

REPUBLIC OF SOUTH AFRICA

BROADCASTING BILL, 1998

-----  
(As introduced in the National Assembly)  
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(MINISTER OF POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B - 98]

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**B I L L**

**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 establish the Frequency Spectrum Directorate in the Department;  
to provide a Charter for the South African Broadcasting Corporation Ltd;  
to establish the South African Broadcasting Production Advisory Body;  
to establish a human resource capacity in policy development ;  
and to provide for matters connected therewith;**

**PREAMBLE**

**Noting** that the history of South African broadcasting system comprises public, commercial and community elements, 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, diversity, equality, independence and unity;

**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 and is controlled and managed by persons or groups of persons from a diverse range of communities including persons from previously disadvantaged groups, reflecting 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 a public property and provides a public service necessary for the maintenance of national identity universal access, diversity, equality, independence and unity;

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

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

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## CHAPTER I 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 are identified and independence of regulation as guaranteed by the Constitution. These principles recognise that the South African Broadcasting system comprises public, commercial and community elements which, makes 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, diversity, equality, independence and unity.***

***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.***

### Definitions and interpretation

- 1.** In this Act, unless the context otherwise indicates—
- Authority, broadcasting, broadcasting licence, broadcasting licensee, broadcasting service, community broadcasting service, private broadcasting service, public broadcasting service, radio, sound broadcasting service, sound radio set, telecommunications, television broadcasting service, television set must have the meaning assigned thereto in the IBA Act and—
- (i) "Agency" means the South African Broadcasting Advisory Body established in terms of section 29 of this Act;
  - (ii) "Board" means the Board of Directors of the South African Broadcasting Corporation limited established in terms of section 12 of this Act;
  - (iii) "Broadcasting service" means—
    - a service that delivers television programmes or radio programmes to a person having equipment appropriate for receiving that service, whether the delivery uses radio frequency spectrum, cable, optical fibre, satellite or a combination of those means but does not include:
      - (a) a service (including a text service) that provides no more than data, or no more than text (with or without associated still images);
      - (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;
  - (iv) "commercial broadcasting service" means a broadcasting service operating for profit and includes any service provided by the Corporation that is not a public broadcasting service;
  - (v) "Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);
  - (vi) "Corporation" means the South African Broadcasting Corporation limited established in terms of section 9;
  - (vii) "Department" means the Department of Communications;
  - (viii) "encryption" means a method for changing a broadcasting signal in a systematic way so that the picture would be unintelligible without a suitable decoder;

- (ix) "incorporation date" means the date on which the Corporation is incorporated into a public company and issued with a certificate to commence business;
- (x) "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 decoders;
- (xi) "IBA Act" means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);
- (xii) "local content" means broadcast programming produced in South Africa by South Africans and includes the South African music as defined in the IBA Act, 1993;
- (xiii) "local delivery service" means a broadcast service using multi-channel terrestrial distribution systems such as cable, micro-wave multi point distribution systems and local multi-point distribution systems;
- (xiv) "multi-channel distribution service" means a service which transmits more than one broadcasting service at the same time by means of radio waves or telecommunications;
- (xv) "old Corporation" means the South African Broadcasting Corporation established in terms of the Broadcasting Act, 1976 (Act No. 73 of 1976);
- (xvi) "President" means the President of the Republic of South Africa;
- (xvii) "prescribed" means prescribed by regulations;
- (xviii) "public commercial broadcasting service" means any broadcasting service provided by the commercial operating entity of the Corporation as set out in section 10B of this Act;
- (xix) "member" means shareholder in the South African Broadcasting limited;
- (xx) "satellite broadcasting service" means a service which is broadcast by transmitters situated on a satellite;
- (xxi) "subscription broadcasting service" means a service provided to an end user upon the payment of a fee;
- (xxii) "Terrestrial broadcasting service" means a service that is broadcast from a transmitter situated upon the earth's surface;
- (xxiii) "transfer date" means the date of commencement of this Act.

(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.

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

## **Objects of the Act**

2. The object of this Act is to establish and develop a broadcasting policy, regulation and control of broadcasting in the Republic and for that purpose to—

- (a) contribute to democracy, development of society, nation building, provide education and strengthen the spiritual and moral fibre of society;
- (b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
- (c) encourage ownership and control of broadcasting services by persons from

- historically disadvantaged groups;
- (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 needs of childrens', women, the youth and disabled programming;
- (f) cater for human resource development;
- (g) encourage investment in the broadcasting sector;
- (h) ensure fair competition in the broadcasting sector;
- (j) ensure efficient use of the broadcasting frequency spectrum;
- (i) provide a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision as well as articulation of long and intermediate-term goals;
- (k) provide for a three tier system of public, commercial and community broadcasting services;
- (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 licenses, viewed collectively, are controlled by persons or group of persons from a diverse range of communities in South Africa;
- (n) ensure that broadcasting services are effectively controlled by South Africans;
- (o) integrate multi-channel distribution systems into the broadcasting policy framework;
- (p) provide access to signal distribution services for content providers;
- (q) provide access to signal distribution services for broadcast content receivers;
- (u) encourage the development of local programming content.

## CHAPTER II SOUTH AFRICAN BROADCASTING SYSTEM

***This Part 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 of and access to broadcasting resources.***

### **The South African Broadcasting System**

- 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;
  - (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 promote ownership control and management of broadcasting services by persons from historically disadvantaged groups;

(d) encourages fair competition in the provision of programmes and services;  
 (4) Subject to subsection (1), the Minister is ultimately responsible to develop policy that is required from time to time.

(5) Public and commercial broadcasting services comply with international technical standards and the broadcasting system is readily adaptable to scientific and technological advances.

(6) The broadcasting system, as a whole, provide educational programming, and where such programming is provided by a dedicated education service, is extended throughout the Republic within the financial resources.

(7) The programming provided by the South African broadcasting system must—

(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 offering a range of South African content and analysis from a South African perspective;

(c) should be drawn from local, regional, national and international sources;

(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;

(8) A range of programming in the Republic's official languages, is extended to all South Africans as circumstances permit.

(9) The Human Resources development strategy for the broadcasting sector will be viewed holistically in terms of qualification standards, skills, development, teaching, inter-relationships with the complimentary sectors and the funding of the training system.

### **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.***

#### ***Part 1: Broadcasting Licenses***

##### **Licences**

4. (1) Any person who intends to provide a broadcasting service, including distribution services whether satellite or terrestrial, which offer programming to the public is required to obtain a licence or authorisation in accordance with the conditions which the Authority may determine from time to time.

(2) For the purposes of this Act, a broadcast service means any activity which provides a service which—

(a) has a signal or packages of signals receivable in South Africa;

- (b) acquires programme rights for South Africa;
- (c) solicits subscribers, advertising or activates and deactivates the decoders of South African subscribers;

(3) This section must not be construed to mean that the signal of a broadcaster, licensed or authorised to provide service to a foreign country by the appropriate authority, which is incidentally received in South Africa, is required to hold a licence in South Africa.

(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.

### **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 namely:

- (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 licenses are categorised in the following classes:

- (a) Free-to-Air radio broadcasting service;
- (b) Free-to-Air television broadcasting service;
- (c) Satellite-free-to-air radio service;
- (d) Satellite-free-to-air television service
- (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 including multi-channel terrestrial distribution such as cable, microwave multi-point distribution systems and local multi-point distribution systems;
- (i) cable television subscription service.

## CHAPTER IV

### THE PUBLIC BROADCASTING SERVICE AND CHARTER OF CORPORATION

*This part provides for incorporation of the SABC (Corporation) and for the Charter. The Charter is dealt by Parliament as part of the broad national policy framework. The authority monitors compliance of the Corporation to the Charter. Parliament will enact the Charter.*

#### *Part 1: Public Broadcasting Service*

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

6. (1) The Corporation is governed by the Charter.
- (2) The Charter will be enacted by Parliament as part of the national broadcasting policy formulation.
- (3) The Authority will monitor compliance of the Corporation to the Charter and complaints arising from it.

## **CHARTER OF THE CORPORATION**

### ***Part 2: Incorporation, Objectives and Organisation or Corporation***

#### **Incorporation**

7. (1) Upon the day of commencement of this Act, the Minister must apply for the incorporation of the South African Broadcasting Corporation to a limited liability company with a share capital as contemplated in the Companies Act.

(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.

(4) The registration of the Memorandum and Articles of Association is exempted from paying 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 may be required to promptly comply with every direction issued under subsection (5).

(7) The Minister may, when in his or her opinion the old Corporation has properly discharged the functions required of it to achieve the objects and purposes of this Act and all directions issued under subsection (5), by proclamation, specify the date of commencement of this Section.

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

#### **Objectives of the 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, license fees or any other means of finance;
- (c) to hold the existing , and to construct, acquire, lease, establish and install additional stations for broadcasting purposes and apparatus for reception of broadcasting services to meeting its objectives or purposes ancillary or related to those objectives;
- (d) to acquire from time to time a license or licenses for such period and subject to such regulations, provisions and license conditions as may be prescribed by the Authority;
- (e) to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;
- (f) to be responsive to audience needs and account on how to meet those needs;
- (g) to provide other services whether or not broadcasting or programme supply

- services, such services being ancillary services;
- (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;
  - (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;
  - (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;
  - (k) to organise, present, produce, provide or subsidise concerts, shows, variety performances, reviews, 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;
  - (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, license or otherwise copyright and designs, trade marks, trade names and any other intellectual, industrial and commercial property rights;
  - (n) to nurture South African talent and train people in production skills and carry out research and development for the benefit of audiences;
  - (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:
- (a) Public Broadcasting Service; and
  - (b) Public Commercial Broadcasting Service.
- (2) The public services and commercial services of the corporation must be separately administered.

### ***Part 3: The Corporation's public broadcasting services***

- 10.** (1) The public broadcasting service provided by the Corporation must—
- (1) strive to make services available to South Africans in all the official languages as circumstances permit;

- (2) reflect the diverse cultural and multilingual nature of South Africa and all of its cultures and regions to audiences;
- (3) strive to be of high quality in all of the languages served;
- (4) provide significant news and public affairs programming, which meets the highest standards of journalism, as well as fair coverage, impartiality, balance and independence from government, commercial and other interests;
- (5) 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, commerce and contribute to a shared South African consciousness and identity;
- (6) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
- (7) strive to offer a broad range of services targeting, particularly, children, women, the youth and the disabled;
- (8) include programmes made by the Corporation as well as those commissioned from the independent production sector;
- (9) include national sports programming as well as developmental and minority sports; and
- (10) the public service broadcasting 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 from the State.

### ***Part 3: The public commercial broadcasting services***

- 11.** The commercial services provided by the Corporation must—
- (1) be subject to the same policy and regulatory structures as outlined in section 23 for commercial broadcasting services;
  - (2) comply with the values of the public broadcasting service in the provision of programmes and service;
  - (3) commission a significant amount of their programming from the independent sector; and
  - (4) subsidise the public broadcasting services to the extent recommended by the Board and approved by the Minister;
  - (5) be operated in an efficient manner so as to maximise the revenues provided to its shareholder.

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

#### **Composition of Board**

**12.** (1) A Board appointed in terms of section 12(1) of this Act controls the affairs of the corporation.

(2) The Board consists of eleven members, eight of whom are non-executive appointed by the President on the advice of the relevant Portfolio committee of Parliament, in accordance with the following principles:

- (a) participation by the public in the nomination process;

(b) transparency and openness; and  
 (c) publication of a short list of candidates for appointment,  
 duly taking into account the objects and principles as enunciated in section 2 of this Act.

(3) The Chief Executive Officer, Chief Operations Officer and the Financial Director are executive members of the Board.

(4) Six members of the Board, which must include the chairperson or vice-chairperson will constitute a quorum at any meeting.

### **Board of Directors**

**13.** (1) The President must, on advice of the relevant Portfolio Committee of Parliament, appoint a Board of Directors of the Corporation for such period as he or she may determine, which period must not exceed five years based on the following principles—

- (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, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education, social and labour issues;
- (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) representative of the broader population of the Republic; and

(2) The President must designate one of the members of the Board referred to in subsection (1) as a chairperson and as a vice-chairperson, both of whom must be non-executive directors.

(3) The vice-chairperson referred to in subsection (2) 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.

(4) Every appointment of a board member must be published in the Government *Gazette*.

(5) A member of the Board appointed to fill a casual vacancy must hold office for the un-expired portion of the period for which the vacating member was appointed.

(6) Members of the Board appointed immediately before the transfer date will retain their appointments with all existing benefits.

### **Executive Committee**

**14.** (1) The affairs of the Corporation are administered by an executive committee consisting of the Chief Executive Officer, Chief Operations Officer and Financial Director and four additional executive members of the Corporation appointed by the Board.

(2) The executive committee is accountable to the Board.

(3) The executive committee will perform such functions as determined by the Board.

## **Termination of Service**

**15.** (1) Subject to the provisions of subsection 13(1) the President may, remove a director from office on account of misconduct or inability to perform the duties of his or her office efficiently.

(2) The services of a director may be terminated in terms of subsection (1) only after an inquiry and upon recommendations by the Board to the President.

## ***Part 6: Financial Matters***

### **Shareholding**

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

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

(3) The Corporation is exempt to pay any stamp duty or fees which is 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.

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

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

**17.** (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.

(3) The annual statements must be tabled by the Minister in Parliament.

### **Rights and obligations**

**18.** (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, unless it has obtained the licence in question and complies with the conditions thereof.

(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 (if any), which the Authority may from time to time determine, to be issued of any licence contemplated in subsection (1).

(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**

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

(2) On the transfer date—

(a) the broadcasting licences issued to the old Corporation must be transferred to the Corporation in terms of section 74 of the IBA Act; and

(b) all other assets, Subject to the provisions of the IBA Act, 1993 or any other law.

(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.

## **Borrowing powers**

**20.** The Corporation may not borrow money without prior written approval of the Minister granted with the concurrence of the Minister of Finance.

## **Acquisition of land**

**19.** (1) Despite anything to the contrary in any law, the Corporation may, with the approval of the Minister and subject to such conditions as he or she may deem fit—

- (a) acquire any land or right in or over land required for the erection of transmission or receiving plant and buildings, masts, power generators and other accessories and enclosures connected therewith;
- (b) acquire any land or right in or over land required for an access road to such transmission or receiving plant, or for a way leave for the construction and use of any such road or the erection, maintenance or inspection of power or programme lines.

(2) (a) The Minister may not grant such approval unless he or she is satisfied, after considering a report by the board, that the Corporation is unable to acquire the land or right upon reasonable terms by agreement with the owner, and that it is necessary that the land or right be acquired by the Corporation for the purpose for which it intends to use it.

(b) When the Minister has granted his approval for such acquisition, the provisions of the Constitution or any other law in the Republic, must apply with the necessary changes, subject to the context, in relation to such acquisition.

(c) For the purposes of such application of those provisions any reference therein to any Minister or to the State must be construed as a reference to the Authority.

## **Accounts**

**22.** (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 of the Corporation prepare statements of account 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 that financial year.

## **Auditing**

**23.** (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 a public accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed as auditor of the Corporation.

(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.

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

(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;
- (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, if anything; or
  - (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, if anything, provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person.
  - (iii) 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 auditor.

(7) Any amount so recovered by the auditor must be paid to the Corporation.

(8) The Corporation must pay to the auditor all reasonable costs incurred by him in recovering such an amount.

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

- (a) whether or not, in his opinion—
  - (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;
  - (iv) the value of the assets of the Corporation has been correctly stated; and
- (b) whether or not all his requirements and recommendations as auditor have been complied with and carried out.

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

### **Part 4: Staffing of Corporation**

#### **Staff of Corporation**

**24.** (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.

(2) The Corporation may—

- (a) by means of the establishment of a housing fund or in any other manner provide for the provision of housing to its officers and other employees on such terms and conditions as it may determine;
- (b) establish or support associations or institutions for the promotion of the interest 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;
- (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.

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

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), employees transferring to the employ of the Corporation in terms of subsection shall 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 advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, remains unchanged.

(5) When an employee of the old Corporation becomes an employee of the Corporation in terms of subsection (3):

- (a) he or she must retain all vacation and sick leave which on the day immediately preceding the transfer date stood to his or her credit, including all monetary benefits attached thereto;
- (b) any inquiry or other action instituted or contemplated in respect of misconduct allegedly committed by such employee prior to his or her employment by the Corporation are to be disposed of or instituted by the Corporation and the Corporation are 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;
- (c) any agreements reached between employees and 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.

### **Annual report**

**25.** (1) The Board must furnish to the Minister, on or before 30 September in each year, a report on the work of the Corporation during its immediately preceding financial year, together with a balance sheet and a complete statement of revenue and expenditure for that financial year, which have been audited by the auditor referred to in section 20, and the report of that auditor, and must in the report so furnished give particulars as to—

- (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;
- (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;
- (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 then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

## **CHAPTER V COMMERCIAL BROADCASTING SERVICES Part 1: Licence requirements and objectives**

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

**26.** (1) Commercial broadcasters must hold a separate licence for each service they provide.

### **Objectives**

- 27.** (1) Commercial broadcasting services—
- (a) must provide a diverse range of programming addressing a wide section of the South African public;
  - (b) must provide, as a whole, programming in all of South African official languages;
  - (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 be extended to all South Africans and provide comprehensive coverage

of the areas which they are licensed to be served within a reasonable period of time.

(2) The programming provided by free-to-air broadcasting service must:

- (a) reflect the culture, character, needs and aspirations of all of the people in the regions that they are licensed to serve;
- (b) provide an appropriate significant amount of South African programming according to the regulations of the Authority;
- (c) include broadcasting 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 shall be subject to a license conditions determined by the Authority specifically on South African local content and other conditions relating to the license.

(4) The programming provided by free-to-air television broadcasting services must—

- (a) include levels of South African drama, documentaries and children's programmes that reflect South African themes, literature and historical events, as prescribed by regulation; and
- (b) include significant amounts of programmes acquired from the independent production sector.

(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.

(6) Commercial subscription services may draw their revenues from subscriptions, advertising and sponsorships. In no case should advertising or sponsorship revenues, or a combination thereof, be the largest source of revenues.

(7) Commercial subscription 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.

## ***Part 2: Subscription Broadcasting Service***

### **Subscription television service**

**28.** (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 more than one additional subscription television service and make known its finding by notice in the *Gazette*.

(2) The Authority must conduct a licensing process immediately, if it finds that the provision of more than one additional subscription television service is feasible.

## **CHAPTER VI**

## COMMUNITY BROADCASTING

### Community broadcasting services

**29.** (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:

- (a) Free-to-air terrestrial radio broadcasting service; and
- (b) free-to-air terrestrial 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 by a Board of which must be democratically elected, providing for participation by all members of the community or communities in the licensed geographic service area.

(4) A community broadcasting service is controlled and managed by people representative of all sectors of the community or communities in the licensed service.

(5) The programming provided by a community broadcasting service must reflect the needs of all of the people in the community.

(6) The programming provided by community broadcasting service must:

- (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 internationally and reflection of local culture; and
- (d) promote development of a sense of common purpose with democracy and improve quality of life.

(7) Community broadcasters will have no limits on the revenues to be drawn from local advertising but will be subject to limits on national advertising as determined by the Authority.

(8) All surplus funds derived from the running of a community broadcasting station will 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.

(9) The Authority will conduct a public inquiry to determine the terms, regulations and conditions to phase in the transition to a geographically founded community service and other priorities within the community sector.

(10) The Authority will conduct an investigation into the viability and impact of community television including:

- (a) definition of community television;
- (b) access to frequencies;
- (c) sustainability;
- (d) ownership and control

(e) legal framework.

(11) As soon as possible after conducting the investigation in subsection (10) the Authority must submit a report to the Minister and Parliament.

**CHAPTER VII**  
**SIGNAL DISTRIBUTION/MULTI-CHANNEL DISTRIBUTIONS**  
***Part 1: Signal Distribution Objectives***

**Signal distribution**

**30.** The Authority will determine and propose to the Minister the terms, licence conditions, obligations and a tariff structure to govern the signal distribution sector upon opening of the sector to competition by the year 2000.

**Objectives of signal distribution**

**31.** (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.

(2) The signal distribution sector must:

- (a) prioritise broadcasting channels licenced in South Africa;
- (b) provide universal access by all South Africans to broadcast and multi-media services;
- (c) provide on diversity of type of broadcast services and content;
- (d) distribute relevant services in all official languages;
- (e) deliver public including educational, commercial and community services;
- (f) roll-out relevant infrastructure for regional services;
- (g) be open and interoperable, harmonised with the Southern African region and be able to meet international distribution standards—
  - (aa) be controlled by South Africans;
  - (bb) provide employment and training for South Africans; and
  - (cc) required to pay a licence fee determined by the Authority.

***Part 2: Multi-channel Distributors***

**Multi-channel Distributors**

**32.** (1) Multi-channel distributors will hold a separate class. of license issued by the Authority.

(2) All broadcast services to be distributed by the multi-channel distributors must hold licence issued by the Authority.

(3) Multi-channel distributors may carry other signal, domestic or foreign upon approval by the Authority.

**33. (1) Objectives of 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;
- (b) provide efficient delivery of programming using the most effective technologies available at reasonable cost;
  - (c) provide reasonable terms for the packaging and retailing of broadcasting services, where such services are supplied pursuant to contractual agreements, failure of which will be determined by the Authority ;
  - (d) carry originating programming, including local programming, where the Authority considers it appropriate.

(2) The Multi-channel delivery system will carry out its objectives on such terms and conditions as are determined by the Authority to achieve the objectives of the broadcasting policy set out in chapter II of this Act, and in particular to provide access to the under served and historically disadvantaged groups.

## **CHAPTER VIII FREQUENCY SPECTRUM DIRECTORATE**

### **Frequency Spectrum Directorate**

**34.** (1) There is established within the Department a Frequency Spectrum Directorate.

(2) The Frequency Spectrum Directorate and its support staff must operate as a Directorate of the Department and should report to the Minister through the Director-General.

(3) The Frequency spectrum Directorate must be impartial in the performance of its functions.

(4) The Frequency Spectrum Directorate is vested with policy development of the radio frequency spectrum and will 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.

## CHAPTER IX ADVISORY BODY TO THE MINISTER

### South African Broadcast Production Advisory Body

**35.** (1) The Minister will 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.

(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 a written agreement entered into for that purpose between the Minister and the Advisory Body.

(3) The Advisory Body will advise the Minister on how to:

- (a) encourage, facilitate and offer guidance and advice in respect of any scheme to promote:
- (i) the production of broadcast materials that meet the cultural needs of South Africans;
  - (ii) the screening and airplay of South African content in television and radio respectively;
  - (iii) awareness of local content in South African and foreign markets;
  - (iv) distribution and exhibition of local content in foreign markets;
  - (v) the correction of imbalances in the local content production industry;
  - (vi) human resource development to provide skills and training of local content providers.

(4) The Advisory Body must, after consultation with the National Film and Television Council and the broadcasting industry, make recommendations for the Minister to determine:

- (a) policy and strategies to govern the production and display of local content;
- (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.

## CHAPTER X SKILLS DEVELOPMENT

***This Part 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 whole to offer programming which is informative and increase the public understanding of development is emphasised.***

### Human resources development

**36.** 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 .

## **CHAPTER XI GENERAL**

### **Regulations**

**37.** (1) The Minister may make regulations in respect of any matter which is required to be prescribed by the Minister of which is necessary in order to achieve the objectives of this Act, and any such regulation may create offences and provide for penalties in respect thereof.

(2) In the exercise of his or her powers under subsection (1), the Minister must be obliged to consider the commendations of the Authority and must not be obliged to accept such recommendations.

### **Repeal and amendment of laws**

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

(2) Any regulations, 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.

**Short title and commencement**

**34.** (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 application of the different sections of this Act by proclamation in the *Gazette*.

**SCHEDULE 1**  
**LAWS AMENDED OR REPEALED**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of Amendment or repeal</b>
Act No. 73 of 1976	Broadcasting Act, 1976	The repeal of the whole
Act No. 153 of 1993	Independent Broadcasting Act, 1993	<p data-bbox="735 533 1433 562"><b>Amendment of section 1 of Act 153 of 1993</b></p> <p data-bbox="735 607 1433 745">By the insertion in the IBA Act, 1993 (hereinafter referred to as the principal Act), is amended by the insertion of the following new definitions:</p> <p data-bbox="735 757 1433 969">(a) "<u>Community Broadcasting Service</u>" means a <u>broadcasting service, which is fully controlled by a non-profit entity and carried on for non-profitable purposes, and serves a particular geographical area.</u></p> <p data-bbox="735 981 1433 1126">(b) "<u>Low power sound broadcasting service</u>" means a <u>community, private or public sound broadcasting service which radiates power not exceeding one Watt;</u>"</p> <p data-bbox="735 1137 1433 1238">(c) "<u>National Revenue Fund</u>" means the <u>Fund established in section 213 of the Constitution.</u>"</p> <p data-bbox="735 1249 1433 1462">(d) "<u>Public Commercial Broadcasting Service</u>" means <u>any broadcasting service provided by the commercial operating entity of the Corporation as set out in Section 51 of the Broadcasting Act of 1998.</u>"</p> <p data-bbox="735 1473 1433 1574">(e) "Minister" means the Minister for Posts, Telecommunications and Broadcasting:</p> <p data-bbox="735 1585 1433 1798"><b>2.</b> The amendment of section 1 by the substitution of the definition of "public broadcasting service" of the following definition: "public broadcasting service" means any service provided by the Public Broadcasting entity of the Corporation.</p> <p data-bbox="735 1854 1433 2029">(4) The quorum for any meeting of the Council shall be <u>four Councillors or a [the] majority of the total number of Councillors holding office at the time, whichever is the greater.</u>"</p>
<u>(3)</u> <u>The President shall, on the advice of the</u>		

National  
Assembly,  
appoint the  
chairperson  
of the  
Authority."

3. Section 13 of the principal Act is amended by the substitutions for section 13 of the following section:

**"GENERAL POWERS AND FUNCTIONS OF  
THE AUTHORITY**

**13** (1) Without derogation from 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 following powers:

- (i) to administer the statutory scheme for granting, renewing and amending of broadcasting licences;
- (ii) to manage broadcasting service 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.
- (iii) to enact regulations consistent with section 2 of the Broadcasting Act of 1998 as set out in section 78 of this Act.
- (iv) to design and implement broadcasting conditions of licence consistent with the objectives set out in section 2 of the Broadcasting Act of 1998, for different categories of broadcasting service, including, but not limited to conditions relating to: of
  - (a) local content requirements,
  - (b) programme requirements,
  - (c) coverage obligations,
  - (d) language service provision,
  - (e) ownership and control compliance,
  - (f) compliance with the Code of Conduct, and
  - (g) empowerment of historically disadvantaged groups;
- (v) to specify the frequency characteristics of broadcasting services;
- (vi) to undertake inquiries on all matters within its jurisdiction, including the holding of public hearings;
- (vii) to provide an annual report to the Minister on all matters within its jurisdiction,

- including, but not limited to:
- (a) the audited report set out in Section 20 of this Act;
  - (b) the issuance, renewal and amendment of licences as set out in Section 20(3)(c) of this Act;
  - (c) compliance and standards;
  - (d) spectrum planning and allocation;
  - (e) progress on meeting local content requirements;
  - (f) deals of all inquiries undertaken within the year;
  - (g) statistical overview of the broadcasting environment;
  - (h) a status quo of the organisation of the Independent Broadcasting Authority including its executives from Head of Department and above;
  - (viii) 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;
  - (ix) to conduct research in all matters affecting broadcasting in order to inform its regulatory role;
  - (x) to publish each year a proposed regulatory agenda for the ensuing three years;
  - (xi) to make recommendations to the Minister for amendments to this and the Broadcasting Acts so as to align them with the current industry and public policy environment
  - (xii) 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;
  - (xiii) to be consulted by the Minister with regard to any matters to be put before Parliament pursuant to requests made under subparagraph (xii)."
  - (xiv) To hold public hearings.

5. Section 12 of the principal Act is amended by the insertion of the following new section:

## "GENERAL ROLE AND POWERS OF THE MINISTER

**13A.** (2) The role and powers of the Minister are as follows:

- (g) to determine all matters relating to privatisation of government broadcasting enterprises;
- (h) to direct the Authority to undertake special investigations, inquiries and report on any matter within its jurisdiction.
- (i) the Minister shall, before a direction contemplated in paragraph is issued, consult the Authority.
- (j) the Minister may from time to time by notice in the *Government Gazette* issue to the Authority, policy directions consistent with the objects mentioned in section 2 of the Broadcasting Act of 1998.
- (k) the Minister shall, before a policy direction contemplated in paragraph (j) is issued;
  - (i) Consult the Authority.
  - (ii) In order to obtain the view of interested persons, cause the text of such direction to be published in the *Government 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.
  - (iii) Refer the proposed direction for comment to the Committees of Parliament appointed for the purpose of considering matters relating to broadcasting;
  - (l) the provisions of paragraph (k) shall not apply in respect of any alternation 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:

- (m) the authority shall perform its functions in terms of this Act in accordance with a policy direction issued under this section;
- (n) 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;
- (o) to table in Parliament the annual or any other reports of the Authority."

5. Section 14(3) is amended by the substitution of the following:

"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 **[the Authority may, after having obtained such professional advice as it may deem fit, considered as being competitive in the open employment market]** is consistent with the public sector."

6. Section 15 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

- "(a) The operating and capital costs of the Authority shall be financed from money appropriated from Parliament from time to time for that purpose.
- (b) The authority shall utilise any money contemplated in subsection (a) in accordance with the statement of estimated expenditure referred to in subsection (c)
- (c) The Authority—
- (i) 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; and
- (ii) 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."

7. The repeal of section 16 of this Act.

8. The amendment of section 17(2) of this Act—

- (a) by the substitution of the following:

"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 **[from time to time authorized for that purpose by special resolution of the Council]** as designated by the chairperson from time to time."

9. Section 18 of the principal Act is amended by the substitution for the following section:

"(18) All fees and penalties received in terms of section 67 shall be paid into the National Revenue Fund referred to in section 213 of the Constitution."

10. Section 31 of the principal Act is amended by the insertion of paragraph (d) subsection (2):

"(d) have due regard to the national frequency allocation plan developed by the South African Spectrum Management Agency established in terms of the Broadcasting Act of 1998." 11.

Section 40(1) is amended by the insertion of the following subparagraph at the end of subparagraph (iii):

"(iv) a low power sound broadcasting service;"

12. Section 41 of the principal Act is amended by the substitution for subsections (6) and (8) of the following subsections:

"(6) Within **[14]** 30 days of receipt of any application in terms of this section, the authority shall cause to be published in the *Gazette* a notice containing all the material particulars of the application and inviting interested persons to lodge **[their]** written

representations in relation to the application in the manner specified in such notice within **[one month] 30 days or such shorter period as may be determined by the Authority, that will not be less than 10 days.**

(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 **[two months] 60 days** 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."

**"8A** Save for representations made under subsection (6), the response of the applicant under subsection 98) 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."

**"41A.** (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.

(2) The Authority shall prescribed the requirements and the procedures applicable to applications for such licences."

13. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

**"(1)** Save as provided in section 41A [1] in respect of [every applications for [a] broadcasting 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."

(b) by the substitution for paragraph 3(c)

of the following paragraph:

"(c) the Authority, after having **[duly]** 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 **[further]** other information furnished in terms of section 41 and any other evidence **[tendered to]** admitted by the Authority, shall within a reasonable time grant or refuse the application and shall subsequently provide written reasons for its **[ruling]** decision by notice in the *Government Gazette* and give notice of the availability of the reasons at the office of the Authority."

14. Section 50 of this Act is hereby repealed and substituted by the following:

**"50.** (1) 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 readership of more than 15% of the total newspaper readership in that area, if the licence area of the radio licence overlaps substantially with the said circulation area of the newspaper;

(2) The substantial overlapping of circulation referred to in subsection (1) shall be interpreted to mean an overlap by 50% or more.

(3) There shall be full and extensive disclosure of the shareholding and financial structures of private broadcasting licences to the Authority".

15. Section 54(1) of this Act is hereby amended by the substitution for paragraph (b) and (c) of the following paragraphs:

"(b) in the case of a public and a private sound broadcasting licence, shall be six years; **[and]**

(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"**

(b) by the insertion of the following paragraph:

"(d) in the case of a low power sound broadcasting licence shall be such period not

exceeding three years as the Authority may determine,"

16. Section 63 of the principal Act is amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) A complaint contemplated in subsection (1) shall be **[in writing and shall be served on the licensee concerned and be]** lodged with the Authority for consideration by the Broadcasting Monitoring and Complaints Committee.

(3) For the purposes of subsection (2), a complain may be delivered by hand or sent by registered post, **[fax or telex] faxed, or** communicated telephonically to the Authority which shall record and transcribe such complaint."

17. Section 66A of the principal Act is amended by the substitution for subsections (3) and (4) of the following subsections:

"(3) (a) No person shall use any **[television set] apparatus** for the reception of any**[thing]** broadcast by a pay-television service which has been licensed in terms of section 46, unless such person has been authorised by such licensee to do so.

(b) No person shall assist any other person in receiving in conflict with paragraph (a) any broadcast by a pay-television service.

(c) No person shall have in his 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.

(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 in a broadcasting service.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence

and liable on conviction to a maximum fine or to imprisonment for a period not exceeding two years."

18. Section 69(1) of the principal Act is amended by the insertion of the following:

"69. (1) (c) delegate to a committee of 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".

69. (1) (c) 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. Council shall after due consideration, decide the matter and provide written reasons as prescribed in section 42(3)(c)."