



Demokratiese Party
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SUBMISSION BY THE DEMOCRATIC PARTY
TO THE TECHNICAL COMMITTEE ON THE
INDEPENDENT MEDIA COMMISSION AND
INDEPENDENT TELECOMMUNICATIONS AUTHORITY

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One Nation. One Future. Een Nasie. Een Toekoms.

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12 May 1993

INDEPENDENT MEDIA COMMISSION (IMC)

The Democratic Party notes with approval the Terms of Reference of the IMC as we believe it is of utmost importance that this body assist with the levelling of the media playing fields in the period leading up to an election.

We would urge that the IMC members be appointed following a process of open hearings and that the body should be dissolved soon after the election. An adequate period should be allowed for the body to wind up its affairs after having dealt with all the matters referred to it.

During the period prior to the election we believe that any of the complaints received or initiated by the IMC should be dealt with as quickly as possible. It is important that transgressions of the code be rectified without delay.

DEMOCRATIC PARTY PROPOSALS REGARDING
PRINCIPLES FOR TELECOMMUNICATIONS AND BROADCASTING
IN THE NEW SOUTH AFRICA

INTRODUCTION

The Democratic Party believes that it is essential that immediate steps be taken to make access to radio and television available to as broad a section of our population as possible in as short a time as possible.

To achieve this aim prior to the first general election under a new constitution, it is vital that steps be taken now to give effect to as many of the following proposals as is possible in the time available.

The Democratic Party recommends that the government begin immediately to draft the necessary legislation to give effect to these principles and obtain widespread comment on such legislation to enable Parliament to consider the Bill during the 1992 session.

In an effort to assist in this process, the Democratic Party has formulated the attached proposals and recommendations regarding the reorganisation of the broadcasting and telecommunications systems in South Africa to better serve the needs of a post apartheid society.

In formulating these proposals, the DP has started from the premise that the airwaves are a public resource accessible to all sections of society. We also agree that freedom of speech and of the press must be enshrined in a new constitution.

Recognising that the diversity of our people and structure of our society create certain unique requirements with regard to our broadcast media, the DP feels that local radio stations - rather than television - are the means of broadcast communication best suited to our needs. We, therefore, believe priority should be placed on licencing media which are able to serve local needs over efforts to create dominant national broadcasters.

In order to give effect to these beliefs, the DP proposes that certain steps be taken to move away from our current centralised broadcast media to a system better suited to the needs of our society and population.

Central to this is the need to create a public body, independent of the government and the SABC, to regulate national communications and media. Such a body would control licencing, formulate rules governing broadcasting and allocate frequencies to private commercial and public broadcasters. It should also have the authority to enforce its regulations through fines or the withdrawal of licences to operate.

This controlling body will also be required to ensure fair access to the airwaves to all legitimate political candidates or parties.

To achieve these aims the DP has made certain key recommendations regarding the SABC in view of the lack of public confidence in the Corporation.

We hope that these proposals will play a positive role in transforming our broadcast and telecommunications media as quickly, efficiently and fairly as possible.

GENERAL PRINCIPLES

- The electromagnetic spectrum is a public resource whose use for radio and television broadcasting may be licenced by the government on their behalf to private and public bodies under laws enacted by Parliament to operate in the public interest and for the public welfare.
- Freedom of speech and of the press must be enshrined in the constitution in any new South African political dispensation - a constitution to be guarded by an independent judiciary. As such, the political, intellectual and artistic rights of broadcasters in the new South Africa will be constitutionally protected from government interference, except for broadly accepted limits articulated in public laws, passed by Parliament and tested in the courts. These might include limited legal prohibitions against pornography, racism and blasphemy.
- The electronic media and telecommunications have demonstrated their ability to unify nations and economic markets throughout the world. As it moves towards real democracy, South Africa will need both commercial and non-commercial media and state-of-the-art communications technologies to attain one of its overarching objectives; a unified nation, drawing strength from the diversity of its people.
- Recognising this diversity, the new South Africa places a high premium on promoting a diversity of voices - serving our citizens in their own areas. As a result, a priority should be placed on licencing media which will demonstrate a unique capability to serve local needs over efforts to create dominant national broadcasters.

SOUTH AFRICAN COMMUNICATIONS AUTHORITY (SACA)

- The creation of a public body to regulate national communications and media and to co-ordinate with international organisations is consistent with accepted worldwide governmental practice.
- In South Africa, a communications authority should be created with specific responsibility to promote, for all our people access to a rapid, efficient, nationwide, worldwide communications system with adequate facilities at reasonable charges. In the near term, it is envisaged that the SACA will regulate the use of the electromagnetic spectrum for all non-governmental broadcasting- including mass media and private radio use. Ultimately, it may also take on responsibility for the promotion of telephone and satellite communications.
- Consistent with the anticipated new constitution, the SACA will be prohibited from censoring programmes or interfering with the right of free speech on the air - except for criminal activity as limited by specific acts of Parliament.
- The SACA will be an independent, public body composed of seven South African citizens, to be called commissioners, selected by the State President. In selecting the SACA commissioners, the State President will seek candidates broadly representative of and acceptable to the country's diverse peoples, as well as its major political groups. An upper house or second chamber of Parliament will be empowered to conduct public hearings into these appointments to confirm the suitability of the proposed commissioners, provided that not more than 3 of the commissioners may come from the same political party.
- The selection of SACA commissioners should be a public process, in which any South African citizen may submit names for the list of nominees. No prior qualification of any kind shall be made to limit the eligibility of citizens to become SACA commissioners. However, no one who accepts appointment as a commissioner may retain any financial interest whatsoever in any area over which the SACA will have regulatory responsibility.
- The SACA will receive its funds from fees and direct appropriations as approved by Parliament. Its budget will be open to the same scrutiny as any other public entity.
- All SACA business, discussion and decisions will be conducted in public, with minutes to be kept of all meetings and records to be available in a public place, accessible during business hours to all South African citizens.

AUTHORITY

- The SACA will have the authority to allocate portions of the spectrum to the different types of broadcast services in accordance with its rules and regulations, international agreements and other laws affecting broadcasting.
- The SACA will have the authority to consider applications to build and operate radio and TV stations; assignment of frequencies, power and operating times; periodic inspection of equipment and the engineering aspects of operation; renewal of licences and transfers and assignments of facilities; modifications and changes in existing facilities; and licencing operators of these, as well as all other non-government transmitters.
- The SACA shall have the authority to enforce its regulations through fines, whose amounts shall be approved by Parliament, or withdrawal of licences to operate.
- Government agencies will negotiate allocations of the spectrum with the SACA to be reserved for their exclusive use, including radio communications frequencies for the military police, emergency services, etcetera. The SACA shall have no authority over governmental use of reserved spectrum, except as shall be negotiated between the SACA and the ministries involved.

COMMERCIAL BROADCASTING LICENCES

- The SACA will be expected to issue broadcast licences to the maximum extent technically feasible to all South African citizens able to show they are legally, technically and financially qualified and whose proposed broadcasting operation will be conducted in the public interest. Availability of spectrum shall be the only government-imposed limitation on the number of stations which may broadcast within a broadcast "market".
- The SACA will have the authority to set the duration of broadcast licences. It shall periodically review the overall performance of stations, usually when they apply for renewal of licence, to determine if they have lived up to their obligations and the undertakings they made in applying for access to use the public airwaves.
- Licences will be immediately issued to all broadcasters currently operating in or broadcasting to South African audiences for the standard licence period set for that particular media. However, in the future, all broadcasters

will be obliged to obtain licences on an equal basis with no company receiving preference over others.

- The SACA shall devise its own working rules and conduct all of its business in accordance with South African law. Disputes arising from the work of the SACA can be challenged in the Supreme Court.
- South Africans who have been disadvantaged by the government's apartheid policy shall be given special consideration in the allocation of broadcast licences by the SACA. Key to the entire acceptability of a new structure is that the services it provides will not directly or indirectly continue the policy of racial separation or advantage.
- In an effort to promote a diversity of voices in the country, priority shall be offered to new broadcast licensees who are able to demonstrate they can uniquely serve a given community's needs. In this manner, the SACA should favour local businesses with no links to existing media chains over others with existing licences or media interests.
- In an effort to promote diversity of ownership and local interests no one company should be allowed more than three (3) radio or TV stations in the country. No new licensee company should be allowed to own a majority interest in a newspaper, a TV station and a radio station in the same market. Rules governing the reduction over time of majority interest ownership by newspapers in existing TV broadcasting to a minority interest, should be promulgated by the SACA.
- No foreign interest should own more than a 20% share of any South African broadcasting station or company.

PUBLIC BROADCASTING

- In view of both the enormous need for educational development in this country and the power of electronic media as an instructional device, the SACA should reserve both TV and radio frequencies for non-commercial broadcasting.
- Public broadcasters shall be funded from contributions or private donations, contracts with government departments or subscription fees, licences and taxes or other government appropriations in a manner dictated by Parliament.

- Public broadcasters should enjoy the same freedoms and responsibilities available to other broadcasters, but should have included as terms of their respective licences that they be non-profit, non-commercial entities.
- Because they will be accepting funds from government and private sources, public broadcasters should be constituted with boards of directors and programme advisory councils whose members are broadly representative of local interests, concerns and cultures.
- The SACA should adopt rules requiring public broadcasters to offer programming in any two South African languages in widespread use in their respective services areas.

MEDIA AND THE TRANSITION TO DEMOCRACY

- The power of the media as a political tool is widely accepted. During the months ahead, the SACA should adopt rules to assure fairness of access to the air waves by legitimate political candidates or parties and to prevent discriminatory pricing in sales of advertising to political candidates or parties. Although no rules may prohibit a station owner/manager from expressing an opinion on political issues, it should be national policy that a station is obliged to offer individuals from the community the opportunity to express opposing political views.
- Based on a complaint from the public about unfair political practices by a station, including a SABC station, the SACA may require its owners/managers to provide evidence that they have not violated SACA rules or face punishment ranging from a fine to a suspension of their broadcast licences.

SABC

- The SABC will remain the dominant nationwide provider of TV and radio news in South Africa during the next few years. Although it has made progress during the past year in moving away from its historical role as an advocate of government policy, many believe that during the sensitive transition to democracy, the distortion of political debates and current affairs may occur.
- Further, something is clearly not right at the SABC. Not only are many of its services losing money, a large number of our citizens have expressed their lack of confidence in its programming by refusing to pay their licence fees.

- (1) The SABC Commercial Broadcast Unit will be made up of both radio and TV stations that are entirely advertiser supported;
- (2) The SABC Public Broadcast Unit will become the first national non-commercial radio and TV service. Supported by fees, contracts with other government agencies, corporate contributions and direct government appropriations it will serve the larger national purpose of building national unity and identity, and providing educational services and cultural development. The SABC Public Broadcast Unit will have its own board of directors and programme committee, selected to be broadly representative of South Africa as a whole, which shall exercise all business and creative decisions on its own behalf; and
- (3) The future of the SABC Technical Systems/Networks Unit deserves careful consideration. Built with public funds and user fees, it represents a massive investment by the people of South Africa in broadcasting technology. Although it would be a prime candidate for privatisation, this division of the SABC could become a profit-making entity - leasing its equipment, facilities and transmission towers to new broadcasters and the SABC - possibly to generate much needed revenue for the Public Broadcast Unit. Because the Unit is a public resource, the SACA - rather than the SABC Executive Committee - should approve or adjust all fees for leasing these facilities at a fair and reasonable rate, prohibiting discrimination among broadcasters. Although no broadcaster would be obliged to use the SABC facilities or transmission towers, the availability of these systems for lease by local broadcasters could substantially reduce the barriers to entry in the South African media business, leading to an earlier proliferation of local radio and TV.

IMPLEMENTATION

The Democratic Party recommends that the government immediately undertake to draft appropriate legislation implementing the above principles. During the Parliamentary recess, the government should undertake to obtain the widest possible public comment in order to fashion a Bill, to be submitted during the next session of Parliament, that will enjoy broad popular support. In this manner, South Africans will be able to obtain the benefits of these reforms in little more than a year.

25 November 1991

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**DEMOCRATIC PARTY PROPOSALS
TO CODESA SUB-GROUP 3, WORKING GROUP 1 ON**

**PRINCIPLES FOR AN
INDEPENDENT BROADCASTING REGULATORY AUTHORITY
TO OPEN ACCESS AND ENSURE FAIRNESS**

The following paper and proposals are presented to the Sub-Group in hopes of organizing our work and setting out key issues for decision regarding the important issue of opening access to electronic media as soon as possible and ensuring political fairness by broadcasters during the important transition period ahead.

At our meeting on 10 February, many CODESA participants expressed a view that the SABC Board should be urgently reconstituted so as to be reflective of all the peoples of South Africa. The Democratic Party endorses this proposal and suggests that a new SABC Board urgently undertake a thorough review of SABC management and policies to ensure that the national broadcaster is fair and open to all South Africans.

In the meanwhile, many South Africans do not believe that the national broadcaster is impartial in its news gathering and dissemination policy. Although SABC staff may consider allegations of continuing pro-government bias unfair, revisions to the Broadcasting Act discussed below will ensure that all broadcasters scrupulously observe fairness and objectivity during the political transition ahead. SABC should hire an outside senior executive with adequate staff and the title of Ombudsman, reporting directly to the Group Chief Executive, to investigate and report both to him and, over the airwaves to the public, allegations of bias by the national broadcaster.

At our meeting on 10 February, there was broad consensus that what is needed is an independent communications authority (ICA), similar to those established in many other countries, to oversee this process. The following are proposals from the Democratic Party intended to guide our deliberations and to assist in decisionmaking:

Independent Communications Authority -- Major Duties

PROMOTE SPECTRUM USE: The Authority shall seek to maximise use of the frequency spectrum in the public interest by (1) working closely with relevant departments to allocate frequencies needed by government (military, police, etc.); (2) to promote maximum effective use of frequencies not needed by government, including the oversight and approval of the national radio frequency grid [Note: This requirement will ensure the availability of frequencies for new broadcasters.]; and (3) supporting research into new technologies of value to South Africa.

RADIO REGULATION: The Authority shall receive applications for broadcast construction permits; set rules and procedures by which it will allocate, modify and transfer control of licences; licence all classes of nongovernment frequency use, including broadcasters of all types; allocate frequencies, power and call signs, as applicable; authorise communication circuits -- including working with the Postmaster General to ensure the availability of adequate telephone service at fair and reasonable rates; modify and renew licences; inspect transmitting equipment and regulate its use; and control interference.

SABC TECHNICAL SERVICES: The Authority shall establish rules to ensure that rates charged by any broadcast service funded by licence fees or government funds for transmission of programming on behalf of a licence holder are fair and reasonable.

BROADCAST SERVICES OVERSEEN: Rules shall be adopted by the Authority overseeing all MW, FM, commercial, public service and community broadcasters; TV, cable TV, pay and low-power TV; satellite and international broadcasts; auxiliary services such as FM subcarriers, TV translators, remote pickups, studio-transmitter links; and experimental and developmental services.

Independent Communications Authority -- Major Policies

REGULATION IN THE SUNSHINE: Belief of all South Africans in the impartiality and fairness of Authority policies is essential. Therefore, all Authority policies, rules and regulations shall be discussed and voted upon by the Commissioners while meeting in public sessions. All meetings, submissions to the Authority, policy documents and decision memoranda shall be open for public scrutiny, with the exception of proprietary financial information being submitted under an Authority licencing proceeding.

COMMUNITY SERVICE: The Authority shall adopt policies and procedures which will require broadcast licencees to attempt to serve the programming needs and interests of their communities. The efforts expended by a broadcaster shall be an important criterion in the licencing or relicencing procedure. All broadcasters shall be obliged to keep a public file with key documents regarding the ownership and management of the station as well as its record of community service throughout its licence term.

FAIRNESS DOCTRINE: A priority for the Commissioners will be the adoption of a series of policies, similar to those in place in the U.S., U.K. and other democracies, to ensure South Africans that all the electronic media are fair in their treatment of political issues and that legitimate political parties and candidates will have fair access to the use of broadcast facilities.

PROMOTION OF DIVERSITY -- Access to News and Cross Ownership: In an effort to ensure that no organisation will be able to dominate the flow of news, no individual or corporation shall own a majority share in a newspaper, a TV station and a radio station -- either nationally or in the same area or local market.

PROMOTION OF DIVERSITY -- Legacy of Apartheid: In the allocation of broadcast licences, the Authority will take action to ensure that SA's majority population, disadvantaged by the legacy of apartheid, will not be disadvantaged in access to the airwaves or suffer unjust barriers to entry in the business of broadcasting.

PROMOTION OF DIVERSITY -- Prevention of Electronic Media Dominance: In the allocation of broadcast licences, the Authority will take action to ensure that, other than the national public service broadcaster, no one individual or company may own more than a total of 3 radio stations or one TV station.

Independent Communications Authority -- Enforcement

INVESTIGATIONS: The Authority shall have the ability to conduct investigations to ensure that its rules and regulations are being observed. It shall also receive complaints from citizens about broadcasters and shall ask broadcasters to address all complaints.

FINES AND/OR LOSS OF LICENCE: For violation of Authority rules, regulations or policies or for a conviction for criminal abuse of the airwaves under South African law, a broadcaster may be subject to fines of up to R100,000 per transgression and/or loss of licence.

Broadcasting Licences

LENGTH OF LICENCE -- Licences issued by the Authority shall be 5 years for radio and 7 years for television.

SA OWNERSHIP -- Licences may only be issued to South African citizens. Corporations may not have more than one-third of their capital stock owned by foreigners.

PUBLIC INTEREST STANDARD - Licencees shall be expected to demonstrate awareness of the important problems or issues in the communities their stations serve and to foster public understanding by presenting some programmes and/or announcements about local issues. But broadcasters, not the Authority or any other governmental body, will be responsible for selecting all the material aired by their stations.

DELIBERATE FALSE OR MISLEADING BROADCASTING: The Authority shall adopt rules to ensure that deliberate acts of news or information falsification or distortion are met with penalties.

ADVERTISING IDENTIFICATION: Rules shall be adopted requiring broadcasters to identify the sponsors of all paid-for programming.

ADVERTISING CARRIED BY COMMERCIAL BROADCASTERS: No rule or policy shall be adopted limiting the amount of commercial matter that may be broadcast in any given period of time, although the amount of advertising carried by the station shall be a matter of public record, and a legitimate subject for discussion during applications for renewal of licence.

ADVERTISING CARRIED BY PUBLIC SERVICE BROADCASTERS:

Public service broadcasters typically receive government funding to transmit educational and entertainment programmes to the general public and also instructional programmes to schools. They should be permitted to air paid advertising for nonprofit organizations but may not air advertising paid for by or on behalf of commercial entities. Further, while they are permitted to editorialise on issues, they may not support or oppose any candidate or party for public office.

"GRANDFATHER CLAUSE" -- No Interruption of Service: In recognition of the major investments already made in electronic media in the country and in order to ensure a normal transition, all existing commercial and public service broadcasters in South Africa and the TVBC states shall receive preliminary licences from the Authority, on condition that they agree to observe all its rules, regulations and policies.

JUDICIAL REVIEW -- All decisions of the Authority shall be open to judicial review to ensure that all rules, regulations and policies are consistent with the new Constitution, the Bill of Rights and all other laws of the Republic.

Independent Communications Authority -- Membership

NAME: The organization name should emphasize its South African character, its independence, and its authority over communications broadly. Hence, it should be the S.A. Communications Authority (SACA) or the S.A. Independent Communications Authority (SAICA).

MEMBERSHIP/NUMBER: The Authority should have 7 members, known as Commissioners.

MEMBERSHIP/COMPOSITION: The Commissioners as a group should be broadly representative of the peoples of South Africa. Factors to be included are the regional, language, cultural and gender diversity of the country.

POLITICAL AFFILIATION: In South Africa's coming multiparty democracy, no more than 2 members of the Authority should be from the same political party. None can be an office bearer of any political party.

COVERAGE: The Authority shall be charged with regulating national and international communications by radio and television, including encoded broadcasting and commercial cable communications within, into or out of the Republic of South Africa. It shall be charged with the management and maximum possible use of the frequency spectrum, a publicly-owned natural resource, on behalf of all South Africans.

BINDING ON CODESA PARTICIPANTS: As participants in CODESA, the body endorsing this initiative, the TVBC states and all political parties agree to accept the Authority's policies and regulations as legally binding, regardless of the legal status of participating states.

TERMS OF OFFICE/EMPLOYMENT: The 7 commissioners should sit for five year terms.

APPOINTMENT: The commissioners should be appointed by the State President from a list approved by CODESA Working Group 1.

QUALIFICATIONS: There should be no qualifications for the job of commissioner, except that appointees should be South African citizens of distinguished abilities and without criminal records. [Demands that Commissioners have specialised credentials presupposes that only "experts" can understand the major policy issues involved in broadcasting and lends itself to the possibility that special interests could control broadcasting.]

FINANCIAL INTEREST IN COMMUNICATIONS: No Commissioner shall have a financial interest in any Authority-related business. Upon agreeing to stand for nomination to the Authority, individuals must declare any financial interest in such business and either agree to divest such interest or place it in trust.

LEADERSHIP: The Authority shall elect a chairman from among its members. The chairman shall have the same powers as the other Commissioners, except that the Chairman shall be responsible for supervision of all Authority administration.

LEGAL/BUDGETARY RESPONSIBILITY: (1) The Authority shall, for the interim, report to CODESA for legal or policy guidance and -- as an independent authority -- shall be fully funded by and financially accountable to Government. (2) Afterward, and until such time as a new constitutional dispensation is adopted, the Authority

shall report to any interim government adopted. (3) After the election of a new Parliament under a new constitutional dispensation, the Authority shall report to Parliament through the Home Affairs Ministry on its budgetary requirements and its financial accountability. (4) The Authority shall work closely with the Parliament and the judiciary to ensure the consistency of its policies and regulations with the Constitution, Bill of Rights and other SA laws.

SALARIES: All Commissioners and their staff shall enjoy the benefits which accrue to government employees, but the Commissioners shall have all authority over staff salaries, subject to normal auditing and Parliamentary approval.

Independent Communications Authority -- Prohibitions

FREEDOM OF SPEECH AND THE PRESS: The Authority shall make no rule or regulation which interferes with the right of the broadcaster to freedom of speech and of the press. The Authority is expressly forbidden from censoring or dictating programme content or from interfering with the decision of a broadcaster on the selection and scheduling of programmes and announcements, including commercial messages, to be aired by the stations. [We anticipate the freedom of speech and of the press will be part of South Africa's Bill of Rights. Although many societies accept some limits to free speech (pornography, blasphemy, racism, etc.), these limits can only be accepted as an act of a democratically elected Parliament -- not by a regulatory authority.

FINANCING OF BROADCASTERS: The suggestion by many well-intentioned individuals and groups that the Authority administer a separate Communications Development Trust or otherwise involve itself in the receipt or dispensing of funds for broadcasters could undermine the Authority's credibility with South Africans, as it would become open to attack of political favouritism and censorship of programme content.

JOHANNESBURG
17 February 1992