

(b) The provisions of paragraph (a) shall *mutatis mutandis* apply in respect of any member of a committee.

Delegations

28. (1) Subject to the provisions of subsection (4), the Commission may in writing—

- (a) delegate to a committee any power, function or duty conferred or imposed upon the Commission by this Act;
- (b) authorize a committee to exercise or perform any power, function or duty assigned to the Commission by this Act.

(2) Any delegation or authorization under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Commission and may at any time be amended or revoked by the Commission.

(3) The Commission 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 of a committee by virtue of a delegation under this section.

(4) The Commission shall not delegate any of the powers, functions or duties referred to in sections 15, 16, 17, 19(2) and (4), 23, 24 and 30.

Limitation of liability

29. Neither the chairperson, any commissioner or any member of a committee nor any expert appointed in terms of this Act or any member of staff of the Commission, shall be personally liable for any damage or loss suffered by any person in consequence of any act which in good faith was performed 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.

Regulations

30. (1) The Commission may make regulations, not inconsistent with the provisions of this Act, in relation to any matter which in terms of this Act shall or may be prescribed or governed by regulation.

(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.

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

31. If the Transitional Executive Council, on behalf 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 Commission 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 respect of certain private broadcasters licensed elsewhere

32. The provisions of this Act shall also apply in respect of the persons in control of the broadcasting services known as "Radio 702", "Capital Radio" and "Trinity Broadcasting Network" as if such persons were broadcasting licensees.

Application of Act in event of conflict with other laws

33. 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.

Dissolution of Commission, and cessation of Act

34. (1) The Commission shall dissolve on the date when the Independent Electoral Commission is dissolved in terms of section 9 of the Independent Electoral Commission Act, 1993, on which date this Act shall cease to have effect. 5

(2) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State, which shall to that extent for all purposes in law be deemed to be the legal successor of the Commission. 10

This Act binding on State and State President

35. (1) This Act shall bind the State.

(2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional Executive Council wherever so provided for in this Act. 15

Short title and commencement

36. This Act shall be called the Independent Media Commission Act, 1993, and shall 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*. 20

**BREAKDOWN OF THE INDEPENDENT MEDIA
COMMISSION BILL AS ADOPTED BY
THE NEGOTIATING COUNCIL**

INDEPENDENT MEDIA COMMISSION BILL

The Negotiating Council adopted the Draft Independent Media Commission Bill *by general consensus* on Tuesday 31 August, 1993.

<i>CLAUSE</i>	<i>DESCRIPTION</i>	<i>STATUS</i>
Clause 1	Definitions	Agreed general consensus
Clause 2	Establishment of Independent Media Commission	Agreed general consensus
Clause 4	Constitution of Commission and appointment of commissioners	Agreed general consensus
Clause 5	Persons qualified to be commissioners	Agreed general consensus
Clause 6	Persons disqualified from being commissioners	Agreed sufficient consensus
Clause 7	Term of office of commissioners	Agreed general consensus
Clause 8	Removal from office	Agreed general consensus
Clause 9	Vacancies in Commission	Agreed general consensus
Clause 10	Remuneration and allowances	Agreed general consensus
Clause 11	Meetings of Commission	Agreed general consensus
Clause 12	Disclosure of conflicting interests	Agreed general consensus
Clause 13	Proceedings of Commission not invalid in certain circumstances	Agreed general consensus

IMC/PLENARY
17 NOVEMBER 1993

Clause 14	Staff of Commission	Agreed general consensus
Clause 15	Establishment of committees of Commission	Agreed general consensus
Clause 16	Appointment of experts	Agreed general consensus
Clause 17	Powers and functions of Commission	Agreed general consensus
Clause 18	Prohibition on broadcasting of party election broadcasts and political advertisements	Agreed general consensus
Clause 19	Party election broadcasts on sound broadcasting services during election period	Agreed sufficient consensus The AVU, the PAC and the SACP reserved their position on sub-clause (8)
Clause 20	Political advertising on sound broadcasting services during the election period	Agreed general consensus
Clause 21	Equitable treatment of political parties by broadcasting licensees during election period	Agreed general consensus
Clause 22	State-financed publications and State information services	Agreed general consensus
Clause 23	Hearings	Agreed general consensus

IMC/PLENARY
17 NOVEMBER 1993

Clause 24	Orders and recommendations of Commission	Agreed general consensus The DP objected to the deletion of the wording "successively" in subclause (1) (c)
Clause 25	Expenditure in connection with functions of Commission	Agreed general consensus
Clause 26	Reporting responsibility of Commission	Agreed general consensus
Clause 27	Offences and penalties	Agreed general consensus
Clause 28	Delegations	Agreed general consensus
Clause 29	Limitation of liability	Agreed general consensus
Clause 30	Regulations	Agreed general consensus
Clause 31	Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic	Agreed general consensus

IMC/PLENARY
17 NOVEMBER 1993

Clause 32	Application of this Act in respect of certain private broadcasters licensed elsewhere	Agreed general consensus It was noted that the B o p h u t a t s w a n a Government had made a submission to the Technical Committee setting out the position of the Bophutatswana Government with regard to Radio 702. This did not influence the acceptance of this clause.
Clause 33	Application of Act in event of conflict with other laws	Agreed by general consensus
Clause 34	Dissolution of Commission, and cessation of Act	Agreed general consensus
Clause 35	This Act binding on State and State President	Agreed general consensus
Clause 36	Short title and commencement	Agreed general consensus

The Independent Media Commission Bill was adopted by Parliament in September 1993.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 340

CAPE TOWN, 27 OCTOBER 1993

KAAPSTAD, 27 OKTOBER 1993

No. 15185

STATE PRESIDENT'S OFFICE

No. 1877.

27 October 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 153 of 1993: Independent Broadcasting Authority Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1877.

27 Oktober 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 153 van 1993: Wet op die Onafhanklike Uitsaaioverheid, 1993.

ACT

To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish a juristic person to be known as the Independent Broadcasting Authority which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference; to provide for the representation of that Authority by and its functioning through a council, and to define the powers, functions and duties of that Authority; to provide for the devolution of powers relating to the administration, management, planning and use of the broadcasting services frequency bands to the said Authority; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 18 October 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

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CHAPTER I

Introductory provisions

Definitions	40
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1. (1) In this Act, unless inconsistent with the context—
 - (i) "apparatus" means any apparatus or equipment used or destined, designed or adapted to be used in connection with broadcasting; (ii)
 - (ii) "appointing body" means the body charged with the appointment of councillors in terms of section 4; (i)
 - (iii) "Authority" means the Independent Broadcasting Authority established by section 3; (xvii)
 - (iv) "authorized person", in relation to any power, function or duty to be exercised or performed for or on behalf of the Authority in terms of this Act, means any councillor or member of a committee of the Council or any staff member of the Authority duly authorized by the Council in terms of this Act to act for or on behalf of the Authority; (iv)

- (v) "broadcasting" means any form of unidirectional telecommunication intended for the public or sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried out by means of radio or any other means of telecommunication or any combination of the aforementioned, and "broadcast" shall be construed accordingly: (xxix) 5
- (vi) "broadcasting licence" means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act to have been so granted and issued: (xxxii) 10
- (vii) "broadcasting licensee" means the holder of a broadcasting licence: (xxxiii) 15
- (viii) "broadcasting service" means a single, defined service which consists in the broadcasting of television or sound material to the public or sections of the public or to the subscribers to such service: (xxx) 15
- (ix) "broadcasting services frequency bands" means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such assignment has been agreed to or adopted by the Republic, as well as any other additional part of the electromagnetic radio frequency spectrum determined nationally for the use of broadcasting services: (xxxi) 20
- (x) "broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any geographical broadcast target area by means of a telecommunications process, but excluding the use of facilities which operate on frequencies outside the broadcasting services frequency bands: (xxxiv) 25 30
- (xi) "broadcasting signal distribution licence" means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing signal distribution for broadcasting purposes, or deemed by this Act to have been so granted and issued: (xxxv) 30
- (xii) "broadcasting signal distribution licensee" means the holder of a broadcasting signal distribution licence: (xxxvi) 35
- (xiii) "chairperson" means the chairperson of the Council referred to in subsection (1)(a) of section 4, or, where two chairpersons have been appointed for the Council in terms of subsection (3) of that section, any one of the two persons so appointed and acting as chairperson at the relevant time, and includes any councillor acting in the stead of the chairperson in accordance with the provisions of section 10(2): (xli) 40
- (xiv) "community" includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest: (v) 45
- (xv) "community broadcasting service" means a broadcasting service which—
 - (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes; 50
 - (b) serves a particular community;
 - (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and 55
 - (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned: (vi)
- (xvi) "company" means any company and any external company, as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973), and includes any close corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984): (xlii) 60

- (xvii) "Constitution Act" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (xviii) "Council" means the council of the Authority referred to in section 3(2), as constituted in terms of section 4(1), and, in relation to the exercise or performance of any power, function or duty conferred or imposed upon the Council by this Act, includes any committee of the Council or any officer of the Authority acting under a delegation or authorization in terms of section 69; (xxii) 5
- (xix) "councillor" means any member of the Council referred to in section 4(1); (xxiii) 10
- (xx) "election" means any election for the National Assembly or any other legislature contemplated in the Constitution Act, and conducted in terms of the Electoral Act, 1993, but excludes the first election to be so held for the National Assembly and such other legislatures in respect of which the Independent Electoral Commission has been established by the Independent Electoral Commission Act, 1993, and has been vested with certain powers; (xxxviii) 15
- (xxi) "election period" means the period commencing on the day immediately following upon the last day determined under the Electoral Act, 1993, for the submission of lists of the nature contemplated in the definition of "political party" in this section, and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected in terms of that Act; (xxxix) 20
- (xxii) "financial year" means the financial year of the Authority commencing on the first day of April in any year and ending on the thirty-first day of March, first following, both days inclusive: Provided that the first financial year shall commence on the date of commencement of this Act; (iii) 25
- (xxiii) "foreign person" means— 30
- (a) a natural person who is not a South African citizen;
- (b) a company, wherever incorporated, where the natural persons who in actual fact control the company, whether directly or indirectly, are not South African citizens; or
- (c) a company, wherever incorporated, where— 35
- (i) a company referred to in paragraph (b) of this definition; or
- (ii) a natural person who is not a South African citizen and a company referred to in that paragraph, controls or control the first-mentioned company, whether directly or indirectly; (xlii) 40
- (xxiv) "licence area" means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence; (xi)
- (xxv) "licensee" means the holder of any licence granted and issued under this Act or deemed by this Act to have been so granted or so issued; (xii) 45
- (xxvi) "Minister" means the Minister charged with the administration of this Act; (xiv)
- (xxvii) "National Assembly" means the National Assembly contemplated in the Constitution Act; (xv) 50
- (xxviii) "party election broadcast" means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party; (xviii)
- (xxix) "political advertisement" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, any money or other consideration; (xix) 55
- (xxx) "political party", for the purposes of sections 59, 60 and 61, means any registered party as defined in section 1 of the Electoral Act, 1993, or any alliance of such registered parties (as the case may be), which, for the purpose of any particular election, has, before the 60

- commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution Act; (xx)
- (xxxi) "prescribed" means prescribed by regulation in terms of section 78; (xl) 5
- (xxxii) "private broadcasting service" means a broadcasting service operated for profit and controlled by a person who is not a public broadcasting licensee; (xxi)
- (xxxiii) "public broadcasting service" means—
- (a) any broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976); 10
 - (b) a broadcasting service provided by any other statutory body; or
 - (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State; 15
- and shall include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition; (xvi) 20
- (xxxiv) "radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz; (xxiv)
- (xxxv) "Republic" means the Republic of South Africa; (xxv)
- (xxxvi) "sound broadcasting service" means a broadcasting service destined to be received by a sound radio set; (x) 25
- (xxxvii) "sound radio set" means any apparatus designed or adapted to be capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or other visible signs or signals; (ix) 30
- (xxxviii) "telecommunications" means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun "telecommunication" shall be construed accordingly; (xxvi) 35
- (xxxix) "television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures; (xxviii) 40
- (xl) "television set" means any apparatus designed or adapted to be capable of receiving transmissions broadcast in the course of a television broadcasting service; (xxvii) 45
 - (xli) "this Act" includes the Schedules to this Act and any regulations made from time to time under section 78; (viii) and
 - (xlii) "Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993. (xxxvii) 50
- (2) For the purposes of this Act a person shall control, have control or be in control of or be in a position to exercise control over, a broadcasting licensee, a newspaper or a company, *inter alia* in the circumstances contemplated in paragraphs 1, 2 and 3, respectively, of Schedule 2 to this Act.

Primary objects of Act

2. The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest through the Independent Broadcasting Authority established by section 3, and for that purpose to—

- (a) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level which. 60

- when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information:
- (b) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
 - (c) ensure that broadcasting services, viewed collectively— 5
 - (i) develop and protect a national and regional identity, culture and character;
 - (ii) provide for regular—
 - (aa) news services;
 - (bb) actuality programmes on matters of public interest; 10
 - (cc) programmes on political issues of public interest; and
 - (dd) programmes on matters of international, national, regional and local significance;
 - (d) protect the integrity and viability of public broadcasting services;
 - (e) ensure that, in the provision of public broadcasting services— 15
 - (i) the needs of language, cultural and religious groups;
 - (ii) the needs of the constituent regions of the Republic and local communities; and
 - (iii) the need for educational programmes, 20
 - are duly taken into account: -
 - (f) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
 - (g) encourage equal opportunity employment practices by all licensees;
 - (h) ensure that broadcasting services are not controlled by foreign persons;
 - (i) ensure that private and community broadcasting licences, viewed 25
 - collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
 - (j) impose limitations on cross-media control of private broadcasting services;
 - (k) promote the most efficient use of the broadcasting services frequency 30
 - bands;
 - (l) ensure that public broadcasting licensees, private broadcasting licensees and signal distribution licensees comply with internationally accepted technical standards;
 - (m) ensure that broadcasting signal distribution facilities are made available 35
 - in respect of all licensed broadcasting services;
 - (n) refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;
 - (o) ensure fair competition between broadcasting licensees; 40
 - (p) promote and conduct research into broadcasting policy and technology;
 - (q) encourage investment in the broadcasting industry;
 - (r) promote the stability of the broadcasting industry;
 - (s) ensure equitable treatment of political parties by all broadcasting 45
 - licensees during any election period;
 - (t) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Independent Broadcasting Authority; and
 - (u) encourage the provision of appropriate means for disposing of com- 50
 - plaints in relation to broadcasting services and broadcasting signal distribution.

CHAPTER II

Independent Broadcasting Authority

Establishment of Independent Broadcasting Authority

3. (1) (a) There is hereby established a juristic person to be known as the Independent Broadcasting Authority, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act or by or in terms of any other law. 55

(b) Without derogating from the generality of paragraph (a), the Independent Broadcasting Authority, for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act and achieving and giving effect to the objects and principles as enunciated in section 2, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other real right or other right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act. 5 10

(2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such council shall in law be regarded as the acts of the Authority.

(3) The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the State, the government and its administration or any political party, or from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party. 15

Constitution of Council

4. (1) The membership of the Council shall consist of— 20
(a) a chairperson, subject to the provisions of subsection (3); and
(b) six other councillors,

appointed by the State President on the advice of the Transitional Executive Council or, where the Transitional Executive Council has dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, by the National Assembly in accordance with the Constitution Act and, in either case, according to the following principles, namely— 25

(i) participation by the public in the nomination process;
(ii) transparency and openness; and
(iii) the publication of a shortlist of candidates for appointment. 30
duly taking into account the objects and principles as enunciated in section 2 of this Act.

(2) Councillors shall—

(a) when viewed collectively, be 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; 35
(b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office; 40
(c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
(d) be persons who are committed to the objects and principles as enunciated in section 2. 45

(3) If the Transitional Executive Council or the National Assembly so decides, it may advise the State President to appoint two co-chairpersons in lieu of one chairperson.

Persons disqualified from being councillors

5. (1) A person shall not be appointed or remain a councillor if such person— 50
(a) is not a citizen of and not permanently resident in the Republic;
(b) at the relevant time holds, or during the preceding 12 months held, an office of profit under the State, subject to the provisions of section 22(3)(a);

- (c) at the relevant time is, or during the preceding 12 months was, a member of the Transitional Executive Council or Parliament or of any other legislature contemplated in the Constitution Act, or if he or she so is or was a member of any local authority;
 - (d) at the relevant time is, or during the preceding 12 months was, an office-bearer or employee of any party, movement, organization or body of a party political nature; 5
 - (e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industry; 10
 - (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
 - (g) is an unrehabilitated insolvent; 15
 - (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine; 20
 - (j) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted—
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992); or 25
 - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (k) has been convicted of an offence under this Act. 30
- (2) Notwithstanding the provisions of paragraph (e) or (f) of subsection (1), a person shall be eligible for appointment to the Council if such person divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.
- (3) For the purposes of subsection (1), "spouse" includes a *de facto* spouse. 35

Terms of office of councillors

6. (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. 40
- (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 to the first Council constituted after the commencement of this Act as shall be determined by lot in accordance with the provisions of Schedule 4, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three councillors remaining at that stage, shall vacate their offices on a date two years later. 45
- (3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office. 50
- (4) A councillor shall upon the expiration of his or her term of office be eligible for re-appointment.
- (5) For the purposes of this section and Schedule 4, "additional councillors" means the members of the Council referred to in section 4(1)(b). 55

Remuneration and allowances of councillors

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

Removal from office

8. (1) Notwithstanding the provisions of section 6, a councillor may be removed from office by the appointing body on account of misconduct or inability to perform the duties of his or her office efficiently, or by reason of his or her absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown.

(2) A councillor shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision to that effect by the appointing body.

Vacancies in Council

9. (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, tendered as contemplated in section 6(3), takes effect; or

(c) if a councillor is removed from office in terms of section 8.

(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.

Meetings of Council

10. (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 from their number 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 expiration 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) Subject to the provisions of subsection (4), 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 regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(6) The Council may, in its discretion, allow members of the public to attend any meeting thereof.

Disclosure of conflicting interests

11. (1) Subject to the provisions of subsection (2), a councillor shall not vote or in any other manner participate in the proceedings at any meeting of the Council nor be present at the venue where such a meeting is held, if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as councillor in a fair, unbiased and proper manner.

(2) 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 such 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 interests; and 5
- (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. 10

(3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the relevant proceedings of the Council shall be null and void. 15

Proceedings of Council not invalid in certain circumstances

12. Subject to the provisions of section 11, 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 the councillors present at the time and entitled so to sit, and the said councillors at the time constituted a quorum. 20

General powers of Authority

13. Without derogating from the generality of the provisions of section 3, the Authority may, in addition to the powers conferred upon it elsewhere in this Act or by any other law, perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to—

- (a) the achievement, pursuit, furtherance or promotion of the objects and principles as enunciated in section 2 and implementing, applying and giving effect to such principles and the provisions of this Act; 30
- (b) the exercise and performance of any of its powers, functions and duties in terms of this Act. 35

Staff of Authority

14. (1) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purpose of assisting the Council, subject to the latter's directions and control, in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act. 40

(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 in terms of this Act.

(3) Subject to the provisions of subsection (4), the Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, housing benefits, pensions and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market. 45

(4) The provisions of Schedule 3 shall apply in respect of persons who, immediately prior to assuming employment with the Authority, are members of any of the pension funds referred to in that portion of paragraph 1 of that Schedule which precedes subparagraph (a) of that paragraph. 50

Financing of Authority

15. (1) The Authority shall be financed and provided with operational capital from—

- (a) such moneys as, on the commencement of this Act, may be allocated from public funds to the Authority by the Minister with the concurrence of the Minister of State Expenditure, which allocation is hereby authorized; 5
- (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 respect of licences; 10
- (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 18;
- (e) loans raised by the Authority in terms of section 16;
- (f) fines payable in terms of this Act on account of the contravention thereof and on account of the breach of licence terms, conditions and obligations; and 15
- (g) the proceeds derived from the sale by the Authority of anything declared forfeited to it in terms of section 67(3)(b).

(2) The moneys which, in terms of subsection (1), constitute the funds of the Authority, shall in accordance with the statement of estimated income and expenditure referred to in subsection (3) as approved in terms of that subsection, be utilized for defraying expenses incurred by the Authority in connection with or arising from the exercise and performance of its powers, functions and duties in terms of this Act: Provided that any amount or portion of an amount which, by the said statement, is required to be so utilized for a particular purpose in connection with a specified matter, may be so utilized by the Authority for any other purpose in connection with that matter. 20 25

(3) (a) The Council shall in each financial year at a time determined by the Minister for that purpose, submit a statement of the Authority's estimated income and expenditure in respect of the next ensuing financial year to the Minister for his or her approval, which approval may be granted with the concurrence of the Minister of State Expenditure. 30

(b) The statement referred to in paragraph (a) shall specify as a separate item of estimated income the amount which, in respect of the financial year to which such statement relates, is to be appropriated to the Authority by Parliament within the contemplation of subsection (1)(b). 35

Raising of loans by Authority

16. (1) The Authority may, with the written consent of the Minister granted with the concurrence of the Minister of Finance, raise loans to finance expenditure which may be incurred by the Authority for the purposes of its functions and operations in terms of this Act, in such maximum amounts and subject to such terms and conditions as may be determined by the Minister so acting. 40

(2) The Minister of Finance may, on behalf of the Government of the Republic and upon such terms and conditions as he or she deems fit, guarantee the repayment of any loan raised by the Authority in accordance with the provisions of subsection (1), as well as the interest and any other charges payable in connection with such loan. 45

(3) Any agreement entered into or guarantee furnished by virtue of the provisions of subsection (2), may be signed on behalf of the Government of the Republic by the Minister of Finance or any person authorized thereto in writing by the said Minister. 50

Banking account

17. (1) The Council shall, in the name of the Authority, open and maintain with a bank registered as such in the Republic or with any other financial institution so registered and approved by the Minister of State Expenditure, an account, in which there shall be deposited, subject to the provisions of section 18, the moneys 55

received by the Authority as contemplated in section 15 and from which payments for it or on its behalf shall be made.

(2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any two members of the staff of the Authority from time to time authorized for that purpose by special resolution of the Council. 5

Investment of surplus moneys

18. The moneys of the Authority which are not immediately required for contingencies or to meet current expenditure may, upon a special resolution of the Council having been adopted for that purpose—

- (a) be invested on call or short-term fixed deposit with any bank or financial institution satisfying the requirements of section 17 (which requirements shall *mutatis mutandis* apply for the purposes of this paragraph); 10
- (b) be deposited with the Corporation for Public Deposits in an investment account in such manner and for such periods as the Minister acting with the concurrence of the Minister of State Expenditure may in writing approve. 15

Accounting and auditing

19. (1) The chief administrative officer referred to in section 14(1) shall be the accounting officer of the Authority charged with the responsibility to ensure that all moneys received and payments made on behalf of the Authority are duly accounted for. 20

(2) The accounting officer shall in respect of each financial year cause such records of account to be kept, in accordance with established accounting practice, principles and procedures, as are necessary to fairly, sufficiently and clearly reflect the revenue, expenditure and transactions of the Authority during such year and the state of its assets, liabilities and financial position and affairs at the end of such year, and to sufficiently explain such revenue, expenditure, transactions, financial position and state of affairs. 25

(3) (a) As soon as may be reasonably practicable after the end of each financial year, the accounting officer shall, in conformity with established accounting practice, principles and procedures, prepare financial statements comprising a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Authority in respect of the financial year having ended and a balance sheet showing the state of its assets, liabilities and financial position as at the end of the latter financial year. 30 35

(b) The financial statements referred to in paragraph (a), shall—

- (i) fairly reflect the transactions, state of affairs and financial position of the Authority and the operational results thereof; and
- (ii) refer to any relevant matter not specifically prescribed by this Act or in any regulation under section 78, which materially affects or is likely so to affect the affairs of the Authority, amplifying and explaining, where necessary, any figures in the financial statements. 40

(4) The Authority's record of accounts and financial statements contemplated in subsections (2) and (3), respectively, shall be audited annually by the Auditor-General. 45

Annual report

20. (1) The Council shall furnish to the Minister such information and particulars as he or she may from time to time in writing require in connection with the activities and financial position of the Authority, and shall annually, as soon as may be reasonably practicable after the end of each financial year, furnish to the Minister a report in regard to the functions, activities, affairs and financial position of the Authority in respect of such financial year. 50

- (2) Without derogating from the generality of the provisions of subsection (1), the annual report referred to in that subsection shall *inter alia* include—
- (a) an audited balance sheet, including any notes thereon and documents annexed thereto whereby relevant information is provided;
 - (b) a statement of income and expenditure contemplated in subsection (3) of section 19, duly audited in terms of subsection (4) of that section, including any notes thereon and documents annexed thereto whereby relevant information is provided;
 - (c) information regarding licences granted, renewed, amended, transferred, suspended or revoked;
 - (d) the auditor's report; and
 - (e) such other information as the Minister may from time to time by notice in the *Gazette* determine, which he or she is hereby empowered to do.
- (3) An annual report submitted in terms of subsection (1) 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.

CHAPTER III

Committees, appointment of experts, and inquiries

Establishment of standing committees of Council

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

Constitution of standing committees

22. (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 of the disqualifications of the nature contemplated in section 5; and
 - (b) who, on account of their expertise, qualifications and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.
- (3) (a) 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, a practising advocate or attorney of at least 10 years' standing or a magistrate with at least 10 years' appropriate experience.
- (b) In the case of any other standing committee, the chairperson shall be the councillor concerned.

Establishment and constitution of special committees of Council, including regional broadcasting committees

23. (1) The Council may establish such special committees as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an *ad hoc* basis.
- (2) The Council may, if deemed necessary, establish regional broadcasting committees after consultation with the executive of any constituent region of the Republic contemplated in the Constitution Act, for such purposes as the Council may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties in the region in question.

(3) The provisions of section 22(1) and (2) shall apply *mutatis mutandis* in relation to any committee established under subsection (1) or (2) of this section.

(4) The Council shall from its number designate a chairperson for any such committee.

(5) The Council may at any time extend, limit or dissolve any such committee. 5

Powers, functions and duties of committees

24. 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: 10
- (b) be delegated to the committee by the Council.

Meetings of committees

25. (1) The meetings of a committee (including any special meeting) shall be convened by the chairperson, who shall determine the procedure at any such meeting.

(2) The provisions of section 10(2), (4) and (5), shall *mutatis mutandis* apply as regards the meetings of any committee. 15

Remuneration and allowances of committee members

26. (1) The members of any committee who are not councillors or members of staff of the Authority, shall be paid such remuneration and allowances as the Council may from time to time determine, subject to the approval of the Minister granted with the concurrence of the Minister of State Expenditure. 20

(2) For the purposes of subsection (1), the Council may differentiate between members of the various committees and between the chairperson and the other members of the same committee. 25

Appointment of experts

27. (1) The Council may, as and when in its opinion the circumstances so require, appoint as many experts as may be deemed necessary, including experts from other countries, with a view to assisting the Council in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom. 30

(2) The terms, conditions, remuneration and allowances applicable in respect of any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be as determined in a written agreement entered into for that purpose between the Council and the expert concerned. 35

(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 subsection (3), may refer the matter back to the expert— 40

- (a) for such further attention as may be determined by the Council;
- (b) to perform such further functions as the Council may deem necessary or desirable.

Inquiries by Authority

28. (1) The Authority may from time to time conduct an inquiry into any matter relevant to—

- (a) the achievement of the objects and application of the principles as enunciated in section 2;
- (b) the exercise and performance of its powers, functions and duties in terms of this Act; and 50
- (c) regulations proposed or made in terms of section 78.

(2) The Authority shall make known its intention to conduct such an inquiry 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 invite interested parties to—

(a) submit written representations; and

(b) indicate whether they require an opportunity to make oral representations to the Authority.

within the period specified in the notice.

(4) Written representations made pursuant to a notice referred to in subsection (2) shall be open to inspection by interested parties during the normal office hours of the Authority.

(5) 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 the representations contemplated in subsection (4).

(6) The Authority shall advise parties referred to in subsection (3)(b) of the place where and time when oral representations may be made.

(7) Oral representations referred to in subsection (3)(b) shall be made in public.

(8) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and as a matter of urgency, conduct a simultaneous inquiry in terms of this section into—

(a) the matters referred to in section 45(1);

(b) the matters referred to in section 50(1); and

(c) the matters contemplated in section 53(7).

(9) An application for a broadcasting licence shall not be considered nor shall any such licence be granted until such time as the matters contemplated in paragraphs (a), (b) and (c) of subsection (8) have all been duly disposed of in accordance with the respective applicable provisions of this Act pursuant to the findings and, where applicable, the recommendations of the Authority following the conclusion of the inquiry contemplated in that subsection.

CHAPTER IV

Control of the broadcasting frequency spectrum

Authority principally vested with powers in relation to administration, management, planning and use of broadcasting services frequency bands

29. (1) Notwithstanding any provisions of the Radio Act, 1952 (Act No. 3 of 1952), or of any other relevant law to the contrary, all powers, functions and duties in relation to the administration, management, planning and use of the broadcasting services frequency bands, shall as from the date of commencement of this Act devolve upon the Authority, subject to the provisions of subsection (4).

(2) In administering, managing, planning and granting permission to use the broadcasting services frequency bands devolving upon the Authority in terms of subsection (1), the Authority shall comply with the applicable standards and requirements of the International Telecommunications Union as reflected in its current Radio Regulations, as agreed to or adopted by the Republic, and shall give its co-operation with a view to enabling the Postmaster General to meet the obligations of the Republic to the International Telecommunications Union as and when necessary.

(3) The Authority shall, in exercising its powers, functions and duties in terms of subsections (1) and (2), ensure that in the use of the broadcasting services frequency bands interference does not exceed acceptable interference levels.

(4) (a) The Authority may, if requested thereto in writing by the Postmaster General, make any of the broadcasting services frequency bands available to the Postmaster General for use by telecommunications users in terms of the Radio Act, 1952, which request shall not be unreasonably refused.

(b) Where, pursuant to any request contemplated in paragraph (a), the Authority has made any broadcasting services frequency bands available for use

by telecommunications users, the administration, management, planning and control over the use of those broadcasting services frequency bands shall cease to vest in the Authority.

(c) Frequencies within the broadcasting services frequency bands which, on 1 September 1993, are used by telecommunications users under valid licences issued for that purpose by the Postmaster General in terms of any law, shall be deemed to have been made available to the Postmaster General in terms of paragraph (b). 5

(5) Notwithstanding any other provisions contained in this Act, the Authority is obliged to honour present and future commitments of the Republic in terms of international agreements in respect of radio and telecommunications matters, with particular reference to the Convention of the International Telecommunications Union (ITU) as well as the main and operating agreements of the International Telecommunication Satellite Organisation (INTELSAT). 10

Broadcasting Technical Committee 15

30. The Broadcasting Technical Committee shall be responsible for—

- (a) the administration, management and planning of the broadcasting services frequency bands in accordance with bilateral, multilateral or international regulation agreed to or adopted by the Republic, and with the provisions of this Act; 20
- (b) the examination of all technical matters relevant to licence applications in order to determine the technical eligibility of applicants for licences;
- (c) the approval of technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;
- (d) the inspection of the plant, installations, transmitters and other apparatus used or to be used by any licensee or prospective licensee; 25
- (e) all the monitoring and investigative functions of the Authority with regard to contraventions of sections 32 and 39;
- (f) assisting the Broadcasting Monitoring and Complaints Committee in the circumstances contemplated in section 62(2); 30
- (g) giving effect to the provisions of section 29(2) and (3);
- (h) assisting the Postmaster General as regards matters relating to broadcasting, in preparing for international conferences convened by the International Telecommunications Union, and for that purpose attending such conferences and, where applicable, implementing any decisions adopted at such conferences in relation to broadcasting; 35
- (i) consultation with the bodies which, in neighbouring states, are charged with responsibility in respect of broadcasting in such states, subject to the directions of the Authority (if any);
- (j) the performance of all other technical functions of the Authority, subject to the directions of the Authority (if any). 40

Frequency plan

31. (1) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any application for a new broadcasting licence is considered in terms thereof, prepare a frequency plan whereby the maximum number of frequencies available for broadcasting services is determined. 45

- (2) In preparing a frequency plan in terms of this section, the Authority shall—
 - (a) have due regard to the reports of experts in the field of frequency planning and to internationally accepted methods for preparing such plans; 50
 - (b) take into account the existing frequencies used by broadcasting services; and
 - (c) reserve frequencies on all bands for the different categories of broadcasting licences referred to in section 40(1). 55

and publish its draft plan by notice in the *Gazette* and in such notice invite interested parties to submit their written comments and representations to the Authority within such period as may be specified in such notice.

(3) After due consideration of the comments and representations (if any) received pursuant to the notice referred to in subsection (2), the Authority shall determine the frequency plan and cause such plan to be published in the *Gazette*.

(4) (a) Any frequency plan determined in terms of this section and all such comments and representations as have been received in response to the notice contemplated in subsection (3), shall be kept at the offices of the Authority and be available for inspection by members of the public during the normal office hours of the Authority.

(b) The Authority shall at the request of any 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 documentation contemplated in paragraph (a).

(5) (a) The Authority shall annually review a frequency plan determined in terms of this section.

(b) The provisions of subsections (2), (3) and (4) shall *mutatis mutandis* apply in relation to any amendment contemplated in paragraph (a) of this subsection.

CHAPTER V

Broadcasting signal distribution licences

Prohibition of broadcasting signal distribution without licence

32. Subject to the provisions of section 33(2), a person shall not provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority under this Chapter.

Granting of broadcasting signal distribution licences

33. (1) A broadcasting signal distribution licence—

(a) may be granted to—

- (i) a person who, as a common carrier, is to provide broadcasting signal distribution for broadcasting licensees in the manner contemplated in section 37;
- (ii) a person who is to provide broadcasting signal distribution for broadcasting licensees on a selective and preferential basis;
- (iii) a broadcasting licensee who chooses to provide, either wholly or partly, broadcasting signal distribution for himself or herself but who does not provide the same for any other broadcasting licensee;

(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 32, 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 from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in subparagraph (i), (ii) or (iii) 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 one of the licences mentioned in subparagraph (i), (ii) or (iii) 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.

(4) Where the Republic has, in terms of section 79, entered into an agreement with any state or territory referred to in that section, the provisions of subsections (2) and (3) shall *mutatis mutandis* apply in relation to any person who, immediately prior to the date of entry into force of such an agreement, provides broadcasting signal distribution in that state or territory in a manner not inconsistent with the provisions of this Act. 5

Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences

34. The procedures in relation to any application for the granting, issuing, renewal, amendment and transfer of any broadcasting signal distribution licence shall be as prescribed. 10

Transmitters and transmission characteristics to be approved by Authority

35. (1) Broadcasting signal distribution in a licence area shall be provided only by means of transmitters the nature, number and transmission characteristics of which have been approved by the Authority. 15

(2) A broadcasting signal distribution licensee shall not—

(a) change any of his or her transmitters approved in terms of subsection (1) nor add to or reduce the number of transmitters so approved;

(b) effect any change in the transmission characteristics of any of his or her transmitters so approved. 20

except with the prior written permission of the Authority.

(3) A broadcasting signal distribution licence to be issued pursuant to the granting thereof in terms of section 33(1), shall stipulate the nature, number and transmission characteristics of the transmitters approved by the Authority under subsection (1) or (2) of this section for use in providing the licensed broadcasting signal distribution. 25

General obligations of broadcasting signal distribution licensees

36. A broadcasting signal distribution licensee shall—

(a) comply with the provisions of this Act and the frequency plan of the Authority; 30

(b) provide broadcasting signal distribution only to broadcasting services provided under an appropriate and valid broadcasting licence; and

(c) take due cognizance of the environmental impact of his or her operational activities and comply with all applicable rules of law relating to the protection of the environment. 35

Obligations of common carriers regarding provision of broadcasting signal distribution

37. A common carrier shall—

(a) be obliged, subject to its technological capacity to do so and to the provisions of paragraph (b), to provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis; 40

(b) in determining its tariffs, duly take into account, *inter alia*—

(i) the different categories of broadcasting licences referred to in section 40(1); and 45

(ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate.

Terms of broadcasting signal distribution licences

38. The term of validity of a broadcasting signal distribution licence—
- (a) in the case of a common carrier, shall be 15 years;
 - (b) in the case of a person referred to in section 33(1)(a)(ii), shall be eight years;
 - (c) in the case of a person referred to in section 33(1)(a)(iii), shall be concurrent with the term of the broadcasting licence of that person.
- whereafter the relevant broadcasting signal distribution licence shall, subject to the provisions of this Chapter, be renewable for like periods.

CHAPTER VI

10

Broadcasting licences**Prohibition on provision of broadcasting service without broadcasting licence**

39. Subject to the provisions of this Act, 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 under this Chapter. 15

Categories of broadcasting licences

40. (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 falling within one or more of the following categories, namely— 20
 - (i) a public sound broadcasting service;
 - (ii) a private sound broadcasting service;
 - (iii) a community sound broadcasting service;
 - (b) a television broadcasting service falling within one or more of the following categories, namely— 25
 - (i) a public television broadcasting service;
 - (ii) a private television broadcasting service;
 - (iii) a community television broadcasting service.
- (2) It shall be permissible for a broadcasting licensee conducting any of the broadcasting services contemplated in subsection (1) to broadcast text by radio in the course of his or her broadcasting service. 30

Application procedure in relation to broadcasting licences

41. (1) The Authority shall, when it intends inviting applications for a broadcasting licence, cause a notice to that effect to be published in the *Gazette*. 35
- (2) Such notice shall state the following, namely—
- (a) the licence category, the frequency available, and, where applicable, the licence area and technical parameters, relevant to the broadcasting licence in respect of which application may be made;
 - (b) the person with whom and the period within which such an application has to be lodged; and 40
 - (c) the application fee payable, which shall be as prescribed.
- (3) Every application made pursuant to such notice shall be in the prescribed form, which form shall *inter alia* require the applicant to furnish particulars—
- (a) of his or her proposals in relation to the nature and licence area of the service; and 45
 - (b) which, having due regard to the provisions of section 45, 46 or 47 (whichever is applicable), may be reasonably necessary in order to enable the Authority to properly consider the application, and shall be accompanied by the prescribed application fee. 50
- (4) The provisions of subsection (3) shall *mutatis mutandis* apply in respect of any person who *mero motu* applies to the Authority for a broadcasting licence.

(5) Notwithstanding the preceding provisions of this section, an applicant may be required in writing by the Authority to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary with a view to enabling it to properly consider the application.

(6) Within 14 days of receipt of any application in terms of this section, the Authority shall cause to be published in the *Gazette* a notice containing all the material particulars of the application and inviting interested persons to lodge their written representations in relation to the application in the manner specified in such notice within one month as from the date of such notice.

(7) (a) Any person who lodges representations pursuant to a notice in terms of subsection (6), shall at the time of lodgement furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such representations to the applicant concerned.

(b) Any person who has so lodged representations, may be required in writing by the Authority to furnish it, within the period specified by it, with such further information as it considers necessary.

(8) The applicant shall submit his or her written response (if any) to any representations lodged in terms of subsection (7) to the Authority within two months of the date of the notice contemplated in subsection (6), and shall at the same time furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such written response to the person having made such representations.

(9) If there is more than one licence application in terms of subsection (3) or (4) (hereinafter referred to as competitive licence applications) relating, substantially, to the same frequency and licence area, the Authority may, with due regard to the objects and principles as enunciated in section 2 and to the provisions of sections 45(2), 46(1) and 47(1) and (2), whichever is applicable, determine the most suitable applicant.

Hearings in relation to applications for broadcasting licences

42. (1) In respect of every application for a broadcasting licence received by the Authority, it shall hold a hearing as provided for in this section.

(2) A hearing in terms of subsection (1) shall be held as soon as may be reasonably practicable, due regard being had to the provisions of section 41(6), (7) and (8), and at such date, time and place as shall be determined by the Authority by notice in the *Gazette*.

(3) At any hearing in terms of subsection (1)—

- (a) the applicant and each party having made representations in terms of subsection (7) of section 41, shall be afforded an opportunity to be heard;
- (b) the parties referred to in paragraph (a) of this subsection may be assisted and represented by any person of their choice;
- (c) the Authority, after having duly considered the application, the representations (if any) made in accordance with the provisions of that subsection, the applicant's written response thereto (if any), any further information furnished in terms of section 41 and any other evidence tendered to the Authority, shall grant or refuse the application and provide written reasons for its ruling.

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

(5) (a) The Authority shall keep a record of all applications and other documentation received by it in terms of section 41 and of all its proceedings, findings and rulings at any hearing in terms of this section.

(b) The records contemplated in paragraph (a) shall be open to public inspection by interested persons during the normal office hours of the Authority.

(c) 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 record referred to in paragraph (a).

(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.

Entitlements under and conditions pertaining to broadcasting licences

43. (1) (a) Notwithstanding any provisions to the contrary in any other law, a licence granted and issued under this Chapter shall by itself entitle the licensee concerned to use the radio frequency and the station as specified in his or her licence for the purpose of providing the broadcasting service to which such licence relates. 5

(b) For the purposes of paragraph (a), "station" shall mean any separate radio receiving or transmitting apparatus or any combination thereof, including any accessory equipment.

(2) Subject to the provisions of this Act, the Authority, in granting any broadcasting licence pursuant to a ruling in terms of section 42(3)(c), may impose such terms, conditions and obligations appropriate to such licence and consistent with the objects and principles as enunciated in section 2, as it deems fit. 10

(3) Any term, 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. 15

(4) A broadcasting licensee shall commence with the broadcasting service to which his or her licence relates within such period as shall be determined by the Authority or within any extension of that period granted by the Authority on good cause shown, and upon failure by the broadcasting licensee so to commence with the said broadcasting service, the licence relating thereto shall lapse. 20

Renewal of broadcasting licences

44. (1) 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 three months, before the date on which it expires by virtue of the provisions of section 54. 25

(2) Sections 41, 42 and 43 shall *mutatis mutandis* apply in relation to an application for the renewal of a broadcasting licence.

(3) The Authority shall not, in relation to any application for the renewal of a broadcasting licence, require from the applicant any information already in possession of the Authority pursuant to having been furnished to it in connection with any prior application made by the applicant in relation to such broadcasting licence. 30

(4) 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 so comply if his or her licence were renewed. 35

(5) A broadcasting licence shall continue to be of force and effect until such time as the Authority has made its decision regarding the application for renewal of such licence. 40

(6) (a) Notwithstanding the provisions of subsection (1), a broadcasting licensee may at any time after the expiration of the three-month period referred to in that subsection but before the expiration of the term of his or her broadcasting licence, apply for the renewal thereof. 45

(b) Notwithstanding any provisions to the contrary, a broadcasting licence shall not be renewed where application for renewal has been made in the circumstances contemplated in paragraph (a), unless the broadcasting licensee pays to the Authority, in addition to the prescribed licence fee, a penalty, in such amount as may be prescribed, in respect of each day by which he or she delayed in making application timeously in terms of subsection (1). 50

Public broadcasting licences

45. (1) As soon as may be reasonably practicable after the commencement of this Act, the Authority shall conduct an inquiry in accordance with the provisions of section 28 into the protection and viability of public broadcasting services, with particular reference to the financing of such services, at the conclusion of which the Authority shall in writing furnish its findings and recommendations to the 55