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Demokratiese Party
Democratic Party

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