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Section 18 Prohibition on the broadcasting of party election broadcasts and political advertisements except in certain circumstances (page 20)

The Technical Committee will be holding formal discussions with the SABC Board on Monday 16 August 1993 concerning the feasibility of allowing party election broadcasts on SABC television services.

However, informal discussions with members of the SABC Board seem to indicate that the SABC would require some form of financial compensation if such party election broadcasts were to be allowed on television.

Sections 19-21 (pages 20-23)

These sections have been amended with a view to achieving the intention of the Negotiating Council, namely that only parties participating in the election should enjoy access to party election broadcasts and political advertisements as set out in the IMC Bill.

Certification of Bill

This draft has progressed substantially towards certification by the State Law Adviser.

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

INDEPENDENT MEDIA COMMISSION BILL

(WORKING DRAFT 10)

*Prepared for discussion by the Technical Committee on the Independent Media Commission
and the Independent Telecommunications Authority, Multi Party Negotiation Process*

16 August 1993

INDEPENDENT MEDIA COMMISSION BILL

To provide for the establishment of a Commission; to provide for equitable treatment of political parties by broadcasting services; to provide for the monitoring of state-financed publications and state information services; and to provide for matters connected therewith.

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

ARRANGEMENT OF ACT

<i>Section No.</i>	<i>Subject matter of sections</i>
<i>Section 1</i>	<i>Definitions</i>
<i>Section 2</i>	<i>Establishment of Independent Media Commission</i>
<i>Section 3</i>	<i>Primary objects of Commission</i>
<i>Section 4</i>	<i>Constitution of Commission and appointment of commissioners</i>
<i>Section 5</i>	<i>Persons qualified to be commissioners</i>
<i>Section 6</i>	<i>Persons disqualified from being commissioners</i>
<i>Section 7</i>	<i>Term of office of commissioners</i>
<i>Section 8</i>	<i>Removal from office</i>
<i>Section 9</i>	<i>Vacancies in Commission</i>
<i>Section 10</i>	<i>Remuneration and allowances</i>
<i>Section 11</i>	<i>Meetings of Commission</i>
<i>Section 12</i>	<i>Disclosure of conflicting interests</i>
<i>Section 13</i>	<i>Proceedings of Commission not invalid in certain circumstances</i>
<i>Section 14</i>	<i>Staff of the Commission</i>
<i>Section 15</i>	<i>Establishment of committees of Commission</i>

Section 16	<i>Appointment of experts</i>
Section 17	<i>Powers and functions of Commission</i>
Section 18	<i>Prohibition of broadcasting of party election broadcasts of political advertisements except in certain circumstances</i>
Section 19	<i>Party election broadcasts on sound broadcasting services</i>
Section 20	<i>Political advertising on sound broadcasting services</i>
Section 21	<i>Equitable treatment of political parties by all broadcasting licensees</i>
Section 22	<i>State-financed publications and state information services</i>
Section 23	<i>Hearings</i>
Section 24	<i>Orders and recommendations of Commission</i>
Section 25	<i>Expenditure in connection with functions of Commission</i>
Section 26	<i>Reporting responsibility of Commission</i>
Section 27	<i>Offences and penalties</i>
Section 28	<i>Delegations</i>
Section 29	<i>Limitations of liability</i>
Section 30	<i>Regulations</i>
Section 31	<i>Application of this Act in respect of certain private broadcasters licensed elsewhere</i>
Section 32	<i>Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic</i>
Section 33	<i>Application of Act in event of conflict with other laws</i>
Section 34	<i>Dissolution of Commission</i>
Section 35	<i>Short title and date of commencement</i>

INTERPRETATION

1. Definitions

- (1) In this Act, unless the context otherwise indicates -

"**Authority**" means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;

"**broadcasting**" means a form of unidirectional telecommunication intended for the public or sections of the public having appropriate receiving facilities, and carried out by means of radio or by cable networks;

"**broadcasting licence**" -

- (a) prior to the commencement of the Independent Broadcasting Authority Act, 1993, means any licence issued in terms of section 7 of the Radio Act, 1952 (Act No. 3 of 1952), or in terms of that Act read with section 12 of the Broadcasting Act, 1976 (Act No. 73 of 1976), to a person for the purpose of providing one or more broadcasting services;
- (b) as from the commencement of the Independent Broadcasting Authority Act, 1993, means a licence granted by the Authority in terms of that Act or deemed by that Act to have been so granted, to a person for the purpose of providing a defined category of broadcasting service;

"**broadcasting licensee**" means the holder of a broadcasting licence;

"broadcasting service" means a single, defined service which broadcasts television, sound or text material to the public or sections of the public;

"chairperson" means the chairperson of the Commission referred to in section 4 (1)(a) and includes any commissioner acting in the stead of such person in accordance with the provisions of section 11(2);

"Commission" means the Independent Media Commission established by section 2 and, in relation to the exercise or performance of any power, function or duty conferred or imposed upon the Commission by or in terms of this Act, includes any committee of the Commission acting under a delegation or authorisation in terms of section 28;

"commissioner" means any member of the Commission referred to in section 4(1);

"committee" means a committee established and appointed in terms of section 15;

"community broadcasting service" means a broadcasting service which -

- (a) is fully controlled by a non-profit entity;
 - (b) caters for particular community interests;
 - (c) encourages members of the community served by it to participate in the operations of the licensee in providing the service and in the selection and provision of programmes under the broadcasting licence;
- and

- (d) may be funded by donations, grants, sponsorships, advertising or membership fees, or by any combination of the aforementioned;

"complainant" means an aggrieved political party contemplated in section 23;

"election" means the first national and SPR elections held after the commencement of this Act;

"election period" means the period commencing on the date when this Act comes into operation and ending on the date when the Independent Electoral Commission is dissolved in terms of the Independent Electoral Commission Act, 1993;

"Independent Electoral Commission" means the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993;

"party election broadcast" means a direct address or message which is broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party;

"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 licensee has received or is to receive, directly or indirectly, any money or other consideration;

"political party" -

- (a) prior to the commencement of the Electoral Act, 1993, means any party, movement or organisation which is or becomes a party to the Multi-Party Negotiation Process;

- (b) as from the commencement of the Electoral Act, 1993, means any party, movement or organisation which is registered as a political party in terms of the Electoral Act, 1993;

"prescribed" means prescribed by regulation in terms of section 30;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a private person;

"public broadcasting service" means -

- (a) a broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976;
- (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,

and shall include a commercially-operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

"radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3000 GHz;

"Republic" means the Republic of South Africa;

"respondent" means a broadcasting licensee, a state-financed publication or a state information service contemplated in section 23(2);

"**sound broadcasting service**" means a broadcasting service to be received by a sound radio set;

"**sound radio set**" means a device 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 visible signs or signals;

"**State**" includes the government and administration of any self-governing territory contemplated in the National States Constitution Act, 1971 (Act No. 21 of 1971);

"**state-financed publication**" means any newspaper, book, periodical, pamphlet, poster or other printed matter, or any other object in or on which sound has been recorded for reproduction, which is wholly or partly financed by the State for the purpose of the promotion of state policy or the policy of a department of State;

"**state information service**" means the services provided by the South African Communication Service and includes any other information service directly or indirectly controlled by the State;

"**television broadcasting service**" means a broadcasting service to be received by a television set;

"**television set**" means a device which is capable of receiving, by radio, transmissions broadcast by a broadcasting service and reproducing them in the form of images or other visible signals, whether with or without accompanying sounds;

"**this Act**" includes the Schedules to this Act, and any regulations made from time to time under section 30; and

"**Transitional Executive Council**" means the Transitional Executive Council established in terms of the Transitional Executive Council Act, 1993.

2. Establishment of Independent Media Commission

- (1) There is hereby established a juristic person to be known as the Independent Media Commission which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act.
- (2) The Commission 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.

3. Primary objects of Commission

The primary objects of the Commission shall be -

- (a) to ensure equitable treatment of all political parties by broadcasting services; and
- (b) to ensure that state-financed publications and state-financed information services are not, directly or indirectly, used to advance the interests of any political party, whether directly or indirectly,

during the election period so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.

4. Constitution of Commission and appointment of commissioners

- (1) The Commission shall consist of -
 - (a) a chairperson; and
 - (b) not more than six other members.
- (2)
 - (a) Each commissioner, including the chairperson, shall be appointed by the Transitional Executive Council with due regard to the provisions of this Act, with particular reference to the provisions of section 2(2).
 - (b) The appointments contemplated in paragraph (a) shall be made simultaneously, shall be made known by notice in the **Gazette** and shall be effective as from the date of publication of such notice.

5. Persons qualified to be commissioners

- (1) The chairperson of the Commission shall be -
 - (a) a judge or retired judge of the Supreme Court of South Africa; or
 - (b) a practising advocate or practising attorney of at least ten years' standing.
- (2) At least two of the commissioners shall have experience in the field of the broadcasting media and at least one in the field of the print media.
- (3) The commissioners shall -
 - (a) be persons who, in the opinion of the Transitional Executive Council, are of high standing and merit and are suited to serve on the

Commission by virtue of their qualifications, expertise and experience;

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

6. Persons disqualified from being commissioners

- (1) A person shall not be appointed or remain a commissioner if such person -
- (a) is not a citizen of and not permanently resident in the Republic;
 - (b) holds an office of profit under the State, subject to the provisions of section 5(1)(a);
 - (c) is a member of Parliament or of the Transitional Executive Council or of any provincial government or is a member of the legislature of the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda or the Republic of Ciskei or any self-governing territory, or is a member of any local authority;
 - (d) is, or during the preceding twelve months was, an office-bearer or employee of any political party;
 - (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 print media industry;

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- (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
 - (g) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
 - (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (i) 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;
 - (j) has at any time been convicted -
 - (i) in the Republic, of theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958); or
 - (ii) elsewhere, of any offence corresponding essentially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (k) is or has been convicted of any offence under this Act.
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- (2) For the purposes of subsection (1), "spouse" includes a **de facto** spouse.

7. Term of office of commissioners

- (1) Subject to the provision of this Act, the commissioners shall hold office until the dissolution of the Commission in terms of section 33.
- (2) A commissioner may at any time, upon at least three months' written notice tendered to the Transitional Executive Council, resign from office.

8. Removal from office

- (1) Notwithstanding the provisions of section (7)(1) and (2), a commissioner may be removed from office by the Transitional Executive Council on account of misconduct or inability to efficiently perform the duties of his or her office, or by reason of his or her absence from three consecutive meetings of the Commission without the prior permission of the chairperson or otherwise without other good cause shown.
- (2) A commissioner shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision of the Transitional Executive Council.

9. Vacancies in Commission

- (1) There shall be a vacancy in the Commission -
 - (a) if a commissioner becomes subject to a disqualification referred to in section 6;
 - (b) when a commissioner's written resignation in terms of section 7(2) takes effect; or
 - (c) if a commissioner is removed from office in terms of section 8.

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- (2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the Transitional Executive Council in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy.

10. Remuneration and allowances

Commissioners shall be paid such remuneration and allowances as the Transitional Executive Council, in consultation with the Minister of State Expenditure, may determine.

11. Meetings of Commission

- (1) The meetings of the Commission shall be held at such times and places as may be determined by resolution of the Commission 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 event of the chairperson being absent, the remaining commissioners 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 Commission 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 commissioners, call for a special meeting, and if the chairperson fails to convene a special meeting within seven days as from such presentation, such two commissioners may, upon the expiration of such seven days, convene a special meeting.

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- (4) The quorum for any meeting of the Commission shall be a majority of the total number of commissioners.
 - (5) A decision of the Commission shall be taken by resolution agreed to by the majority of commissioners at any meeting of the Commission 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 Commission may, in its decision, allow members of the public to attend any meeting of the Commission.
 - (7)
 - (a) The Commission shall cause minutes to be prepared and kept of the proceedings of every meeting thereof and cause copies of such minutes to be circulated to all the commissioners.
 - (b) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Commission by the chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute **prima facie** evidence of the proceedings of the Commission and the matters they purport to minute.

12. Disclosure of conflicting interests

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

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- (2) If at any stage during the course of any proceedings before the Commission it appears that any commissioner has or may have an interest which may cause such a conflict of interest to arise on his or her part -
- (a) such commissioner shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner 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 commissioners regarding such determination, shall be recorded in the minutes of the meeting in question.
- (3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, the proceedings of the Commissions shall be null and void.

13. Proceedings of Commission not invalid in certain circumstances

Subject to the provisions of section 12, a decision taken by the Commission 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 commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by a majority of commissioners present at the time and entitled to so sit.

14. Staff of Commission

- (1) (a) The Commission shall appoint a suitably qualified and experienced

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person as chief administrative officer for the purpose of assisting the Commission, 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 Commission shall appoint such other staff as it deems necessary with a view to assisting it with all such work as may arise through the exercise and performance of its powers, functions and duties in terms of this Act.
- (2) The staff of the Commission shall receive such remuneration, allowances and other employment benefits, and shall, subject to the provisions of section 33, be appointed for such periods, as the Commission may determine.
- (3) In exercising its powers in terms of subsection (2), the Commission shall consult with the Minister of State Expenditure.

15. Establishment of committees of Commission

- (1) The Commission shall establish and appoint the following two committees, namely -
 - (a) a broadcasting committee which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(a); and
 - (b) a state-financed publication and state information services committee which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(b).
- (2) The Commission may establish and appoint such other committees for such purposes as it may deem necessary with a view to assisting it in the effective

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exercise and performance of its powers, functions and duties in terms of this Act.

- (3) The Commission shall from its number designate a chairperson for each committee.
- (4) A committee shall have two or more additional members, as may be determined by the Commission, who shall be persons -
 - (a) who are not subject to any of the disqualifications of the nature contemplated in section 6; and
 - (b) who, on account of their qualifications, expertise and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.
- (5) Whenever the office of a member of a committee becomes vacant, the Commission shall appoint a person to fill the vacancy.
- (6) The provisions of sections 5(3), 10, 11, 12, 13 and 25 shall **mutatis mutandis** apply in respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question.
- (7) The Commission may at any time extend, limit or dissolve any such committee.

16. Appointment of experts

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- (1) The Commission may appoint as many experts, including experts from other countries, as may be deemed 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 Commission 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 Commission for its consideration.
- (4) The Commission, on receipt of the report referred to in subsection (3), may refer the matter back to the expert -
 - (a) for such further attention as may be determined by the Commission;
 - (b) to perform such further functions as the Commission may deem necessary or desirable.

7. Powers and functions of Commission

- (1) The Commission, in order to achieve the objects of this Act, shall -
 - (a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of this Act relating to -
 - (i) party election broadcasts and political advertisements; and
 - (ii) equitable treatment of all political parties; and

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(b) monitor all state-financed publications and state information services, during the election period, in accordance with the provisions of this Act, and exercise and perform such other powers and functions as may be assigned to it by or in terms of this Act.

- (2) The Commission shall inform the Transitional Executive Council and the Independent Electoral Commission of any matter which has come to its knowledge in the exercise and performance of its powers, functions and duties in terms of this Act and which, in its opinion, may have an adverse impact upon the creation or achievement of a climate favourable to free political participation and the holding of the election on a free and fair basis.

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

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except if and to the extent authorised by the provisions of sections 19 and 20.

19. Party election broadcasts on sound broadcasting services

- (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.
- (2) The Commission shall determine the time to be made available to political parties for purposes of subsection (1), including the duration and scheduling of such party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question.

- (3) The Commission shall consult with the relevant public sound broadcasting licensees and all political parties prior to making any determination in terms of subsection (2).
- (4) In making any determination in terms of subsection (2), the Commission may impose such conditions upon a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.
- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (6) A party election broadcast shall comply with a broadcast quality acceptable to the Commission.
- (7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.
- (8) No private sound broadcasting licensee shall be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall **mutatis mutandis** apply.

20. Political advertising on sound broadcasting services

- (1) No sound broadcasting licensee shall be required to broadcast a political advertisement, but if he or she elects to do so, it shall afford all other political parties, should they so request, a like opportunity.
- (2) A sound broadcasting licensee shall broadcast a political advertisement only if it has been submitted on behalf of a political party by its duly authorised representative.

- (3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.
- (4) A political advertisement shall not contain any material which may reasonably expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (5) A political advertisement shall comply with a technical quality acceptable to the Commission.
- (6) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.
- (7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

21. Equitable treatment of political parties by all broadcasting licensees

- (1) If the coverage by any broadcasting service extends to the field of elections, political parties and issues relevant thereto, such broadcasting service shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.
- (2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such political party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.
- (3) If a broadcasting licensee intends to broadcast a programme wherein a

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political party is criticised within 48 hours before the commencement of the polling period or during the polling period, then the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.

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

22. State-financed publications and state information services

- (1) The publisher of any state-financed publication in existence immediately prior to the commencement of this Act shall be required, within 14 days of such commencement, to submit to the Commission the prescribed information concerning such publication.
- (2) Any state-financed publication which is published for the first time after the commencement of this Act, shall be required, no less than 14 days prior to the proposed date of publication, to submit to the Commission the prescribed information concerning such publication.
- (3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.
- (4) A state-financed publication shall be submitted to the Commission free of charge within 48 hours of the completion of the printing thereof.
- (5) No state-financed publication shall contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.
- (6) The provisions of subsection (5) shall *mutatis mutandis* apply in respect of

any statement, material or advertisement made or issued by any state information service.

23. Hearings

- (1) Any political party which has reason to believe that a broadcasting licensee, a state-financed publication or a state information service has contravened the provisions of this Act in relation to such party, and which was unable to resolve the matter with the licensee, publication or information service, may lodge a complaint with the Commission.
- (2) A complaint made in terms of subsection (1) shall be in writing and shall be served on the licensee, publication or information service in subsection (1), and be lodged with the Commission.
-) For the purposes of subsection (2), a complaint may be delivered by hand or sent by registered post, telefax or telex.
- (4) The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter, investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent an opportunity to make representations and to be heard in relation thereto.
- (5) The Commission shall determine the form and procedure as regards the adjudication of any complaint.
- (6) The complainant and the respondent shall be entitled to legal representation in any hearing held by the Commission for the purpose of adjudicating a complaint.

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- (7) (a) After having considered the complaint and any representations and evidence (if any) in regard thereto, the Commission shall make a ruling on the matter.
 - (b) Any ruling of the Commission in terms of paragraph (a) shall be published in such manner as the Commission may in its discretion determine.
 - (8) Hearings held in terms of this section shall be open to the public.
 - (9) (a) The Commission shall keep a record of all complaints received by it and of all its proceedings and rulings in relation thereto.
 - (b) The records referred to in paragraph (a) shall be open to public inspection by interested parties during office hours at the offices of the Commission.
 - (c) The Commission shall at the request of any interested party and on payment of such fee as may be prescribed by the Commission (if any), furnish him or her with the required copies of or extracts from any record referred to in paragraph (a).
 - (10) The powers of the Commission with regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and material, shall be as prescribed.
 - (11) For the purposes of this section, a state-financed publication and state information service shall be represented by the official of the State at the head of the state-financed publication or state information service in question.

- (12) The provisions of this section shall **mutatis mutandis** apply to any investigation instituted **mero motu** by the Commission in relation to any suspected contravention of the provisions of this Act by any broadcasting licensee, state-financed publication or state information service.

24. Orders and recommendations of Commission

- (1) The Commission, in making a ruling referred to in section 23, may issue an order or recommendation -
- (a) requiring the public sound broadcasting licensee to broadcast a party election broadcast;
 - (b) requiring the sound broadcasting licensee to broadcast a political advertisement;
 - (c) requiring the broadcasting licensee to broadcast a counter-version of the programme complained of or the facts or opinions expressed within such a programme;
 - (d) imposing financial penalties on broadcasting licensees for non-compliance with the provisions of this Act;
 - (e) recommending the temporary prohibition of broadcasting by a broadcasting licensee or the revocation of a broadcasting licence should the broadcasting licensee successively fail to comply with the provisions of this Act,

and may issue any other order or recommendation which it considers appropriate with a view to remedying the matter.

- (2) In any case where a state-financed publication or a state information service

is the respondent, the Commission shall convey its ruling to the Transitional Executive Council.

25. Expenditure in connection with functions of Commission

- (1) The expenditure in connection with the implementation and administration of this Act and the exercise and performance of the powers, functions and duties of the Commission, shall be paid out of public funds allocated to it by the Transitional Executive Council in consultation with the Minister of State Expenditure.
- (2) The Chief administrative officer referred to in section 14(1)(a) acting on the authority and subject to the general or special directions of the Commission (if any), shall from time to time in writing requisition moneys for the purposes contemplated in subsection (1).

26. Reporting responsibility of Commission

Without in any way derogating from its independence, the Commission shall on a quarterly basis report in writing to the Transitional Executive Council and the Independent Electoral Commission in regard to its expenditure and activities, respectively.

27. Offences and penalties

Any person who -

- (a) wilfully hinders or obstructs the Commission, any of its committees or a member of the staff of the Commission in the exercise or performance of its, his or her powers, functions or duties in terms of this Act; or
- (b) wilfully hinders, obstructs or interrupts the proceedings at any hearing of the

Commission,

shall be guilty of an offence and liable on conviction to a maximum fine of R 2 000.

- (2) Any person who contravenes or fails to comply with -
 - (a) any order referred to in section 24, shall be guilty of an offence and liable on conviction to a maximum fine of R 100 000; or
 - (b) any other order of the Commission, shall be guilty of an offence and liable on conviction to a maximum fine of R 10 000.
- (3) If any commissioner fails to disclose any interest as required by section 12(2) or, subject to the provisions of that section, is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, the proceeding thereat shall be null and void and such commissioner shall be guilty of an offence and liable on conviction to a maximum fine of R 100 000.

28. Delegations

- (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 or in terms of this Act;
 - (b) authorise a committee to exercise or perform any power, function or duty assigned to the Commission by or under this Act.
- (2) Any delegation or authorisation 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 made in terms of a delegation under this section.
 - (4) The Commission shall not delegate any power, function or duty referred to in section 15, 16, 17, 18(2) and (4), 23, 24 or 30.

29. Limitation of liability

Neither the chairperson or any commissioner or member of a committee of the Commission, 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 or thing which in good faith was performed or done or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act.

30. Regulations

- (1) The Commission may make regulations 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 prescribe a fine not exceeding R 10 000.

31. Application of this Act in respect of certain private broadcasters licensed elsewhere

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.

*

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

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,

with reference to such election and during such election period as shall be specified in such an agreement.

33. Application of Act in event of conflict with other laws

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.

34. Dissolution of Commission

- (1) The Commission shall dissolve on the date when the Independent Electoral Commission is dissolved in terms of the Independent Electoral Commission Act, 1993.
- (2) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State.

*

35. Short title and date of commencement

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 and made known by the State President by proclamation in the **Gazette**.

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

INDEPENDENT MEDIA COMMISSION BILL

(WORKING DRAFT 11)

Prepared by the Technical Committee on the Independent Media Commission and the Independent Telecommunications Authority, Multi Party Negotiation Process, for discussion by the Negotiating Council.

25 August 1993

INDEPENDENT MEDIA COMMISSION BILL

To establish the Independent Media Commission for the purpose of ensuring, during the period of the first national election and the SPR elections held after the commencement of this Act, the equitable treatment of political parties by broadcasting services and that state-financed publications and state information services do not advance the interests of any political party; to define the composition, powers, functions and duties of the said Commission; and to provide for incidental matters.

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

ARRANGEMENT OF ACT

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<i>Section No.</i>	<i>Subject matter of sections</i>
<i>Section 1</i>	<i>Definitions</i>
<i>Section 2</i>	<i>Establishment of Independent Media Commission</i>
<i>Section 3</i>	<i>Primary objects of Commission</i>
<i>Section 4</i>	<i>Constitution of Commission and appointment of commissioners</i>
<i>Section 5</i>	<i>Persons qualified to be commissioners</i>
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<i>Section 33</i>	<i>Dissolution of Commission</i>
<i>Section 34</i>	<i>Short title and date of commencement</i>

INTERPRETATION

1. Definitions

In this Act, unless the context otherwise indicates -

"Authority" means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;

"broadcasting" means a form of unidirectional telecommunication intended for the public or sections of the public having appropriate receiving facilities, whether carried out by means of radio, cable, optical fibre, satellite or any other means, or any combination of the aforementioned;

"broadcasting licence" means a licence granted and issued by the Authority in terms of the Independent Broadcasting Authority Act, 1993, or deemed by that Act to have been so granted and issued to a person for the purpose of providing a defined category of broadcasting service;

"broadcasting licensee" means the holder of a broadcasting licence;

"broadcasting service" means a single, defined service which broadcasts television, sound or text material to the public or sections of the public;

"chairperson" means the chairperson of the Commission referred to in section 4 (1)(a) and includes any commissioner acting in the stead of such person in accordance with the provisions of section 11(2);

"Commission" means the Independent Media Commission established by section 2 and, in relation to the exercise or performance of any power, function or duty conferred or imposed upon the Commission by or in terms of this Act, includes any

committee of the Commission acting under a delegation or authorisation in terms of section 28;

"commissioner" means any member of the Commission referred to in section 4(1);

"committee" means a committee established and appointed in terms of section 15;

"community broadcasting service" means a broadcasting service which -

- (a) is fully controlled by a non-profit entity;
- (b) caters for particular community interests;
- (c) encourages members of the community served by it to participate in the operations of the licensee in providing the service and in the selection and provision of programmes under the broadcasting licence; and
- (d) may be funded by donations, grants, sponsorships, advertising or membership fees, or by any combination of the aforementioned;

complainant means an aggrieved political party contemplated in section 23;

"election" means the first national and SPR elections held after the commencement of this Act;

"election period" means¹

¹ Finalisation of this definition is deferred until such time as the apposite provisions of the Independent Electoral Commission Bill, 1993, and those of the Electoral Bill, 1993, have been finalised.

"Independent Electoral Commission" means the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993;

"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;

"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;

"political party" means²

"prescribed" means prescribed by regulation in terms of section 30;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a private person;

"public broadcasting service" means -

- (a) a broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976);
- (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

² Ibid.

persons in relation to sound radio sets and in relation to television sets, or from the state,

and shall include a commercially-operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition;

"radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3000 GHz;

"Republic" means the Republic of South Africa;

"respondent" means a broadcasting licensee, a state-financed publication or a state information service contemplated in section 23(2);

"sound broadcasting service" means a broadcasting service to be received by a sound radio set;

"sound radio set" means a device 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 visible signs or signals;

"State" includes the government and administration of any self-governing territory contemplated in the National States Constitution Act, 1971 (Act No. 21 of 1971);

"state-financed publication" means any newspaper, book, periodical, pamphlet, poster or other printed matter, or any other object in or on which sound has been recorded for reproduction, which is wholly or partly financed by the State for the purpose of the promotion of state policy or the policy of a department of State;

"state information service" means the services provided by the South African Communication Service and includes any other information service directly or

indirectly controlled by the State;

"television broadcasting service" means a broadcasting service to be received by a television set;

"television set" means a device which is capable of receiving, by radio, transmissions broadcast by a broadcasting service and reproducing them in the form of images or other visible signals, whether with or without accompanying sounds;

"this Act" includes the Schedules to this Act, and any regulations made from time to time under section 30; and

"Transitional Executive Council" means the Transitional Executive Council established in terms of the Transitional Executive Council Act, 1993.

2. Establishment of Independent Media Commission

- (1) There is hereby established a juristic person to be known as the Independent Media Commission which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act.
- (2) The Commission 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.

3. Primary objects of Commission

The primary objects of the Commission shall be -

- (a) to ensure equitable treatment of all political parties by broadcasting services;
and
- (b) to ensure that state-financed publications and state-financed information services are not, directly or indirectly, used to advance the interests of any political party, whether directly or indirectly,

during the election period so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.

4. Constitution of Commission and appointment of commissioners

- (1) The Commission shall consist of -
 - (a) a chairperson; and
 - (b) not more than six other members.
- (2)
 - (a) Each commissioner, including the chairperson, shall be appointed by the Transitional Executive Council with due regard to the provisions of this Act, with particular reference to the provisions of section 2(2).
 - (b) The appointments contemplated in paragraph (a) shall be made simultaneously, be made known by notice in the **Gazette** and be effective as from the date of publication of such notice.

5. Persons qualified to be commissioners

- (1) The chairperson of the Commission shall be -

- (a) a judge or retired judge of the Supreme Court of South Africa; or
 - (b) a practising advocate or practising attorney of at least 10 years' standing or a magistrate with at least 10 years' appropriate experience.
- (2) At least two of the commissioners shall have experience in the field of the broadcasting media and at least one in the field of the print media.
- (3) The commissioners shall -
- (a) be persons who, in the opinion of the Transitional Executive Council, are of high standing and merit and are suited to serve on the Commission by virtue of their qualifications, expertise and experience;
 - (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office;
 - (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
 - (d) persons who are committed to the objects and principles of this Act.

6. Persons disqualified from being commissioners

- (1) A person shall not be appointed or remain a commissioner if such person -
- (a) is not a citizen of and not permanently resident in the Republic;

- (b) holds an office of profit under the State, subject to the provisions of section 5(1);
- (c) is a member of Parliament or of the Transitional Executive Council or of any provincial government or is a member of the legislature of the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda or the Republic of Ciskei or of any self-governing territory, or is a member of any local authority;
- (d) is, or during the preceding twelve months was, an office-bearer or employee of any political party;
- (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 print media industry;
- (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
- (g) is an unrehabilitated insolvent;
- (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;
- (j) at any time prior to the date of commencement of this Act has been

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 under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958); or

(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) is or has been convicted of any offence under this Act.

(2) For the purposes of subsection (1), "spouse" includes a **de facto** spouse.

7. Term of office of commissioners

(1) Subject to the provision of this Act, the commissioners shall hold office until the dissolution of the Commission in terms of section 33.

(2) A commissioner may at any time, upon at least three months' written notice tendered to the Transitional Executive Council, resign from office.

8. Removal from office

(1) Notwithstanding the provisions of section 7(1) and (2), a commissioner may be removed from office by the Transitional Executive Council on account of misconduct or inability to efficiently perform the duties of his or her office, or by reason of his or her absence from three consecutive meetings of the Commission without the prior permission of the chairperson or otherwise

without other good cause shown.

- (2) A commissioner shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision of the Transitional Executive Council.

9. Vacancies in Commission

- (1) There shall be a vacancy in the Commission -
 - (a) if a commissioner becomes subject to a disqualification referred to in section 6;
 - (b) when a commissioner's written resignation in terms of section 7(2) takes effect; or
 - (c) if a commissioner is removed from office in terms of section 8.
- (2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the Transitional Executive Council in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy.

10. Remuneration and allowances

Commissioners shall be paid such remuneration and allowances as the Transitional Executive Council, in consultation with the Minister of State Expenditure, may determine.

11. Meetings of Commission

- (1) The meetings of the Commission shall be held at such times and places as may

be determined by resolution of the Commission 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 event of the chairperson being absent, the remaining commissioners 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 Commission 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 commissioners, call for a special meeting, and if the chairperson fails to convene a special meeting within 7 days as from such presentation, such two commissioners may, upon the expiration of such 7 days, convene a special meeting.
- (4) The quorum for any meeting of the Commission shall be a majority of the total number of commissioners.
- (5) A decision of the Commission shall be taken by resolution agreed to by the majority of commissioners at any meeting of the Commission 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 Commission may, in its discretion, allow members of the public to attend any meeting of the Commission.
- (7) (a) The Commission shall cause minutes to be prepared and kept of the proceedings of every meeting thereof and cause copies of such minutes

to be circulated to all the commissioners.

- (b) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Commission by the chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute **prima facie** evidence of the proceedings of the Commission and the matters they purport to minute.

12. Disclosure of conflicting interests

- (1) Subject to the provisions of subsection (2), a commissioner shall not vote nor in any other manner participate in the proceedings at any meeting of the Commission, nor be present at the venue where such a meeting is held if, in relation to any matter before the Commission, he or she has any interest which precludes him or her from performing his or her functions as commissioner in a fair, unbiased and proper manner.
- (2) If at any stage during the course of any proceedings before the Commission it appears that any commissioner has or may have an interest which may cause such a conflict of interests to arise on his or her part -
 - (a) such commissioner shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interests; and

- (b) such disclosure and the decision taken by the remaining commissioners regarding such determination, shall be recorded in the minutes of the meeting in question.
- (3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, the proceedings of the Commission shall be null and void.

13. Proceedings of Commission not invalid in certain circumstances

Subject to the provisions of section 12, a decision taken by the Commission 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 commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by a majority of commissioners present at the time and entitled to so sit and the commissioners present and so entitled at the time constituted a quorum.

14. Staff of Commission

- (1) (a) The Commission shall appoint a suitably qualified and experienced person as chief administrative officer for the purpose of assisting the Commission, 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 Commission shall appoint such other staff as it deems necessary with a view to assisting it with all such work as may arise through the exercise and performance of its powers, functions and duties in terms