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SOUTH AFRICAN CHAMBER OF BUSINESS



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SACOB  
SABEK

The Voice of Business/Die Sakestem

Reg. No/Nr. 05/20230/08

REF : EH.4

12 July 1993

Per telefax : 397 2211

The Convenor  
 Technical Committee on the  
 Independent Broadcastint Media Commission  
 Multi-Party Negotiating Process  
 Box 307  
 ISANDO  
 1600

For attention : Melody Emmett7 PAGES

Dear Sir

**INDEPENDENT BROADCASTING AUTHORITY BILL -  
 COMMENTARY**

I attach for your consideration commentary on the Independent Broadcasting Bill which we only received last Monday.

I shall be grateful if you would acknowledge receipt of this submission.

Yours faithfully

W V LACEY  
 SENIOR ECONOMIST

INCORPORATING:

THE ASSOCIATION OF CHAMBERS OF COMMERCE AND INDUSTRY OF SOUTH AFRICA & THE SOUTH AFRICAN FEDERATED CHAMBER OF INDUSTRIES  
 Directors: Mr. J.H. Viljoen, Mr. G.J. Trollope, Mr. S. Sterling

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## COMMENT ON THE INDEPENDENT BROADCASTING AUTHORITY BILL

### [WORKING DRAFT 4]

#### 1. INTRODUCTION

The South African Chamber of Business [SACOB] comprises some 100 individual Chambers of Commerce and Industry. Through these Chambers some 40 000 individual businesses are represented by SACOB. In addition over 50 National Business Associations are indirectly linked to SACOB. In the words of its Mission Statement, SACOB is "the voice of business". Business as both a consumer and a participant [particularly in the funding of services through advertising] in broadcasting services has a view on the future policy for broadcasting in South Africa, and wishes to comment on the draft Bill which outlines future policy objectives and the regulatory mechanisms for attaining those objectives. The following commentary is set out according to the Chapters contained in the Bill. As an overall comment it must be stated that for such an important piece of legislation, which sets out the rules in respect of broadcasting services in South Africa, it is unreasonable to expect a suitably mandated view from representative bodies such as SACOB on the legislation in the two weeks allowed for comment. SACOB must accordingly voice its grave concern on the consultative process of the exercise.

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## 2. CHAPTER 2. OBJECT AND POLICY

The objectives and policies set out in this Chapter are supported. However it would appear that the proposed promotion of broadcasting services [public, private and community] as set out in sub clause 2 of Clause 3 is threatened by the heavy hand of bureaucracy as revealed in the regulatory mechanisms set out in the Bill. In this respect it is urged that in devising the appropriate regulations particular emphasis be given to sub clause 11 of Clause 3 [limiting interference in commercial activity of a broadcasting service to a minimum]. SACOB would be opposed to a rigid regulatory structure. Furthermore SACOB would be sceptical of any single authority laying a claim to judge the broadcasting needs of the public [sub clause 11 of Clause 3]. In that respect broadcasting policy must provide the public with multiple choice [an important component of competition]. To that end the regulatory mechanisms must not unduly impede entry into the broadcasting industry.

## 3. CHAPTER 3. INDEPENDENT BROADCASTING AUTHORITY

3.1 The establishment of an Independent [that is, depoliticised] Broadcasting Authority is supported. However the independence of the Authority is conditional upon certain strictures imposed by Clauses 10 and 13 which provide for Ministerial approval in respect of certain financial functions. It is conceded that if the Authority is to be funded by the State there is a need for accountability, but it must be noted that such requirements detract from the Authority's political independence.

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3.2 The criteria set out in sub clause (2) of Clause 5 in respect of the attributes for the members of the Authority do not stipulate the nature of the qualification, expertise and experience that would be regarded as suitable. One is led to ask whether there is not a possibility of the Authority being dominated by academicians, legal people, former bureaucrats or former politicians. Accordingly, SACOB submits that at least one of the members should be a person who has a proven record of business skills.

#### 4. CHAPTER 4. COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

The establishment of a Broadcasting Spectrum Management Committee [BSMC] and a Broadcasting Monitoring and Complaints Committee [BMCC] is supported. The point made in para. 3.2. is equally applicable to sub clause (2) of Clause 23. Furthermore, on such technical aspects of broadcasting it is submitted that the Authority is being denied invaluable practical expertise/experience by being precluded from having as a member of the BSMC and BMCC any person having an association [financial or employment] with the broadcasting/telecommunications industry. Albeit that provision is made for the appointment of experts to assist the Authority, the provisions of (d) and (e) of Clause 6 are very restrictive on the Authority to fulfil its functions effectively. Appropriate recusion mechanisms could be built into any sensitive decision-making issues.

#### 5. CHAPTER 5. BROADCASTING FREQUENCY SPECTRUM MANAGEMENT

The provisions for managing the broadcasting frequency spectrum are accepted.

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## 6. CHAPTER 6. BROADCASTING SIGNAL DISTRIBUTION LICENCES

It is noted that a subsidiary company of the SABC [Sentech] is to be licensed as the common carrier for broadcasting signal distribution [sub clause (2) of Clause 33]. SACOB supports the provision in sub clause (1) which allows others to be licenced as broadcasting signal distributors.

## 7. CHAPTER 7. BROADCASTING LICENCES

7.1 Sub clause (7) of Clause 41 provides for the Authority to obtain a security from the licensee 'sufficient to guarantee the performance of the service for the term of the broadcasting licence'. Since the period of these licences could run from three to ten years [Clause 52], the security requirement could be onerous. Such a clause places severe limitations on prospective broadcasters in the private and community sectors, thereby defeating certain of the objectives set out in Clause 3 of Chapter 2.

7.2 Sub clause (2) of Clause 43 sets out the criteria in respect of granting a private broadcasting licence. These criteria outline the requirements of an applicant's business plan. With regard to (b) the Authority will be taking on the role of an arbiter in determining Competition policy. SACOB does not believe that this should be a function of the Authority. Such measures have been adopted in the past under the guise of preventing what has been termed 'wasteful competition' [e.g. liquor, bakery, butchery licences]. SACOB would strongly caution against a strict adherence to such criteria. With regard to (h) [black and/or gender economic empowerment], SACOB believes that

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prescriptive intervention in the form of racial/gender quotas demanded by a statutory body such as the Independent Broadcasting Authority will do more harm than good insofar as it will :-

- \* adversely affect investor confidence;
- \* encourage devious strategies to create the appropriate image; and
- \* raise expectations beyond realistic limits that will create problems for both business and government.

7.3 Clauses 46 and 47 exemplify the potential for the bureaucracy to impose its heavy hand. SACOB believes that the issue of determining the appropriate degree of competition, cross-ownership and the control of the electronic media by the print media is a matter for decision-making by the Competition Board and not by the Independent Broadcasting Authority. At the very least the Competition Board should work closely with the Authority to safeguard and promote competition.

7.4 Clause 49 provides for the Authority to prescribe virtually any condition upon a licensee. Under the policy objectives set out in Clause 3 of Chapter 2, such a provision could be used to justify any one of a number of obscure and contentious objectives.

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7.5 Clause 50 makes provision for local content material. While SACOB supports the intent behind such a provision, it is submitted that such a stricture should apply to public broadcasters only. The imposition of such conditions upon private broadcasters could well undermine their economic viability. The primary source of finance for private broadcasters will be from advertising whose support will be solely market driven. Sub clause (2) (d) of Clause 50 provides a regional dimension to local content. The enforcement of such a requirement must be conditional upon production facilities being available within the region.

**8. CHAPTER 8. BROADCASTING PROGRAMMES**

No comment.

**9. CHAPTER 9. ENFORCEMENT**

No comment.

**10. CHAPTER 10. REGULATIONS, AMENDMENTS AND REPEAL OF LAWS**

No comment.