

REPUBLIC OF SOUTH AFRICA

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# BROADCASTING BILL

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*(As recommended by the Portfolio Committee on Communications (National Assembly))*

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(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

**[B 94D—98]**



REPUBLIEK VAN SUID-AFRIKA

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# UITSAAIWETSONTWERP

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*(Soos aanbeveel deur die Portefeuljekomitee oor Kommunikasie (Nasionale Vergadering))*

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(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWESE)

**[W 94D—98]**

ISBN 0 621 28629 X

## GENERAL EXPLANATORY NOTE:

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

The explanatory introductory provisions in bold type and italics do not form part of the provisions of this Act.

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# BILL

**To repeal the Broadcasting Act, 1976 (Act No. 73 of 1976), so as to establish a new broadcasting policy for the Republic; to amend certain provisions of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); to clarify the powers of the Minister in regard to policy formulation and the Authority's powers with respect to the regulation and licensing of the broadcasting system; to provide for classes of broadcasting activities in the public interest and for that purpose—**  
**to provide a Charter for the South African Broadcasting Corporation Ltd;**  
**to establish the Frequency Spectrum Directorate in the Department;**  
**to establish the South African Broadcasting Production Advisory Body; and**  
**to establish a human resource capacity in policy development;**  
**and to provide for matters connected therewith.**

## PREAMBLE

**Noting** that the South African broadcasting system comprises public, commercial and community elements, and the system makes use of radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of a South African identity, universal access, equality, unity and diversity;

**Acknowledging** that the South African broadcasting services are owned and controlled by South Africans;

**Realising** that the broadcasting system must reflect the identity and diverse nature of South Africa, is controlled and managed by persons or groups of persons from a diverse range of communities, including persons from previously disadvantaged groups, and must reflect the multilingual and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds and official languages in the Republic;

**Encouraging** the development of South African expression by providing a wide range of programming that refers to South African opinions, ideas, values and artistic creativity by displaying South African talent in radio and television programming and by making use of radio frequencies that are public property and that provide a public service necessary for the maintenance of national identity, universal access, equality, unity and diversity; and

**Resolving** to align the broadcasting system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows:—

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## CHAPTER I

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## FUNDAMENTAL PRINCIPLES AND INTERPRETATION

*This Chapter sets out the fundamental principles and objects of this Act. Freedom of expression and the journalistic, creative and programming independence of the broadcasters and independence of regulation are identified as guaranteed by the Constitution. These principles recognise that the South African broadcasting system comprises public, commercial and community elements which make use of the radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of South African identity, universal access, equality, unity and diversity.* 15

*This Chapter also contains definitions explaining the meaning of certain words for the purpose of the Act and provisions regarding the interpretation of the Act.* 20

**Definitions and interpretation**

1. (1) In this Act, unless the context otherwise indicates, radio, sound broadcasting service and television set have the meaning assigned thereto in the IBA Act, and—
- (i) “Advisory Body” means the South African Broadcast Production Advisory Body established in terms of section 38 of this Act; 25
  - (ii) “appointing body” means the body charged with the appointment of members of the Board in terms of section 13 of this Act;
  - (iii) “Authority” means the Independent Broadcasting Authority established by section 3 of the IBA Act; 30
  - (iv) “Board” means Board of South African Broadcasting Corporation Limited;
  - (v) “broadcaster” means any legal or natural person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service irrespective of technology used; 35
  - (vi) “broadcasting” means any form of unidirectional telecommunications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio or any other means of telecommunication or any combination of the aforementioned, and “broadcast” is construed accordingly; 40
  - (vii) “broadcasting licence” means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act to have been so granted and issued; 45
  - (viii) “broadcasting licensee” means the holder of a broadcasting licence;
  - (ix) “broadcasting service” means any service which consists of the broadcasting of television or sound broadcasting material to the public, sections of the public or to subscribers to such a service but does not include—
    - (a) a service (including text service) that provides no more than data, or no more than text (with or without associated still images); 50

- (b) a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; and
- (c) a service or a class of service that the Minister determines, by notice in the *Gazette*, not to fall within this definition;
- (x) “broadcasting services frequency bands” means that part of the electromagnetic radio frequency spectrum which is allocated for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such allocation has been agreed to or adopted by the Republic; 5
- (xi) “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 to any broadcast target area by means of a telecommunication process and includes multi-channel distribution; 10
- (xii) “broadcasting signal distribution licence” means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing signal distribution for broadcasting purposes, or deemed by this Act to have been so granted and issued; 15
- (xiii) “broadcasting signal distribution licensee” means the holder of a broadcasting signal distribution licence;
- (xiv) “channel” means a single defined television programming service of a licensee other than a video on demand programming service; 20
- (xv) “commercial broadcasting service” means a broadcasting service operating for profit or as part of a profit entity but excludes any broadcasting service provided by a public broadcasting licensee;
- (xvi) “common carrier” means a service for broadcasting signal distribution as provided by Sentech Limited, established in terms of the Sentech Act, 1996; 25
- (xvii) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (xviii) “community” includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest; 30
- (xix) “community broadcasting service” means a broadcasting service which—
- (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
- (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 35
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned; 40
- (xx) “Corporation” means the South African Broadcasting Corporation Limited established in terms of section 7 of this Act;
- (xxi) “Department” means the Department of Communications;
- (xxii) “direct to home broadcasting” means broadcast via satellite directly to individual users and includes multi-channel satellite distribution; 45
- (xxiii) “encryption” means a method for changing a broadcasting signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment;
- (xxiv) “free-to-air service” means a service which is broadcast without encryption and capable of being received on universal receivers without payment by the end user to the broadcaster and without the use of receiving equipment; 50
- (xxv) “IBA Act” means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);
- (xxvi) “incorporation date” means the date on which the Corporation is incorporated into a public company and issued with a certificate to commence business; 55
- (xxvii) “licence area” means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence;
- (xxviii) “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;
- (xxix) “local content” has a meaning similar to the meaning set out in section 53 of the IBA Act; 60

- (xxx) “local delivery service” means a broadcast service using multi-channel terrestrial distribution systems such as cable, micro-wave multi-point distribution systems;
- (xxxi) “low power sound broadcasting service” means a community, private or public sound broadcasting service which radiates power not exceeding one watt; 5
- (xxxii) “member” means executive and non-executive members of the Board referred to in sections 12 and 13 of this Act;
- (xxxiii) “Minister” means the Minister charged with the administration of this Act;
- (xxxiv) “multi-channel distribution service” means a service which transmits more than one channel at the same time by means of radio waves or telecommunications; 10
- (xxxv) “National Revenue Fund” means the Fund established by section 213 of the Constitution;
- (xxxvi) “old Corporation” means the South African Broadcasting Corporation established in terms of the Broadcasting Act, 1976 (Act No. 73 of 1976); 15
- (xxxvii) “prescribed” means prescribed by regulation;
- (xxxviii) “President” means the President of the Republic of South Africa;
- (xxxix) “public broadcasting service” means—  
 (a) any broadcasting service provided by the South African Broadcasting Corporation; 20  
 (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, 25  
 and must include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;
- (xl) “radio” means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz; 30
- (xli) “satellite broadcasting service” means a service which is broadcast by transmitters situated on a satellite;
- (xlii) “sound broadcasting service” means a broadcasting service destined to be received by a sound radio set;
- (xliii) “sound radio set” means any apparatus designed or adapted 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 other visible signs or signals; 35
- (xliv) “subscription broadcasting service” means a broadcasting service provided to an end user upon the payment of a fee; 40
- (xlv) “telecommunications” means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, 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” must be construed accordingly; 45
- (xlvi) “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;
- (xlvii) “terrestrial broadcasting service” means a service that is broadcast from a transmitter situated upon the earth’s surface; 50
- (xlviii) “transfer date” means a date announced by the Minister by proclamation in the *Gazette*.

(2) Any interpretation of the provisions of this Act must be construed and applied in a manner which is consistent with freedom of expression and the journalistic, creative and programming independence of the broadcasters guaranteed by the Constitution. 55

(3) The provisions of the Companies Act are applicable to the Corporation except where otherwise stated in this Act.

## Object of Act

- 2.** The object of this Act is to establish and develop a broadcasting policy in the Republic in the public interest and for that purpose to—
- (a) contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society; 5
  - (b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
  - (c) encourage ownership and control of broadcasting services through participation by persons from historically disadvantaged groups; 10
  - (d) ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
  - (e) cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;
  - (f) encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups; 15
  - (g) encourage investment in the broadcasting sector;
  - (h) ensure fair competition in the broadcasting sector;
  - (i) ensure efficient use of the broadcasting frequency spectrum; 20
  - (j) provide a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision as well as articulation of long-term and intermediate-term goals;
  - (k) provide for a three tier system of public, commercial and community broadcasting services; 25
  - (l) establish a strong and committed public broadcasting service which will service the needs of all South African society;
  - (m) ensure that the commercial and community licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in South Africa; 30
  - (n) ensure that broadcasting services are effectively controlled by South Africans;
  - (o) integrate multi-channel distribution systems into the broadcasting framework;
  - (p) provide access to signal distribution services for content providers;
  - (q) provide access to signal distribution services for broadcast content receivers;
  - (r) encourage the development of local programming content. 35

## CHAPTER II

### SOUTH AFRICAN BROADCASTING SYSTEM

*This Chapter is of central significance to the Act, as it lays the basis that the South African broadcasting system is owned and controlled by South Africans. The National Government, acting through the Minister, is responsible for the achievement of this purpose and the constitutional mandate of broadcasting policy development. Being empowered to act on behalf of the nation, the Minister has the ultimate responsibility to fulfil certain obligations relating to use, protection and access to broadcasting resources.* 40

#### South African broadcasting system 45

- 3.** (1) The South African broadcasting system—
- (a) serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
  - (b) operates in the public interest and strengthens the spiritual and moral fibre of society; 50
  - (c) ensures that the broadcasting system is controlled by persons or groups of persons from a diverse range of communities in South Africa and within each element promotes ownership, control and management of broadcasting services by persons from historically disadvantaged groups;
  - (d) encourages fair competition in the provision of programmes and services. 55

- (2) Subject to subsection (1), the Minister is ultimately responsible to develop policy that is required from time to time.
- (3) Public and commercial broadcasting services must comply with international technical standards and the broadcasting system must be readily adaptable to scientific and technological advances. 5
- (4) The broadcasting system, as a whole, must provide educational programming, and where such programming is provided by a dedicated education service, must be extended throughout the Republic within the financial resources.
- (5) The programming provided by the South African broadcasting system must— 10
- (a) be varied and comprehensive, providing a balance of information, education and entertainment meeting the broadcasting needs of the entire South African population in terms of age, race, gender, interests and backgrounds;
  - (b) be varied and offer a range of South African content and analysis from a South African perspective;
  - (c) must be drawn from local, regional, national and international sources; 15
  - (d) provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern;
  - (e) provide a significant place for programmes produced by the independent production sector;
  - (f) comply with the code of conduct for broadcasting services as prescribed in Schedule 1 of the IBA Act; 20
- (6) A range of programming in the Republic's official languages must be extended to all South Africans as circumstances permit.
- (7) The human resources development strategy for the broadcasting sector must be viewed holistically in terms of qualification standards, skills development, teaching, inter-relationships with the complementary sectors and the funding of the training system. 25

### CHAPTER III

#### CLASSIFICATION OF BROADCASTING SERVICES

*This Chapter emphasises the need to adopt a more comprehensive approach to broadcasting and broadcasting services to be in line with international practices and technological developments.* 30

##### *Part 1: Broadcasting licences*

#### **Licences**

4. (1) Any person who intends to provide a broadcasting service, including distribution services whether satellite or terrestrial, or any other form of distribution which offer programming to the public is required to obtain a licence in accordance with the conditions which the Authority may determine from time to time. 35
- (2) A broadcasting service existing at the commencement of this Act, upon application to the Authority for a broadcasting licence, is deemed to have the necessary permission to continue its activities for a period not exceeding six months from the commencement of this Act or until such time as the Authority has decided on the licence application and, in the event of a decision to grant the application, has issued such licence. 40
- (3) This section must not be construed to mean that a broadcaster licensed or authorised to provide service to a foreign country by the appropriate authority and whose signal is incidentally received in South Africa, is required to hold a licence in South Africa. 45
- (4) The Authority may attach prescribed conditions to an authorisation or licence.
- (5) No person may provide a broadcasting service unless such service is provided in accordance with a broadcasting licence issued to that person by the Authority. 50
- (6) Each channel provided in a multi-channel environment must be authorised by the Authority upon application by the person offering a broadcasting service to the public.
- (7) Any channel carried by a broadcasting service at the commencement of this Act, upon application to the Authority for authorisation, is deemed to have the necessary

permission to continue its activities unless the Authority decides anything to the contrary.

### **Classes of licences**

**5.** (1) Subject to the provisions of this Act, the Authority may, on such conditions as it may determine, issue a sound or television broadcasting service licence for a specified area in the following broadcasting service categories: 5

- (a) A public broadcasting service;
- (b) a commercial broadcasting service; and
- (c) a community broadcasting service.

(2) Subject to the provisions of this Act, the broadcasting licences are categorised in the following classes: 10

- (a) Free-to-air radio service;
- (b) free-to-air television service;
- (c) satellite-free-to-air radio service;
- (d) satellite-free-to-air television service; 15
- (e) satellite-subscription television service;
- (f) terrestrial-subscription television service;
- (g) direct-to-home delivery service, including multi-channel satellite distribution;
- (h) local delivery service;
- (i) cable television subscription service; 20
- (j) low power radio service; and
- (k) any other class of licence as determined from time to time.

## **CHAPTER IV**

### **PUBLIC BROADCASTING SERVICE AND CHARTER OF CORPORATION**

*This Chapter provides for the incorporation of the Corporation and for the Charter. The Charter is dealt with by Parliament as part of the broad national policy framework. The Authority monitors and enforces compliance with the provisions of the Charter of the Corporation.* 25

#### *Part 1: Public broadcasting service*

#### **South African Broadcasting Corporation** 30

**6.** (1) The Corporation is governed by the Charter.

(2) In terms of this Charter, the Corporation will in pursuit of its objectives and in exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.

(3) The Authority must monitor and enforce compliance with the Charter by the Corporation. 35

### **CHARTER OF CORPORATION**

#### *Part 2: Establishment, incorporation, objectives and organisation of Corporation.*

#### **Incorporation**

**7.** (1) On the transfer date the Minister must apply for the establishment by incorporation of the Corporation to a limited liability company with a share capital as contemplated in the Companies Act. 40

(2) The Corporation is the successor of the old Corporation.

(3) The application for incorporation must be accompanied by the memorandum and articles of association as contemplated in the Companies Act signed by the Minister on behalf of the State. 45

(4) The registration of the memorandum and articles of association is exempted from the payment of an additional fee as required by section 63(2) of the Companies Act.

(5) The Registrar of Companies is entitled to issue such directives and authorise such deviations from the regulations in force in terms of the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to this section.

(6) The Board of the old Corporation must be required to promptly comply with every directive issued under subsection (5). 5

(7) The Minister must, when in his or her opinion the old Corporation has properly discharged its functions and all directives issued under subsection (5), by notice in the *Gazette*, fix the date of establishment and incorporation.

(8) The State, upon incorporation, holds one hundred percent of the shares of the Corporation. 10

### Objectives of Corporation

8. The objectives of the Corporation are—

- (a) to make its services available throughout the Republic;
- (b) to provide sound and television broadcasting services, whether by analogue or digital means, and to provide sound and television programmes of information, education and entertainment funded by advertisements, subscription, sponsorship, licence fees or any other means of finance; 15
- (c) to acquire from time to time a licence or licences for such period and subject to such regulations, provisions and licence conditions as may be prescribed by the Authority; 20
- (d) to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;
- (e) to be responsive to audience needs and account on how to meet those needs;
- (f) to provide other services, whether or not broadcasting or programme supply services, such services being ancillary services; 25
- (g) to provide television and radio programmes and any other material to be transmitted or distributed by the common carrier for free to air reception by the public subject to section 33 of this Act;
- (h) to provide to other bodies by such means and methods as may be convenient, services, programmes and materials to be transmitted or distributed by such bodies and to receive from such other bodies services, programmes and materials to be transmitted by stations of the Corporation for reception as above; 30
- (i) to commission, compile, prepare, edit, make, print, publish, issue, circulate and distribute, with or without charge, such books, magazines, periodicals, journals, printed matter, records, cassettes, compact disks, video tapes, audio-visual and interactive material, whether analogue or digital and whether on media now known or hereafter invented, as may be conducive to any of the objects of the Corporation; 35
- (j) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available to the public such libraries and archives with or without charge; 40
- (k) to organise, present, produce, provide or subsidise concerts, shows, variety performances, revues, musical and other productions and performances and other entertainment whether live or recorded in connection with the broadcasting and programme supply services of the Corporation or for any purpose incidental thereto; 45
- (l) to collect news and information in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies;
- (m) to carry out research and development work in relation to any technology relevant to the objects of the Corporation and to acquire by operation of law, registration, purchase, assignment, licence or otherwise copyright and designs, trade marks, trade names and any other intellectual, industrial and commercial property rights; 50
- (n) to nurture South African talent and train people in production skills and carry out research and development for the benefit of audiences; 55
- (o) to develop, produce, manufacture, purchase, acquire, use, display, sell, rent or dispose of sound recordings and films and materials and apparatus for use in connection with such sound recordings and films;

- (p) to develop and extend the services of the Corporation beyond the borders of South Africa.

### **Organisation**

- 9.** (1) The Corporation consists of two separate operational entities, namely— 5  
 (a) a public service; and  
 (b) a commercial service.  
 (2) The public and commercial services of the Corporation must be separately administered.

### ***Part 3: Public service***

#### **Public service** 10

- 10.** (1) The public service provided by the Corporation must—  
 (a) make services available to South Africans in all the official languages;  
 (b) reflect both the unity and diverse cultural and multilingual nature of South Africa and all of its cultures and regions to audiences;  
 (c) strive to be of high quality in all of the languages served; 15  
 (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;  
 (e) include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce and contributing to a shared South African consciousness and identity; 20  
 (f) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression; 25  
 (g) strive to offer a broad range of services targeting, particularly, children, women, the youth and the disabled;  
 (h) include programmes made by the Corporation as well as those commissioned from the independent production sector; and 30  
 (i) include national sports programming as well as developmental and minority sports.  
 (2) The public service provided by the Corporation may draw revenues from advertising and sponsorships, grants and donations, as well as licence fees levied in respect of the licensing of persons in relation to television sets, and may receive grants 35 from the State.

### ***Part 4: Commercial services***

#### **Commercial services**

- 11.** The commercial services provided by the Corporation must—  
 (a) be subject to the same policy and regulatory structures as outlined in this Act 40 for commercial broadcasting services;  
 (b) comply with the values of the public broadcasting service in the provision of programmes and service;  
 (c) commission a significant amount of their programming from the independent 45 sector;  
 (d) subsidise the public services to the extent recommended by the Board and approved by the Minister; and  
 (e) be operated in an efficient manner so as to maximise the revenues provided to its shareholder.

### ***Part 5: Governance of Corporation*** 50

#### **Composition of Board**

- 12.** The Board consists of—  
 (a) twelve non-executive members;

- (b) the Group Chief Executive Officer; and
- (c) the Chief Operations Officer and the Chief Financial Officer or their equivalents, who will be executive members of the Board.

### Members of Board

- 13.** (1) The twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly. 5
- (2) The non-executive members of the Board must be appointed in a manner ensuring—
- (a) participation by the public in a nomination process;
  - (b) transparency and openness; and 10
  - (c) that a shortlist of candidates for appointment is published, taking into account the objects and principles of this Act.
- (3) The President must designate one of the members of the Board referred to in subsection (2) as the chairperson and another member as a deputy chairperson, both of whom must be non-executive members of the Board. 15
- (4) The members of the Board must, when viewed collectively—
- (a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education, social and labour issues; 20
  - (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) represent a broad cross-section of the population of the Republic; 25
  - (d) be persons who are committed to the objects and principles as enunciated in the Charter of the Corporation.
- (5) The members of the Board must hold office for such period as the President may determine which period must not exceed five years.
- (6) The deputy chairperson referred to in subsection (3) must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson. 30
- (7) Every appointment of a member of the Board must be published in the *Gazette*.
- (8) A member of the Board appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed. 35
- (9) Members of the Board appointed immediately before the transfer date will retain their appointments with all existing benefits.
- (10) Nine members of the Board, which must include the chairperson or the deputy chairperson, will constitute a quorum at any meeting of the Board.
- (11) The Board controls the affairs of the Corporation and must protect matters referred to in section 6(2) of this Act. 40

### Executive committee

- 14.** (1) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer and six other members appointed by the Board. 45
- (2) The Group Chief Executive Officer will be the accounting officer of the Corporation.
- (3) The executive committee is accountable to the Board.
- (4) The executive committee will perform such functions as determined by the Board.

### Removal from office

- 15.** The appointing body may remove a member from the office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board. 50

**Disqualification**

- 16.** (1) A person will not qualify to be appointed to the Board if such person—
- (a) is not a citizen of and not permanently resident in the Republic;
  - (b) is subject to an order of a competent court declaring such person to be mentally ill or disordered; 5
  - (c) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
  - (d) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted— 10
    - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992);
    - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); 15
    - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty;
  - (e) has been convicted of an offence under this Act.

**Disclosure of conflict of interests**

- 17.** (1) A person may not be appointed on the Board, unless the necessary disclosure has been made that such person— 20
- (a) 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 printed media industry;
  - (b) 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). 25
- (2) If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part— 30
- (a) such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member is precluded from participating in such meeting by reason of a conflict of interest; and 35
  - (b) such disclosure and the decision taken by the remaining Board members regarding such determination, must be recorded in the minutes of the meeting in question.
- (3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void. 40

**Part 6: Financial matters****Financial regulations**

- 18.** (1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be managed. 45
- (2) Such regulations must be approved by the Minister after consultation with the Minister of Finance.
- (3) The Corporation must make such regulations known in a manner it deems fit.
- (4) The Corporation must open and maintain an account with a bank registered as such in the Republic, or with any other financial institution so registered and approved by the Minister of Finance. 50

(5) The Corporation may with the approval of the Minister invest any surplus funds of the Corporation.

(6) The surplus referred to in subsection (5) must at the end of a financial year, be carried over to the next financial year and form part of the budget of the Corporation for that financial year. 5

(7) Any dividends received by the State must be paid into the National Revenue Fund.

### **Shareholding**

**19.** (1) Subject to the provisions of section 32 of the Companies Act the Corporation may have less than seven persons.

(2) The Minister must, with the concurrence of the Minister of Finance, determine the total value and number of the shares in the Corporation. 10

(3) The Corporation is exempt from the payment of any stamp duty or fees which are payable in respect of any increase of the share capital or the number of shares in the Corporation as required by section 75(3) of the Companies Act.

### **Financial year and annual financial statements** 15

**20.** (1) Subject to the provisions of section 285 of the Companies Act, the financial year of the Corporation commences on 1 April and ends on 31 March of the following year.

(2) In addition to the annual financial statements to be drawn up in terms of the Companies Act the Minister may direct the Corporation to draw up annual statements in a form determined by him or her. 20

(3) The annual financial statements must be tabled by the Minister in the National Assembly.

### **Rights and obligations**

**21.** (1) The Corporation may not by virtue of the powers conferred upon it by this Act do anything for which a licence is required in terms of the IBA Act or the Telecommunications Act, 1996 (Act No. 103 of 1996), unless it has obtained the licence in question and complies with the conditions thereof. 25

(2) Notwithstanding anything to the contrary contained in the IBA Act, or any other law, the Corporation is entitled, against payment of the annual fees which the Authority may from time to time determine, to be issued with a licence contemplated in subsection (1). 30

(3) The Corporation must provide the Authority with all necessary and relevant information for the purpose of monitoring compliance with the Charter.

### **Transfer of assets** 35

**22.** (1) Before the transfer date the Corporation must apply in terms of sections 41 and 42 of the IBA Act for the broadcasting licences held by the old Corporation to be transferred to the Corporation.

(2) Subject to the provisions of the IBA Act or any other law, all the other assets issued to the old Corporation must be transferred to the Corporation in terms of section 74 of the IBA Act. 40

(3) The Corporation is required to pay liabilities, rights and obligations of the old Corporation, including any claim to copyright, trademarks, patents and inventions vested in the Corporation.

(4) Subject to the provisions of any other law, no transfer duty, stamp duty or any other duty must be payable in respect of the transfer of any asset in terms of this section. 45

### **Borrowing powers**

**23.** The Corporation must not borrow money without prior written approval of the Minister and the Minister of Finance.

**Accounts**

24. (1) The Corporation must keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.

(2) The Corporation must as soon as practicable after the end of each financial year, prepare statements of accounts and a balance sheet showing in appropriate detail the revenues and expenditure of the Corporation during that financial year, and its assets and liabilities as at the end of each financial year. 5

(3) The Corporation must in its accounts referred to in subsection (2) reflect separately the accounts of the public and commercial services.

**Auditing**

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25. (1) In addition to the annual financial statements to be prepared in terms of the Companies Act, the Corporation must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed as auditor of the Corporation. 15

(2) The Board must produce and lay before the auditor all books and accounts of the Corporation with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or control.

(3) For the purposes of the audit the auditor may hear and receive evidence upon oath, and may by written notice under his hand require any person to appear before him in person at a time and place stated in such notice, to give information or produce any books or document necessary for the audit. 20

(4) Any person appearing in terms of such a notice must be paid such witness fees and allowances as he or she would have been entitled to if such person appeared in a magistrate's court as a witness. 25

(5) The auditor must—

(a) disallow any payment made without proper authority according to law, and report the disallowance to the Board;

(b) charge against the person who made or authorised the payment in question, so much of the payment as is not condoned by the Board; 30

(c) charge against the person responsible therefor—

(i) as much of the amount of any deficiency or loss arising from negligence or misconduct of that person as is not condoned by the Board;

(ii) as much of any amount which ought to have been but was not brought into account by that person as is not condoned by the Board, provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person, 35

and certify in every case that the amount so charged is correct.

(6) Any amount so charged and certified by the auditor must be paid by the person against whom it has been charged to the Corporation within fourteen days after it was so certified, and, if not so paid, may be recovered from that person as a debt by the Corporation. 40

(7) It must be the duty of the auditor, in addition to his or her ordinary duties as an auditor, to certify not less than once in every year—

(a) whether or not, in his or her opinion— 45

(i) the accounts of the Corporation are in order;

(ii) such accounts present a true and correct view of the financial position of the Corporation and of its transactions;

(iii) due provision has been made for the redemption and repayment of loans raised by the Corporation; 50

(iv) the value of the assets of the Corporation has been correctly stated; and

(b) whether or not all his or her requirements and recommendations as auditor have been complied with and carried out.

(8) The expenses of or incidental to any audit must be borne by the Corporation.

*Part 7: Staffing of Corporation***Staff of Corporation**

26. (1) The Corporation may engage such officers and other employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their other conditions of service in general. 5

(2) The Corporation may—

- (a) establish a housing fund or in any other manner provide for housing to its officers and other employees on such terms and conditions as it may determine; 10
- (b) establish or support associations or institutions for the promotion of the interests of its officers and other employees of their dependants;
- (c) establish or support aid funds for the rendering of assistance to its officers and other employees or their dependants under such circumstances as it may approve; 15
- (d) establish a bursary fund to finance or assist in financing in the interest of the Corporation the training or further training of existing or prospective officers and other employees of the Corporation; and
- (e) provide for its officers, other employees and pensioners or their dependants, by means of insurance with an insurance company or by means of a pension or provident fund or in any other manner, pecuniary benefits upon retirement or termination of service or at any other time. 20

(3) As from the transfer date every employee of the old Corporation must, without interrupting his or her service, become an employee in a similar post in the Corporation, subject to conditions of employment which must not be less favourable than those applicable to him or her on the day immediately preceding the transfer date. 25

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), employees transferred to the Corporation in terms of subsection (3) must be deemed not to have changed employers and the position of such employees in respect of the phasing in of any tax levied on benefits or privileges derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, remains unchanged. 30

(5) Employees transferred from the old Corporation to the Corporation in terms of subsection (3), must retain all vacation and sick leave which on the day immediately preceding the transfer date stood to their credit, including all monetary benefits attached thereto. 35

(6) Any inquiry or other action instituted or contemplated in respect of misconduct allegedly committed by such employee prior to his or her transfer to the Corporation will be disposed of or instituted by the Corporation, and the Corporation must take steps against the employee concerned if he or she is found guilty of misconduct, in terms of the laws applicable to him or her before the transfer date. 40

(7) Any agreements reached between employees and the management of the old Corporation relating to the recognition agreements and downscaling of employees, increment or any human resource policy are applicable to the Corporation, and the Corporation must take all necessary steps to conclude the process. 45

**Television licenses**

27. (1) The Corporation may issue a television licence conferring to the holder the right to use a television set or any number of television sets specified in the licence.

(2) The licence is renewable annually.

(3) The holder of any television set which was used without authorisation before the date of commencement of this Act, must within 12 months after the date and subject to the rules of the Corporation relating to the authorisation, apply for such licence. 50

(4) The Corporation must maintain a register of all the licences.

(5) For the purposes of this Act, “holder” means—

- (a) any owner of a television set; 55
- (b) any business or institution with reference to a category to which such business or institution belongs;
- (c) any holder of any permit registered for a place, vehicle, vessel or aircraft so specified, where a business or the affairs of that institution are carried on, or

which has already been recorded on the register of the Corporation.

(6) The Authority may after consultation with the Corporation make regulations in regard to any matter pertaining to television licence fees which may be issued.

(7) The Corporation may delegate the collection of the payment of television licence fees to other persons. 5

(8) Failure to be in possession of a valid television licence is a civil offence.

### **Annual report**

**28.** (1) The Board must furnish to the Minister, on or before 30 September in each year, a report on the work of the Corporation of the previous financial year, together with a balance sheet and a complete statement of revenue and expenditure for that financial year audited by the auditor referred to in section 25, and the report of that auditor, and must give particulars as to— 10

- (a) the book value of all classes of property owned by the Corporation;
- (b) the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid; 15
- (c) the position of every fund established in terms of this Act;
- (d) the expenses of management and administration and all other expenses of the Corporation;
- (e) the erection and construction, repair, improvement or alteration of any plant, equipment or building, and the cost thereof; 20
- (f) the price or rent of any land or any other immovable property acquired or hired;
- (g) any other matters which the Minister may require the Board to deal with.

(2) The Minister must table every report furnished in terms of subsection (1) in Parliament, within seven days after receiving it if Parliament is in session, or, if Parliament is not in session, within seven days after the commencement of its next ensuing session. 25

## **CHAPTER V**

### **COMMERCIAL BROADCASTING SERVICES 30**

#### *Part 1: Licence requirements and objectives*

#### **Requirement to hold a licence**

**29.** Any person intending to offer a commercial broadcasting service must hold a separate licence for each broadcasting service they provide.

#### **Objectives 35**

**30.** (1) Commercial broadcasting services when viewed collectively—

- (a) must as a whole provide a diverse range of programming addressing a wide section of the South African public;
- (b) must provide, as a whole, programming in all South African official languages; 40
- (c) may provide programming in languages other than South African official languages, where the Authority is convinced that such services can be commercially viable;
- (d) must within a reasonable period of time be extended to all South Africans and provide comprehensive coverage of the areas which they are licensed to serve. 45

(2) The programming provided by free-to-air broadcasting services must as a whole—

- (a) reflect the culture, character, needs and aspirations of the people in the regions that they are licensed to serve subject to licence conditions;
- (b) provide an appropriate significant amount of South African programming according to the regulations of the Authority; 50
- (c) include news and information programmes on a regular basis, including discussion on matters of national and regional, and, where appropriate local, significance; and

(d) meet the highest standards of journalistic professionalism.

(3) The programming provided by commercial subscription broadcasting services must be subject to licence conditions determined by the Authority.

(4) The programming provided by free-to-air television broadcasting services must as a whole include levels of South African drama, documentaries and children's programmes that reflect South African themes, literature and historical events, as prescribed by regulation. 5

(5) The Authority may make regulations on the amount of South African programming and other matters which reflect these circumstances, bearing in mind the objects of this Act. 10

(6) Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships. In no case may advertising or sponsorships, or a combination thereof, be the largest source of revenue.

(7) Subscription broadcasting services may not acquire exclusive rights for the broadcast of national sporting events, as identified in the public interest from time to time by the Authority in consultation with the Minister and the Minister of Sport and in accordance with the regulations determined by the Authority through a public process. 15

## ***Part 2: Subscription broadcasting service***

### **Subscription television service**

**31.** (1) As soon as possible after the promulgation of this Act, the Authority must conduct an inquiry in terms of section 28 A of the IBA Act, into the economic feasibility of the provision of additional subscription television services and make known its finding by notice in the *Gazette*. 20

(2) The Authority must conduct a licensing process immediately if it finds that the provision of additional subscription television services is feasible. 25

## **CHAPTER VI**

### **COMMUNITY BROADCASTING SERVICES**

#### **Community broadcasting services**

**32.** (1) Despite the provisions of this Act or any other law, a community broadcasting service licence may be granted by the Authority in the following categories: 30

(a) Free-to-air radio broadcasting service;

(b) free-to-air television service.

(2) The licence of a community broadcasting service must be held by a licensee.

(3) The licensee referred to in subsection (2) must be managed and controlled by a board which must be democratically elected, from members of the community in the licensed geographic area. 35

(4) The programming provided by a community broadcasting service must reflect the needs of the people in the community which must include amongst others cultural, religious, language and demographic needs and must — 40

(a) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;

(b) be informational, educational and entertaining;

(c) focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture; and 45

(d) promote the development of a sense of common purpose with democracy and improve quality of life. 50

(5) All surplus funds derived from the running of a community broadcasting station must be invested for the benefit of the particular community and monitored by the Authority, which has the power to audit the financial records of the services.

(6) The Authority must conduct a public inquiry to determine priorities within the community radio sector. 55

- (7) The Authority must conduct an investigation into the viability and impact of community television, including—
- (a) definition of community television;
  - (b) access to frequencies;
  - (c) sustainability; 5
  - (d) ownership and control; and
  - (e) legal framework.
- (8) As soon as possible after conducting the investigation referred to in subsection (10) the Authority must submit a report to the Minister and Parliament.

## CHAPTER VII 10

### SIGNAL DISTRIBUTION AND MULTI-CHANNEL DISTRIBUTIONS

#### *Part 1: Signal distribution and objectives*

##### **Signal distribution**

- 33.** (1) The Authority must conduct an inquiry to determine the licence conditions, obligations, and tariff structure for signal distribution including the regulatory regime for multi-channel distribution services and convergence. 15
- (2) Subject to subsection (1), the Authority must issue recommendations as to whether sections 49 and 50 of the IBA Act are applicable to broadcasting services carrying more than one channel and the extent and the terms upon which such sections must apply.
- (3) Sections 49 and 50 of the IBA Act must not apply to such broadcasting services unless the Authority has issued such a recommendation, and that recommendation has been adopted by the National Assembly. 20

##### **Objectives**

- 34.** (1) All signal distribution services and broadcasting services, whether through terrestrial frequencies, satellite or telecommunication facilities within the borders of the Republic or from the Republic to other countries will be required to hold a licence issued by the Authority. 25
- (2) Subject to licence conditions determined by the Authority the signal distribution sector must—
- (a) prioritise the provision of broadcasting channels licensed in South Africa; 30
  - (b) provide universal access for all South Africans to broadcast services;
  - (c) provide a diversity of type of broadcast services and content;
  - (d) deliver public services, including educational, commercial and community services;
  - (e) roll-out relevant infrastructure for regional services; 35
  - (f) be open and interoperable, harmonised with the Southern African region, and be able to meet international distribution standards.
- (3) The Authority must in a licensing process promote the participation by South Africans in the broadcasting signal distribution sector, provide employment and training for South Africans and ensure the payment of licence fees. 40

#### *Part 2: Multi-channel distributors*

##### **Multi-channel distributors**

- 35.** (1) Multi-channel distributors must hold a separate class of licence issued by the Authority.
- (2) Multi-channel distributors may carry other signals, domestic or foreign, upon approval by the Authority. 45

##### **Objectives**

- 36.** (1) The objectives of the multi-channel delivery system are to—
- (a) give priority to the carriage of South African programming services and, in particular, to the carriage of South African services; 50

- (b) provide efficient delivery of programming using the most effective technologies available at reasonable cost;
  - (c) carry original programming, including local programming, where the Authority considers it appropriate.
- (2) The multi-channel delivery system must carry out its objectives on such terms and conditions as are determined by the Authority to achieve the objectives of this Act. 5

## CHAPTER VIII

### FREQUENCY SPECTRUM DIRECTORATE

#### Frequency Spectrum Directorate

37. (1) There is established within the Department a Frequency Spectrum Directorate. 10
- (2) The Frequency Spectrum Directorate and its support staff must operate as a directorate of the Department and must report to the Minister through the Director-General.
- (3) The Frequency Spectrum Directorate must be impartial in the performance of its functions. 15
- (4) The Frequency Spectrum Directorate is vested with policy development of the radio frequency spectrum and must undertake technological and economic research of the radio frequency spectrum to ensure the efficient use of the spectrum.
- (5) In accordance with subsection (2) the Frequency Spectrum Directorate is vested with the responsibility for the overall research of the use of the radio frequency spectrum to meet the needs of the users thereof. 20
- (6) The Frequency Spectrum Directorate in the performance of its functions must co-operate with the relevant bodies where applicable.

## CHAPTER IX

25

### ADVISORY BODY TO MINISTER

#### South African Broadcast Production Advisory Body

38. (1) The Minister must establish a South African Broadcast Production Advisory Body to advise him or her on how the development, production and display of local television and radio content can be supported. 30
- (2) The terms and conditions of allowances, composition and meetings applicable to the Advisory Body by virtue of its appointment in terms of subsection (1) must be as determined by the Minister in concurrence with the Minister of Finance.
- (3) The Advisory Body must advise the Minister on how to encourage, facilitate and offer guidance and advice in respect of any scheme and to promote— 35
- (a) the production of broadcast materials that meet the cultural needs of South Africans;
  - (b) the screening and airplay of South African content in television and radio, respectively;
  - (c) awareness of local content in South African and foreign markets; 40
  - (d) distribution and exhibition of local content in foreign markets;
  - (e) the correction of imbalances in the local content production industry;
  - (f) human resource development to provide skills and training of local content providers;
  - (g) co-productions and the concluding of international agreements. 45
- (4) The Advisory Body must, after consultation with the National Film and Video Foundation and the broadcasting industry, make recommendations for the Minister to determine after consultation with the Minister of Arts, Culture, Science and Technology, the Minister of Trade and Industry and the Minister of Finance—
- (a) policy and strategies to give effect to the production and display of local content; 50

- (b) financing strategies to support the production and display of local content;
- (c) supply-side measures and initiatives to support the production of local content;
- (d) policies to enhance the production of local content for the multi-channel and digital broadcasting environment. 5

## CHAPTER X

### SKILLS DEVELOPMENT

*This Chapter relates to the use of broadcasting as a resource in support of both the formal and informal education. The need for the broadcasting system as a whole to offer programming which is informative and increase the public understanding of development is emphasised.* 10

#### Human resources development

**39.** All licensees licensed in terms of the IBA Act and the provisions of this Act must comply with the provisions of the national policy regarding skills development and specific human resource development conditions determined by the Authority . 15

## CHAPTER XI

### GENERAL

#### Regulations of this Act

**40.** (1) The Minister may by notice in the *Gazette*, make regulations regarding— 20

- (a) any matter which is required or permitted by this Act;
- (b) any notice required by this Act to be prescribed;
- (c) any administrative or procedural matter necessary for the provisions of this Act.

(2) In the exercise of his or her powers under subsection (1), the Minister is obliged to consider the recommendations of the Authority. 25

#### Repeal and amendment of laws

**41.** (1) The laws specified in Schedule 1 are repealed or amended to the extent indicated in the third column thereof.

(2) Any regulation, license, appointment, designation, determination or other thing which was made, issued or done under a law repealed by this section and which could be made, issued or done, under any provision of this Act, is deemed to have been made, issued or done under the last-mentioned provision and remains in force until repealed or amended. 30

#### Application of this Act

**42.** In the event of conflict between the provisions of this Act and any other law relating to broadcasting, the provisions of this Act must prevail. 35

#### Short title and commencement

**43.** (1) This Act is called the Broadcasting Act, 1998, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed for the coming into operation of different sections of this Act by proclamation in the *Gazette*. 40

## SCHEDULE

## LAWS AMENDED OR REPEALED

No. and year of law	Short title	Extent of amendment or repeal
Act No. 73 of 1976 Act No. 153 of 1993	Broadcasting Act, 1976 Independent Broadcasting Act, 1993	<p>The repeal of the whole.</p> <p>In this Act, unless the context otherwise indicates, broadcasting, broadcasting signal distribution, broadcasting service, encryption, private broadcasting service, public broadcasting service, community, broadcasting services frequency bands, have the meaning assigned thereto in section 1 of the Broadcasting Act of 1998.</p> <p>1. Amendment of section 1 by the insertion of the following definitions:</p> <p>(a) “<b>‘low power sound broadcasting service’</b> means a community, private or public sound broadcasting service which radiates power not exceeding one watt;”;</p> <p>(b) “<b>‘National Revenue Fund’</b> means the Fund established by section 213 of the Constitution;”;</p> <p>(c) “<b>‘financial interest’</b> means interest that may not have voting rights attached to it but which gives the person or entity a financial interest directly via shares or indirectly via an agreement giving it the power to have control of the licensee or effective say over the affairs of the licensee.”.</p> <p>2. Amendment of section 1 by the substitution for the definition of “<b>election period</b>” of the following definition:</p> <p>“<b>‘election period’</b> means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected.”.</p> <p>3. Amendment of section 2 by the substitution for “private commercial” to “commercial”, wherever it appears.</p> <p>4. Amendment of section 10 by the substitution for subsection (4) of the following subsection:</p> <p>(4) The quorum for any meeting of the Council shall be <u>four councillors</u> or a majority of the total number of councillors holding office at the time, whichever is the greater.”.</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>5. Substitution for section 13 of the following section:</p> <p><b><u>“General powers and functions of Authority</u></b></p> <p><b>13.</b> (1) Without derogation from <u>the generality of the provisions of section 3, the Authority shall, in addition to powers conferred upon it elsewhere in this Act, or by any other law, have the power—</u></p> <p>(a) <u>to administer the statutory scheme for granting, renewing and amending of broadcasting licences;</u></p> <p>(b) <u>to manage broadcasting services frequency bands and other parts of the radio frequency spectrum properly delegated to it by the Minister as outlined in section 29 of this Act;</u></p> <p>(c) <u>to make regulations consistent with section 2 of the Broadcasting Act, 1998, as set out in section 78 of this Act;</u></p> <p>(d) <u>to design and implement broadcasting conditions of licence consistent with the objectives set out in section 2 of the Broadcasting Act, 1998, for different categories of broadcasting service, including, but not limited to conditions relating to—</u></p> <p><u>(i) local content requirements;</u></p> <p><u>(ii) programme requirements;</u></p> <p><u>(iii) coverage obligations;</u></p> <p><u>(iv) language service provision;</u></p> <p><u>(v) ownership and control compliance;</u></p> <p><u>(vi) compliance with the Code of Conduct for Broadcasting Services; and</u></p> <p><u>(vii) empowerment of historically disadvantaged groups;</u></p> <p>(e) <u>to specify the frequency characteristics of broadcasting services;</u></p> <p>(f) <u>to undertake inquiries on all matters within its jurisdiction, including the holding of public hearings;</u></p> <p>(g) <u>to submit an annual report to the Minister on all matters within its jurisdiction, including, but not limited to—</u></p> <p><u>(i) the audited report set out in section 20 of this Act;</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><u>(ii) the issuance, renewal and amendment of licences as set out in section 20(3)(c) of this Act;</u></p> <p><u>(iii) compliance with standards;</u></p> <p><u>(iv) spectrum planning and allocation;</u></p> <p><u>(v) progress on meeting local content requirements;</u></p> <p><u>(vi) deals of all inquiries undertaken within the year;</u></p> <p><u>(vii) statistical overview of the broadcasting environment;</u></p> <p><u>(viii) a status quo of the organisation of the Independent Broadcasting Authority, including its executives from the rank of Head of Department and above;</u></p> <p><u>(h) to monitor the broadcasting industry to ensure compliance with broadcasting laws and regulations as well as with community standards in programming, as set out in section 66 of this Act;</u></p> <p><u>(i) to conduct research in all matters affecting broadcasting in order to perform its regulatory role;</u></p> <p><u>(j) each year to publish a proposed regulatory agenda for the ensuing three years;</u></p> <p><u>(k) to make recommendations to the Minister for amendments to this Act and the Broadcasting Act, 1998, so as to align them with the current industry and public policy environment;</u></p> <p><u>(l) to review and consider any technical matters relating to broadcasting referred to it by the Minister and to make recommendations to the Minister with respect thereto;</u></p> <p><u>(m) to be consulted by the Minister with regard to any matters to be put before Parliament pursuant to requests made under paragraph (g);</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><u>(n) to hold public hearings.</u></p> <p><u>(2) The President shall, on the advice of the National Assembly, appoint the chairperson of the Authority.”.</u></p> <p><b>6.</b> Insertion of the following section after section 13:</p> <p><b>“General role and powers of Minister</b></p> <p><b>13A.</b> <u>The role and powers of the Minister are as follows:</u></p> <p><u>(a) The Minister shall determine all matters relating to privatisation of government broadcasting enterprises.</u></p> <p><u>(b) The Minister shall direct the Authority to undertake special investigations, inquiries and report on any matter within its jurisdiction.</u></p> <p><u>(c) The Minister shall, before a direction contemplated in paragraph (b) is issued, consult the Authority.</u></p> <p><u>(d) The Minister may from time to time by notice in the Gazette issue to the Authority policy directions consistent with the objects mentioned in section 2 of the Broadcasting Act, 1998.</u></p> <p><u>(e) The Minister shall, before a policy direction contemplated in paragraph (d) is issued—</u></p> <p><u>(i) consult the Authority;</u></p> <p><u>(ii) in order to obtain the view of interested persons, cause the text of such direction to be published in the Gazette together with a notice declaring his or her intention to issue that direction and inviting interested persons to lodge written representations in relation to the direction in the manner specified in such notice within 30 days from the date of the notice;</u></p> <p><u>(iii) refer the proposed direction for comment to the committees of Parliament appointed for the purpose of considering matters relating to broadcasting.</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><u>(f) The provisions of paragraph (e) shall not apply in respect of any amendment by the Minister of a policy direction in consequence of comments or representations received by him or her pursuant to consultation, publication or reference in terms of that paragraph.</u></p> <p><u>(g) The Authority shall perform its functions in terms of this Act in accordance with a policy direction issued under this section.</u></p> <p><u>(h) A policy direction issued under this section may be amended, withdrawn or substituted by the Minister, and the provisions of this section shall apply, with the necessary changes, in relation to any such amendment, withdrawal or substitution.</u></p> <p><u>(i) The Minister shall table in Parliament the annual or any other reports of the Authority.”.</u></p> <p>7. Amendment of section 14 by the substitution for subsections (1) and (3) of the following subsections:</p> <p>“(1) The Council shall appoint a suitably qualified and experienced person as <b>[chief administrative officer]</b> chief executive officer of the Authority for the purpose of assisting the Council, subject to the latter’s direction and control in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act.</p> <p>(3) Subject to the provisions of subsection (4), the Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, housing benefits, pensions and other employment benefits as <b>[the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market]</b> <u>is consistent with the public sector.”.</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>8.</b> Amendment of section 15 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) (a) <u>The operating and capital costs of the Authority shall be financed from money appropriated by Parliament from time to time for that purpose.</u></p> <p>(b) <u>The Authority shall utilise any money contemplated in paragraph (a) in accordance with the statement of estimated expenditure referred to in paragraph (c).</u></p> <p>(c) <u>The Authority—</u></p> <p>(i) <u>shall in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure for the following financial year to the Minister for his or her approval, granted in consultation with the Minister of Finance;</u></p> <p>(ii) <u>may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted in consultation with the Minister of Finance; and</u></p> <p>(iii) <u>may retain application fees for administration purposes.”.</u></p> <p><b>9.</b> Repeal of section 16.</p> <p><b>10.</b> Amendment of section 17 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any two members of the staff of the Authority [<b>from time to time authorized for that purpose by special resolution of the Council</b>] <u>as designated by the chairperson from time to time.”.</u></p> <p><b>11.</b> Substitution for section 18 of the following section:</p> <p><b>“Investment of surplus moneys</b></p> <p><b>18.</b> <u>All fees and penalties received in terms of section 67 shall be paid into the National Revenue Fund.”.</u></p> <p><b>12.</b> Section 40 is hereby repealed.</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>13.</b> Amendment of section 41—</p> <p>(a) by the substitution for subsection (6) of the following subsection:</p> <p>“(6) Within <b>[14]</b> <u>30 days</u> of receipt of any application in terms of this section, the Authority shall cause to be published in the <i>Gazette</i> a notice containing all the material particulars of the application and inviting interested persons to lodge <b>[their]</b> written representations in relation to the application in the manner specified in such notice within <b>[one month]</b> <u>30 days or such shorter period as from the date of such notice as may be determined by the Authority, which may not be less than 10 days.</u>”;</p> <p>(b) by the substitution for subsection (8) of the following subsection:</p> <p>“(8) The applicant shall submit his or her written response (if any) to any representations lodged in terms of subsection (7) to the Authority within <b>[two months]</b> <u>60 days</u> 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 he or she has sent by registered post or delivered a copy of such written response to the person having made such representations.”;</p> <p>(c) by the insertion after subsection (8) of the following subsection, with subsection (9) becoming subsection (10):</p> <p><u>“(9) Save for representations made under subsection (6), the response of the applicant under subsection (8) and such further information as the applicant furnishes under subsection (5) within the period specified under that subsection, no application may be amended or varied and no supplementary or additional documents may be filed after the publication of the notice under subsection (6), except with the written permission of the Authority granted upon application and upon such terms and conditions as Council may determine.”.</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>14.</b> Insertion of the following section after section 41:</p> <p>“<b>41A.</b> (1) Notwithstanding the provisions of sections 41, 42, 44 and 47 the Authority may on such terms and conditions as it may determine, issue a licence to provide a low power sound broadcasting service.</p> <p>(2) The Authority shall prescribe the requirements and procedures applicable to applications for such licences.”</p> <p><b>15.</b> Amendment of section 42—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) <b>[In]</b> Save as provided in section 41A in respect of <b>[every application]</b> applications for <b>[a]</b> broadcasting <b>[licence]</b> licences received by the Authority, a notice of which has been published under section 41(6), it shall at its discretion hold a hearing as provided for in this section.”;</p> <p>(b) by the substitution for paragraph (c) of subsection (3) of the following paragraph:</p> <p>“(c) the Authority, after having <b>[duly]</b> 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 <b>[further]</b> other information furnished in terms of section 41 and any other evidence <b>[tendered to]</b> admitted by the Authority, shall within a reasonable time grant or refuse the application and shall subsequently provide written reasons for its <b>[ruling]</b> decision by notice in the <i>Gazette</i> and give notice of the availability of the reasons at the office of the Authority.”</p> <p><b>16.</b> Amendment of section 48 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) have financial interest or interest either in voting shares or paid-up capital in a private broadcasting licensee exceeding twenty percent.”</p> <p><b>17.</b> Amendment of sections 48, 49, 50 and 54 by the substitution of “private commercial” with “commercial”, wherever it appears.</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>18.</b> Amendment of section 50 by the substitution for subsection (2) of the following subsection:</p> <p><u>“(2)(a) No person who controls a newspaper may acquire or retain a financial control in both a radio and TV licence.</u></p> <p><u>(b) No person who is in a position to control a newspaper may be in a position to control a radio or television licence in an area where the newspaper has an average ABC circulation of 20% of the total newspaper readership in the area, if the licence area of the radio licence overlaps substantially with the said circulation area of the newspaper.</u></p> <p><u>(c) Substantial overlap shall be interpreted to mean an overlap by 50% or more.</u></p> <p><u>(d) A 20% shareholding in a radio or television licence shall be deemed to constitute control.</u></p> <p><u>(e) The shareholding and financial structures of commercial broadcasting licensees will form part of the annual reports submitted to the authority.”.</u></p> <p><b>19.</b> Amendment of section 54—</p> <p>(a) by the substitution for paragraphs (b) and (c) of the following paragraphs:</p> <p>“(b) in the case of a public and a private sound broadcasting licence, shall be six years; <b>[and]</b></p> <p>(c) in the case of a community sound or television broadcasting licence which is not a temporary community broadcasting licence within the contemplation of section 47A, shall be four years [,]; and”;</p> <p>(b) by the insertion of the following paragraph:</p> <p><u>“(d) in the case of a low power sound broadcasting licence shall be such period not exceeding three years as the Authority may determine.”.</u></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>20.</b> Amendment of section 63 by the substitution for subsections (2) and (3) of the following subsections:</p> <p>“(2) A complaint contemplated in subsection (1) shall be <b>[in writing and shall be served on the licensee concerned and be]</b> lodged with the Authority for consideration by the Broadcasting Monitoring and Complaints Committee.</p> <p>(3) For the purposes of subsection (2), a complaint may be delivered by hand <b>[or]</b> sent by registered post, <b>[fax or telex]</b> faxed, or communicated telephonically to the Authority, which shall record and transcribe such complaint.”.</p> <p><b>21.</b> Amendment of section 66A by the substitution for subsections (3) and (4) of the following subsections:</p> <p>“(3) (a) No person shall use any <b>[television set]</b> apparatus for the reception of <b>[anything]</b> any broadcast by a pay-television service which has been licensed in terms of section 46, unless such person has been authorized by such licensee to do so.</p> <p>(b) No person shall assist any other person in receiving, in conflict with paragraph (a), any broadcast by a pay-television service.</p> <p>(c) No person shall have in his or her possession any equipment, object or electronic data intended to be used for the reception, in conflict with paragraph (a), of any broadcast by a pay-television service.</p> <p>(d) For the purposes of paragraph (b), “assist” shall include but shall not be limited to manufacturing, distributing, letting, selling or supplying any equipment, object or electronic data intended by the manufacturer, distributor, lessor, seller or supplier, as the case may be, to be used or applied, either by itself or in conjunction with any other object, for the reception, in contravention of paragraph (a), of anything broadcast by a broadcasting service.</p> <p>(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p><b>22.</b> Amendment of section 67 by the substitution for subsection (2)(h)(ii) and (iii) of the following subparagraphs:</p> <p>“(ii) in the case of a contravention of sections 32, 39 and 74, to a fine not exceeding R1 000 000 per day;</p> <p>(iii) in the case of a contravention of section 71(1), and in the case of an offence contemplated in paragraph (d) of this subsection, to a fine not exceeding R100 000.”.</p> <p><b>23.</b> Amendment of section 69 by the addition of the following paragraphs in subsection (1):</p> <p>“(c) <u>delegate to a committee of the Council, established pursuant to section 23 of this Act the power to hold hearings in respect of inquiries under section 28 and in respect of applications to grant, renew, amend or transfer any licence;</u></p> <p>(d) <u>delegate to any committee acting in terms of subsection (c) shall as soon as reasonably possible after it has held an inquiry or hearing, provide the Council with transcripts of the proceedings together with a written report on the proceedings, oral evidence and representations. The Council shall after due consideration, decide the matter and provide written reasons as prescribed in section 42(3)(c);</u></p> <p>(e) <u>the common carrier for broadcasting signal distribution shall provide signal distribution facilities to be used for emergency sound broadcasting services to the extent that they are deemed necessary in the public interest by the Minister. The common carrier shall comply with the conditions imposed by the Authority.”.</u></p> <p><b>24.</b> Section 80 is hereby repealed.</p>

## **MEMORANDUM ON THE OBJECTS OF THE BROADCASTING BILL, 1998**

This bill is the culmination of the White Paper on Broadcasting, 1998. One of the objectives of the exercise is to repeal the Broadcasting Act, 1976 (Act No. 73 of 1976), so as to establish a new broadcasting policy in the Republic. Accordingly, the Independent Broadcasting Authority Act, 1993 (Act No. 103 of 1993), must be amended. The objects of the new Broadcasting Act are specifically spelled out and contained in clause 2.

The SABC currently operates in terms of the Broadcasting Act, 1976. This Bill proposes that the Broadcasting Act, 1976, be repealed. It is therefore imperative to deal with the SABC in a different manner.

### **1. CLAUSE BY CLAUSE ANALYSIS**

Chapter I contains the definitions, interpretation, fundamental principles and objects of the Bill.

Chapter II stipulates that the Act must foster freedom of expression and journalistic, creative and programming independence.

Chapter III requires all persons providing broadcasting services to hold a licence and clause 5 defines the different classes of broadcasting licences.

Chapter IV—

- (a) establishes the Charter of the Corporation in terms which the Corporation must be managed;
- (b) establishes the South African Broadcasting Corporation as a limited liability company in terms of the Companies Act, 1973; and
- (c) deals with the establishment, management and operation of the Corporation, which were addressed in the Broadcasting Amendment Bill (B 8 of 1998), which was introduced in Parliament earlier this year but was kept on hold pending the approval of the White Paper on Broadcasting.

Chapter V provides for the commercial broadcasting services and license requirements. Part 2 of Chapter V deals with licensing of additional services.

Chapter VI deals with community broadcasting services and an inquiry into the feasibility of additional services.

Chapter VII provides for signal distribution, multi channel distributors and the objectives thereof.

Chapter VIII establishes the Frequency Spectrum Directorate in the Department of Communications with the task to develop policy for radio frequency spectrum.

Chapter IX establishes the South African Broadcast Production Advisory Body to deal primarily with how the development, production and display of local television and radio content can be supported.

Chapter X states that the human resource development policies of licensees must comply with the provisions of the national policy regarding skills development.

Chapter XI deals with the regulations, repeals and amendments and stipulates that the Act will come into operation on a date determined by the President.

### **2. PERSONS AND BODIES CONSULTED**

The following persons and bodies were consulted in the preparation of the Bill:

1. IBA (Independent Broadcasting Authority).
2. South African Broadcasting Corporation.
3. Sentech.
4. M-Net.
5. National Association of Broadcaster.
6. National Community Radio Forum.
7. Open Window Network.
8. SATRA (South African Regulatory Authority).
9. Telkom.
10. Herdboys Advertising Agency.
11. Advertising Standards Authority.

12. Independent Producers Organisation.
13. MWASA (Media Workers Association of South Africa).
14. Communications Workers Union.
15. BEMAWU.
16. Tony Sanderson, Lungisi Hlongwane, David Dison, Prof Guy Berger, Prof Njabulo Ndebele.
17. Universal Service Agency.
18. Bophuthatswana Broadcasting.
19. Mopani Media.
20. Applied Broadcasting Centre.
21. Makana Trust.
22. Department of Education.
23. Consumer Electronics Association.
24. Orbicom.
25. Association of Advertising Agencies.
26. Media Directors Circle.
27. Association of Marketers.
28. Department of Finance.
29. Department of Public Service Administration.

### **3. PARLIAMENTARY PROCEDURE**

The Department of Communications and the State law advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provisions to which the procedure set out in sections 74 and 76 of the Constitution applies.

