

(2) The councillors shall be -

- (a) persons who are citizens of and permanently resident in the Republic;
and
- (b) when viewed collectively, persons who are suited to serve on the Council by virtue of their qualifications, expertise and experience in the fields of, *inter alia*, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education; and
- (c) 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 persons holding public office; and
- (d) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (e) persons who are committed to the objects and principles as enunciated in section 2.

5. Persons disqualified from being members of the Council

- (1) A person shall not be appointed or remain as a member of the Council if such person -
 - (a) holds an office of profit under the State, subject to the provisions of section 21 (3);
 - (b) is a member of Parliament or any SPR legislature which derives its authority from the law of the Constitution at the relevant time, or any local authority;

- (c) is an office-bearer or employee of any political party;
 - (d) directly or indirectly, whether personally or through his or her spouse, partner, or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
 - (e) holds an office in or, is employed by, any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (d);
 - (f) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
 - (g) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (h) has, after the commencement of this Act, been convicted, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
 - (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any other offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine; or
 - (j) is or has been convicted of an offence under this Act.
- (2) Notwithstanding the provisions of paragraph (a), (b), (c), (d) or (e) of subsection (1), a person shall be eligible for appointment to the Council if such person resigns from office or divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

6. Terms of office of Councillors

- (1) The chairperson shall hold office for a period of five years as from the date of his or her appointment.
- (2)
 - (a) Subject to the provisions of paragraph (c) of this subsection, the additional councillors shall hold office for a period of four years as from the date of their appointment.
 - (b) One half of the total number of additional councillors shall vacate their offices every two years.
 - (c) For the purposes of paragraph (b), such three of the six additional councillors appointed in the first Council constituted after the commencement of this Act as shall be designated by the appointing body for that purpose, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three remaining councillors shall vacate their offices on a date two years later.
- (3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office.
- (4) A councillor shall upon expiration of his or her term of office be eligible for re-appointment.

7. Remuneration, allowances and pensions ⁴

Councillors shall be paid such remuneration and allowances from the funds of the Authority as the Minister, in consultation with the Minister of State Expenditure, may determine.

8. Vacancies in Council

(1) There shall be a vacancy in the Council -

- (a) if a councillor becomes subject to a disqualification referred to in section 5;
- (b) when a councillor's written resignation in terms of section 6(3) takes effect; or
- (c) if a councillor is removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office.

(2) A vacancy in the Council shall be filled by the appointment of another councillor by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

⁴ The Negotiating Council requested that the relationship of the IBA to the transitional structures such as subcouncils of the TEC should be clarified i.e., mechanisms for consultation with such transitional structures should be provided for whenever "the Minister" is mentioned. The Technical Committee is of view that this important point will be more effectively dealt with once the legislation on the TEC has been finalised.

9. Meetings of the Council

- (1) The meetings of the Council shall be held at such times and places as may be determined by resolution of the Council whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) In the absence of the chairperson, the remaining councillors shall elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.
- (3) The chairperson, may at any time, in his or her discretion convene a special meeting of the Council, which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall upon having been presented with a requisition for that purpose signed by at least two councillors, call for a special meeting, and if the chairperson fails to convene a special meeting within seven days as from such presentation, such two councillors may, upon the expiry of such seven days, convene the special meeting.
- (4) The quorum for any meeting of the Council shall be a majority of the total number of councillors.
- (5) A decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council, and, in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

10. Disclosure of Conflicting Interest

- (1) If at any stage during the course of any proceedings before the Council it appears that any councillor has or may have an interest which may cause a

conflict of interest to arise on his or her part -

- (a) such councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining councillors to discuss the matter and determine whether such councillor is precluded from participating in such meeting by reason of a conflict of interest; and
 - (b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the meeting in question.
- (2) If any councillor fails to disclose any interest as required by subsection (1), the proceedings of the Council shall be null and void and such councillor shall be guilty of an offence and shall be liable on conviction to a maximum fine of R100 000.

11. Proceedings of Council not invalid in certain circumstances

Subject to the provisions of section 10, a decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a councillor or a vacancy in the Council or the fact that any person not entitled to sit as a councillor sat as such at the time when such decision was taken, provided such decision was taken by a majority of councillors present at the time and entitled to so sit.

12. General or Ancillary Powers of the Authority ⁵

The Authority, in exercising its powers and performing its functions, shall have the

⁵ This is by no means an exhaustive list of general or ancillary powers. The Technical Committee, together with the State Law Advisor, is still attending to this section. The Bill, in its final form, will be more comprehensive.

capacity to -

- (a) enter into agreements with any person or, with the approval of the Minister, with any government or administration, upon such conditions as the Authority and that person, government or administration may agree;
- (b) hire, purchase, possess or otherwise acquire movable and immovable property and encumber such property;
- (c) let, sell or otherwise dispose of movable or immovable property;
- (d) acquire or alienate rights in incorporeal things or otherwise dispose thereof;
- (e) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (f) borrow, lend or invest money with the written approval of the Minister, granted with the concurrence of the Minister of State Expenditure; and
- (g) make donations.

13. Staff of the Authority

- (1) (a) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purposes of assisting the Council, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the implementation of this Act.

- (b) The chief administrative officer shall be the accounting officer for the Authority.
- (2) The Council shall appoint such other staff for the Authority as it deems necessary with a view to assisting the Authority with all such work as may arise through the exercise and performance of its powers, functions and duties.
- (3) The Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market for the manpower concerned.
- (4) The pension rights of officers and employees shall be in accordance with the provisions as set out in Schedule 2 of the Act.

14. Financing of Authority ⁶

- (1) The Authority shall be financed and provided with operational capital from -
 - (a) such moneys as may on the commencement of this Act from public funds be allocated to the Authority by the Minister, in concurrence with the Minister of State Expenditure, which the Minister so acting is hereby empowered to do;
 - (b) such moneys as are from time to time appropriated to the Authority by Parliament;
 - (c) fees and other moneys payable to the Authority in terms of this Act in

⁶ This section will, in its final form, include a subsection on annual estimates of revenue and expenditure.

respect of licences;

- (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 17;
 - (e) loans raised by the Authority in terms of section 15; and
 - (f) fines and penalties payable in terms of this Act on account of the breach of licence conditions or on account of any contraventions of this Act.
- (2) The Authority shall utilise its funds for defraying expenses in connection with the exercise and performance of its powers, functions and duties.

15. Loans raised by the Authority ⁷

16. Banking Account

17. Investments

18. Accounting and auditing

- (1) The financial year of the Authority shall commence on the first day of April in any year and end on the last day of March first following, both days inclusive.
- (2) The accounting officer shall -

⁷ Sections 15, 16 and 17 will be finalised by the Technical Committee in conjunction with the State Law Adviser.

- (a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of the Authority; and
 - (b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (1), prepare annual financial statements reflecting, with suitable particulars, moneys received and expenses incurred by the Authority during, and its assets and liabilities as at the end of, the financial year concerned.
- (3) The records and annual financial statements referred to in subsection (2) shall be audited by the Auditor-General.
- (4) The financial statements referred to in subsection (2), shall -
- (a) be in conformity with generally accepted accounting practices;
 - (b) fairly reflect the state of affairs and functions of the Authority and the results thereof; and
 - (c) refer to any relevant matters not specifically prescribed by this Act which affect or are likely to affect the affairs of the Authority.

19. Annual report

- (1) The Council shall within three months after the end of each financial year or such longer period as the Auditor-General may determine, submit to the Minister an annual report on the Authority's affairs and functions in respect of that financial year, which shall, *inter alia*, include -
 - (a) an audited balance sheet, including any notes thereon or a document

annexed thereto providing information required by this Act;

- (b) an audited income statement, including any similar financial statement, where such form is appropriate, and including any notes thereon or a document annexed thereto providing the information required by this Act;
 - (c) an audited statement of the source and application of funds;
 - (d) information regarding licences granted, renewed, amended, suspended, revoked or transferred; and
 - (e) such information as may be prescribed by regulation.
- (2) As soon as may be reasonably practicable after a receipt of a report in terms of subsection (1), the Minister shall table it in Parliament.

CHAPTER 4

COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

20. Standing Committees of Council

- (1) The Council shall establish and appoint the following standing committees, namely -
 - (a) the Broadcasting Technical Committee; and
 - (b) the Broadcasting Monitoring and Complaints Committee.
- (2) The Council may establish and appoint such other standing committees for such purposes as it may deem necessary for the effective exercise and performance of its powers, functions and duties, and may at any time extend, limit or dissolve any such committee.

21. Constitution of Standing Committees

- (1) Each standing committee shall consist of -
 - (a) at least one councillor designated by the Council; and
 - (b) two or four additional members as the Council may determine from time to time.
- (2) The additional members shall be persons -
 - (a) who are not subject to any disqualification referred to in section 5; and
 - (b) who, on account of their expertise, experience, fairness and general

acceptability, are suited to serve on a committee.

- (3) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge or a retired judge of the Supreme Court of South Africa or a practising advocate or attorney of at least ten years standing. In the case of any other standing committee, the chairperson shall be the councillor concerned.

22. Establishment, Appointment and Constitution of Special Committees

- (1) The Council may establish and appoint such special committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an ad hoc basis.
- (2) The provisions of section 21 (1) and (2) shall apply *mutatis mutandis* in relation to any committee established under subsection (1) of this section.
- (3) The Council shall from its number designate a chairperson for such committee.

23. Powers, functions and duties of committees

A committee shall, with due regard to the objects and principles as enunciated in section 2, exercise and perform such powers, functions and duties as may -

- (a) be conferred and imposed upon the committee by or under this Act;
- (b) be delegated to the committee by the Council.

24. Meetings of committees

- (1) The meetings of a committee (including any special meetings) shall be convened by the chairperson, who shall determine the procedure at any such meeting.
- (2) The provisions of section 9 (2),(4), and (5), shall **mutatis mutandis** apply as regards the meetings of any committee.

25. Appointment of experts

- (1) The Council may appoint as many experts as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any appointment in terms of subsection (1) and the work to be performed or service to be rendered by virtue of such appointment shall be in accordance with a written agreement entered into between the Council and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Council for its consideration.
- (4) The Council, on receipt of the report referred to in sub-section (3), may refer the matter back to the expert -
 - (a) for such further attention as may be determined by the Council; or
 - (b) to perform such further functions as the Council may deem necessary or desirable.

26. Inquiries by the Authority ⁸

- (1) The Authority may at any stage conduct an inquiry into any matter relevant to -
 - (a) the achievement of the objects and principles as enunciated in section 2;
 - (b) the exercise and performance of its powers, functions and duties in terms of this Act;
 - (c) regulations proposed or made in terms of section 70.
- (2) The Authority shall make known its intention to conduct an inquiry known by the publication in the **Gazette** of a notice to that effect.
- (3) The notice referred to in subsection (2) shall indicate the subject matter of the inquiry and shall invite interested parties to -
 - (a) submit written representations; and
 - (b) indicate whether or not they require an opportunity to make oral representations to the Authority,within a period prescribed in the notice.
- (4) The Authority shall advise parties referred to subsection (3)(b) of the place and time when oral representations may be made.

⁸ The procedures relevant to inquiries have not been finalised in this draft. The Technical Committee is attending to the matter.

- (5) The presentation of oral representations referred to in subsection (3)(b) shall be held in public and all documents submitted by interested parties shall be open for public scrutiny.
- (6) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any new broadcasting licences are granted in terms of section 38, conduct a single inquiry, in terms of this section, into -
- (a) the matters referred in section 39(1);
 - (b) the matters referred to in section 44(2); and
 - (c) the various matters referred to in section 48(5).

CHAPTER 5

BROADCASTING FREQUENCY SPECTRUM

27. Assignment of the broadcasting services frequency bands

- (1) The Postmaster General shall assign all his or her powers, functions, duties and responsibilities regarding the broadcasting services frequency bands to the Authority, which shall regulate such frequency bands in accordance with the provisions of this Act.
- (2) In regulating the frequency bands referred to in subsection (1), the Authority shall comply with the applicable standards issued by the International Telecommunications Union in its current Radio Regulations or Broadcasting Plans, as agreed to and adopted by the Republic.

28. Broadcasting Technical Committee

The Broadcasting Technical Committee shall be responsible for the management of the broadcasting services frequency bands, the determination of signal standards to be used in Republic and the technical planning functions of the Authority.

29. Frequency plan

- (1) The Authority shall prepare a frequency plan whereby the maximum number of channels available for broadcasting services are determined and shall cause such plan to be published in the **Gazette**.
- (2) The Authority shall annually review the frequency plan referred to in subsection (1) and cause any amendment to such plan to be published in the **Gazette**.

(3) In preparing a frequency plan, the Authority shall -

- (a) have due regard to the reports of experts in the field and internationally-accepted methods for preparing such plans;
- (b) reserve frequencies on all bands for the different categories of broadcasting licences referred to in section 38(1); and
- (c) take into account the existing frequencies used by broadcasting services.

and cause its determinations to be published in the Gazette for comment

(4) The Authority shall keep a record of and make available for public inspection all comments received and all determinations made by the Authority in performing its functions in terms of this section.

CHAPTER 6

BROADCASTING SIGNAL DISTRIBUTION LICENCES

30. Prohibition on the provision of broadcasting signal distribution without a licence

Subject to the provisions of section 31(2), no person shall provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority.

31. Granting of broadcasting signal distribution licence

(1) A broadcasting signal distribution licence -

(a) may be granted to -

(i) a person operating as a common carrier for broadcasting signal distribution;

(ii) a broadcasting licensee who chooses to fulfil, wholly or partly, the signal distribution process itself;

(b) shall, subject to the objects and principles as enunciated in section 2, and to the provisions of this chapter, be granted to any person who satisfies the requirements of subsection (2) and has applied for such licence in accordance with the provisions of that subsection.

(2) Notwithstanding the provisions of section 30, any person who, immediately prior to the date of commencement of this Act is engaged in broadcasting signal distribution in a manner not inconsistent with the provisions of this Act, shall, for a period of 12 months as from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in

subparagraph (i) or (ii) of subsection (1)(a), if such person within such period applies to the Authority for a broadcasting signal distribution licence.

- (3) A licence granted to a person under paragraph (b) of subsection (1), shall assume the format of either of the licencees mentioned in subparagraphs (i) and (ii) of paragraph (a) of that subsection and shall, subject to the provisions of this Act, confer no greater rights, privileges or empowerments and impose no stricter duties, conditions, obligations or responsibilities on such person than those with which he or she was vested or to which he or she was subject immediately prior to such date of commencement.

32. Criteria and procedures for granting and renewal of broadcasting signal distribution licences

The criteria and procedures in relation to any application for the granting, issuing and renewal of any broadcasting signal distribution licence shall be as prescribed.

33. Conditions of broadcasting signal distribution licence

A broadcasting signal distribution licensee shall -

- (a) comply with the provisions of this Act and the Authority's frequency plan;
- (b) not provide broadcasting signal distribution services to broadcasting services not licensed by the Authority;
- (c) take due cognisance of the environmental impact of its activities and comply with the applicable Acts;⁹

⁹ This matter is under further consideration

34. Term of broadcasting signal distribution licence

- (1) The term of a licence allocated to a person referred to in section 31(1)(a) shall be a maximum of 15 years.
- (2) The term of a licence allocated to a person referred to in section 31(1)(b) shall be concurrent with the term of such person's broadcasting licence.

whereafter such licence shall, subject to the provisions of this chapter, be renewable for a like period.

35. General provisions on broadcasting signal distribution licences ¹⁰

The provisions of sections 47, 50, 51 and 52 shall *mutatis mutandis* apply in relation to broadcasting signal distribution licences.

36. Obligations of common carrier regarding provision of service and resolution of disputes ¹¹

¹⁰ This matter is under further consideration.

¹¹ This section is still being finalised by the Technical Committee and will deal with -

- (a) the obligation of a common carrier signal distribution licensee to provide signal distribution services to broadcasting licensees; and
- (b) The resolution of disputes re quality of services, tariffs and any other relevant matters

CHAPTER 7

BROADCASTING LICENCES

37. Prohibition on the provision of a broadcasting service without a broadcasting licence

A person shall not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority.

38. Granting and renewal of broadcasting licences

(1) Subject to the provisions of this Act, the Authority may on such conditions as it may in any case determine, issue an applicant with a broadcasting licence to provide within a specified licence area -

(a) a sound broadcasting service in one or more of the following categories:

(i) A public sound broadcasting service.

(ii) A private sound broadcasting service.

(iii) A community sound broadcasting service.

(iv) Any other category of sound broadcasting service the Authority may wish to identify;

(b) a television broadcasting service in one or more of the following categories of services:

- (i) A public television broadcasting service.
 - (ii) A private television broadcasting service.
 - (iii) A community television broadcasting service.
 - (iv) Any other category of television broadcasting service the Authority may wish to identify.
- (2) (a) When the Authority intends inviting applications for a broadcasting licence, it shall cause a notice to that effect to be published in the Gazette.
- (b) Such notice shall state -
- (i) where applicable, the licence category and technical parameters of the proposed broadcasting licence; and
 - (ii) the period within which an application has to be lodged; and
 - (iii) the prescribed application fee payable on application.
- (c) Every application which is made pursuant to such notice shall be made in such form as may be prescribed, and shall be accompanied by -
- (i) the prescribed application fee;
 - (ii) the applicant's proposals in relation to the nature and licence area of the service; and
 - (iii) such other information as the Authority may deem necessary in order to properly consider the application.

- (d) All applications to the Authority which are made other than pursuant to a notice referred to in paragraph (a), shall comply with the requirements referred to in paragraph (c).
 - (e) On receipt of an application for a licence, the chairperson shall give notice of the application in the **Gazette**.
 - (f) Any person shall be entitled, within fourteen days after publication of such notice, to lodge written representations in relation to the application for the relevant broadcasting licence, with the Authority.
- (3) The Authority shall -
- (a) before considering any application for a broadcasting licence, by notice in the **Gazette**, make known the place where and the time at which it will hold a hearing concerning the application;
 - (b) afford all applicants and persons who made submissions in terms of subsection (2)(f) an opportunity to be heard;
 - (c) allow any of the parties referred to in paragraph (b) of this subsection to be assisted and represented by a person appointed by such parties;
 - (d) give reasons for its decision regarding the application.
- (4) The proceedings referred to in subsection (3) shall be recorded in the prescribed manner.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (6) Upon having reached a decision on any application, the Authority shall, by

notice in the **Gazette** and by written notice addressed to the applicant, make known the outcome thereof.

- (7) A broadcasting licensee shall commence with the licensed broadcasting service within a period determined by the Authority, or within any extended period granted by the Authority on good cause shown, failing which such licence shall lapse.
- (8) An application for the renewal of a broadcasting licence may be made to the Authority by the broadcasting licensee not earlier than six months, and not later than thirty days, before the date on which it would otherwise expire.
- (9) The Authority shall not require any applicant for the renewal of a broadcasting licence to file any information which previously had been furnished to the Authority, or which is not directly material to the considerations that affect the granting or denial of such application, but the Authority may require any new or additional facts it deems necessary.
- (10) Pending any final decision on an application for the renewal of a broadcasting licence, such a licence shall continue to be of force and effect.
- (11) The Authority, shall refuse an application for the renewal of a broadcasting licence only if the licensee has failed to materially comply with the licence conditions or the provisions of this Act during the term of the existing licence and if the Authority is satisfied that the applicant would not, if his licence were renewed, so comply.
- (12) Subsections (2), (3), (4), (5) and (6) of section 38 shall **mutatis mutandis** apply to an application for the renewal of a broadcasting licence.
- (13) The Authority may levy such fees as it deems fit in relation to the issuing of any licence under this Act and may, for that purpose, prescribe different fees

in respect of different categories or sub-categories of licences: Provided that such fee shall not constitute payment in consideration for the granting of the licence.

39. Public broadcasting licences

- (1) As soon as possible after the commencement of this Act, the Authority shall conduct an inquiry in terms of section 26 into the protection and viability of public broadcasting services in the Republic, with particular reference to the financing, control and accountability of such services, and at the conclusion thereof the Authority shall submit in writing its findings and recommendations to the Minister, who shall table the same in Parliament within 14 days.
- (2) In the event of the Authority proposing 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* apply the following criteria, namely -
 - (a) the demand for the proposed broadcasting service within the proposed licence area;
 - (b) the need for the proposed broadcasting service within such area, having due regard to broadcasting services already existing therein; and
 - (c) the technical quality of the service having due regard to developments in broadcasting technology.
- (3) Upon the commencement of this Act, all public broadcasting services shall be deemed to have been licensed in terms of this section in respect of the same services as were provided immediately prior to the commencement of this Act, and such licences shall accordingly in all respects be subject to the provisions

of this Act.¹²

40. Private broadcasting licences

- (1) In considering an application for a private broadcasting licence, the Authority shall, with due regard to the objects and principles enunciated in section 2, *inter alia* take into account -
- (a) the demand for the proposed broadcasting service within the proposed licence area;
 - (b) the need for the proposed broadcasting service within such licence area, having due regard to the broadcasting services already existing therein;
 - (c) the expected technical quality of the proposed broadcasting service, having due regard to developments in broadcasting technology;
 - (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 its top management structure;

¹² This section is a mere indication of what is proposed in principle. The finalisation of this section and the applicability of this Act to public broadcasting services in the TBVC states, is dependent upon agreement being reached as to the reincorporation of those territories back into South Africa and the time frames relevant thereto. It is envisaged by the Technical Committee that all the relevant public broadcasting services presently operated in South Africa and the TBVC states by public (state) broadcasters, shall be listed in a separate Schedule to this Act and that they be deemed by the Act to have been licensed thereunder.

- (g) the applicant's record and the record of each person referred to in paragraph (f), in situations requiring trust and candour;
 - (h) whether the applicant is precluded by or in terms of section 42, 43, 44 or 45 from holding a broadcasting licence;
 - (i) whether the applicant or a person referred to in paragraph (f) has been convicted of an offence in terms of this Act.
- (2) Upon the commencement of this Act, all private broadcasting services which were licensed immediately prior to the commencement of this Act shall be deemed to have been licensed in terms of this Act and such licences shall accordingly in all respects be subject to the provisions of this Act ¹³.

41. Community broadcasting licences

- (1) In considering an 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;
 - (b) whether the applicant has the support of the relevant community to provide the proposed broadcasting service; ¹⁴
 - (c) whether the applicant proposes to cater for the interests of the relevant

¹³ The remarks under the previous footnote in relation to public broadcasting services in the TBVC states are *mutatis mutandis* applicable in relation to those private broadcasters licensed in terms of the laws of the TBVC states.

¹⁴ It was suggested at the Negotiating Council debate that the Technical Committee should consider how the relevant applicant's support would be tested. The Technical Committee is now proposing that a mechanism to ascertain "support" should be prescribed by the Council by regulation in order to ensure the application of a uniform standard/test.

community; and

- (d) whether the applicant proposes to encourage members of the relevant community to participate in the operations of the broadcasting service and in providing the service and selecting and providing the programmes thereunder.

- (2) Subsections (2) (a), (b), (d), (h) and (i) of section 40 shall **mutatis mutandis** apply to a community broadcasting licence.

42. Limitations on foreign control of private broadcasting services ¹⁵

- (1) One or more foreign person shall not, whether directly or indirectly -
 - (a) exercise control over a private broadcasting licensee.
 - (b) have financial interests in a private broadcasting licensee exceeding 20% in total.
- (2) Not more than 20% of the directors of a private broadcasting licensee may be foreign persons.

43. Limitations on the control over private broadcasting services ¹⁶

- (1) No person shall -

¹⁵ The provisions of sections 42, 43 and 44 and Schedule 4 of this Act relating to control over private broadcasting services, are to a great extent directed against such control being exercised by companies or conglomerations/groups of companies, necessitating a thorough investigation of modern company structures and phenomena and the various provisions of the Companies Act, 1973 (Act No 61 of 1973), relevant thereto. Due to the complexity of this area, the Technical Committee has not completed its research and its investigations in this regard are continuing.

¹⁶ The Committee has resolved the issue as contained in footnote 11 of the 4th Draft by the insertion of subsection (6). The Committee will return to this section once the definition of control is finalised.

- (a) directly or indirectly exercise control over more than one private television broadcasting licence;
 - (b) be a director of a company which is, or of two or more companies which are, between them, 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 another company which is in a position to exercise control of another private television broadcasting licence.
- (2) No person shall -
- (a) be in a position to exercise control over more than two private FM sound broadcasting licences;
 - (b) be a director of a company which is, or of two or more companies which are, between them, 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 another company which is in a position to exercise control over any private FM sound broadcasting licence.
- (3) No person referred to in subsection (2) shall be in a position to control two private FM sound broadcasting licences which have the same or overlapping licence areas.
- (4) No person shall:

- (a) be in a position to exercise control of more than two private AM sound broadcasting licences; or
 - (b) be a director of a company that is, or of two or more companies that are, between them, in a position to exercise control of more than two private AM sound broadcasting licences; or
 - (c) be in a position to exercise control of two private AM sound broadcasting licences, and a director of another company that is in a position to exercise control of other private AM sound broadcasting licences; or
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences which have the same or overlapping licence areas.
- (6) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purposes of advancing the objects and principles as enunciated in section 2, make recommendations to the Minister regarding the amendment of any of the preceding subsections, which recommendations shall be tabled in Parliament within 14 days.

44. Limitations on cross-media control of private broadcasting services ¹⁷

- (1) Cross-media control of broadcasting services shall be subject to such limitations as shall be prescribed from time to time.

¹⁷ The Technical Committee has resolved the issue as contained in footnote 12 of the 4th draft by providing for a public inquiry into the matter. This section is also still subject to the same considerations as noted under footnote 15. However, the Technical Committee envisages cross-media control, in relation to the control of a broadcasting service, to embrace inter alia, the capacity of the owner or person in control of a newspaper or newspapers to exercise effective control, whether directly or indirectly, over the operations of the broadcasting service concerned.

- (2) When considering or proposing the exercise of its powers in terms of subsection (1), the Authority shall conduct an inquiry, in terms of the provisions of section 26, and shall, in doing so, *inter alia* have regard to -

- (a) the various categories of newspapers according to extent of publication, extent of circulation and circulation figures, and any other category pertaining to existing and future control of the various newspapers in the Republic;
- (b) the maximum percentage of equity and voting interests which may be held in any private broadcast licensee by a person who controls a newspaper or any number or group of newspapers and any international precedents in that regard; and
- (c) any other matter which the Authority considers relevant.

45. Prohibition on the granting of broadcasting licences to political parties¹⁸

- (1) No political party, and no organisation or group of persons which has as its object, or as one of its objects, whether expressed or otherwise, the nomination of candidates for election, shall be granted a broadcasting licence.
- (2) No political party, and no organisation or group of persons which has as its object, or as one of its objects, whether expressed or otherwise, the influencing of public opinion to support or to oppose a political party or organisation or group referred to in subsection (1) shall be granted a broadcasting licence.

¹⁸ The Technical Committee has taken cognisance of all the submissions on this section. However, this section can only be re-drafted once the definition of "political party" has been finalised by the Technical Committee on the IEC. It is not sufficient for the purposes of this section to only refer to political parties or organisations registered in terms of a new Electoral Act, since the aim of this section is to prohibit the granting of licences to all political parties, whether registered or not.

46. Licence conditions ¹⁹

- (1) Any licence granted or deemed to have been granted in terms of this Act may be amended in the following limited circumstances:
 - (a) In the case of a licence referred to in section 39(3) or 40(2), so as to excise therefrom any condition, obligation or other provision inconsistent with the provisions of this Act, and, in so far as may be necessary, to substitute for the condition, obligation or provision so excised any other condition, obligation or provision.
 - (b) To such extent as may be necessary in the interests of orderly frequency management, provided the amendment will not cause substantial prejudice to the licensee.
 - (c) To the extent necessitated by any international agreement relating to broadcasting, to which the Republic is a party.
- (2) Subject to the provisions of this Act, the Authority may in granting any licence impose such other conditions and obligations, appropriate to such licence, as it deems fit and consistent with the objects and principles as enunciated in section 2.
- (3) Any condition or obligation imposed in terms of subsection (2) shall be specified in the licence to which it pertains, and shall upon the issue of such licence acquire the force of law.

¹⁹ Due to time constraints, the Technical Committee was unable to include this section, which has general application to licences, under chapter 10 where it rightfully belongs. It proposes to do so in the next draft.

47. Procedure for the amendment of licences

- (1) When proposing to amend a licence, the Council shall cause notice of the proposed amendment to be given in the Gazette.
- (2) Within fourteen days after publication of such notice, any person shall be entitled to lodge written representations with the Authority, regarding the proposed amendment of the relevant licence.
- (3) The Authority shall
 - (a) When considering the amendment of a broadcasting licence, by notice in the Gazette, make known the place where and the time at which it will hold a hearing concerning the proposed amendment of the licence;
 - (b) afford all persons having who made submissions in terms of subsection (2) a reasonable opportunity to be heard at such hearing;
 - (c) allow any of the parties referred to in subsection (2) to be assisted and represented by a person appointed by such parties; and
 - (d) give reasons for its decision with regard to the amendment of a licence.
- (4) The Authority shall record the proceedings referred to in subsection (3) in the prescribed manner.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (6) Upon having decided to amend a broadcasting licence, the Authority shall