

Minister, who shall Table the same in the Transitional Executive Council or, where the Transitional Executive Council has been dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, in the National Assembly, within 14 days of receipt thereof: Provided that if, where such findings and recommendations are to be Tabled in the National Assembly, the National Assembly is not in session at the time, such Tabling shall be effected within 14 days after the commencement of its next ensuing session. 5

(2) In the event of the Authority considering the granting of a new public broadcasting licence it shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account— 10

- (a) the demand for the proposed broadcasting service within the proposed licence area;
- (b) the need for the proposed service within such area, having regard to broadcasting services already existing therein; and
- (c) the technical quality of the proposed service, having regard to developments in broadcasting technology. 15

(3) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement of this Act provides one or more public broadcasting services in accordance with law shall, for a period of 12 months as from such date of commencement, be deemed to be the holder of a public broadcasting licence contemplated in section 41(1)(a)(i) or (b)(i), as the case may be, in respect of each such service: Provided that such person shall for any such service be granted an appropriate public broadcasting licence in terms of this Act if he or she makes application therefor within the said period. 20

(4) Where the Republic has in terms of section 79 entered into an agreement with a state or territory referred to in that section, the provisions of subsection (3) of this section shall *mutatis mutandis* apply in respect of any person who, immediately prior to the entry into force of such agreement, provides one or more public broadcasting services in such state or territory in accordance with the laws in force therein at the time. 25 30

Private broadcasting licences

46. (1) In considering any application for a private broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account—

- (a) the demand for the proposed broadcasting service within the proposed licence area; 35
- (b) the need for the proposed service within such licence area, having regard to the broadcasting services already existing therein;
- (c) the expected technical quality of the proposed service, having regard to developments in broadcasting technology; 40
- (d) the capability, expertise and experience of the applicant;
- (e) the financial means and business record of the applicant;
- (f) the business record of each person who, if a licence were granted to the applicant, is or would be in a position to control the operations of the applicant either in his or her individual capacity or as a member of the board of directors or top management structure; 45
- (g) the applicant's record and the record of each person referred to in paragraph (f), in relation to situations requiring trust and candour;
- (h) whether the applicant is precluded by or in terms of section 48, 49, 50 or 51 from holding a broadcasting licence; and 50
- (i) whether either the applicant or the person referred to in paragraph (f) has been convicted of an offence in terms of this Act. 55

(2) (a) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement thereof provides a private broadcasting service under a valid licence in terms of the provisions of any law in force at the time (hereinafter referred to as an existing licence), shall be deemed to be the holder of a broadcasting licence contemplated in section 40(1)(a)(ii) or (b)(ii), as

the case may be, granted and issued in terms of this Act, on the date of commencement thereof, for a period of six years and eight years, respectively, on the same terms, conditions and obligations as those applicable in respect of the existing licence immediately prior to such date of commencement: Provided that the terms, conditions and obligations of the existing licence as on the day immediately prior to such date of commencement, shall only for the duration of the said period of six years or eight years (as the case may be) be deemed to be in accordance with the provisions of this Act, and shall upon the expiration of such period be subject to amendment by the Authority to such extent as may be necessary so as to excise from such licence any such term, condition, obligation or other provision as may be inconsistent with the provisions of this Act, and thereupon the Authority may substitute therefor any other new term, condition or obligation.

(b) In applying the provisions of paragraph (a)—

(i) the period of six years or eight years (as the case may be) shall be deemed to constitute the licence term in respect of the person deemed by that paragraph to be the holder of a broadcasting licence: 15

(ii) Bophuthatswana Commercial Radio (Proprietary) Limited, a licensed broadcaster according to Bophuthatswana law, shall be deemed to be the holder of an existing licence as contemplated in that paragraph, unless an agreement such as that contemplated in section 79 has been entered into between the Governments of the Republics of South Africa and Bophuthatswana: Provided that the licence which may be deemed to be held in terms of this subparagraph shall in no way derogate from the validity of the licence held under Bophuthatswana law and from the authority of the Bophuthatswana Government to enforce the terms and conditions of that licence, as in force on the second day of September, 1993, under Bophuthatswana law. 20 25

(3) Where the Republic has in terms of section 79 entered into an agreement with a state or territory referred to in that section, the provisions of subsection (2)(a) shall *mutatis mutandis* apply in relation to any person who, immediately prior to the entry into force of such agreement, provides a private broadcasting service in such state or territory under a valid licence in terms of the laws in force in such state or territory at the time. 30

Community broadcasting licences

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47. (1) In considering any application for a community broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account—

(a) whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes; 40

(b) whether the applicant proposes to serve the interests of the relevant community;

(c) whether, as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and 45

(d) whether the applicant proposes to encourage members of the relevant community or those 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. 50

(2) Paragraphs (a), (b), (d), (g) and (i) of section 46(1) shall *mutatis mutandis* apply in relation to a community broadcasting licence.

Limitations on foreign control of private broadcasting services

48. (1) One or more foreign persons shall not, whether directly or indirectly—
 (a) exercise control over a private broadcasting licensee; or
 (b) have financial or voting interests in a private broadcasting licensee exceeding twenty percent in total. 5
- (2) Not more than twenty percent of the directors of a private broadcasting licensee may be foreign persons.
- (3) The preceding provisions of this section shall not apply in respect of any person who—
 (a) by subsection (2) of section 46 is deemed; or
 (b) by virtue of subsection (3) of section 46 being read with paragraph (a) of the said subsection (2), is by the said subsection (2) deemed. 10
- to be a broadcasting licensee, for the duration of the period of six or eight years (as the case may be) deemed to constitute the first term of his or her licence.

Limitations on control of private broadcasting services

49. (1) No person shall—
 (a) directly or indirectly exercise control over more than one private television broadcasting licence; or
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one private television broadcasting licence; or
 (c) be in a position to exercise control over a private television broadcasting licence and be a director of any company which is in a position to exercise control over any other private television broadcasting licence. 20
- (2) No person shall—
 (a) be in a position to exercise control over more than two private FM sound broadcasting licences; 25
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two private FM sound broadcasting licences; or
 (c) be in a position to exercise control over two private FM sound broadcasting licences and be a director of any company which is in a position to exercise control over any other private FM sound broadcasting licence. 30
- (3) A person referred to in subsection (2) shall not be in a position to control two private FM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas. 35
- (4) No person shall—
 (a) be in a position to exercise control over more than two private AM sound broadcasting licences; 40
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two private AM sound broadcasting licences; or
 (c) be in a position to exercise control over two private AM sound broadcasting licences and be a director of any company which is in a position to exercise control over any other private AM sound broadcasting licence. 45
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas. 50
- (6) (a) On application by any person the Authority may, on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt such person from adhering to any one of the limitations contemplated in the preceding subsections.
- (b) An exemption in terms of paragraph (a) may be made subject to such terms and conditions as the Authority deems appropriate and equitable in the circumstances. 55

(7) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purpose of advancing the objects and principles enunciated in section 2, after due inquiry in terms of section 28 make recommendations to the Minister regarding the amendment of any of the preceding subsections, which recommendations shall be Tabled in the National Assembly by the Minister within 14 days after receipt thereof, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session. 5

Limitations on cross-media control of private broadcasting services

50. (1) Cross-media control of broadcasting services shall be subject to such limitations as from time to time determined by the Transitional Executive Council acting on the recommendation of the Authority, or, where the Transitional Executive Council has dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, by the National Assembly so acting, in accordance with the provisions of the Constitution Act. 10 15

(2) With a view to exercising its powers in terms of subsection (1), the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28 and shall in doing so *inter alia* have regard to—

(a) the various categories of newspapers according to frequency of publication, geographical extent of circulation and circulation figures as well as any matter relevant to the existing and future control of any such newspaper; and 20

(b) the maximum percentage of financial or voting interests which may be held in any one or more private broadcasting licensees by a person who controls one or more newspapers or groups of newspapers, 25

and any international precedents in that regard.
(3) The Authority may on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt the publisher of a newspaper or, where such publisher is a company, the person in control of such company, from adherence to any of the limitations determined in terms of this section. 30

(4) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purpose of advancing the objects and principles as enunciated in section 2, institute and conduct a public inquiry and make recommendations to the Minister regarding the amendment of any of the preceding subsections of this section. 35

(5) The recommendations contemplated in subsection (4) shall be Tabled in the National Assembly by the Minister within 14 days of receipt thereof, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session. 40

(6) A determination made in terms of subsection (1), whether pursuant to the first inquiry referred to in section 28(8) or to any subsequent inquiry conducted in accordance with the provisions of this Act, shall not be applicable to and not be enforceable against any broadcasting licensee to which such determination relates for the duration of the term of the licence valid at the time such determination is made, but shall become applicable to and enforceable against such a broadcasting licensee only upon the renewal of his or her licence upon the expiration of such term. 45

Prohibition on granting of broadcasting licences to party political entities

51. No broadcasting licence shall be granted to any party, movement, organization, body or alliance which is of a party political nature. 50

Amendment of broadcasting licences

52. (1) Subject to the provisions of section 46(2), a broadcasting licence may be amended by the Authority only—

- (a) to such extent as may be necessary in the interest of orderly frequency management, provided the amendment will not cause substantial prejudice to the licensee; or
 - (b) to such extent as may be necessitated by virtue of any bilateral, multilateral or international agreement or convention relating to broadcasting to which the Republic is bound, whether as a party or otherwise; or
 - (c) if requested thereto by the broadcasting licensee, and then only if and in so far as the proposed amendment—
 - (i) does not militate against orderly frequency management;
 - (ii) will not prejudice any other broadcasting licensee; and
 - (iii) will not be inconsistent with the provisions of this Act or with any agreement or convention contemplated in paragraph (b).
- (2) Whenever the Authority considers amending a broadcasting licence in terms of subsection (1), it shall cause notice of the proposed amendment to be published in the *Gazette* and, in the case of an amendment contemplated in paragraph (a) or (c) of that subsection, invite interested persons to make their representations within a period of 14 days to a person specified in such notice.
- (3) When representations are lodged with the Authority in accordance with the requirements of the notice referred to in subsection (2), the provisions of subsections (5), (6), (7) and (8) of section 41 shall *mutatis mutandis* apply: Provided that in so applying the said subsections (6) and (8), the references therein to "one month" and "two months" shall be construed as a reference to "14 days".
- (4) The Authority may in its discretion hold a hearing with a view to making a decision regarding the amendment of a licence in terms of subsection (1)(a) or (c) of this section, in which event the provisions of section 42 shall *mutatis mutandis* apply.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open to public scrutiny.
- (6) After having decided to amend a broadcasting licence, the Authority shall cause such amendment to be published in the *Gazette* as soon as possible.

Imposition of specific broadcasting licence conditions regarding local television content and South African music

53. (1) For the purposes of this section—
- (a) "local television content" means a television programme (excluding transmissions of sports events and compilations thereof, advertisements, teletext and continuity announcements) which is produced—
 - (i) by a broadcasting licensee; or
 - (ii) by a person who is a citizen of and permanently resident in the Republic; or
 - (iii) by a juristic person the majority of the directors, shareholders or members of whom are citizens of and permanently resident in the Republic; or
 - (iv) in a co-production in which persons referred to in subparagraph (i), (ii) or (iii) have at least a fifty percent financial interest; or
 - (v) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed number of the key personnel who are involved in the production of the television programme, are citizens of and permanently resident in the Republic; or
 - (vi) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;
 - (b) "independent television production" means a production of local television content—
 - (i) by a person not directly or indirectly employed by any broadcasting licensee; or

- (ii) by a person who is not controlled by or is not in control of any broadcasting licensee: and
 - (c) a musical work broadcast by a broadcasting service referred to in subsection (3) shall qualify as "South African music" if such work complies with at least two of the following requirements, namely—
 - (i) if the lyrics (if any) were written by a South African citizen;
 - (ii) if the music was written by a South African citizen;
 - (iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;
 - (iv) if the musical work consists of a live performance which is—
 - (aa) recorded wholly in the Republic; or
 - (bb) performed wholly in the Republic and broadcast live in the Republic.
- (2) The Authority shall in respect of a television broadcasting licence impose and specify therein such conditions, as prescribed, regarding local television content and independent television production, which, without derogating from the generality of the foregoing, may include any condition requiring the broadcasting licensee—
- (a) annually to expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of his or her gross revenue, on programmes which have a local television content;
 - (b) to allocate a specified minimum percentage of his or her total broadcasting time to television programmes which have a local television content;
 - (c) in the case where he or she provides a subscription broadcasting service a portion of which is unencoded, to allocate a specified minimum percentage of unencoded broadcasting time to programmes which have a local television content;
 - (d) in the case where he or she has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes which have been produced in the relevant region or locality; and
 - (e) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b), (c) or (d), whichever is applicable, to a prescribed diversity of television programmes which are independent television productions.
- (3) The Authority shall, in relation to a broadcasting service which devotes a significant proportion of its broadcasting time to broadcasting music, prescribe a condition whereby the licensee is required to broadcast a specified minimum percentage of musical works which qualify as South African music.
- (4) In prescribing any amount or percentage referred to in subsection (2) or (3), the Authority may prescribe the application thereof with regard to—
- (a) any of the categories of broadcasting licences referred to in section 40(1);
 - (b) defined viewing and listening times, where applicable;
 - (c) various categories of television programmes, where applicable; and
 - (d) the period within which the broadcasting licensee shall comply with the provisions of this section.
- (5) Notwithstanding the provisions of section 46(2) or (3), any person who by such section is deemed to be the holder of a broadcasting licence referred to in section 40(1)(a)(ii) or (b)(ii), shall be subject to any regulations made under section 78 for the purpose of prescribing conditions capable of being imposed in terms of subsection (2) or (3) of this section (whichever is applicable), and shall on demand submit to the Authority his or her licence with a view to having conditions specified thereon in accordance with the provisions of such regulations.
- (6) A condition imposed in terms of subsection (2) in respect of any television broadcasting licence shall become binding on and enforceable against the licensee concerned on the expiration of a reasonable period, not shorter than 18 months, as shall in each case be determined by the Authority and specified on the relevant licence.

(7) With a view to exercising its powers in terms of subsections (2), (3) and (4), the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28.

Terms of broadcasting licences

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54. The term of validity of a broadcasting licence—

- (a) in the case of a public and a private television broadcasting licence, shall be eight years;
- (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, shall be four years.

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whereafter such licence shall, subject to the provisions of this Chapter, be renewable for like periods.

Record of programmes broadcast by broadcasting licensees

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55. (1) A broadcasting licensee shall—

- (a) retain, for a period of not less than 30 days, a recording of every programme broadcast in the course of his or her broadcasting service;
- (b) on demand of the Broadcasting Monitoring and Complaints Committee, produce to it any such recording for examination or reproduction;
- (c) on demand of the Broadcasting Monitoring and Complaints Committee, produce to it any script or transcript of a programme after the broadcast thereof.

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(2) Nothing in this Act shall be construed as requiring or authorizing the Authority or the Broadcasting Monitoring and Complaints Committee in the performance of its functions and duties, to view programmes prior to their being broadcast.

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CHAPTER VII

Broadcasting programmes

Code of Conduct for Broadcasting Services

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56. (1) Subject to the provisions of subsection (2), all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 1.

(2) The provisions of subsection (1) shall not apply to any broadcasting licensee if he or she is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, and provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

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Control over advertisements

57. (1) All broadcasting licensees shall adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa.

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(2) The Broadcasting Monitoring and Complaints Committee shall adjudicate complaints concerning alleged breaches of the Code by broadcasting licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with the provisions of Chapter VIII.

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(3) Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority, is found to have breached the Code, such broadcasting licensee shall be dealt with in accordance with the applicable provisions of Chapter VIII.

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Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

58. A party election broadcast and a political advertisement shall not be broadcast on any broadcasting service except during an election period and then only if and to the extent authorized by the provisions of sections 59 and 60. 5

Broadcasting of party election broadcasts on sound broadcasting services during election period

59. (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorized representative. 10

(2) The Authority shall determine the time to be made available to political parties for the purposes of subsection (1), including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question. 15

(3) The Authority shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination in terms of subsection (2).

(4) In making any determination in terms of subsection (2), the Authority may impose such conditions on a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably. 20

(5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast. 25

(6) A party election broadcast shall conform to a technical quality acceptable to the Authority.

(7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

(8) A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall *mutatis mutandis* apply. 30

Political advertising on sound broadcasting services during election period

60. (1) A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity. 35

(2) A sound broadcasting licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorized representative.

(3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice. 40

(4) A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast. 45

(5) A political advertisement shall conform to a technical quality acceptable to the Authority.

(6) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

(7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election. 50

Equitable treatment of political parties by broadcasting licensees during election period

61. (1) If, during an election period, the coverage of any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably. 5

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such party a reasonable opportunity to respond to the criticism. 10

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee intends broadcasting a programme in which a particular political party is criticized, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter. 15

(4) The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 59 and any political advertisement in the circumstances contemplated in section 60. 20

CHAPTER VIII**Enforcement****Broadcasting Monitoring and Complaints Committee**

62. (1) Subject to the provisions of sections 56 and 57, the Broadcasting Monitoring and Complaints Committee shall— 25

- (a) monitor compliance by broadcasting licensees or their adherence to—
 - (i) the terms, conditions and obligations of their broadcasting licences;
 - (ii) the Code of Conduct for Broadcasting Services as set out in Schedule 1 to this Act;
 - (iii) the Code of Advertising Practice contemplated in subsection (1) of section 57; 30

(b) monitor compliance by broadcasting licensees with the provisions of sections 58, 59, 60 and 61;

(c) monitor compliance by broadcasting signal distribution licensees with the terms, conditions and obligations of their broadcasting signal distribution licences and with any requirement relating to such a licensee or licence as imposed by Chapter V or any regulation in terms of section 78; and 35

(d) monitor compliance by licensees with any other material provisions of this Act relevant to them or their respective licences. 40

(2) In exercising its powers in terms of subsection (1)(a)(i), (c) or (d) in relation to technical matters, the Broadcasting Monitoring and Complaints Committee shall be assisted by the Broadcasting Technical Committee.

(3) The Broadcasting Monitoring and Complaints Committee shall, in accordance with the provisions of section 63, inquire into and adjudicate any alleged or suspected non-compliance or non-adherence contemplated in subsection (1). 45

Hearings held by Broadcasting Monitoring and Complaints Committee

63. (1) An interested person who has reason to believe that a licensee is guilty of any non-compliance or non-adherence of the nature contemplated in section 62(1), may in connection therewith lodge a complaint with the Broadcasting 50

Monitoring and Complaints Committee within 30 days after the occurrence of the alleged or suspected non-compliance or non-adherence.

(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 complaint may be delivered by hand or sent by registered post, fax or telex.

(4) The Broadcasting Monitoring and Complaints Committee shall as soon as may be reasonably practicable, having regard to the urgency of the matter, investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make representations and to be heard in relation thereto.

(5) The Broadcasting Monitoring and Complaints Committee shall determine the form and procedure as regards the adjudication of any complaint.

(6) The complainant and the respondent shall be entitled to legal representation at any hearing held by the Broadcasting Monitoring and Complaints Committee for the purpose of adjudicating a complaint.

(7) (a) After having considered the complaint and the representations (if any) and evidence in regard thereto, the Broadcasting Monitoring and Complaints Committee shall make its finding as regards the alleged or suspected non-compliance or non-adherence.

(b) Any finding in terms of paragraph (a) shall be published in such manner as the Broadcasting Monitoring and Complaints Committee may in its discretion determine.

(8) Hearings held in terms of this section shall be open to the public.

(9) (a) The Broadcasting Monitoring and Complaints Committee shall keep a record of all complaints received by it and of all its proceedings, rulings and findings in relation thereto.

(b) The records referred to in paragraph (a) shall be kept at the offices of the Authority and be open to inspection by interested parties during the normal office hours of the Authority.

(c) The Authority shall at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in paragraph (a).

(10) With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and material, the Broadcasting Monitoring and Complaints Committee shall have such powers as may be prescribed.

(11) The provisions of subsections (5), (6), (7), (8), (9) and (10) shall *mutatis mutandis* apply in relation to any investigation instituted *mero motu* by the Broadcasting Monitoring and Complaints Committee with regard to any suspected non-compliance or non-adherence of the nature contemplated in section 62(1).

Recommendations of Broadcasting Monitoring and Complaints Committee

64. (1) Upon having made a finding, in terms of subsection (7) of section 63, that any complaint adjudicated by it in terms of that section is justified, the Broadcasting Monitoring and Complaints Committee shall in writing make recommendations to the Authority as to which of the steps provided for in paragraphs (a) to (g), inclusive, of subsection (1) of section 66 should be taken against the licensee in relation to whom such finding was made, and forward its finding and such recommendations, together with the record of the adjudication proceedings, to the Authority for appropriate action in terms of section 66.

(2) The Broadcasting Monitoring and Complaints Committee shall, when forwarding its recommendations to the Authority in terms of subsection (1), simultaneously by written notice addressed to the licensee referred to in that subsection, inform him or her accordingly.

Powers of Broadcasting Monitoring and Complaints Committee regarding findings made by Advertising Standards Authority of South Africa

65. (1) Where the Advertising Standards Authority of South Africa has adjudicated any complaint against a broadcasting licensee who is a member thereof, that body shall forward a certified copy of the record of such adjudication and of its finding to the Broadcasting Monitoring and Complaints Committee. 5

(2) A finding forwarded to the Broadcasting Monitoring and Complaints Committee as envisaged by subsection (1) shall be dealt with by that body *mutatis mutandis* in accordance with the provisions of section 64 as if such finding was a finding made by itself in terms of section 63(7). 10

Powers of Authority in cases of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993

66. (1) As soon as may be reasonably practicable after receipt of any record of adjudication and the finding and recommendations relevant thereto, as forwarded to it by the Broadcasting Monitoring and Complaints Committee in terms of section 64, or section 65 read with section 64 (as the case may be), and having duly taken into account the nature, consequences and gravity of the non-compliance or non-adherence to which such finding relates, the circumstances in which it occurred and the recommendations so received, the Authority shall make any one or more of the following orders, namely— 15 20

- (a) where such finding is founded on non-compliance by the respondent with the provisions of section 58, 59, 60 or 61, an order whereby the respondent, if he or she—
 - (i) is a sound broadcasting licensee, is required to broadcast a party election broadcast or a political advertisement (as the case may be); 25
 - (ii) is a broadcasting licensee, is required to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme, whichever is applicable; 30
- (b) directing the respondent to desist from any further non-compliance or non-adherence; 30
- (c) directing the respondent to publish such finding at his or her own cost and in the manner required by the Authority;
- (d) directing the respondent to pay, as a fine, the amount prescribed in respect of such non-compliance or non-adherence; 35
- (e) directing the respondent to take such remedial and other steps, not inconsistent with the objects and principles as enunciated in section 2, as may be determined by the Authority;
- (f) prohibiting a respondent who is a licensee from carrying on his or her broadcasting service or broadcasting signal distribution service (as the case may be) for such period as determined by the Authority, or revoking his or her licence: Provided that such a prohibition shall not endure for longer than 30 days; 40
- (g) if satisfied that the non-compliance or non-adherence to which such finding relates, constitutes an offence, an order directing such record of adjudication and the finding and recommendations of the Broadcasting Monitoring and Complaints Committee relevant thereto, to be referred to the Attorney-General with a view to instituting a criminal prosecution. 45 50

(2) An order in terms of subsection (1)(f) may be made only in circumstances where the Broadcasting Monitoring and Complaints Committee has repeatedly in terms of section 63(7) found complaints against a licensee to be justified.

(3) Where a licensee is by virtue of an order made in terms of subsection (1)(f), temporarily prohibited from carrying on his or her service, the Authority may order that, for the duration of the period of such prohibition— 55

- (a) any premises used or capable of being used by such licensee for the provision of his or her broadcasting service or broadcasting signal distribution service (as the case may be) and any transmitters, apparatus and other equipment used or capable of being used for that purpose, be sealed;
- (b) any transmitters, apparatus and other equipment so used or capable of being so used, be seized and retained for such period.
- (4) (a) Failure by a licensee to comply with an order made in terms of subsection (1), shall be deemed to constitute non-compliance of the nature contemplated in subsection (1)(d) of section 62, entitling the Broadcasting Monitoring and Complaints Committee, in relation thereto, to act in terms of subsection (3) of that section.
- (b) The provisions of paragraph (a) may be invoked against the person contemplated therein, irrespective of whether or not such person is being prosecuted for or has been convicted of any offence referred to in section 67(2)(c) or (d).
- (5) Where the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, after finalization of any adjudication proceedings in terms of section 23 of that Act—
- (a) has found a broadcasting licensee, have contravened the provisions of that Act;
- (b) has made an order in terms of section 24(1)(c) of that Act; and
- (c) has forwarded a certified copy of the said order and of the record of the adjudication proceedings relating thereto to the Authority in accordance with the provisions of section 24(2) of that Act,
- the Authority may, in relation to such broadcasting licensee, make an order contemplated in subsection (1)(f) of this section as if such order were made pursuant to a finding of the Broadcasting Monitoring and Complaints Committee in terms of section 63(7) of this Act.
- (6) An order in terms of subsection (1)(a), (c), (d), (e) or (f), or in terms of subsection (5) read with subsection (1)(f), as the case may be, shall not be made in any particular case unless the rules of natural justice have been observed.

Offences and penalties

67. (1) If a councillor fails to disclose any interest as required by section 11(2) or, subject to the provisions of that section, if he or she is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings thereat, such councillor shall be guilty of an offence and liable on conviction to a maximum fine of R100 000.
- (2) Any person who—
- (a) in applying for a licence in terms of this Act or for the renewal, amendment or transfer of such a licence, in his or her application furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or who wilfully fails to disclose any information or particulars material to his or her application;
- (b) contravenes the provisions of section 32, 39, 71 or 74;
- (c) fails to comply with any order made by the Authority in terms of section 66(1)(a), (b), (c), (d) or (e), or contravenes the provisions of section 75;
- (d) acts in disregard of any prohibition imposed by order of the Authority in terms of section 66(1)(f);
- (e) fails to produce any licence issued to him or her under this Act on the demand of any authorized person, or who hinders or obstructs any authorized person in the exercise or performance by the latter of his or her powers, functions or duties in terms of this Act,
- shall be guilty of an offence and liable on conviction—

- (i) in the case of an offence contemplated in paragraph (a) of this section, to a maximum fine of R250 000;
 - (ii) in the case of a contravention of section 32 or 39, to a maximum fine of R500 000;
 - (iii) in the case of a contravention of section 71(1) or 74, and in the case of an offence contemplated in paragraph (d) of this subsection, to a maximum fine of R100 000;
 - (iv) in the case of an offence contemplated in paragraph (c) of this subsection, to a maximum fine of R50 000;
 - (v) in the case of the offences contemplated in paragraph (e) of this subsection, and in the case of a contravention of section 71(2), to a maximum fine of R15 000.
- (3) (a) Any person who, without the written authorization of the Authority, breaks any seal contemplated in section 66(3)(a), shall be guilty of an offence and liable on conviction to a maximum fine of R250 000.
- (b) The court convicting a person of any offence referred to in paragraph (a) of this subsection may, in addition to any fine which it may impose in terms of that paragraph, declare any transmitters, apparatus and other equipment referred to in section 66(3) and any article, object or thing by means of which such offence was committed, to be forfeited to the Authority: Provided that no such declaration shall be so made upon proof to the satisfaction of the court that such transmitter, apparatus, equipment, article, object or thing is not the property of the person so convicted and that, as regards such article, object or thing, the owner thereof was unable to prevent it from being used as a means to commit such offence.

CHAPTER IX

General provisions

Minutes of Council and its committees

68. (1) The Authority and each of its committees shall cause minutes to be prepared and kept of the proceedings of every meeting of the Council and such a committee, respectively, and cause copies of such minutes to be circulated to all councillors or members of such a committee (as the case may be).
- (2) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Authority or such a committee by the person presiding thereat, shall, in the absence of proof of error therein, be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Authority or such committee (as the case may be) and the matters they purport to minute.

Delegations

69. (1) Subject to the provisions of subsection (4), the Council may in writing—
- (a) delegate to any councillor or any of its committees or to the chief administrative officer any power, function or duty conferred or imposed upon the Authority by or in terms of this Act: Provided that a power, function or duty so delegated to the chief administrative officer may be exercised or performed by any other staff member of the Authority specially authorized thereto except where the terms of such delegation precludes such officer from doing so; and
 - (b) authorize a standing committee or a special committee to exercise or perform any power, function or duty assigned to the Authority by or in terms of this Act.
- (2) Any delegation or authorization under subsection (1) may be made subject to such conditions and restrictions as the Council may determine, and may at any time be amended or revoked by the Council.

(3) The Council shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision made in terms of such a delegation.

(4) The power to grant, renew, amend or transfer any licence, and the powers contemplated in sections 16, 18, 21, 23, 26, 56(2), 59, 60, 61, 66 and 78 and in this section, shall not be delegated under this section. 5

Register of licences

70. (1) The Authority shall keep a register in which it shall record all licences granted in terms of this Act as well as any amendments to or transfers of such licences. 10

(2) The register referred to in subsection (1) shall be open to inspection by interested persons during the normal office hours of the Authority.

(3) The Authority shall at the request of any interested person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any part of the said register. 15

Records to be kept by licensees

71. (1) A licensee which is a company shall inform the Authority in writing of any change in the control of that company.

(2) A broadcasting signal distribution licensee and a broadcasting licensee shall keep such particulars and statistics relating to its broadcasting signal distribution activities or broadcasting activities (as the case may be) as may be prescribed. 20

Authority may demand production of licensees' books, records, etc.

72. The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at a time and place specified in the notice, such documents, accounts, estimates, returns and other records and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by or in terms of this Act or the regulations, or by the relevant licence. 25

Powers of authorized persons

73. An authorized person may at any reasonable time and without prior notice enter into or onto any premises and— 30

- (a) inspect, and make copies of or extracts from, specified books of account or other records of the licensee in order to determine whether the licensee is in compliance with the terms, conditions and obligations of his or her licence and with the provisions of this Act, or for any other purpose connected with the achievement of the objects of this Act; 35
- (b) where a broadcasting service or broadcasting signal distribution service is conducted in or on such premises, demand the production of the necessary broadcasting licence;
- (c) inspect any licence issued to any person under this Act; 40
- (d) inspect the studio, plant, transmitters, apparatus and other equipment used by any person for the purposes of or in connection with broadcasting or broadcasting signal distribution, as the case may be;
- (e) inspect anything referred to in paragraph (d) which is in the possession of or used by, or suspected of being in the possession of or being used by, any person in contravention of this Act. 45

Transfer of licences

74. (1) A licence issued under this Act shall not be transferred—

- (a) unless the broadcasting service or broadcasting signal distribution service to which the relevant licence relates, as the case may be, is transferred together with such licence to the same transferee; and 50

(b) without the prior written permission of the Authority.

(2) (a) The provisions of sections 41 and 42 governing the procedure applicable in relation to applications for and the granting of broadcasting licences, shall *mutatis mutandis* apply in relation to applications for the transfer of broadcasting licences and the granting of permission for such transfers. 5

(b) Subject to the provisions of subsection (1), the procedure applicable in respect of applications for the transfer of broadcasting signal distribution licences and the granting of permission for such transfers, shall be as prescribed.

Restriction on use of name or description implying connection with Authority

75. No person shall apply to any venture, undertaking, business, company or other association or body (whether corporate or incorporate) a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body, of the one part, and the Authority, of the other. 10

Limitation of liability

76. Neither the chairperson, any councillor or any member of a committee of the Council, nor any expert appointed in terms of this Act or any member of the staff of the Authority, shall be personally liable for any damage or loss suffered by any person in consequence of any act or thing which in good faith was performed or done or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act. 20

Confidentiality

77. Every councillor, every member of any committee of the Council and any member of the staff of the Authority shall aid in preserving secrecy and shall not disclose any information in regard to any matter which may come to his or her knowledge in the actual or supposed exercise or performance on behalf of the Authority of any of its powers, functions or duties in terms of this Act or in performing any work arising from the functioning or functions of the Authority in terms of this Act, or by virtue of the office held by him or her, except— 25

- (a) in so far as the provisions of this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter; 30
- (b) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act; or 35
- (c) on the order of a competent court of law.

Regulations

78. (1) The Council may make regulations, not inconsistent with the provisions of this Act, in relation to—

- (a) any technical matter necessary or expedient for the regulation of broadcasting activities and the possession and use of transmitters, apparatus and other equipment, including any standards, specifications and prohibitions relevant thereto; 40
- (b) conferring any additional powers on authorized persons, and the procedures to be followed by such persons; 45
- (c) any matter which in terms of this Act shall or may be prescribed or governed or determined by regulation; and

(d) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act.

(2) A regulation in terms of subsection (1) may declare any contravention thereof or failure to comply therewith to be an offence, and may in respect thereof provide for the imposition of a fine not exceeding R10 000.

(3) When proposing to make any regulation in relation to any matter, other than a matter referred to in subsection (1)(d), the procedure contemplated in subsections (2) to (6) of section 28 shall be followed by the Authority.

Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic

79. If the Government of the Republic and the government of any state or territory which was previously part of the Republic agree thereto and a law of such state or territory provides therefor—

(a) the Authority may exercise and perform in respect of persons and matters in the said state or territory all such powers, functions and duties as it may in terms of this Act exercise and perform in respect of persons and matters in the Republic; and

(b) the provisions of this Act shall for the purposes of paragraph (a) be deemed to apply *mutatis mutandis* in such state or territory.

Application of Act in event of conflict with other laws

80. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail.

Liquidation

81. The Authority shall not be placed in liquidation except under the authority of and in accordance with an Act of Parliament specially adopted for that purpose.

This Act binding on State and State President

82. This Act shall bind the State, and shall bind the State President in so far as he or she is required by this Act to act on the advice of the Transitional Executive Council or the National Assembly.

Short title and commencement

83. (1) (a) This Act shall be called the Independent Broadcasting Authority Act, 1993, and shall, subject to the provisions of paragraph (b), come into operation on a date to be determined by the Transitional Executive Council, which date shall be made known by the State President by proclamation in the *Gazette*.

(b) Sections 49(6) and 50(3) shall come into operation on 1 January 1996.

(2) Different dates may under subsection (1)(a) be determined in respect of different provisions of this Act.

Schedule 1

CODE OF CONDUCT FOR BROADCASTING SERVICES

(Section 56)

Preamble

1. The fundamental principle to be upheld, is that the freedom of all broadcasting licensees is indivisible from and subject to the same restraints as those relevant to the individual person, and is founded on the individual's fundamental right to be informed and to freely receive and disseminate opinions.

General

2. Broadcasting licensees shall—

- (a) not broadcast any material which is indecent or obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;
- (b) not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity;
- (c) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

News

3. (1) Broadcasting licensees shall be obliged to report news truthfully, accurately and objectively.

(2) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by—

- (a) distortion, exaggeration or misrepresentation;
- (b) material omissions; or
- (c) summarization.

(3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it shall be presented in such manner as to indicate clearly that such is the case.

(4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.

(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.

(6) Reports, photographs or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity, due regard being had to the prevailing moral climate. In particular, broadcasting licensees shall avoid the broadcasting of obscene and lascivious matter.

(7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

Comment

4. (1) Broadcasting licensees shall be entitled to comment on and criticize any actions or events of public importance.

(2) Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

(3) Comment shall be an honest expression of opinion.

Controversial issues of public importance

5. (1) In presenting a programme in which controversial issues of public importance are discussed, a broadcasting licensee shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and in substantially the same time slot.

(2) A person whose views have been criticized in a broadcasting programme on a controversial issue of public importance, shall be given a reasonable opportunity by the broadcasting licensee to reply to such criticism, should that person so request.

Elections

6. During any election period, the provisions of sections 58, 59, 60 and 61 of this Act shall apply, and all broadcasting services shall in terms of those sections be subject to the jurisdiction of the Authority.

Privacy

7. In so far as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

Paying a criminal for information

8. No payment shall be made to persons involved in crime or other notorious behaviour, or to persons who have been engaged in crime or other notorious behaviour, in order to obtain information concerning any such behaviour, unless compelling societal interests indicate the contrary.

Schedule 2

INSTANCES OF CONTROL OF PRIVATE BROADCASTING LICENSEES,
NEWSPAPERS AND COMPANIES

Control of a private broadcasting licensee

1. (1) For the purposes of this Act, a person shall control or be in a position to exercise control over any existing or prospective private broadcasting licensee if, *inter alia*—
- (a) such person, either alone or together with an associate, is in a position to exercise control over such broadcasting licensee;
 - (b) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over the selection or provision of a significant proportion of the programmes broadcast or proposed to be broadcast by such broadcasting licensee;
 - (c) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over a significant proportion of the operations of such a broadcasting licensee in providing a broadcasting service under the broadcasting licence;
 - (d) such person, either alone or together with an associate, is in a position—
 - (i) where the licensee or prospective licensee is a company, to veto any action taken by the board of directors of such licensee or to appoint or secure or veto the appointment of at least half of the board of directors of such licensee; or
 - (ii) to give or exercise in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the broadcasting licensee; or
 - (e) the existing or prospective broadcasting licensee or, where such a licensee is a company, more than fifty percent of the directors of such company—
 - (i) acts or is accustomed to act; or
 - (ii) under a contract, arrangement or understanding (whether formal or informal) is destined, required or expected to act,
 in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his or her associate acting together or, if such person is a company, the directors of the latter company.
- (2) Subparagraph (1)(b) shall not apply in relation to the provision of programmes by a person to a broadcasting licensee under any agreement if the conditions of such agreement relate only to the programmes so provided or to the promotion thereof.
- (3) An employee of a broadcasting licensee shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such licensee merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.
- (4) More than one person may be in a position to exercise control over a licensee.

Control of a newspaper

2. (1) For the purposes of this Act, a person shall control or be in a position to exercise control over a newspaper if—
- (a) such person is the publisher of the newspaper;
 - (b) such person is in a position, either alone or together with an associate, and either directly or indirectly—
 - (i) to exercise control over a significant proportion of the operations of the publisher in publishing the newspaper; or
 - (ii) to exercise control over the selection or provision of a significant proportion of the material to be published in the newspaper;
 - (c) where the newspaper is published by a company, the person, either alone or together with an associate, is in a position—
 - (i) to exercise control over such company;
 - (ii) to veto any action taken by the board of directors of such company;
 - (iii) to appoint or secure or veto the appointment of at least one half of the board of directors of such company; or
 - (iv) to give or exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management of the affairs of such company; or
 - (d) where the newspaper is published by a company, the company or more than fifty percent of its directors—
 - (i) acts or is accustomed to act; or
 - (ii) under a contract or an arrangement (whether formal or informal) is destined, required or expected to act,
 in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his or her associate acting together or, if such person is a company, the directors of the latter company.
- (2) Subparagraph (1)(b)(ii) shall not apply in relation to the provision of material by a person to a newspaper under any agreement for the supply of material of that kind if the conditions of such agreement relate only to the material so provided.
- (3) An employee of the publisher of a newspaper shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such newspaper merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.

Deemed control of a company

3. Without derogating from the provisions of any law or from the common law, and in the absence of proof to the contrary, a person shall be regarded as being in control of, or being in a position to exercise control over, a company if he or she has equity shareholding in the company exceeding twenty-five percent or has other financial interests therein equal to at least twenty-five percent of its net assets.

Schedule 3

CONTINUATION OF EXISTING PENSION RIGHTS OF STAFF MEMBERS OF AUTHORITY
UPON ASSUMING EMPLOYMENT

1. Any staff member of the Authority who, immediately prior to assuming employment with the Authority, was a member of the Government Service Pension Fund, the Temporary Employees Pension Fund, any other pension fund or scheme administered by the Department of Finance or the pension funds established by section 9 of the Post Office Act, 1958 (Act No. 44 of 1958), hereinafter referred to as an officer or employee, may upon assuming such employment—

- (a) choose to remain a member of any such pension fund, and from the date of exercising such a choice, such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be a dormant member of the relevant pension fund within the contemplation of section 15(1)(a) of the General Pensions Act, 1979 (Act No. 29 of 1979); or
- (b) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), as if the Authority had under section 4 of the last-mentioned Act been declared to be an associated institution; or
- (c) request to become a member of any other pension fund registered as such under the Pension Funds Act, 1956 (Act No. 24 of 1956).

2. In the case where an officer or employee becomes a member of a fund in accordance with a request in terms of paragraph 1(b) or (c)—

- (a) the pension fund of which the officer or employee was a member (hereinafter referred to as the former fund) shall transfer to the pension fund of which he or she becomes a member (hereinafter referred to as the new fund) an amount equal to the funding level of the former fund multiplied by the actuarial liability of that fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee with the Authority, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement of employment up to the date of transfer of the amount;
- (b) his or her membership of the former fund shall lapse as from the date of the commencement of his or her employment with the Authority, and thereafter he or she shall cease to have any further claim against the former fund except as provided in subparagraph (a); and
- (c) the former fund shall transfer any claim it may have against such officer or employee to the new fund.

3. In the case where an officer or employee becomes a member of a new fund pursuant to a request in terms of paragraph 1(c) the State shall pay to such new fund an amount equal to the difference between the actuarial liability of the former fund in respect of such an officer or employee as on the date of the commencement of his or her employment with the Authority, and the amount transferred in terms of paragraph 2(c) to the new fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement of employment up to the date of the transfer of the amount.

4. The provisions of paragraphs 2 and 3 shall *mutatis mutandis* apply in respect of any officer or employee who, by virtue of a choice in terms of paragraph 1(a), has become a dormant member and thereafter requests that his or her accrued pension benefits be transferred in terms of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a pension fund registered in terms of the Pension Funds Act, 1956.

5. Where, in the case of any officer or employee referred to in paragraph 1 who pursuant to a request in terms of subparagraph (c) of that paragraph has become a member of any other pension fund, any lump sum benefit has become payable by such pension fund in consequence of the death of such officer or employee or on his or her withdrawal or resignation from such pension fund or his or her retirement, or on the winding-up of such pension fund, such pension fund shall for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed, in relation to such officer or employee, to be a fund referred to in paragraph (a) of the definition of "pension fund" in the said section 1.

6. For the purpose of this Schedule—

"actuarial liability" of a pension fund in respect of a particular member or a group of members of such a fund, means such actuarial liability as determined by an actuary nominated for that purpose by the Minister;

"funding level of a pension fund" means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the responsible Minister of State; and

"prime rate" means the average amount prime rate of the three largest banks in the Republic.

Schedule 4

DETERMINATION BY LOT FOR PURPOSES OF SECTION 6(2)(c)

1. Upon having appointed the six additional councillors in terms of section 6 of this Act, the appointing body shall forthwith proceed, in an open and transparent manner, to determine by lot, as required by subsection (2)(c) of that section, which three of such six additional councillors shall vacate their offices upon the expiration of two years after their appointment, for which purpose that appointing body shall designate from its own number the person who shall conduct the lot (hereinafter referred to as the designated person).

2. The designated person shall thereupon ensure that the name of each one of the six additional councillors is written on a separate piece of paper of equal size and identical shape and colour.

3. The designated person shall thereafter display the six pieces of paper contemplated in paragraph 2 to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper. The designated person shall thereafter fold every such piece of paper in such a manner that the name thereon is not visible, and place all such pieces of paper in an empty container.

4. The designated person shall thereupon appoint an impartial person (hereinafter referred to as the drawer) to draw three pieces of paper from the said container.

5. The designated person shall thereafter shake the container in such a manner as to thoroughly mix the pieces of paper therein, and shall hold such container in such a position that the drawer is unable to see the pieces of paper inside.

6. The drawer shall thereafter draw three pieces of paper from such container and hand them to the designated person without unfolding any of them.

7. The designated person shall then unfold each of the three pieces of paper handed to him or her as contemplated in paragraph 6, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

8. The three persons whose names have been so drawn, shall vacate their offices as councillors two years after the date of their appointment as such.

**BREAKDOWN OF THE INDEPENDENT
BROADCASTING AUTHORITY BILL AS ADOPTED
BY THE
NEGOTIATING COUNCIL**

INDEPENDENT BROADCASTING AUTHORITY BILL

The Negotiating Council adopted the Independent Broadcasting Authority Bill by *general consensus* on Thursday 2 September, 1993.

CLAUSE	DESCRIPTION	STATUS
Clause 1	Definitions	Agreed general consensus
Clause 2	Primary objects of the Act	Agreed general consensus
Clause 3	Establishment of Independent Broadcasting Authority	Agreed general consensus
Clause 4	Constitution of Council	Agreed general consensus
Clause 5	Persons disqualified from being councillors	Agreed general consensus
Clause 6	Terms of office of councillors	Agreed general consensus
Clause 7	Remuneration and allowances of councillors	Agreed general consensus
Clause 8	Removal from office	No comment/ Agreed
Clause 9	Vacancies in Council	No comment/ Agreed
Clause 10	Meetings of Council	No comment/ Agreed
Clause 11	Disclosure of conflicting interests	No comment/ Agreed
Clause 12	Proceedings of Council not	

IBA/PLENARY
17 NOVEMBER 1993

	invalid in certain circumstances	No comment/ Agreed
Clause 13	General powers of Authority	Agreed general consensus
Clause 14	Staff of Authority	No comment/ Agreed
Clause 15	Financing of Authority	No comment/ Agreed
Clause 16	Raising of loans by Authority	Agreed general consensus
Clause 17	Banking account	Agreed general consensus
Clause 18	Investment of surplus moneys	Agreed general consensus
Clause 19	Accounting and auditing	Agreed general consensus
Clause 20	Annual report	Agreed general consensus
Clause 21	Establishment of standing committees of Council	No comment/ Agreed
Clause 22	Constitution of standing committees	No comment/ Agreed
Clause 23	Establishment and constitution of special committees of Council, including regional broadcasting committees	Agreed general consensus
Clause 24	Powers, functions and duties of committees	No comment/ Agreed
Clause 25	Meetings of committees	No comment/ Agreed

Clause 26	Remuneration and allowances of committee members	Agreed general consensus
Clause 27	Appointment of experts	No comment/ Agreed
Clause 28	Inquiries by Authority	Agreed general consensus
Clause 29	Authority principally vested with powers in relation to administration, management, planning and use of broadcasting services frequency bands	Agreed general consensus
Clause 30	Broadcasting Technical Committee	Agreed general consensus
Clause 31	Frequency plan	No comment/ Agreed
Clause 32	Prohibition of broadcasting signal distribution without licence	Agreed general consensus
Clause 33	Granting of broadcasting signal distribution licences	Agreed general consensus
Clause 34	Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences	Agreed general consensus
Clause 35	Transmitters and transmission characteristics to be approved by Authority	Agreed general consensus
Clause 36	General obligations of broadcasting signal distribution licensees	Agreed general consensus

IBA/PLENARY
17 NOVEMBER 1993

Clause 37	Obligations of common carriers regarding provision of broadcasting signal distribution	Agreed general consensus
Clause 38	Terms of broadcasting signal distribution licences	Agreed general consensus
Clause 39	Prohibition on provision of broadcasting service without broadcasting licence	No comment/ Agreed
Clause 40	Categories of broadcasting licences	Agreed general consensus
Clause 41	Application procedure in relation to broadcasting licences	Agreed general consensus
Clause 42	Hearings in relation to applications for broadcasting licences	Agreed general consensus
Clause 43	Entitlements under and conditions pertaining to broadcasting licences	Agreed general consensus
Clause 44	Renewal of broadcasting licences	No comment/ Agreed
Clause 45	Public broadcasting licences	Agreed general consensus
Clause 46	Private broadcasting licences	Agreed general consensus
Clause 47	Community broadcasting licences	No comment/ Agreed
Clause 48	Limitations on foreign control of private broadcasting services	Agreed general consensus

IBA/PLENARY
17 NOVEMBER 1993

Clause 49	Limitations on control of private broadcasting services	Agreed general consensus
Clause 50	Limitations on cross-media control of private broadcasting services	Agreed general consensus
Clause 51	Prohibition on granting of broadcasting licences to party political entities	Agreed general consensus
Clause 52	Amendment of broadcasting licences	No comment/ Agreed
Clause 53	Imposition of specific broadcasting licence conditions regarding local television content and South African music	Agreed general consensus
Clause 54	Terms of broadcasting licences	No comment/ Agreed
Clause 55	Record of programmes broadcast by broadcasting licensees	No comment/ Agreed
Clause 56	Code of Conduct for Broadcasting Services	Agreed general consensus
Clause 57	Control of advertisements	No comment/ Agreed
Clause 58	Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances	Agreed general consensus
Clause 59	Broadcasting of party election broadcasts on sound broadcasting services during election period	Agreed general consensus

IBA/PLENARY
17 NOVEMBER 1993

Clause 60	Political advertising on sound broadcasting services during election period	Agreed general consensus
Clause 61	Equitable treatment of political parties by broadcasting licensees during election period	Agreed general consensus
Clause 62	Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 63	Hearings by Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 64	Recommendations of Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 65	Powers of Broadcasting Monitoring and Complaints Committee regarding findings made by Advertising Standards Authority of South Africa	Agreed general consensus
Clause 66	Powers of Authority in places of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993	Agreed general consensus
Clause 67	Offences and penalties	Agreed general consensus
Clause 68	Minutes of Council and committees	Agreed general consensus
Clause 69	Delegations	
Clause 70	Register of licences	Agreed general consensus

IBA/PLENARY
17 NOVEMBER 1993

Clause 71	Records to be kept by licensees	No comment/ Agreed
Clause 72	Authority may demand production of licensees' books, records, etc.	No comment/ Agreed
Clause 73	Powers of authorised persons	No comment/ Agreed
Clause 74	Transfer of licences	No comment/ Agreed
Clause 75	Restriction on use of name or description implying connection with the Authority	No comment/ Agreed
Clause 76	Limitation of liability	No comment/ Agreed
Clause 77	Confidentiality	Agreed general consensus
Clause 78	Regulations	Agreed general consensus
Clause 79	Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic	Agreed general consensus
Clause 80	Application of Act in event of conflict with other laws	No comment/ Agreed
Clause 81	Liquidation	No comment/ Agreed
Clause 82	This Act binding on State and State President	Agreed general consensus

The Independent Broadcasting Authority Bill was adopted by Parliament in September 1993.

**EMBARGOED UNTIL DELIVERY/TABLING IN THE
NEGOTIATING COUNCIL**

**FOURTH REPORT OF THE TECHNICAL COMMITTEE
ON INDEPENDENT MEDIA COMMISSION AND
INDEPENDENT TELECOMMUNICATIONS AUTHORITY**

11 JUNE 1993

1. The Technical Committee has received submissions concerning the Independent Broadcasting/Telecommunications Authority from the following parties:

Bophuthatswana Government

Conservative Party

Democratic Party

Inkatha Freedom Party

Kwa-Zulu Government

Pan African Congress

South African Government

Venda Government

The Committee is in the process of giving its urgent attention to these submissions.

2. Although the Committee has made substantial progress on a Draft Independent Broadcasting Authority Bill, certain critical issues, some of which are of a extremely complex nature, still have to be resolved. Furthermore, additional input is required from a range of experts on certain of these issues.

In these circumstances the Committee is of the view that it would be premature to introduce the Draft, as it presently stands, for debate by the Negotiating Council.

3. The contents of this Bill and the Independent Media Commission Bill are of

EMBARGOED UNTIL DELIVERY/TABLING IN THE NEGOTIATING COUNCIL

importance not only to the political parties, but also to existing broadcasters, possible new entrants to broadcasting, the media industry and the public at large.

Therefore the Committee strongly recommends that when the Bill is presented by this Committee to the Negotiating Council, both it and the Independent Media Commission Bill should at the same time be published for comment.

This is an additional reason why the Committee feels that it is inappropriate to publish the Draft Independent Broadcasting Authority Bill at this point, since it could cause unnecessary controversy.

4. Notwithstanding the foregoing, the Committee is of the view that the Independent Media Commission Bill should be debated by the Negotiating Council as a matter of urgency, in order that this piece of legislation can be finalised.

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