vacancies in Council</i>
10	<i>Meetings of Council</i>
11	<i>Disclosure of conflicting interests</i>
12	<i>Proceedings of Council not invalid in certain circumstances</i>
13	<i>General or ancillary powers of Authority</i>
14	<i>Staff of Authority</i>
15	<i>Financing of Authority</i>
16	<i>Raising of loans by Authority</i>
17	<i>Banking account</i>
18	<i>Investment of surplus moneys</i>
19	<i>Accounting and auditing</i>
20	<i>Annual report</i>

CHAPTER 3: COMMITTEES, APPOINTMENT OF EXPERTS, AND INQUIRIES

21	<i>Establishment and appointment of standing committees of Council</i>
22	<i>Constitution of standing committees</i>
23	<i>Establishment, appointment and constitution of special committees of Council</i>
24	<i>Powers, functions and duties of committees</i>
25	<i>Meetings of Committees</i>
26	<i>Remuneration and allowances of committee members</i>
27	<i>Appointment of experts</i>
28	<i>Inquiries by Authority</i>

CHAPTER 4: CONTROL OF THE BROADCASTING FREQUENCY SPECTRUM

29	<i>Authority vested with exclusive powers in relation to administration, management and planning of broadcasting services frequency bands</i>
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- 30 *Broadcasting Technical Committee*
31 *Frequency plan*

CHAPTER 5: BROADCASTING SIGNAL DISTRIBUTION LICENCES

- 32 *Prohibition of broadcasting signal distribution without licence*
33 *Granting of broadcasting signal distribution licences*
34 *Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences*
35 *Transmitters and transmission characteristics to be approved by Authority*
36 *General obligations of broadcasting signal distribution licensees*
37 *Obligations of common carrier regarding provision of broadcasting signal distribution*
38 *Terms of broadcasting signal distribution licences*

CHAPTER 6: BROADCASTING LICENCES

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40 *Categories of broadcasting licences*
41 *Application procedure in relation to broadcasting licences*
42 *Hearings in relation to applications for broadcasting licences*
43 *Entitlements under and conditions pertaining to broadcasting licences*
44 *Renewal of broadcasting licences*
45 *Public broadcasting licences*
46 *Private broadcasting licences*
47 *Community broadcasting licences*
48 *Limitations on foreign control of private broadcasting services*
49 *Limitations on control of private broadcasting services*
50 *Limitations on cross-media control of private broadcasting services*
51 *Prohibition on granting of broadcasting licences to political entities*

- 52 *Amendment of broadcasting licences*
53 *Imposition of specific broadcasting licence conditions regarding local television content and South African music*
54 *Terms of broadcasting licences*
55 *Record of programmes broadcast by broadcasting licensee*

CHAPTER 7: BROADCASTING PROGRAMMES

- 56 *Code of Conduct, and exemptions*
57 *Control over advertisements*
58 *Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances*
59 *Broadcasting of party election broadcasts on sound broadcasting services during election period*
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76	<i>Limitation of liability</i>
77	<i>Confidentiality</i>
78	<i>Regulations</i>
79	<i>Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic</i>
80	<i>Application of Act in event of conflict with other laws</i>
81	<i>Liquidation</i>
82	<i>Amendment of laws</i>
83	<i>This Act binding on State</i>
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SCHEDULES

Schedule 1 Procedure for appointing councillors

Schedule 2 Pension rights of officers and employees

Schedule 3 Code of Conduct for South African broadcasters

***Schedule 4 Control of private broadcasting licences and
newspapers and ownership of company interests***

Schedule 5 Amendment of laws

CHAPTER 1

INTRODUCTORY PROVISIONS

1. Definitions

(1) In this Act, unless inconsistent with -

"apparatus" means any apparatus or equipment used or destined, designed adopted to be used in connection with broadcasting;

"appointing body" means the body charged with the appointment of councillors in terms of section 4;

"authorised person" in relation to any power, function or duty to be exercised or performed for or on behalf of the Authority in terms of this Act, means any councillor or member of a committee of the Council or any staff member of the Authority duly authorised in terms of this Act to act on behalf of the Authority;

"Authority" means the Independent Broadcasting Authority established by section 3;

"broadcasting" means any form of unidirectional telecommunication intended for the public or sections of the public, or subscribers to any broadcasting service, having appropriate receiving facilities, whether carried out by means of radio or any other means of telecommunication, or any combination of the aforementioned;

"broadcasting licence" means a licence granted and issued by the Authority in terms of this Act or deemed by this Act to have been so granted or issued to a person for the purpose of providing a defined category of broadcasting service;

"broadcasting licensee" means the holder of a broadcasting licence;

"broadcasting service" means a single, defined service which consists in the broadcasting television or sound material to the public or sections of the public or to the subscribers to such service;

"broadcasting services frequency bands" means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such assignment has been agreed to or adopted by the Republic, and any other additional part of the electromagnetic radio frequency spectrum determined nationally for the use of broadcasting services;

"broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed by means of a telecommunications process to any geographical target area excluding the use of facilities which operate on frequencies outside the broadcasting services frequency boards;

"broadcasting signal distribution licence" means a licence granted and issued by the Authority in terms of this Act or deemed by this Act to have been so granted or issued to a person for the purpose of providing signal distribution for broadcasting purposes;

"broadcasting signal distribution licensee" means the holder of a broadcasting signal distribution licence;

"chairperson" means the chairperson of the Council, referred to in section 4(1)(a), and includes any councillor acting in the stead of such person in accordance with the provisions of section 10(2);

"community" includes a geographically-founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

"community broadcasting service" means a broadcasting service which -

- (a) is fully controlled by a non-profit entity;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;

"company" means any company or external company as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973), and includes any close corporation as defined in section 1 of the Close Corporation Act, 1984 (Act No. 69 of 1984);

"Council" means the council of the Authority referred to in section 3(2), as constituted in terms of section 4(1) and, in relation to the exercise or performance of any power, function or duty conferred upon the Council by this Act, includes any committee of the Council or any officer of the Authority acting under a delegation or authorisation in terms of section 69;

"councillor" means any member of the Council referred to in section 4(1);

"election" means any election for the National Assembly or any other legislature contemplated in the Constitution Act conducted in terms of the Electoral Act, 1993;

"election period" means the period commencing on the day immediately following after the last day determined under the Electoral Act, 1993, for the submission of lists of the nature contemplated in the definition of "political party" in this section, and ending on the day immediately following after the day on which candidates of any of the political parties are declared duly elected in terms of that Act;

"financial year" means the financial year of the Authority commencing on the first day of April in any year and ending on the thirty-first day of March, first following, both days inclusive: Provided that the first financial year shall commence on the date of the commencement of this Act;

"foreign person" means -

- (a) a natural person who is not a South African citizen;
- (b) a company, wherever incorporated, where the natural persons who in actual fact control the company, whether directly or indirectly, are not South African citizens; or

(c) a company, wherever incorporated, where -

(i) a company referred to in paragraph (b) of this definition; or

(ii) a natural person who is not a South African citizen and a company referred to in that paragraph,

controls or control the company, whether directly or indirectly;

"licence area" means the geographical target area of a broadcasting service as specified in a broadcasting licence;

"licensee" means the holder of any licence granted and issued under this Act or deemed by this Act to have been so granted or so issued;

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

"National Assembly" means the National Assembly contemplated in the Constitution Act;

"party election broadcast" means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party;

"political advertisement" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, any money or other consideration;

"political party", for the purposes of sections 59, 60 and 61, means any registered party as defined in section 1 of the Electoral Act, 1993, or any alliance of such registered parties (as the case may be), which, for the purpose of any particular election, has, before the commencement of the election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution Act;

"prescribed" means prescribed by regulation in terms of section 77;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a private person;

"public broadcasting service" means -

- (a) any broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976);
- (b) a broadcasting service provided by any other statutory body; or
- (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State;

and shall include a commercially-operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

"radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz;

"Republic" means the Republic of South Africa;

"sound broadcasting service" means a broadcasting service destined to be received by a sound radio set;

"sound radio set" means any apparatus designed so adopted to be capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals;

"telecommunications" means any system or method of conveying signs, signals, communications or other information by means of electricity, magneton, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun "telecommunication" shall be construed accordingly;

"television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

"television set" means any apparatus designed or adopted to be capable of receiving transmissions broadcast in the course of television; and

"this Act" includes the Schedules to this Act and any regulations made from time to time under section 78.

- (2) For the purposes of this Act a person shall control, have controlled, be in control of or be in a position to exercise control over a broadcasting licensee, a newspaper or a company **inter alia** in the circumstances contemplated in paragraphs (1), (2) and (3), respectively, of Schedule 4 to this Act.

2. Primary objects of Act

The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest through the Independent Broadcasting Authority established by section 3, and for that purpose to -

- (1) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- (2) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
- (3) ensure that broadcasting services, viewed collectively -
 - (a) develop and protect a national identity, culture and character;
 - (b) provide for regular -
 - (i) news services;
 - (ii) actuality programmes on matters of public interest;
 - (iii) programmes on political issues of public interest; and
 - (iv) programmes on matters of international, national, regional and local significance;
- (4) protect the integrity and viability of public broadcasting services;

- (5) ensure that, in the provision of public broadcasting services -
 - (a) the needs of language, cultural and religious groups;
 - (b) the needs of the constituent regions of the Republic and local communities; and
 - (c) the need for educational programmes,are duly taken into account;
- (6) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- (7) encourage equal opportunity employment practices by all licensees;
- (8) ensure that broadcasting services are not controlled by foreign persons;
- (9) ensure that private and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (10) impose limitations on cross-media control of private broadcasting services;
- (11) promote the most efficient use of the broadcasting services frequency bands;
- (12) ensure that public and private broadcasting licensees and signal distribution licensees comply with internationally-accepted technical standards;
- (13) ensure that broadcasting signal distribution facilities are made available in respect of all licensed broadcasting services;

- (14) refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;
- (15) ensure fair competition between broadcasting licensees;
- (16) promote and conduct research into broadcasting policy and technology;
- (17) encourage investment in the broadcasting industry;
- (18) promote the stability of the broadcasting industry;
- (19) ensure equitable treatment of political parties by all broadcasting licensees during an election period;
- (20) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Independent Broadcasting Authority; and
- (21) encourage the provision of appropriate means for addressing complaints in relation to broadcasting services and broadcasting signal distribution.

CHAPTER 2

INDEPENDENT BROADCASTING AUTHORITY

3. Establishment of Independent Broadcasting Authority

- (1) (a) There is hereby established the Independent Broadcasting Authority which shall be a juristic person and exercise and perform the powers, functions and duties conferred and imposed upon it by this Act or by or any other law.
- (b) Without derogating from the generality of paragraph (a), the Independent Broadcasting Authority for the purposes of and the proper exercise and performance of its powers, functions and duties in terms of this Act and achieving and giving effect to the objects and principles as enunciated in section 2, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring and holding an alienating or otherwise disposing movable or immovable property and any other real rights or other rights or interests, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act.
- (2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such council shall be the acts of the Authority.
- (3) The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the State, the government and its administration, any political party or any other functionary or body

directly or indirectly representing the interests of the State, the government or any political party.

4. Constitution of Council

(1) The membership of the Council shall consist of -

- (a) a chairperson; and
- (b) six other councillors,

appointed in accordance with the provisions of Schedule 1.

(2) Councillors shall -

- (a) when viewed collectively, be persons who are suited to serve on the Council by virtue of their qualifications, expertise and experience in the fields of, **inter alia**, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office;
- (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles as enunciated in section 2.

5. Persons disqualified from being or remaining councillors

- (1) A person shall not be appointed or remain a councillor if such person -
- (a) is not a citizen of and not permanently resident in the Republic;
 - (b) holds an office of profit under the State, subject to the provisions of section 22(3)(a);
 - (c) is a member of Parliament or any other legislature contemplated in the Constitution Act contemplated in the Constitution Act at the relevant time, or is a member of any local authority;
 - (d) is, or during the preceding twelve months was, an office-bearer or employee of any party, movement, organisation or body of a party political nature;
 - (e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
 - (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
 - (g) is an unrehabilitated insolvent;
 - (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;

- (i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
 - (j) at any time prior to the date of commencement of this Act, has been convicted, or at any time after such commencement, is convicted -
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958); or
 - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (k) is or has been convicted of an offence under this Act.
- (2) Notwithstanding the provisions of paragraph (b), (e) or (f) of subsection (1), a person shall be eligible for appointment to the Council if such person divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.
- (3) For the purposes of this section, "spouse" includes a **de facto** spouse.

6. Terms of office of councillors

- (1) The chairperson shall hold office for a period of five years as from the date of his or her appointment.

- (2) (a) Subject to the provisions of paragraph (c) of this subsection, the additional councillors shall hold office for a period of four years as from the date of their appointment.
 - (b) One half of the total number of additional councillors shall vacate their offices every two years.
 - (c) For the purposes of paragraph (b), such three of the six additional councillors appointed to the first Council constituted after the commencement of this Act as shall be determined by lot by the appointing body for that purpose in accordance with the provisions of Schedule 6, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three councillors remaining at that stage, shall vacate their offices on a date two years later.
- (3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office.
- (4) A councillor shall upon expiration of his or her term of office be eligible for re-appointment.
- (5) For the purposes of this section and schedule 6, "additional councillors" means the members of the Council referred to in section 4(1)(b).

7. Remuneration and allowances of councillors

Councillors shall, from the funds of the Authority, be paid such remuneration and allowances and be entitled to such perquisites, as the Minister, in consultation with the Minister of State Expenditure, may determine.

8. Removal from office

- (1) Notwithstanding the provisions of section 6 a councillor may be removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office, or by reason of his or her absence from three consecutive meetings of the Council without the prior permission of the chairperson or otherwise without good cause shown.
- (2) A councillor shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision to that effect agreed to by at least seventy-five per cent of the members of the appointing body.

9. Vacancies in Council

- (1) There shall be a vacancy in the Council -
 - (a) if a councillor becomes subject to a disqualification referred to in section 5;
 - (b) when a councillor's written resignation in terms of section 6(3) takes effect; or
 - (c) if a councillor is removed from office in terms of section 8.
- (2) A vacancy in the Council shall be filled by the appointment of another councillor by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

10. Meetings of Council

- (1) The meetings of the Council shall be held at such times and places as may be determined by resolution of the Council whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) In the absence of the chairperson, the remaining councillors shall from their number elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.
- (3) The chairperson may at any time in his or her discretion convene a special meeting of the Council which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall, upon having been presented with a requisition for that purpose signed by at least two councillors, call for a special meeting, and if the chairperson fails to convene a special meeting within seven days as from such presentation, such two councillors may, upon the expiration of such seven days, convene the special meeting.
- (4) The quorum for any meeting of the Council shall be a majority of the total number of councillors.
- (5) A decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council and, in the event of an equality of votes regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (6) The Council may, in its discretion, allow members of the public to attend any meeting of the Council.

11. Disclosure of conflicting interests

- (1) Subject to the provisions of subsection (2), a councillor shall not vote nor in any other manner participate in the proceedings at any meeting of the Council, nor be present at the venue where such a meeting is held, if, in relation to any matter before the Council he or she has any interest which precludes him or her from performing his or her functions as councillor in a fair, unbiased and proper manner.
- (2) If at any stage during the course of any proceedings before the Council it appears that any councillor has or may have an interest which may cause such conflict of interest to arise on his or her part -
 - (a) such councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining councillors to discuss the matter and determine whether such councillor is precluded from participating in such meeting by reason of a conflict of interests; and
 - (b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the meeting in question.
- (3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the proceedings of the Council shall be null and void.

12. Proceedings of Council not invalid in certain circumstances

Subject to the provisions of section 11, a decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a councillor or a vacancy in the Council or the fact that any person not entitled to sit as a councillor sat as such at the time when such decision was taken, provided such decision was taken by a majority of councillors present at the time and entitled to so sit, and the councillors present and so entitled at the time constituted a quorum.

13. General or ancillary powers of Authority

The Authority, in exercising its powers and performing its functions, shall have the capacity to -

- (a) hire, purchase, possess or otherwise acquire movable and immovable property and encumber such property;
- (b) let, sell or otherwise dispose of movable or immovable property;
- (c) acquire or alienate rights in incorporeal things or otherwise dispose thereof;
- (d) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (e) make donations.

14. Staff of Authority

- (1) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purposes of assisting the Council, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the implementation of this Act.
- (2) The Council shall appoint such other staff for the Authority as it deems necessary with a view to assisting the Authority with all such work as may arise through the exercise and performance of its powers, functions and duties in terms of this Act.
- (3) The Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pensions and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market.
- (4) The pension rights of staff members shall be in accordance with the provisions as set out in Schedule 2 of the Act.

15. Financing of Authority

- (1) The Authority shall be financed and provided with operational capital from -
 - (a) such moneys as may from public funds be allocated on the commencement of this Act to the Authority by the Minister, in concurrence with the Minister of State Expenditure, which the Minister so acting is hereby empowered to do;

- (b) such moneys as are from time to time appropriated to the Authority by Parliament;
 - (c) fees and other moneys payable to the Authority in terms of this Act in respect of licences;
 - (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 18;
 - (e) loans raised by the Authority in terms of section 16;
 - (f) fines and penalties payable in terms of this Act on account of the breach of licence conditions or on account of any contraventions of this Act; and
 - (g) the proceeds derived from the sale by the Authority of anything forfeited to it in terms of section 67(3)(b).
- (2) The moneys, which, in terms of subsection (1) constitute the funds of the Authority, shall in accordance with the statement of estimated income and expenditure referred to in subsection (3) as approved in terms of that subsection, be utilised for defraying expenses incurred in connection with or arising from the exercise and performance of its powers, functions and duties in terms of this Act: Provided that any amount or portion of an amount which, by the said statement of estimated income and expenditure, is required to be so utilised for a particular purpose in connection with a specified matter, may be so utilised by the Authority for any other purpose in connection with that matter.
- (3) (a) The Council shall in each financial year at a time determined by the Minister for that purpose, submit a statement of the Authority's

estimated income and expenditure in respect of the next ensuing financial year to the Minister for his or her approval, to be granted with the concurrence of the Minister of State Expenditure.

- (b) The statement referred to in paragraph (a) shall specify as a separate item of estimated income the amount which, in respect of the financial year to which such statement relates, is to be appropriated to the Authority by Parliament within the contemplation of subsection (1)(b).

16. Raising of loans by Authority

- (1) The Authority may, with the written consent of the Minister acting with the concurrence of the Minister of Finance, raise loans to finance expenditure to be incurred by the Authority for the purposes of its functions and operations in terms of this Act, in such maximum amounts and subject to such terms and conditions as may be specified by the Minister so acting.
- (2) The Minister of Finance may, on behalf of the government of the Republic and upon such terms and conditions as he or she deems fit, guarantee the repayment of any loan raised by the Authority in accordance with the provisions of subsection (1), as well as the interest and any other charges payable in connection with such loan.
- (3) Any agreement entered into or guarantee furnished by virtue of the provisions of subsection (2), may be signed on behalf of the Government of the Republic by the Minister of Finance or any person authorised thereto in writing by the said Minister.

17. Banking account

- (1) The Council shall, in the name of the Authority, open and maintain with a bank registered as such in the Republic or with any other financial institution duly so registered and approved by the Minister of State Expenditure, an account in which there shall be deposited, subject to the provisions of section 18, the moneys received by the Authority as contemplated in section 15 and from which payments by or on its behalf shall be made.
- (2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any 2 of the officers from time to time authorised for that purpose by special resolution of the Council.

18. Investment of surplus moneys

The moneys of the Authority which are not immediately required for contingencies or to meet current expenditure may, upon a special resolution of the Council having been adopted for that purpose -

- (a) be invested on call or short-term fixed deposit with any bank or financial institution satisfying the requirements of section 17 (which requirements shall **mutatis mutandis** apply for the purposes of this paragraph);
- (b) be deposited with the Corporation for Public Deposits in an investment account in such manner and for such periods as the Minister acting with the concurrence of the Minister of Finance may in writing approve.

19. Accounting and auditing

- (1) The chief administrative officer referred to in section 14(1) shall be the accounting officer of the Authority charged with the responsibility to ensure that all moneys received by and payments made on behalf of the Authority are duly and properly accounted for.
- (2) The accounting officer shall in respect of each financial year cause such records of account to be kept, in accordance with established accounting practices, principles and procedures, as are necessary to fairly, sufficiently and clearly reflect the revenue, expenditure and transactions of the Authority during such year and the state of its assets, liabilities, financial position and affairs as at the end of such year, and to sufficiently explain such revenue, expenditure, transactions, state of affairs and financial position.
- (3)
 - (a) As soon as may be reasonably practicable after the end of each financial year, the accounting officer shall, in conformity with established accounting practices, principles and procedures, prepare financial statements comprising a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Authority in respect of the financial year having ended and a balance sheet showing the state of its assets, liabilities and financial position as at the end of such financial year.
 - (b) The financial statements referred to in paragraph (a), shall -
 - (i) fairly reflect the transactions, state of affairs and financial position of the Authority and the results thereof; and
 - (ii) refer to any relevant matter not specifically prescribed by this Act or in any regulation under section 77, which materially affects or is likely to so affect the affairs of the Authority, amplifying and explaining, where necessary, any figures in the

financial statements.

- (4) The Authority's record of accounts and financial statements contemplated in subsections (2) and (3), respectively, shall be audited annually by the Auditor-General.

20. Annual report

- (1) The Council shall furnish to the Minister such information and particulars as he or she may from time to time in writing require in connection with the activities and financial position of the Authority, and shall annually, as soon as may be reasonably practicable after the end of each financial year, submit to the Minister a report in regard to the Authority's functions, activities, affairs and financial position in respect of such financial year.
- (2) Without derogating from the generality of the provisions of subsection (1), the annual report referred to in that subsection shall **inter alia** include -
 - (a) an audited balance sheet, including any notes thereon and documents annexed thereto whereby relevant information is provided;
 - (b) an audited statement of income and expenditure contemplated in section 19(3), including any notes thereon and documents annexed thereto whereby relevant information is provided;
 - (c) information regarding licences granted, renewed, amended, transferred, suspended or revoked;
 - (d) the auditor's report; and

- (e) such other information as the Minister may from time to time specify by notice in the **Gazette**, which he is hereby empowered to do.

- (3) An annual report submitted in terms of subsection (1) shall be tabled in Parliament by the Minister within fourteen days after receipt thereof, if Parliament is then in session or, if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.

CHAPTER 3

COMMITTEES, APPOINTMENT OF EXPERTS, AND INQUIRIES

21. Establishment and appointment of standing committees of Council

- (1) The Council shall establish and appoint the following standing committees, namely -
 - (a) the Broadcasting Technical Committee; and
 - (b) the Broadcasting Monitoring and Complaints Committee.
- (2) The Council may establish and appoint such other standing committees for such purposes as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and may at any time extend, limit or dissolve any such committee.

22. Constitution of standing committees

- (1) Each standing committee shall consist of -
 - (a) at least one councillor designated by the Council; and
 - (b) two or four additional members as the Council may determine from time to time.
- (2) The additional members shall be persons -

- (a) who are not subject to any of the disqualification of the nature contemplated in section 5; and
 - (b) who, on account of their expertise, qualifications and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.
- (3) (a) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge or a retired judge of the Supreme Court of South Africa, a practising advocate or attorney of at least ten years' standing or a magistrate with at least ten years' appropriate experience.
- (b) In the case of any other standing committee, the chairperson shall be the councillor concerned.

23. Establishment, appointment and constitution of special committees of Council

- (1) The Council may establish and appoint such special committees as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an **ad hoc** basis.
- (2) The provisions of section 22(1) and (2) shall apply **mutatis mutandis** in relation to any committee established under subsection (1) of this section.
- (3) The Council shall from its number designate a chairperson for any such committee.
- (4) The Council may at any time extend, limit or dissolve any such committee.

24. Powers, functions and duties of committees

A committee shall, with due regard to the objects and principles as enunciated in section 2, exercise and perform such powers, functions and duties as may -

- (a) be conferred and imposed upon the committee by or under this Act;
- (b) be delegated to the committee by the Council.

25. Meetings of committees

- (1) The meetings of a committee (including any special meetings) shall be convened by the chairperson, who shall determine the procedure at any such meeting.
- (2) The provisions of section 10(2),(4) and (5), shall **mutatis mutandis** apply as regards the meetings of any committee.

26. Remuneration and allowances of committee members

- (1) The members of any committee who are not councillors or members of staff of the Authority, shall be paid such remuneration and allowances as the Council may from time to time determine, subject to the approval of the Minister granted with the concurrence of the Minister of State Expenditure.
- (2) For the purposes of subsection (1), the Council may differentiate between members of the various committees and between the chairperson and the other members of any one committee.

27. Appointment of experts

- (1) The Council may, as and when in its opinion the circumstances so require, appoint as many experts as may be deemed necessary, including experts from other countries, with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be in accordance with a written agreement entered into between the Council and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Council for its consideration.
- (4) The Council, on receipt of the report referred to in subsection (3), may refer the matter back to the expert -
 - (a) for such further attention as may be determined by the Council;
 - (b) to perform such further functions as the Council may deem necessary or desirable.

28. Inquiries by Authority

- (1) The Authority may from time to time conduct an inquiry into any matter relevant to -

- (a) the achievement of the objects and principles as enunciated in section 2;
 - (b) the exercise and performance of its powers, functions and duties in terms of this Act; and
 - (c) regulations proposed or made in terms of section 78.
- (2) The Authority shall make known its intention to conduct an inquiry by the publication in the **Gazette** of a notice to that effect.
- (3) The notice referred to in subsection (2) shall indicate the subject matter of the inquiry and shall invite interested parties to -
- (a) submit written representations; and
 - (b) indicate whether or not they require an opportunity to make oral representations to the Authority,
- within the period specified in the notice.
- (4) The written representations made pursuant to a notice referred to in subsection (2) shall be open to inspection by interested parties during the normal office hours of the Authority.
- (5) Any interested party may on payment of a fee determined by the Authority require the Authority to furnish him or her with a copy of or extract from such written representations.
- (6) The Authority shall advise the parties referred to in subsection (3)(b) of the

place and time when oral representations may be made.

- (7) Oral representations referred to in subsection (3)(b) shall be made in public.
- (8) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and as a matter of urgency, conduct a simultaneous inquiry in terms of this section into -
 - (a) the matters referred to in section 45(1);
 - (b) the matters referred to in section 50(2); and
 - (c) the matters referred to in section 53(7).
- (9) An application for a broadcasting licence shall not be considered nor shall any such licence be granted until such time as the matters referred to in paragraphs (a), (b) and (c) of subsection (8) have all been duly disposed of in accordance with the respective applicable provisions of this Act pursuant to the findings and, where applicable, the recommendations, of the Authority following the conclusion of the inquiry contemplated in that subsection.

CHAPTER 4

CONTROL OF THE BROADCASTING FREQUENCY SPECTRUM

29. Authority vested with exclusive powers in relation to administration, management and planning of broadcasting services frequency bands

- (1) Notwithstanding any provisions in the Radio Act, 1952 (Act No. 3 of 1952), or of any other relevant law to the contrary, all powers, functions and duties in relation to the administration, management, planning and use of the broadcasting services frequency bands.
- (2) In administering, managing, planning and granting permission to use the broadcasting services frequency bands devolving upon the Authority in terms of subsection (1) the Authority shall comply with the applicable standards issued by the International Telecommunications Union in its current Radio Regulations, as agreed to or adopted by the Republic, and shall for that purpose consult with the Postmaster General as and when necessary.
- (3) The Authority shall in exercising its powers, functions and duties in terms of subsection (1) and (2) ensure that in the use of the broadcasting services frequency bands interference is kept to a minimum and does not exceed acceptable interference levels.

30. Broadcasting Technical Committee

The Broadcasting Technical Committee shall be responsible for -

- (a) the administration, management and planning of the broadcasting services

frequency bands in accordance with bilateral, multilateral or international regulation and with the provisions of this Act;

- (b) the examination of all technical matters relevant to licence applications in order to determine the technical eligibility of applicants for licences;
- (c) the approval of technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;
- (d) the inspection of the plant, installations, transmitters and other apparatus used or to be used by any licensee;
- (e) all the monitoring and investigative functions of the Authority with regard to contraventions of sections 32 and 39;
- (f) assisting the Broadcasting Monitoring and Complaints Committee in the circumstances contemplated in section 62(2);
- (g) be responsible for giving effect to the provisions of section 29(2) and (3);
- (h) assisting the Postmaster General or any person or body being the telecommunications regulator, preparing for international conferences convened by the International Telecommunications' Union, in matters relating to broadcasting, and for that purpose attending such conferences and, where applicable, implementing any decisions adopted at such conferences;
- (i) liaison and consultation with the relevant bodies responsible for broadcasting in neighbouring countries and subject to the directions of the Authority (if any),
- (j) subject to the directions of the Authority (if any), the performance of all other

technical functions of the Authority.

31. Frequency plan

- (1) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any application for a new broadcasting licence is considered in terms of this Act, prepare a frequency plan whereby the maximum number of frequencies available for broadcasting services are determined.
- (2) In preparing a frequency plan in terms of this section, the Authority shall -
 - (a) have due regard to the reports of experts in the field and internationally-accepted methods for preparing such plans;
 - (b) take into account the existing frequencies used by broadcasting services; and
 - (c) reserve frequencies on all bands for the different categories of broadcasting licences referred to in section 40(1),and publish its draft plan by notice in the **Gazette** and in such notice invite interested parties to submit their written comments and representations to the Authority within such period as may be specified in such notice.
- (3) After due consideration of the comments and representation received pursuant to the notice referred to in subsection (2) (if any), the Authority shall determine the frequency plan and cause such plan to be published in the **Gazette**.

- (4) (a) Any frequency plan determined in terms of this section and all such comments and representations as have been received in response to the notice contemplated in subsection (3), shall be kept at the offices of the Authority and be available for inspection by members of the public during the normal office hours of the Authority.
- (b) The Authority shall at the request of any person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any part of the documentation contemplated in paragraph (a).
- (5) (a) The Authority shall annually review a frequency plan determined in terms of this section.
- (b) The provisions of subsections (2), (3) and (4) shall **mutatis mutandis** apply in relation to any amendment contemplated in paragraph (a) of this subsection.

CHAPTER 5

BROADCASTING SIGNAL DISTRIBUTION LICENCES

32. Prohibition of broadcasting signal distribution without licence

Subject to the provisions of section 33(2), no person shall provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority.

33. Granting of broadcasting signal distribution licences

(1) A broadcasting signal distribution licence -

(a) may be granted to -

- (i) a person who, as a common carrier, is to provide broadcasting signal distribution for broadcasting licensees in the manner contemplated in section 37;
- (ii) a person who is to provide broadcasting signal distribution for broadcasting licensees on a selective and preferential basis;
- (iii) a broadcasting licensee who chooses to provide, whether wholly or partly, broadcasting signal distribution for itself but who does not provide broadcasting signal distribution for any other broadcasting licensee;

- (b) shall, subject to the objects and principles as enunciated in section 2, and to the provisions of this Chapter, be granted to any person who satisfies the requirements of subsection (2) and has applied for such licence in accordance with the provisions of that subsection.
- (2) Notwithstanding the provisions of section 32, any person who, immediately prior to the commencement of this Act is engaged in broadcasting signal distribution in a manner not inconsistent with the provisions of this Act, shall, for a period of 12 months from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in subparagraph (i), (ii) or (iii) of subsection (1)(a), if such person within such period applies to the Authority for a broadcasting signal distribution licence.
- (3) A licence granted to a person under paragraph (b) of subsection (1), shall assume the format of one of the licences mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) of that subsection and shall, subject to the provisions of this Act, confer no greater rights, privileges or empowerments and impose no stricter duties, conditions, obligations or responsibilities on such person than those with which he or she was vested or to which he or she was subject immediately prior to such date of commencement.
- (4) Where the Republic has, in terms of section 79, entered into an agreement with any state referred to in that section, the provisions of subsections (2) and (3) shall **mutatis mutandis** apply in relation to any person who, immediately prior to the entry into force of such an agreement, provides broadcasting signal distribution in that state in a manner not inconsistent with the provisions of this Act.

34. Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences

The procedures in relation to any application for the granting, issuing, renewal, amendment and transfer of any broadcasting signal distribution licence shall be as prescribed.

35. Transmitters and transmission characteristics to be approved by Authority

(1) Broadcasting signal distribution in a licence area shall be provided only by means of transmitters the nature, number and transmission characteristics of which have been approved by the Authority.

(2) A broadcasting signal distribution licensee shall not -

(a) change any of his or her transmitters approved in terms of subsection (1) nor add to or reduce the number of transmitters so approved;

(b) effect any change in the transmission characteristics of any of his or her transmitters so approved,

except with the prior written permission of the Authority.

(3) A broadcasting signal distribution licence to be issued pursuant to the granting thereof in terms of section 33(1), shall stipulate the nature, number and transmission characteristics of the transmitters approved by the Authority under subsection (1) or (2) for use by the broadcasting signal distribution licensee in providing broadcasting signal distribution.

36. General obligations of broadcasting signal distribution licensees

A broadcasting signal distribution licensee shall -

- (a) comply with the provisions of this Act and the Authority's frequency plan;
- (b) not provide broadcasting signal distribution except to broadcasting services licensed by the Authority in terms of this Act; and
- (c) take due cognisance of the environmental impact of its activities and comply with all applicable rules of law relating to the protection of the environment.

37. Obligations of common carrier regarding provision of broadcasting signal distribution

A common carrier, shall -

- (a) be obliged, subject to its technological capacity to do so and to the provisions of paragraph (b), to provide broadcasting signal distribution to broadcasting licensees upon their request, on an equitable, reasonable, non-preferential and non-discriminatory basis;
- (b) in determining its tariffs, duly take into account, **inter alia**, -
 - (i) the different categories of broadcasting licences referred to in section 40; and
 - (ii) the nature and technical parameters of the service provided to each broadcasting licensee, with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting

services to which they relate;

38. Terms of broadcasting signal distribution licences

The term of validity of a broadcasting signal distribution licence -

- (a) in the case of a common carrier, shall be a maximum of 15 years;
- (b) in the case of a person referred to in section 33(1)(a)(ii), shall be 8 years;
- (c) in the case of a person referred to in section 33(1)(a)(iii), shall be concurrent with the term of the broadcasting licence of such person,

whereafter such licence shall, subject to the provisions of this Chapter, be renewable for like periods.

CHAPTER 6

BROADCASTING LICENCES

39. Prohibition on provision of broadcasting service without broadcasting licence

A person shall not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority.

40. Categories of broadcasting licences

(1) Subject to the provisions of this Act, the Authority may on such conditions as it may in any case determine, issue an applicant with a broadcasting licence to provide within a specified licence area -

(a) a sound broadcasting service in one or more of the following categories of services, namely -

(i) a public sound broadcasting service;

(ii) a private sound broadcasting service;

(iii) a community sound broadcasting service;

(b) a television broadcasting service in one or more of the following categories of services, namely -

(i) a public television broadcasting service;

- (ii) a private television broadcasting service;
 - (iii) a community television broadcasting service.
- (2) It shall be permissible for a broadcasting licensee conducting any of the broadcasting services contemplated in subsection (1) to broadcast text by radio in the course of his or her broadcasting service.

41. Application procedure in relation to broadcasting licences

- (1) When the Authority intends inviting applications for a broadcasting licence, it shall cause a notice to that effect to be published in the **Gazette**.
- (2) Such notice shall specify -
- (a) the licence category, the frequency available, and, where applicable, the licence area and technical parameters relevant to the broadcasting licence in respect of which application may be made;
 - (b) the person with whom and the period within which such an application has to be lodged; and
 - (c) the application fee payable, which shall be as prescribed.
- (3) Every application made pursuant to such notice shall be in the prescribed form which form shall **inter alia** require the applicant to furnish particulars -
- (a) of his or her proposals in relation to the nature and licence area of the service; and

(b) which, having due regard to the provisions of section 45, 46 or 47 (whichever is applicable), may be reasonably necessary in order to enable the Authority to properly consider the application,

and shall be accompanied by the prescribed application fee.

- (4) The provisions of subsection (3) shall **mutatis mutandis** apply to any person who **mero motu** applies to the Authority for a broadcasting licence.
- (5) Notwithstanding the preceding provisions of this section, an applicant may be required in writing by the Authority to furnish it, within the period specified by it, with such further information as may be reasonably necessary with a view to enabling the Authority to properly consider the application.
- (6) Within fourteen days of receipt of any application in terms of this section, the Authority shall cause to be published in the **Gazette** a notice containing all the material particulars of the application and inviting interested parties to lodge their written representations in relation to the application in the manner specified in such notice within one month as from the date of such notice.
- (7) (a) Any party which lodges representations in terms of subsection (6), shall at the time of lodgement furnish proof to the satisfaction of the Authority that it has sent by registered post or delivered a copy of such representations to the applicant concerned.
- (b) Any party which has lodged representations in terms of paragraph (a) may be required in writing by the Authority to furnish it, within the period specified by it, with such further information as it considers necessary.

- (8) The applicant shall submit its written response (if any) to any representations lodged in terms of subsection (7) to the Authority within two months of the date of the notice contemplated in subsection (6), and shall at the same time furnish proof to the satisfaction of the Authority that it has sent by registered post or delivered a copy of such written response to the party having made such representations.
- (9) If there is more than one licence application in terms of subsection (3) or (4) (hereinafter referred to as competitive licence applications), for substantially the same frequency and licence area, the Authority may, with due regard to the objects and principles as enunciated in section 2 and the provisions of section 45(2), 46(1) and 47(1) and (2), where applicable, determine the most suitable applicant.

42. Hearings in relation to applications for broadcasting licences

- (1) The Authority shall hold a hearing in respect of every application for a broadcasting licence received by it as provided in this section.
- (2) The Authority shall hold a hearing in terms of subsection (1) as soon as may be reasonably practicable, due regard being had to the provisions of section 41(6), (7) and (8), at such date, time and place as shall be determined by the Authority by notice in the **Gazette**.
- (3) At any hearing in terms of subsection (1) -
 - (a) the applicant and each party having made representations in terms of subsection (7) of section 41, shall be afforded an opportunity to be heard;

- (b) the parties referred to in paragraph (a) of this subsection may be assisted and represented by any person of their choice;
 - (c) the Authority, after having duly considered the application, the representations (if any) made in accordance with the provisions of that subsection, the applicant's written response thereto (if any), any further information furnished in terms of section 41 and any other evidence tendered to the Authority, shall grant or refuse the application and provide written reasons for its decision.
- (4) Hearings held in terms of this section shall be open to the public.
- (5) (a) The Authority shall keep a record of all applications and other documentation received by it in terms of section 41, and of all its proceedings and rulings at any hearing in terms of this section.
- (b) The records referred to in paragraph (a) shall be open to public inspection by interested persons during the normal office hours of the Authority.
- (c) The Authority shall at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in paragraph (a).
- (6) Upon having reached a decision on any application, the Authority shall, by notice in the **Gazette** and by written notice addressed to the applicant, make known the outcome thereof.

43. Entitlements under and conditions pertaining to broadcasting licences

- (1) (a) Notwithstanding any provisions in any other law to the contrary, a licence granted and issued under Chapter 6, shall by itself entitle the licensee concerned to use the radio frequency and the station as specified in his or her licence, for the purpose of providing the broadcasting service to which such licence relates.
- (b) For the purposes of paragraph (a) "station" shall mean any separate radio receiving or transmitting apparatus or any combination thereof, including any accessory equipment.
- (2) Subject to the provisions of this Act, the Authority, in granting any broadcasting licence pursuant to a decision in terms of section 42(3)(c), may impose such terms, conditions, obligations and provisions appropriate to such licence as it deems fit and which are consistent with the objects and principles as enunciated in section 2.
- (3) Any term, condition or obligation imposed in terms of subsection (1) shall be specified in the licence to which it pertains, and shall upon the issue of such licence acquire the force of law.
- (4) A broadcasting licensee shall commence with the broadcasting service to which his or her licence relates, within such period as shall be determined by the Authority, or within any extension of that period granted by the Authority on good cause shown, failing which such licence shall lapse.

44. Renewal of broadcasting licences

- (1) An application for the renewal of a broadcasting licence may be made to the Authority by the broadcasting licensee not earlier than six months, and not later than 3 months, before the date on which it expires in terms of section 54.
- (2) Sections 41, 42 and 43 shall **mutatis mutandis** apply to an application for the renewal of a broadcasting licence.
- (3) The Authority shall not, in relation to any application for the renewal of a broadcast licence, require from the applicant any information already in possession of the Authority pursuant to having been furnished to it in connection with any prior application made by the applicant in relation to such broadcasting licence.
- (4) The Authority shall refuse an application for the renewal of a broadcasting licence only if the licensee has failed to materially comply with the licence conditions or the provisions of this Act during the term of the existing licence and if the Authority is satisfied that the applicant would not, if his or her licence were renewed, so comply.
- (5) A broadcasting licence shall continue to be of force and effect until such time as the Authority has made its decision regarding the application for renewal of such broadcasting licence.
- (6) (a) Notwithstanding the provisions of subsection (1), a broadcasting licensee may at any time after the three month period referred to in that subsection but before the expiration of the term of his or her broadcasting licence, apply for the renewal thereof.

- (b) Notwithstanding any provisions to the contrary, a broadcasting licence shall not be renewed where any application or renewal has been made in the circumstances contemplated in paragraph (a), unless the broadcasting licensee pays to the Authority, in addition to the prescribed licence fee, a penalty, in such amount as may be prescribed, in respect of each day by which he or she delayed in making his or her application timeously in terms of subsection (1).

45. Public broadcasting licences

- (1) As soon as may be reasonably practicable after the commencement of this Act, the Authority shall conduct an inquiry in accordance with the provisions of section 28 into the protection and viability of public broadcasting services, with particular reference to the financing of such services, and at the conclusion thereof the Authority shall in writing submit its findings and recommendations to the Minister, who shall table the same in the Transitional Executive Council or, where that Council has been dissolved in terms of section 5 of the Transitional Executive Council Act, 1993, in Parliament, within fourteen days of receipt thereof: Provided that if, where such funds and recommendations are to be tabled in Parliament, Parliament is not in session at time, such tabling shall be effected within fourteen days after the commencement of its next ensuing session.
- (2) In the event of the Authority considering the granting of a new public broadcasting licence, it shall, with due regard to the objects and principles as enunciated in section 2, **inter alia** take into account -
- (a) the demand for the proposed broadcasting service within the proposed licence area;

- (b) the need for the proposed service within such area, having due regard to broadcasting services already existing therein; and
 - (c) the technical quality of the proposed service having due regard to developments in broadcasting technology.
- (3) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement of this Act provides one or more public broadcasting services in accordance with law shall, for a period of twelve months as from such date of commencement, be deemed to be the holder of a public broadcasting licence contemplated in section 40(1)(a)(i) or (b)(i) (as the case may be) in respect of each such service: Provided that such person shall for any such service be granted an appropriate public broadcasting licence in terms of this Act if he or she makes application therefor within the said period.
- (4) Where the Republic has in terms of section 78 entered into an agreement with a state referred to in that section, the provisions of subsection (3) shall **mutatis mutandis** apply in relation to any person who, immediately prior to the entry into force of such agreement, provided one or more public broadcasting services in such state in accordance with the laws in force therein at the time.

46. Private broadcasting licences

- (1) In considering an application for a private broadcasting licence, the Authority shall, with due regard to the objects and principles enunciated in section 2, **inter alia** take into account -
- (a) the demand for the proposed broadcasting service within the proposed

- licence area;
- (b) the need for the proposed service within such licence area, having due regard to the broadcasting services already existing therein;
 - (c) the expected technical quality of the proposed service, having due regard to developments in broadcasting technology;
 - (d) the capability, expertise and experience of the applicant;
 - (e) the financial means and business record of the applicant;
 - (f) the business record of each person who, if a licence were granted to the applicant, is or would be in a position to control the operations of the applicant either in his or her individual capacity or as a member of the board of directors or of its top management structure;
 - (g) the applicant's record and the record of each person referred to in paragraph (f), in situations requiring trust and candour;
 - (h) whether the applicant is precluded by or in terms of section 48, 49, 50 or 51 from holding a broadcasting licence; and
 - (i) whether either of the applicant and the person referred to in paragraph (f) has been convicted of an offence in terms of this Act.
- (2) (a) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement thereof provides a private broadcasting service under a valid licence in terms of the provisions of any law in force at the time, (hereinafter referred to as an existing licence) shall be deemed to be the holder of a broadcasting

licence contemplated in section 40(1)(a)(ii) or (b)(ii), as the case may be, granted and issued in terms of this Act, on the date of commencement thereof, for a period of eight years and six years, respectively, on the same terms, conditions, obligations and provisions as those applicable to such licence immediately prior to such date of commencement: Provided that the terms, conditions, obligations and provisions of the existing licence as on the day immediately prior to such date of commencement, shall only for the duration of the said period of eight years or six years (as the case may be) be deemed to be in accordance with the provisions of this Act and shall upon the expiration of such period be subject to amendment by the Authority to such extent as may be necessary so as to excise from such licence any such terms, condition, obligation or other provision as may be inconsistent with the provisions of this Act, and to substitute therefor any other new term, condition, obligation or other provision.

- (b) In applying the provisions of paragraph (a) -
- (i) the period of eight years and of six years shall be deemed to constitute the licence term of the person deemed by that paragraph to be the holder of a broadcasting licence;
 - (ii) Bophuthatswana Commercial Radio (Proprietary) Limited, being a licensed broadcaster according to Bophuthatswana law, shall be deemed to be the holder of an existing licence as contemplated in that paragraph, unless an agreement such as that contemplated in section 79 has been entered into between the governments of the Republic of South Africa and the Republic of Bophuthatswana.

- (3) Where the Republic has in terms of section 79 entered into an agreement with a state referred to in that section, the provisions of subsection (2) shall **mutatis mutandis** apply in relation to any person who, immediately prior to the entry into force of such agreement, provides a private broadcasting service in such state under a valid licence in terms of the laws in force therein at the time.

47. Community broadcasting licences

- (1) In considering an application for a community broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, **inter alia** take into account -
- (a) whether the applicant is fully controlled by a non-profit entity;
 - (b) whether the applicant proposes to serve the interests of the relevant community;
 - (c) whether, as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and
 - (d) whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast by such broadcasting service;

- (2) Subsection (1) (a), (b), (d), (g) and (i) of section 46 shall **mutatis mutandis** apply in relation to a community broadcasting licence.

48. Limitations on foreign control of private broadcasting services

- (1) One or more foreign persons shall not, whether directly or indirectly -
- (a) exercise control over a private broadcasting license; or
 - (b) have financial or voting interests in a private broadcasting license exceeding twenty per cent in total.
- (2) Not more than twenty percent of the directors of a private broadcasting licensee may be foreign persons.
- (3) The preceding provisions of this section shall not apply in respect of any person who -
- (a) by subsection (2) of section 46 is deemed; or
 - (b) by virtue of subsection (3) of section 46 being read with the said subsection (2), is by the said subsection (2) deemed,

to be a broadcasting licensee, for the duration of the period of eight or six years (as the case may be) deemed to constitute the first term of such licence.

49. Limitations on control of private broadcasting services

(1) No person shall -

- (a) directly or indirectly exercise control over more than one private television broadcasting licence; or
- (b) be a director of a company which is, or of two or more companies which are, between them, in a position to exercise control over more than one private television broadcasting licence; or
- (c) be in a position to exercise control over a private television broadcasting licence, and be a director of any company which is in a position to exercise control over another private television broadcasting licence.

(2) No person shall -

- (a) be in a position to exercise control over more than two private FM sound broadcasting licences;
- (b) be a director of a company which is, or of two or more companies which are, between them, in a position to exercise control over more than two private FM sound broadcasting licences; or
- (c) be in a position to exercise control over two private FM sound broadcasting licences, and be a director of any company which is in a position to exercise control over any other private FM sound broadcasting licence.

(3) No person referred to in subsection (2) shall be in a position to control two

private FM sound broadcasting licences which have the same or substantially overlapping licence areas.

- (4) No person shall -
- (a) be in a position to exercise control over more than two private AM sound broadcasting licences;
 - (b) be a director of a company which is, or of two or more companies which are, between them, in a position to exercise control over more than two private AM sound broadcasting licences; or
 - (c) be in a position to exercise control over two private AM sound broadcasting licences, and a director of any company which is in a position to exercise control over any other private AM sound broadcasting licence.
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences which have the same or substantially overlapping licence areas.
- (6) (a) On application by any person, the Authority may, on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt such person from adhering to any one of the limitations contemplated in the preceding subsections.
- (b) An exemption in terms of paragraph (a) may be made subject to such terms and conditions as the Authority deems appropriate and equitable.
- (7) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purposes of advancing the objects and

principles as enunciated in section 2, make recommendations to the Minister regarding the amendment of any of the preceding subsections, which recommendations shall be tabled in Parliament by the Minister within fourteen days after receipt thereof if Parliament is then in session or if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.

50. Limitations on cross-media control of private broadcasting services

- (1) Cross-media control of broadcasting services shall be subject to such limitations as from time to time determined by the Transitional Executive Council, acting on the recommendation of the Authority, or, where the Transitional Executive Council has dissolved in terms of section 5 of the Transitional Executive Council Act, 1993, by the National Assembly adopting such recommendation by a seventy-five per cent majority.
- (2) With a view to exercising its powers in terms of subsection (1) the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28 and shall, in doing so, **inter alia** have regard to -
 - (a) the various categories of newspapers according to frequency of publication, geographical extent of circulation and circulation figures, and any matter relevant to the existing and future control of such newspaper; and
 - (b) the maximum percentage of financial or voting interests which may be held in any one or more private broadcasting licensees by a person who controls one or more newspapers or group of newspapers,

and any international precedents in that regard.

- (3) A determination made in terms of subsection (1), whether pursuant to the first inquiry referred to in subsection (8) of section 28 or to, any subsequent inquiry conducted in accordance with the provisions of that section, shall not be applicable to and enforceable against any broadcasting licensee to which such determination relates during the licence term valid at the time such determination is made, but shall become applicable to and enforceable against such a broadcasting licensee only upon the renewal of his or her licence upon the expiration of such term.

51. Prohibition on granting of broadcasting licences to political entities

No broadcasting licence shall be granted to any political party, movement, organisation or body or any alliance of any of the aforementioned with one another.

52. Amendment of broadcasting licences

- (1) Subject to the provisions of section 46(2), a broadcasting licence may be amended by the Authority only -
 - (a) to such extent as may be necessary in the interest of orderly frequency management, provided the amendment will not cause substantial prejudice to the licensee;
 - (b) to such extent as may be necessitated by any bilateral, multilateral or international agreement or convention relating to broadcasting to which the Republic is a party;

- (c) if requested thereto by the broadcasting licensee, and then only if and insofar as the proposed amendment -
 - (i) does not militate against orderly frequency management;
 - (ii) will not prejudice any other broadcasting licensee; and
 - (iii) will not be inconsistent with the provisions of this Act or with any agreement contemplated in paragraph (b).
- (2) Whenever the Authority considers amending a broadcasting licence in terms of subsection (1), it shall cause notice of the proposed amendment to be published in the **Gazette** and, in the case of an amendment contemplated in paragraph (a) or (c) of that subsection, invite interested persons to make their presentations within a period of fourteen days to a person specified in such notice.
- (3) When representations are lodged with the Authority in accordance with the requirements of the notice referred to in subsection (2), the provisions of subsections (6),(7) and (8) of section 41 shall **mutatis mutandis** apply: Provided that for the purposes of such applications, any reference in the said subsection 5(6) and (8) any reference to "one month" or "two months" shall be construed as a reference to "fourteen" days".
- (4) The Authority may, in its discretion hold a hearing with a view to making a decision regarding the amendment of a licence in terms of subsection (1)(a) or (c), in which event the provisions of section 42 shall **mutatis mutandis** apply.
- (5) The proceedings referred to in subsection (3) shall be held in public and the

documents pertaining to such proceedings shall be open to public scrutiny.

- (6) Upon having decided to amend a broadcasting licence, the Authority shall cause such amendment to be published in the **Gazette**.

53. Imposition of specific broadcasting licence conditions regarding local television content and South African music

- (1) For the purposes of this section -

- (a) **"local television content"** means a television programme, excluding transmissions of sports events and compilations thereof, advertisements, teletext and continuity announcements, produced -

- (i) by a broadcasting licensee; or

- (ii) by a person who is a citizen and permanent resident of the Republic; or

- (iii) by a juristic person, the majority of directors, shareholders or members of which are citizens and permanent residents of the Republic; or

- (iv) in a co-production in which persons referred to in subparagraphs (i), (ii) or (iii) have at least a fifty per cent financial interest; or

- (v) by persons referred to in subparagraph (i), (ii), (iii) or (iv) and in circumstances where the prescribed number of the key personnel who are involved in the production of the television

programme, are citizens and permanent residents of the Republic; or

(vi) by persons referred to in subparagraph (i), (ii), (iii) or (iv) in circumstances where the prescribed percentage of the production costs are expended in the Republic;

(b) **"independent television production"** means a production of local television content -

(i) by a person who is not directly or indirectly employed by any broadcasting licensee; or

(ii) by a person who is not controlled by or does not control, any broadcasting licensee;

(c) a musical selection broadcast by a broadcasting service referred to in subsection (3) shall qualify as **"South African music"** if such composition complies with at least two of the following conditions, namely -

(i) if the lyrics (if any) were written by a South African citizen;

(ii) if the music was written by a South African citizen;

(iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;

(iv) if the musical selection consists of a live performance which is -

(aa) recorded wholly in the Republic; or

(bb) performed wholly in the Republic and broadcast live in the Republic.

(2) The Authority shall in respect of a television broadcasting licence impose and specify therein such conditions, as prescribed, regarding local television content and independent television production, as it deems fit, which, without derogating from the generality of the foregoing, may include any condition requiring the broadcasting licensee -

- (a) to expend a specified sum of money subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of its gross revenue, on programmes which have a local television content;
- (b) to allocate a specified minimum percentage of the total amount of broadcast transmission time to television programmes which have a local television content;
- (c) in the case where he or she provides a subscription broadcasting service, a portion of which is unencoded, to allocate a specified minimum percentage of unencoded time to programmes which have a local television content;
- (d) in the case where he or she has a regional or local licence area, to allocate a specified minimum percentage to local television programmes which have been produced in the region or locality; and
- (e) to allocate a specified minimum portion of the percentage referred to in paragraphs (a), (b), (c) or (d), whichever is applicable, to a prescribed diversity of television programmes which are independent television productions.

- (3) The Authority shall, in relation to a broadcasting service which devotes a significant proportion of its broadcasting time to broadcasting music, prescribe a condition whereby the licensee is required to broadcast a specified minimum percentage of musical selections which qualify as South African music.
- (4) In prescribing any amount or percentage referred to in subsection (2) or (3), the Authority may prescribe the application thereof with regard to -
 - (a) the category of broadcasting licence referred to in section 40;
 - (b) defined viewing and listening times, where applicable;
 - (c) various categories of television programmes where applicable; and
 - (d) the period within which the broadcasting licensee shall comply with the provisions of this section.
- (5) Notwithstanding the provisions of section 46(2) or (3), any person who by such section is deemed to be the holder of a broadcasting licence referred to in section 40(1)(a)(ii) or (b)(ii), shall be subject to any regulations made under section 78 for the purpose of prescribing conditions capable of being imposed in terms of subsection (2) or (3) of this section (whichever is applicable), and shall on demand submit to the Authority its licence with a view to having conditions specified thereon in accordance with the provisions of such regulations.
- (6) A condition in terms of subsection (2) in respect of any television broadcasting licence shall become binding on and enforceable against the licensee concerned on the expiration of such period, not shorter than one year, as shall in each case be specified by the Authority.

- (7) With a view to exercising its powers in terms of subsections (2), (3) and (4), the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28.

54. Terms of broadcasting licences

The term of validity of a broadcasting licence -

- (a) in the case of a public and a private television broadcasting licence, shall be eight years;
- (b) in the case of a public and a private sound broadcasting licence, shall be six years; and
- (c) in the case of a community sound or television broadcasting licence, shall be four years,

whereafter such licence shall, subject to the provisions of this Chapter, be renewable for like periods.

55. Record of programmes broadcast by broadcasting licensee

- (1) A broadcasting licensee shall -
- (a) retain, for a period not less than thirty days, a recording of every programme included in the service in question;

- (b) at the request of the Broadcasting Monitoring and Complaints Committee, produce to it any such recording for examination or reproduction;
 - (c) at the request of the Broadcasting Monitoring and Complaints Committee, provide to it any script or transcript of a programme after the broadcast thereof.
- (2) Nothing in this Act shall be construed as requiring or authorising the Authority or the Broadcasting Monitoring and Complaints Committee in the performance of its functions and duties, to view programmes prior to their being broadcast.

CHAPTER 7

BROADCASTING PROGRAMMES

56. Code of Conduct, and exemptions

- (1) Subject to the provisions of subsection (2), all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 3.
- (2) The provisions of subsection (1) shall not apply to any broadcasting licensee if that licensee is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

57. Control over advertisements

- (1) All broadcasting licensees shall adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa.
- (2) The Broadcasting Monitoring and Complaints Committee shall adjudicate any complaint concerning any alleged breach of the Code referred to in subsection (1) by broadcasting licensees who are not members of the Advertising Standards Authority, in accordance with the provisions of Chapter 8.
- (3) Where a broadcasting licensee, whether or not a member of the Advertising

Standards Authority, is found to have breached the Code, such broadcasting licensee shall be dealt with in accordance with the applicable provisions of Chapter 8.

58. Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except during an election period and then only if and to the extent authorised by the provisions of sections 59 and 60.

59. Broadcasting of party election broadcasts on sound broadcasting services during election period

- (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.
- (2) The Authority shall determine the time to be made available to political parties for the purposes of subsection (1), including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question.
- (3) The Authority shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination in terms of subsection (2).
- (4) In making any determination in terms of subsection (2), the Authority may impose such conditions upon a public broadcasting licensee with respect to

party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.

- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (6) A party election broadcast shall comply with a technical quality acceptable to the Authority.
- (7) No party election broadcast shall be broadcast later than forty-eight hours prior to the commencement of the polling period.
- (8) A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall **mutatis mutandis** apply.

60. Political advertising on sound broadcasting services during election period

- (1) A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.
- (2) A sound broadcasting licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorised representative.
- (3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

- (4) A political advertisement shall not contain any material which may reasonably expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (5) A political advertisement shall comply with a technical quality acceptable to the Authority.
- (6) No political advertisement shall be broadcast later than forty-eight hours prior to the commencement of the polling period.
- (7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

61. Equitable treatment of political parties by all broadcasting licensees during election period

- (1) If during an election period the coverage by any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.
- (2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such political party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.
- (3) If, within forty-eight hours before the commencement of the polling period or

during the polling period, a broadcasting licensee intends broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.

- (4) The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 59 and any political advertisements in the circumstances contemplated in section 60.

CHAPTER 8

ENFORCEMENT

62. Broadcasting Monitoring and Complaints Committee

- (1) Subject to the provisions of sections 56 and 57, the Broadcasting Monitoring and Complaints Committee shall -
 - (a) monitor compliance or adherence by broadcasting licensees with -
 - (i) the terms, conditions, obligations and provisions of their broadcasting licences;
 - (ii) the Code of Conduct for Broadcasting Services as set out in Schedule 3 to this Act;
 - (iii) the Code of Advertising practice contemplated in subsection (1) of section 57, or the code determined in terms of subsection (4) of that section, as the case may be;
 - (b) during an election period, monitor compliance by broadcasting licensees with the provisions of sections 59, 60 and 61;
 - (c) monitor compliance by broadcasting signal distribution licensees with the terms, conditions, obligations and provisions of their broadcasting signal distribution licences and with any requirement relating to such a licensee or licence as imposed by Chapter 5 or any regulation in terms of section 78; and

- (d) monitor compliance by licensees with any other material provisions of this Act relevant to them or their respective licences.
- (2) In exercising its powers in terms of subsection 1(a)(i), (c) or (d) in relation to technical matters, the Broadcasting Monitoring and Complaints Committee shall be assisted by the Broadcasting Technical Committee.
- (3) The Broadcasting Monitoring and Complaints Committee shall, in accordance with the provisions of section 63, inquire into and adjudicate any alleged or suspected non-compliance or non-adherence contemplated in subsection (1).

63. Hearings held by Broadcasting Monitoring and Complaints Committee

- (1) Any interested person who has reason to believe that there has been non-compliance or non-adherence of the nature contemplated in section 62(1), on the part of any licensee, may lodge a complaint with the Broadcasting Monitoring and Complaints Committee within thirty days after the occurrence of the alleged or suspected non-compliance or non-adherence.
- (2) A complaint contemplated in subsection (1) shall be in writing and shall be served on the licensee concerned and be lodged with the Authority for consideration by the Broadcasting Monitoring and Complaints Committee.
- (3) For the purposes of subsection (2), a complaint may be delivered by hand or sent by registered post, telefax or telex.
- (4) The Broadcasting Monitoring and Complaints Committee shall as soon as may be reasonably practicable, having due regard to the urgency of the matter, investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make

representations and to be heard in relation thereto.

- (5) The Broadcasting Monitoring Complaints Committee shall determine the form and procedure as regards the adjudication of any complaint.
- (6) The complainant and the respondent shall be entitled to legal representation at any hearing held by the Broadcasting Monitoring and Complaints Committee for the purpose of adjudicating a complaint.
- (7)
 - (a) After having considered the complaint and any representations and evidence (if any) in regard thereto, the Broadcasting Monitoring and Complaints Committee shall make its finding as regards the alleged or suspected non-compliance or non-adherence.
 - (b) Any finding in terms of paragraph (a) shall be published in such manner as the Broadcasting Monitoring and Complaints Committee may in its discretion determine.
- (8) Hearings held in terms of this section shall be open to the public.
- (9)
 - (a) The Broadcasting Monitoring and Complaints Committee shall keep a record of all complaints received by it and of all its proceedings, rulings and findings in relation thereto.
 - (b) The records referred to in paragraph (a) shall be filed in the offices of the Authority and be open to public inspection by interested parties during the normal office hours of the Authority.
 - (c) The Authority shall at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in

paragraph (a).

- (10) With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and material, the Broadcasting Monitoring and Complaints Committee shall have such powers as may be prescribed.
- (11) The provisions of subsections (5), (6), (7), (8), (9) and (10) shall **mutatis mutandis** apply in relation to any investigation instituted **mero motu** by the Broadcasting Monitoring and Complaints Committee with regard to any suspected non-compliance or non-adherence of the nature contemplated in section 62(1).

64. Recommendations of Broadcasting Monitoring and Complaints Committee

- (1) Upon having made a finding, in terms of subsection (7) of section 63, that any complaint adjudicated by it in terms of that section is justified, the Broadcasting Monitoring and Complaints Committee shall in writing make recommendations to the Authority as to which of the steps provided for in paragraphs (a) to (g), inclusive, of section 66(1), should be taken against the licensee in relation to which such finding was made, and forward its finding and such recommendations, together with the record of the adjudication proceedings, to the Authority for appropriate action in terms of section 66.
- (2) The Authority shall, when forwarding its recommendations to the Authority in terms of subsection (1), simultaneously by written notice addressed to the licensee referred to in subsection (1), inform him or her accordingly.

65. Powers of Broadcasting Monitoring and Complaints Committee regarding findings made by Advertising Standards Authority of South Africa

- (1) Where the Advertising Standards Authority of South Africa has adjudicated any complaint against a broadcasting licensee who is a member thereof, that body shall forward a certified copy of the record of such adjudication and of its finding to the Broadcasting Monitoring and Complaints Committee.
- (2) A finding forwarded to the Broadcasting Monitoring and Complaints Committee as envisaged by subsection (1), shall be dealt with by that body **mutatis mutandis** in accordance with the provisions of section 64 as if such finding was a finding made by the Broadcasting Monitoring and Complaints Committee in terms of section 63(7).

66. Powers of Authority in cases of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993

- (1) As soon as may be reasonably practicable after receipt of any record of adjudication and the finding and recommendations relevant thereto, as forwarded to it by the Broadcasting Monitoring and Complaints Committee in terms of section 64, or section 65 read with section 64 (as the case may be), and having duly taken into account the nature, consequences and gravity of the non-compliance or non-adherence to which such finding relates, the circumstances in which it occurred and the recommendations so received, the Authority shall make any one or more of the following orders, namely -
 - (a) where such finding is founded on non-compliance by the broadcasting licensee with the provisions of section 59, 60 or 61 during an election period -

- (i) requiring such broadcasting licensee, if he or she provides a sound broadcasting service, to broadcast a party election broadcast or a political advertisement (as the case may be);
- (ii) requiring such broadcasting licensee to broadcast a counter-version of the programme complained of or of the facts or opinions expressed within such a programme,

whichever is applicable;

- (b) directing the licensee to desist from any further non-compliance or non-adherence;
- (c) directing the licensee to publish such finding free of charge and in the manner required by the Authority;
- (d) directing the licensee to pay, as a penalty, the prescribed amount;
- (e) directing the licensee to take such remedial and other steps, not inconsistent with the objects and principles as enunciated in section 2, as may be determined by the Authority;
- (f) prohibiting the licensee from carrying on his or her broadcasting service or broadcasting signal distribution service (as the case may be) for such period as determined by the Authority, or revoking his or her licence: Provided that such a prohibition shall not endure for longer than thirty days;
- (g) if satisfied that the non-compliance or non-adherence to which such finding relates, constitutes an offence, directing such record of adjudication and the finding and recommendations of the Broadcasting

Monitoring and Complaints Committee relevant thereto, to be referred to the Attorney General with a view to instituting a criminal prosecution.

- (2) An order in terms of subsection (1)(f) may be made only in circumstances where the Broadcasting Monitoring and Complaints Committee has successively, in terms of section 63(7) found complaints against a licensee to be justified.
- (3) Where a licensee is by virtue of an order made in terms of subsection (1)(f), temporarily prohibited from carrying on his or her service, the Authority may, for the duration of the period of such prohibition order -
 - (a) any premises used or capable of being used by such licensee for the provision of his or her broadcasting service or broadcasting signal distribution service (as the case may be) and any transmitters, apparatus and other equipment used or capable of being used for that purpose, to be sealed;
 - (b) seize any transmitters, apparatus and other equipment so used or capable of being so used and retain the same for such period.
- (4)
 - (a) Failure by a licensee to comply with an order made in terms of subsection (1), shall be deemed to constitute non-compliance of the nature contemplated in subsection (1)(d) of section 62, entitling the Broadcasting Monitoring and Complaints Committee, in relation thereto, to act in terms of subsection (3) of that subsection.
 - (b) The provisions of paragraph (a) may be invoked against the person contemplated therein, irrespective of whether or not such person is being prosecuted for or has been convicted of any offence referred to

in section 67(2)(c) or (d).

- (5) Where the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, after due adjudication in terms of section 23 of that Act -
- (a) has found a broadcasting licensee to have contravened the provisions of that Act;
 - (b) has made an order in terms of section 24(1)(c) of that Act; and
 - (c) has forwarded a certified copy of the said order and of the record of the adjudication proceedings relevant thereto to the Authority in accordance with the provisions of section 24(2) of that Act,

the Authority may, in relation to such broadcasting licensee make an order contemplated in subsection (1)(f) of this section as if such order were made pursuant to a finding of the Broadcasting Monitoring and Complaints Committee in terms of section 63(7) of this Act.

- (6) The Authority, in making any order in terms of subsection (1)(a) to (f), inclusive, or subsection (5) read with subsection (1)(f), as the case may be, shall observe the rules of natural justice.

67. Offences and penalties

- (1) If any councillor fails to disclose any interest as required by section 11(2) or, subject to the provisions of that section, is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings thereat, such councillor shall be guilty of an offence and liable on

conviction to a maximum fine of R100 000.

(2) Any person who -

- (a) in applying for any licence in terms of this Act or for the renewal, amendment or transfer of such a licence, in his or her application furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or who wilfully fails to disclose any information or particulars material to his or her application;
- (b) contravenes the provisions of section 32, 39, 71 or 74;
- (c) fails to comply with any order made by the Authority in terms of section 66(1)(a), (b), (c), (d) or (e), or contravenes the provisions of section 75;
- (d) acts in disregard of any prohibition imposed by order of the Authority in terms of section 66(1)(f);
- (e) fails to produce any licence issued to him or her under this Act on the demand of any authorised person, or who hinders or obstructs any authorised person in the exercise or performance by the latter of his or her powers, functions or duties in terms of this Act;

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence contemplated in paragraph (a) of this section, to a maximum fine of R250 000;
- (ii) in the case of a contravention of section 32 or 39, to a maximum fine

of R500 000;

- (iii) in the case of a contravention of section 71(1) or 74, and in the case of an offence contemplated in paragraph (d) of this subsection, to a maximum fine of R100 000;
 - (iv) in the case of an offence contemplated in paragraph (c) of this subsection, to a maximum fine of R50 000;
 - (v) in the case of the offenses contemplated in paragraph (e) of this subsection, and in the case of the contravention of section 71(2), to a maximum fine of R15 000.
- (3) (a) Any person who, without the written authorisation of the Authority, breaks any seal contemplated in section 66(3) shall be guilty of an offence and liable on conviction to a maximum fine of R250 000.
- (b) The court convicting a person of an offence referred to in paragraph (a) may, in addition to any fine which it may impose in terms of that paragraph, declare any transmitters, apparatus and other equipment referred to in section 66(4) and any article, object or thing by means of which such offence was committed, to be forfeited to the Authority: Provided that no such declaration shall be so made upon proof to the satisfaction of the court that such transmitter, apparatus, equipment, article, object or thing is not the property of the person so convicted and that, as regards such article, object or thing, the owner thereof was unable to prevent it from being used as a means to commit such offence.

CHAPTER 9

GENERAL PROVISIONS

68. Minutes of Council and its committees

- (1) The Authority and each of its committees shall cause minutes to be prepared and kept of the proceedings of every meeting of the Council and such a committee, respectively, and cause such minutes to be circulated to all councillors or members of such a committee (as the case may be).
- (2) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Authority or such a committee by the person presiding thereat shall, in the absence of proof of error therein, be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute **prima facie** evidence of the proceedings of the Authority or such committee (as the case may be) and the matters they purport to minute.

69. Delegations

- (1) Subject to the provisions of subsection (4), the Council may in writing -
 - (a) delegate to any councillor or any of its committees or to the chief administrative officer any power, function or duty conferred or imposed upon the Authority by or in terms of this Act: Provided that a power, function or duty so delegated to the chief administrative officer may be exercised or performed by any other staff member of

the Authority specially authorised thereto, except where the terms of such delegation precludes such officer from doing so; and

- (b) authorise a standing committee or a special committee to exercise or perform any power, function or duty assigned to the Authority by or under this Act.
- (2) Any delegation or authorisation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Council and may at any time be amended or revoked by the Council.
- (3) The Council shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision made in terms of a delegation under this section.
- (4) The power to grant, renew, amend or transfer any licence, and the powers contemplated in sections 16, 18, 21, 23, 26, 56(2), 57(4), 59, 60, 61, 66, 69 and 79, shall not be delegated under this section.

70. Register of licences

- (1) The Authority shall keep a register in which it shall record all licences granted in terms of this Act, as well as any amendments to or transfers of such licences.
- (2) The register referred to in subsection (1) shall be open to public inspection by interested parties during normal office hours of the Authority.
- (3) The Authority shall at the request of any person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or

extract from any part of the said register.

71. Records to be kept by licensees

- (1) A licensee which is a company or corporation shall inform the Authority in writing of any change in the control of that company or corporation.
- (2) A broadcasting signal distribution licensee and a broadcasting licensee shall keep such particulars and statistics relating to its broadcasting signal distribution activities or broadcasting activities (whichever is applicable) as may be prescribed.

72. Authority may demand production of licensees' books and records, etc.

The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at a time and place specified in the notice, such documents, accounts, estimates, returns and other records and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by or in terms of this Act or the regulations, or by the relevant licence.

73. Powers of authorised persons

An authorised person may at any reasonable time and without prior notice enter into or onto any premises and -

- (a) inspect, and make copies of or extracts from, specified books of account or other records of the licensee in order to determine whether the licensee is

complying with the terms, conditions, obligations and provisions of his or her licence and with the provisions of this Act, or for any other purpose connected with the achievement of the objects of this Act;

- (b) where a broadcasting service or broadcasting signal distribution service is conducted in or on such premises, demand the production of the necessary broadcasting licence;
- (c) inspect any licence issued to any person under this Act;
- (d) inspect the studio, plant, transmitters, apparatus and other equipment used by any person for the purposes of or in connection with broadcasting or broadcasting signal distribution, as the case may be;
- (e) inspect anything referred to in paragraph (d) which is in the possession of or used by, or suspected of being in the possession of or being used by, any person in contravention of this Act.

74. Transfer of licences

- (1) A licence issued under this Act shall not be transferred -
 - (a) unless the broadcasting service or the broadcasting signal distribution service to which the relevant licence relates, as the case may be, is transferred together with such licence to the same transferee; and
 - (b) without the prior written permission of the Authority.
- (2) (a) The provisions of sections 41 and 42 governing the procedure applicable for and the granting of broadcasting licences, shall **mutatis**

mutandis apply in relation to applications for the transfer of broadcasting licences and the granting of permission for such transfers.

- (b) Subject to the provisions of subsection (1), the procedure applicable to applications for the transfer of broadcasting signal distribution licences and the granting of permission for such transfers, shall be as prescribed.

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

No person shall apply to any venture, undertaking, business, company or other association or body (whether corporate or incorporate) a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body and the Authority.

76. Limitation of liability

Neither the chairperson, any councillor or member of a committee of the Authority, nor any expert appointed in terms of this Act or any officer or employee of the Authority, shall be personally liable for any damage or loss suffered by any person in consequence of any act or thing which in good faith was performed or done or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act.

77. Confidentiality

Every councillor, every member of any committee of the Council and any member of the staff of the Authority shall aid in preserving secrecy and shall not disclose any

information in regard to any matter which may come to his or her knowledge in the actual or supposed exercise and performance on behalf of the Authority of any of its powers, functions and duties in terms of this Act or in performing any work arising from the functioning or functions of the Authority in terms of this Act, or by virtue of the office held by him except -

- (a) in so far as the provisions of this Act requires or provides for the publication of or access by the public or any interested person to information relating to such matter;
- (b) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act;
- (c) on the order of a competent court of law.

78. Regulations

- (1) The Council may make regulations not inconsistent with the provisions of this Act, in relation to -
 - (a) any matter which in terms of this Act shall or may be prescribed or governed or determined by regulation;
 - (b) any technical matter necessary or expedient for the regulation of broadcasting activities and the possession and use of transmitters, apparatus and other equipment, including any prohibition relevant thereto;
 - (c) conferring any additional powers on authorised persons, and the procedures to be followed by such persons; and

- (d) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act.
- (2) A regulation in terms of subsection (1) may declare any contravention thereof or failure to comply therewith to be an offence and may in respect thereof prescribe a fine of not exceeding R10 000.
- (3) When proposing to make any regulation in relation to any matter, other than a matter of procedure or form, the procedures contemplated in subsections (2) to (5) of section 31 shall be followed, **mutatis mutandis**, by the Authority.

79. Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic

If the Government of the Republic and the government of any state or territory which was previously part of the Republic, agree thereto, and a law of such state or territory provides therefor -

- (a) the Authority may exercise and perform in respect of persons and matters in the said state or territory all such powers, functions and duties as it may in terms of this Act exercise and perform in respect of persons and matters in the Republic; and
- (b) the provisions of this Act shall for the purposes of paragraph (a) be deemed to apply **mutatis mutandis** in such state or territory.

80. Application of Act in event of conflict with other laws

In the event of a conflict between the provisions of this Act and those of any other

law, the provisions of this Act shall prevail.

81. Liquidation

The Authority shall not be placed in liquidation except under the authority of and in accordance with an Act of Parliament specially adopted for that purpose.

82. Amendment of laws

The laws mentioned in Schedule 5 are hereby amended to the extent indicated in that Schedule.

83. This act binding on State

This Act shall bind the State.

84. Short title and date of commencement

(1) (a) This Act shall be called the Independent Broadcasting Authority Act, 1993, and shall, subject to the provisions of paragraph (b) come into operation on a date to be determined by the Transitional Executive Council and made known by the State President by proclamation in the **Gazette**.

(b) Section 49(6) shall come into operation on the first day of January, 1996.

- (2) Different dates may under subsection (1) be determined in respect of different provisions of this Act.

SCHEDULE 1A ¹

(Section 4)

Procedure for appointing councillors

1. Councillors shall be appointed by a committee which shall be established by -
 - (1) the Multi-Party Forum/Transitional Executive Council, in the period prior to the first national election held after the commencement of this Act;
 - (2) the interim legislative body, in the period between the first national election held after the commencement of this Act and the first session of a Parliament elected in terms of a new constitution;
 - (3) Parliament, in the period subsequent to the first session of Parliament elected in terms of a new constitution,

- [2. **The committee referred to in paragraph 1 shall be appointed on the basis of consensus or, if consensus cannot be reached, by a seventy-five percent majority].**

3. (1) Whenever one or more members are required to be appointed to the Council, the committee referred to in paragraph 1(1), (2) or (3), whichever is applicable at that time, shall cause to be published in the **Gazette** a notice:

^{1/} Schedule 1A is supported by some members of the technical committee. Paragraphs 2, 10 and 11 have been inserted following the 6th Draft of the IBA Bill. However, see the alternative appointment procedure as contained in Schedule 1B.

- (a) calling for the submission of written nominations from the public of persons for appointment as a member of the Council;
 - (b) indicate that these nominations are to be submitted to the committee within a period specified in the said notice.
- (2) The notice referred to in subparagraph (1), shall also prescribe the form of the nominations and shall include provision for -
- (a) signed and written acceptance by the nominees of their nomination;
 - (b) motivations in support of these nominations which shall accompany such nominations;
 - (c) nominations, when appropriate, to include nominations for the chairperson of the Council;
 - (d) details of the nominee's qualifications, experience and expertise;
 - (e) details concerning the disqualificatory provisions referred to in section 5 of this Act; and
 - (f) the maximum number of nominations any person may submit;
 - (g) other matters which the committee may deem necessary.
4. The committee shall cause to be published in the **Gazette** a notice containing the full list of nominations which were submitted to it and which complied with the prescribed form.

5. The committee shall consider these nominations in the context of the provisions of this Act, and shall -
 - (1) decide upon a shortlist of nominees;
 - (2) advise such nominees in writing that they have been shortlisted for appointment to the Council;
 - (3) cause to be published in the **Gazette** a notice containing the said shortlist; and
 - (4) at the same time as gazetting such shortlist, invite the public to submit written comment concerning any one or more of the nominees so shortlisted, which comment is to be submitted within a period specified in such notice.

6. Subsequent to the closing date for receipt of such comment, the committee shall conduct public hearings concerning the selection of members to be appointed to the Council.

7. A public hearing shall be open to the public and representatives of the media.

8. A hearing shall be conducted by the committee, who shall determine the precise form and conduct of such hearing, provided that -
 - (1) each nominee who has been shortlisted and who has accepted his/her nomination shall appear before the committee at such a hearing;
 - (2) each such nominee, at the commencement of such hearing, shall take an oath or affirm that he or she shall tell the truth; and

- (3) only members of the committee may question a nominee, and such questioning shall only relate to whether or not the nominee:
 - (a) meets the positive and disqualificatory provisions referred to in sections 4 and 5 of this Act and in the prescribed form; and
 - (b) is committed to and understands the provisions of this Act.
 - (4) a nominee may be assisted by a legal representative during the hearing.
9. The committee, in relation to each nominee, shall consider any written nominations and comment, as well as any oral evidence, which it has received, in the context of the provisions of this Act.
- [10. On the basis of consensus, after considering the factors referred to in paragraph 9, the committee shall select the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson.**
11. **In the event of there not being total consensus in respect of a selection or selections contemplated in paragraph 10, a list of persons which has the support of at least seventy-five percent of the members of the committee, shall be deemed to be the selection or selections of the committee].**
12. The committee shall submit to the Multi-Party Forum or the Transitional Executive Council, or its successors, a list of the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson

of the Council.

13. Immediately thereafter, the Multi-Party Forum or the Transitional Executive Council, or its successors, shall cause the list referred to in paragraph 12 to be published in a notice in the Gazette and such appointment(s) shall take effect from the date of publication of this notice.

SCHEDULE 1 B ²

(Section 4)

Procedure for appointing councillors

1. Councillors shall be appointed by a committee which shall be established by -
 - (1) the Multi-Party Forum/Transitional Executive Council, in the period prior to the first national election held after the commencement of this Act;
 - (2) the interim legislative body, in the period between the first national election held after the commencement of this Act and the first session of a Parliament elected in terms of a new constitution;
 - (3) Parliament, in the period subsequent to the first session of Parliament elected in terms of a new constitution,
2. The committee referred to in paragraph 1 shall be appointed on the basis of consensus or, if consensus cannot be reached, by a seventy-five percent majority.
3. Each councillor and the chairperson of the Council shall be appointed in a procedure to be determined by the committee and such procedure shall be based on the following principles, namely -

² Schedule 1 B, which is the preferred option of other members of the technical committee, does not include the procedure as set out in paragraphs 3-8 of Schedule 1 A. Paragraph 3 of Schedule 1 B simply sets out the principles upon which such a procedure should be based. However, paragraphs 1, 2, 5, 6, 7, 8 and 9 in Schedule 1 B are equivalent to paragraphs 1, 2, 9, 10, 11, 12 and 13 of Schedule 1 A.

- (1) public participation in the nomination process;
 - (2) transparency and openness;
 - (3) the publication of short lists; and
 - (4) the principles and objects as enunciated in section 2 of this Act.
4. Whenever one or more councillors are required to be appointed to the Council, the committee referred to in paragraph 1(1), (2) or (3), whichever is applicable at that time, shall follow the procedure to be determined in terms of paragraph 3.
 5. The committee, in relation to each nominee, shall consider any written nominations and comment, as well as any oral evidence, which it has received, in the context of the provisions of this Act.
 6. On the basis of consensus, after considering the factors referred to in paragraph 5, the committee shall select the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson.
 7. In the event of there not being total consensus in respect of a selection or selections contemplated in paragraph 6, a list of persons which has the support of at least seventy-five percent of the members of the committee, shall be deemed to be the selection or selections of the committee.

8. The committee shall submit to the Multi-Party Forum or the Transitional Executive Council, or its successors, a list of the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson of the Council.

9. Immediately thereafter, the Multi-Party Forum or the Transitional Executive Council, or its successors, shall cause the list referred to in paragraph 8 to be published in a notice in the Gazette and such appointment(s) shall take effect from the date of publication of this notice.

SCHEDULE 2

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 PostOffice Act, 1958 (Act No. 44 of 1958), and who is employed by the Authority 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 Authority 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 Authority, 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 Authority 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 becomes 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 Authority, and the amount transferred in terms of subparagraph (c) of paragraph (2) to the first-mentioned fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of the transfer of the amount.

4. The provisions of paragraphs (2) and (3), shall mutatis mutandis apply in respect of an officer or employee who has by virtue of a choice in terms of subparagraph (a) of paragraph (1) become a dormant member and thereafter requests that his accrued

pension benefits be transferred in terms of the provisions of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a pension fund registered in terms of the Pension Funds Act, 1956.

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

6. For the purpose of this schedule -

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

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

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

SCHEDULE 3

(Section 56)

CODE OF CONDUCT FOR BROADCASTING SERVICES

1. Preamble

The fundamental principle to be upheld is that the freedom of all broadcasting services is indivisible from, and subject to the same restraints as that of the individual and rests on the individual's fundamental right to be informed and freely to receive and to disseminate opinions.

2. General

Broadcasting services shall-

- (1) not present material which is indecent or obscene or offensive to public morals, which is offensive to the religious convictions or feelings of a section of the population, which is likely to harm relations between sections of the population or is likely to prejudice the safety of the state or public order;
- (2) not, without due care and sensitivity, present material which contains brutality, violence, atrocities, drug abuse and obscenity;
- (3) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

3. News

- (1) Broadcasting services shall be obliged to report news truthfully, accurately and objectively.
- (2) News shall be presented in the correct context and in a balanced manner, without an intentional or negligent departure from the facts whether by:
 - (a) distortion, exaggeration or misrepresentation;
 - (b) material omissions; or
 - (c) summarisation.
- (3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour and supposition, it shall be presented in such manner as to indicate this clearly.
- (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 such verification is not practicable, that fact shall be mentioned in such a report.
- (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.
- (6) Reports, photographs or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing

moral climate. In particular, broadcasting services shall avoid the broadcasting of obscene and lascivious matter.

- (7) The identity of rape victims and other victims of sexual violence shall not be broadcast without the consent of the victim.

4. Comment

- (1) Broadcasting services shall be entitled to comment upon or criticise any actions or events of public importance.
- (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) Comment shall be an honest expression of opinion.

5. Controversial issues of public importance

- (1) In presenting a programme in which controversial issues of public importance are discussed, a broadcaster shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and at substantially the same time slot.
- (2) A person whose views have been criticised in a broadcasting programme on a controversial issue of public importance, shall be given a reasonable opportunity by the broadcasting service to reply to such criticism, should that person so request.

6. Elections

During an election period, the provisions of sections 58, 59, 60 and 61 of this Act shall apply and all broadcasting services shall, in terms of these sections, be subject to the jurisdiction of the Authority.

7. Privacy

In so far as both news and comment are concerned, broadcasting services 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.

8. Payment for information from a criminal

No payment shall be made to persons involved in crime or other notorious misbehaviour, or to persons have been engaged in crime or other notorious misbehaviour in order to obtain information concerning such behaviour, unless compelling societal interests indicate the contrary.

SCHEDULE 4

(Sections 48, 49 and 50)

CONTROL OF A PRIVATE BROADCASTING LICENCE, A NEWSPAPER OR A COMPANY

1. Control of a private broadcasting licensee

- (1) For the purposes of this Act, a person shall control or be in a position to exercise control over any existing or private broadcasting licensee if, amongst others -
 - (a) the person, either alone or in association with any other person, is in a position to exercise control of the broadcasting licensee;
 - (b) the person, either alone or in association with any other person, is in a position to exercise (direct or indirect) control over the selection or provision of a significant proportion of the programmes broadcast or to proposed to be broadcast by the broadcasting licensee or prospective broadcasting licensee;
 - (c) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the broadcasting licensee in providing broadcasting services under the broadcasting licence; or
 - (d) the person, either alone or in association with any other person is in

a position -

- (i) where the licensee or prospect licensee is a company, to veto any action taken by the board of directors of the broadcasting licensee or to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the broadcasting licensee; or
 - (ii) exercise in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the broadcasting licensee; or
- (e) the existing or proposed broadcasting licensee or, where he or she is a company, more than 50% of its directors -
- (i) act, or are accustomed to act; or
 - (ii) under a contract or arrangement or understanding (whether formal or informal) are intended or expected to act

in accordance with the directions, instructions or wishes of, or in concert with, the person, or the person and his or her associate acting together or, if the person is a company, the director of a company.

- (2) Subparagraph (1)(b) does not apply to the provision of programmes by a person to a broadcasting licensee under any agreement if the conditions of the agreement relate only to the programmes so supplied or the promotion thereof.
- (3) An employee of a broadcasting licensee shall not be regarded as being in a position to exercise control over a broadcasting licensee under subparagraph

(1) merely because of his or her being an employee, except where he or she is placed in that position by virtue of his or her association with any other person.

(4) More than one person may be in a position to exercise control over a licensee.

2. Control of a newspaper

For the purposes of this Act, a person shall control or be in a position to exercise control over a newspaper if -

- (a) the person is the publisher of the newspaper; or
- (b) the person is in a position, either alone or in association with any other person, and either directly or indirectly:
 - (i) to exercise control over a significant proportion of the operations of the publisher in publishing the newspaper; or
 - (ii) to exercise control over the selection or provision of a significant proportion of the material to be published in the newspaper; or
- (c) if the newspaper is published by a company, the person, either alone or in association with any other person, in a position -
 - (i) to exercise control over the company; or
 - (ii) to veto any action taken by the board of directors of the company; or

- (iii) to appoint or secure the appointment of, or veto the appointment of, at least one half of the board of directors of the company; or
 - (iv) to exercise, in any other manner, whether directly or indirectly, discretion or restraint over any substantial issue affecting the management of affairs of the company; or
 - (d) if the newspaper is published by a company, if the company or more than 50% of its directors -
 - (i) act, or are accustomed to act; or
 - (ii) under a contract or an arrangement (whether formal or informal) are intended or expected to act,

in accordance with the directions, instructions or wishes of, or in concert with, the person, or the person and his or her associate acting together or, if the person is a company, the directors of a company.
- (2) Subsection (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under any agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.
- (3) An employee of the publisher of a newspaper shall not be regarded as being in a position to exercise control over the newspaper under subparagraph (1) merely because of his or her being an employee, except when he or she is placed in that position by virtue of his or her association with any other person.

3. Deemed control of a company

Without derogating from the provisions of any law or from any rule of common law, and in the absence of proof to the contrary, a person shall, be regarded as being in control of, or being in a position to exercise control over, a company if he or she has equity or voting interests in the company exceeding 25 % or has other financial interest therein of or exceeding 25% of its nett assets: Provided that where another partner person who is not the spouse, partner or associate of the firstmentioned person, such firstmentioned person shall nit in terms of this subparagraph be regarded as being in a position to exercise control over the company.

SCHEDULE 5

(Section 81)

AMENDMENT OF LAWS

To be submitted in due course. The laws to be amended are likely to include the following:

1. Radio Act, 1952 (Act No. 3 of 1952)
2. Post Office Act, 1958 (Act No. 44 of 1958)
3. Broadcasting Act, 1976 (Act No. 73 of 1976)

SCHEDULE 6

DETERMINATION BY LOT FOR PURPOSES OF SECTION 6(2)(c)

1. Upon having appointed the six additional councillors in terms of section 6, the appointing body shall forthwith proceed, in an open and transparent manner, to determine as required by subsection 2(c) of that section, which three of such six additional councillors shall vacate their offices upon the expiration of two years after their appointment, for which purpose that appointing body shall designate from its own number the person who shall conduct the lot.
2. The designated person shall thereupon ensure that the name of each one of the six additional councillors is written on a separate piece of paper of equal and similar shape and colour.
3. The designated person display the six pieces of paper contemplated in paragraph 2 to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper. The designated person shall thereafter fold every such piece of paper in such a manner that the names thereon are not visible, and place all such pieces of paper in an empty container.
4. The designated person shall thereupon appoint an impartial person to draw three pieces of paper from the set container pieces of paper (hereinafter referred to as the drawer).
5. The designated person shall thereupon shake the container in such a manner as to thoroughly mix the pieces of paper therein, and shall hold such container in such a position that the drawer is unable to see the pieces of paper in such container.

6. The drawer shall thereafter draw three pieces of paper from such container as may be necessary to determine the matter in respect of which the lot and shall, without unfolding each piece of paper so drawn, hand such three pieces of paper to the designated person.
7. The designated person shall, after having drawn three pieces of paper from the set container, unfold each piece of paper handed to him as contemplated in paragraph 6, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper.
8. The persons whose names have been so drawn shall vacate their offices as councillors two years after the date of their appointment as such.