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Message:

Please see attached correspondence.

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6 July, 1993

The Chairman of
The Technical Committee on the Independent Media Commission
and Independent Telecommunications Authority
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Comment on the Fourth Draft of the Independent Broadcast Authority Bill

Venture Communications have been appointed as consultants to advise Nasionale Koerante Beperk (the newspaper division of Nasionale Media; publishers of regional, local and free newspapers) on the establishment of local radio stations. The comments detailed below have been made with the approval of Nasionale Koerante.

The aim of the draft bill is to establish an Independent Broadcasting Authority in order to give rise to a deregulated broadcasting industry in South Africa. The establishment of an independent broadcasting industry can only be supported. The severe limitations in allocating licenses that will be placed on the proposed Authority gives rise to concern. In many instances the bill tends to over-regulate and limits the discretion of the proposed Authority. The restrictions on press ownership in particular are regarded as unfair, impractical, and bound to be counterproductive.

The following issues should receive attention:

- The bill tends to be *overly prescriptive* in the definition of programming content. In a free market, a private broadcaster will not survive unless he lives up to the requirements of his market.
- The determination of *fees* should be reviewed. The allocation of licenses should not be seen as a revenue opportunity for the state but should be related to the costs of regulation. The highest bidder may not be the best positioned to satisfy the requirements of a particular market.

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Members:
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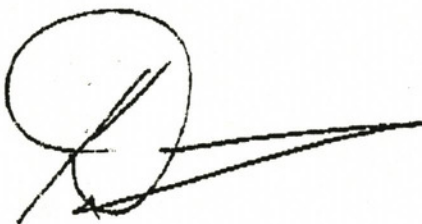
• The *limitation requirements on control and cross-ownership of media* needs to be reconsidered. The requirements are considered to be too onerous as well as limiting the discretion of the Authority. The limitations placed on press ownership are considered unacceptable and counterproductive for two reasons:

- They will result in a further decline in newspaper profitability leading to rationalisation and concentration.
- By disqualifying shareholders of M-Net from participating in radio, the major press groups are prevented from competing in, and adding value to this industry with their independent news infrastructures. This will result in a deluge of "canned" wire service news.

The attachment hereto comments in depth on provisions of the draft bill that are of particular concern. We request the committee's consideration of our objections. We would further request an opportunity to make representation to the Technical Committee before the acceptance of the draft bill by the Negotiating Forum.

We offer our cooperation and assistance in achieving a dispensation acceptable to all.

Yours faithfully



KEVIN DOVE

Nasionale Koerante Beperk - Commentary on the Fourth Draft of the Independent Broadcasting Authority Bill (22 June 1993).

1. Introduction

Nasionale Koerante welcomes the deregulation in the broadcasting industry brought about through the proposed establishment of the Independent Broadcasting Authority.

Broadcast frequencies should be used with due consideration to the requirements of the community to which the airways belong. In order to ensure freedom of expression to all, a multiplicity of voices of high quality are required. In a free market, a broadcaster who does not provide for the community requirements, would find itself without listeners, without advertising, and out of business. Nevertheless, there is a need to regulate in order to ensure adequate quality standards and a diversity of services in the interest of the community. The number of broadcasters is limited by the physical availability of frequency spectrum. It is the duty of the authority to allocate frequency as efficiently as possible to those parties which are best suited to serve the community.

However, over-regulation and uncertainty engendered by the threat of license suspension will be counterproductive to a successful and vibrant broadcasting industry reflecting all the opinions of the community.

The fourth draft aims to achieve the above principles. We believe, however, that certain aspects should be reviewed as these tend to over-regulate and restrict the discretion of the Authority. The restrictions placed on press ownership are also found to be unacceptable and counterproductive as argued below.

2. Comment

a. Section 3 - Policy

The duties referred to, (in particular sub-section 3) are typical duties of public broadcasters. Provisions should not obligate private broadcasters to particular programme content. In a free market, the communities will exercise their choice and ensure that the programme content is in line with their requirements.

Nasionale Koerante supports the view that there should not be an absolute obligation on the Authority, as imposed by the word "shall", but that the Authority be guided by the legislation and given the discretion to balance conflicting objectives in its decision making.

b. Section 41(15) : Fees

In setting charges for Broadcasting license, the Authority should be careful not to be seen to hire out or auction the rights to broadcasting frequencies. The charges must be related to the costs of regulation and not seen as a source of state revenue - which should be derived from other sources such as direct and indirect taxation. The British experience, where frequencies were allocated to the highest bidder, has drawn severe criticism and will not necessarily result in the best quality or in licenses being issued to the applicants best able to serve a particular community.

The discretion of the Authority should be limited to "reasonable costs of regulation in terms of the Act". A part of the obligation should be borne by the State.

c. Section 45 : Limitations on Foreign Control

The limitation of foreign control could be seen to be counter-productive since it is in the interest of the country to attract foreign investment. It is understood that it is the desire to limit the foreign control of the media. This can be achieved through limiting the voting percentage of foreign directors on the Board rather than restricting investment.

d. Section 46: Limitations on the Control of Private Broadcasting Services

Nasionale Koerante supports the goal that the concentration of media ownership be limited. However, the absolute nature of Section 46 is unacceptable. It is proposed that this section serve as a guideline to the commission, but that the Authority have the discretion to review and change such limitations to reflect changing circumstances.

e. Section 47: Limitations on Cross-Media Control of Private Broadcasters

The motivations for the limitation of cross-media control are understood, but, the realities of the South African Economy would make these limitations difficult to apply. The effect would be counterproductive and end in greater concentration.

Competition for Revenue

Private broadcasters are funded by subscription and advertising revenue. They compete with the print media for the same advertising budgets. Research has indicated that the advertising cake is limited. Consequently, the introduction of new broadcasting services will result in a reallocation of advertising revenues away from newspapers, Section 47 limits the ability of newspaper companies to compete for this revenue. Newspapers are not high margin businesses. Typically cross-subsidisation and the sharing of infrastructure is required to ensure the survival of newspapers serving

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smaller communities. Denying the newspapers the opportunity to compete in electronic media will lead to further concentration in print media in order to ensure survival. The reduction in profitability will also impede the ability of the press groups to enter into the market sectors serving the historically disadvantaged.

News Infrastructure

The establishment of a news infrastructure is expensive. Small radio and television stations will not have the means to establish independent services and will merely channel the existing wire services. This will in turn increase the concentration of information and restrict the development of a multiplicity of independent voices. The press, on the other hand, have established infrastructure which can easily be extended to the electronic media. Only by having press groups participate and compete in broadcasting will multiple quality news voices be heard.

Restrictions on the Newspaper Groups

The blanket provision that newspaper groups that have a combined circulation of 300 000 may have interests in only one private broadcaster, is patently unfair. It is difficult to understand how this limitation is arrived at with out consideration of specific local and regional circumstances. Nasionale Media's 26,7% interest in M-Net Television prohibits Die Burger from applying for a local radio license in Cape Town despite these being two entirely different operations - the provision of local information via radio versus a national entertainment television channel.

Broadcast licenses should be allocated on merit to those persons best able to address a particular market segment with the best product. It is evident from the interest that is being expressed in new broadcast licenses, that competitive license applications will be received by the Authority. The Authority will act to ensure that the successful applicant will be able to sustain the envisaged service and that the license is issued with due consideration of the public interest. This, together with the limitations imposed by Section 46 as implemented with the discretion of the Authority, will ensure that the objectives of the bill are met. It would appear counter-productive to limit the Authority's discretion, and in so doing, preclude proposals which may best satisfy the license requirements of a particular area.

f. Section 50 : Local Content

Support of the local broadcast production and music industry is laudable. Prescriptions of the programming content of private broadcasters is, however unacceptable. Private broadcasters exist to satisfy the requirements of a specific target market. The requirements of the market should dictate the programming content. The Code of Conduct, the general

aims of the act and the requirements of the market should be the only guiding forces.

g. **Schedule 4 : Control**

The deemed level of control of 15% is considered too low and contrary to accepted norms. The generally accepted norm of the Stock Exchange is that a minimum of 30% is required to constitute control.

3. **Conclusion**

The draft bill represents a significant step forward in deregulating broadcasting in South Africa. There are, however elements of the bill that tend to over-regulate and limit the discretion of the proposed broadcasting Authority.

The following issues are found to be of particular significance and should receive careful consideration:

- The bill tends to be *overly prescriptive* in the definition of programming content. In a free market, a private broadcaster will not survive unless he lives up to the requirements of his market.
- The determination of *fees* should be reviewed. The allocation of licenses should not be seen as a revenue opportunity for the state but should be related to the costs of regulation. The highest bidder may not be the best positioned to satisfy the requirements of a particular market.
- The *limitation requirements on control and cross-ownership of media* needs to be reconsidered. The requirements are considered to be too onerous as well as limiting the discretion of the Authority. The limitations placed on press ownership are considered unacceptable and counterproductive. They will result in a further decline in newspaper profitability leading to rationalisation and concentration. Finally, by disqualifying shareholders of M-Net from participating in radio, the major press groups are unable to compete in, and add value to this industry with their independent news infrastructures. This will result in a deluge of "canned" wire service news.