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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**No. 1432****9 October 2003****REGULATIONS RELATING TO REVIEW PROCEDURES TO BE FOLLOWED
IN THE EVENT OF A REVIEW APPLICATION BEING BROUGHT TO THE
BROADCASTING MONITORING AND COMPLAINTS COMMITTEE.**

**The Independent Communications Authority has, under section 78 (1) of
the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993),
made the regulations in the Schedule**

SCHEDULE**1. PREAMBLE**

In an agreement signed in 1995 between the IBA and the BCCSA it was agreed that a complainant shall have the right to approach the IBA if he or she is of the opinion that the BCCSA has not applied the principles of natural justice and its procedure in a legally acceptable manner, whereupon the IBA shall, if it finds in favour of the complainant refer the matter back to the BCCSA for re-hearing. These powers of the IBA have now been transferred to the Independent Communications Authority (the Authority) which is the current regulator of both the broadcasting and telecommunications sector in South Africa.

2. DEFINITIONS

In these regulations any word to which a meaning has been assigned in the Independent Broadcasting Authority Act (Act 153 of 1993) and the Broadcasting Act (No.4 of 1999) shall have that meaning unless the context indicates otherwise.

2.1 "MCU" refer to the Monitoring and Complaints unit of ICASA

- 2.2 **"day"** means ordinary days, from Monday to Sunday inclusive but shall not include public holidays. In the calculation of days the first day shall be excluded and the last included.

3. GROUNDS OF REVIEW

The grounds upon which the proceedings of the BCCSA may be brought under review before the BMCC are:

- 3.1 Absence of jurisdiction on the part of the BCCSA;
- 3.2 Bias, malice or corruption on the part of the BCCSA;
- 3.3 Gross irregularity in the proceedings;
- 3.4 Failure to comply with rules of natural justice;

4. REVIEW PROCEDURE

In the event of a matter being referred to the BMCC for review the procedure is as follows:

- 4.1 An Application for Review of a decision made by the BCCSA must be brought within a reasonable time after the decision has come to the notice of the complainant, but in any event not later than 30 days after the BCCSA hearing.

4.2 All review proceedings shall commence by the lodging of an Application for Review, served by the party seeking to review the BCCSA proceedings, with the manager of the MCU, and notice given thereof to all other parties affected. Proof of notice to all affected parties must be furnished to the Authority.

4.3 The Application for Review should:

4.3.1 Call upon the BCCSA to show cause why such proceedings should not be reviewed and set aside,

4.3.2 Call upon the BCCSA to despatch, within fifteen days after receipt of the application, to the MCU the transcript of such proceedings sought to be reviewed and set aside. Such transcript shall be certified by the BCCSA as a true copy of the proceedings.

4.4 The Application for Review shall set out the proceedings sought to be reviewed as well as the grounds and the facts and circumstances upon which the applicant relies to have the decision or proceedings set aside.

- 4.5 The MCU shall make available to the applicant and other interested parties the transcript despatched to it as aforesaid upon such terms as the MCU thinks appropriate.
- 4.6 The applicant may within ten days after the MCU has made the record available to him/her, by serving of a notice to amend, add to or vary the terms of his Application for Review.
- 4.7 A copy of the application as amended shall then be served to the manager of the MCU and any other affected party.
- 4.8 Should the BCCSA or any other party affected desire to oppose the granting of the order prayed in the Application, such party shall:
- 4.8.1 within ten days after receipt by him/her of the application or any amendment thereof serve notice to the applicant and the manager of the MCU that he/she intends so to oppose and shall in such notice appoint an address at which he/she will accept notice and service of all process in such proceedings; and

- 4.8.2 within ten days after the expiry of the time referred to in paragraph 4.8.1 hereof, serve any reply he/she may desire in answer to the allegations made by the applicant.
- 4.9 Where no notice in terms of sub paragraph 4.8.1 and 4.8.2 is served, the applicant may within five days of the expiry thereof apply to the manager of the MCU to allocate a date for the hearing of the application.
- 4.10 If the applicant fails to apply for a date within the period aforesaid, the respondent may do so immediately upon the expiry thereof.
- 4.11 Notice in writing of the date allocated as aforesaid shall forthwith be given by the MCU to all affected parties.
- 4.12 The BMCC, after hearing an application shall, if it finds in favour of the applicant, refer the matter back to the BCCSA for re-hearing.