

REPUBLIC OF SOUTH AFRICA

BROADCASTING AMENDMENT BILL

*(As amended by the Portfolio Committee on Communications (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 34D—2002]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Broadcasting Act, 1999, so as to add certain definitions; to provide for the conversion of the old Corporation into a public company in terms of the Companies Act; to clarify the relationship between the policies governing public commercial services and the values of the public broadcasting service; to provide for the continued existence of the old Corporation during the transitional period; to provide for a procedure relating to authorisation of all channels carried by the broadcasting services; to provide for the procedure relating to the granting of additional subscription television service licences and to open subscription television services to full competition; to provide for the application and granting of television licences; to provide for the imposition of penalties for failure to pay television licence fees; to provide for the appointment of inspectors; and to provide for the making of regulations; to amend the Independent Broadcasting Authority Act, 1993, and the Independent Communications Authority of South Africa Act, 2000; and to provide for matters connected therewith.

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

Amendment of Preamble to Act 4 of 1999

1. The Preamble to the Broadcasting Act, 1999 (Act No. 4 of 1999) (hereinafter referred to as the principal Act), is hereby amended by the substitution for the third paragraph of the following paragraph: 5

“**Realising** that the broadcasting system must reflect the identity and diverse nature of South Africa, is controlled and managed by persons or groups of persons from a diverse range of communities, including persons from previously disadvantaged groups, and must reflect the multilingual and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds, religious backgrounds and official languages in the Republic:” 10

Amendment of section 1 of Act 4 of 1999

2. Section 1 of the principal Act is hereby amended—
- (a) by the insertion after the definition of “appointing body” of the following definition: 15
- “‘authorised inspector’ means an authorised inspector appointed by the Corporation in terms of section 27(6) of this Act;”;

- (b) by the substitution for the definition of “Board” of the following definition:
 “ ‘Board’ means Board of [**South African Broadcasting Corporation Limited**] the Corporation;”;
- (c) by the substitution for the definition of “broadcaster” of the following definition: 5
 “ ‘broadcaster’ means any legal or natural person who composes or packages [**or distributes**] television or radio programme services for reception by the public or sections of the public or subscribers to such a service irrespective of technology used;”;
- (d) by the substitution for the definition of “broadcasting licence” of the following definition: 10
 “ ‘broadcasting licence’ means a licence granted and issued by the Authority in terms of this Act or the IBA Act, to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act or the IBA Act to have been so granted and issued;”;
- (e) by the substitution for the definition of “broadcasting signal distribution licence” of the following definition: 15
 “ ‘broadcasting signal distribution licence’ means a licence granted and issued by the Authority in terms of this Act or the IBA Act to a person for the purpose of providing signal distribution for broadcasting purposes, or deemed by this Act or the IBA Act to have been so granted and issued;”;
- (f) by the insertion after the definition of “broadcasting signal distribution licensee” of the following definitions: 20
 “ ‘broadcasting signal distribution service’ means a service whereby broadcasting signal distribution is provided;
 ‘business’, for the purposes of the definition of ‘record’ and section 27 means a person who uses a television set—
 (a) in the course of conducting his or her business;
 (b) in the course of engaging in commercial transactions;
 (c) as part of his or her activities for gain; or
 (d) on premises which are occupied for business purposes, but excludes a dealer and lessor;”;
- (g) by the substitution for the definition of “channel” of the following definition: 25
 “ ‘channel’ means a single defined [**television**] programming service of a licensee other than a video on demand programming service;”;
- (h) by the insertion after the definition of “commercial broadcasting service” of the following definition: 30
 “ ‘commercial service division’ means the commercial service division of the Corporation contemplated in section 9(1)(b);”;
- (i) by the substitution for the definition of “Corporation” of the following definition: 40
 “ ‘Corporation’ means the South African Broadcasting Corporation Limited [**established**] upon conversion of the old Corporation in terms of section [7] 8A of this Act;”;
- (j) by the insertion after the definition of “Corporation” of the following definitions: 45
 “ ‘date of conversion’ means the date determined by the Minister by notice in the *Gazette*, as stipulated in section 8A(1);
 ‘dealer’ means a person who engages in the business of selling television sets;”;
- (k) by the deletion of the definition of “direct to home broadcasting”; 50
- (l) by the insertion after the definition of “Department” of the following definition:
 “ ‘due diligence report’ means the due diligence report to be prepared by the old Corporation in terms of section 8A(12)(a);”;
- (m) by the substitution for the definition of “free-to-air service” of the following definition: 55
 “ ‘free-to-air service’ means a service which is broadcast and capable of being received without payment of subscription fees;”;
- (n) by the deletion of the definition of “incorporation date”; 60

- (o) by the insertion after the definition of “IBA Act” of the following definitions:
 “ ‘inventory’ means the inventory to be prepared by the old Corporation and submitted to the Minister in accordance with the provisions of section 8A(13)(a);
 ‘lessor’ means a person who engages in the business of renting out television sets;
 ‘licence’ means a broadcasting licence or a broadcasting signal distribution licence;”;
- (p) by the substitution for the definition of “licensee” of the following definition:
 “ ‘licensee’ means the holder of any licence granted and issued under this Act or the IBA Act or deemed by this Act or the IBA Act to have been so granted and so issued;”;
- (q) by the deletion of the definition of “local delivery service”;
- (r) by the substitution for the definition of “multi-channel distribution service” of the following definition:
 “ ‘multi-channel distribution service’ means a [service which transmits more than one channel at the same time by means of radio waves or telecommunications] broadcasting signal distribution service that provides broadcasting signal distribution of more than one channel at the same time on the same signal, and ‘multi-channel distributor’ is construed accordingly;”;
- (s) by the insertion after the definition of “old Corporation” of the following definition:
 “ ‘person’ has the meaning assigned to it in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), and includes any department of state or administration in the national, provincial or local spheres of government;”;
- (t) by the insertion after the definition of “public broadcasting service” of the following definitions:
 “ ‘public service division’ means the public service division of the Corporation contemplated in section 9(1)(a);
 ‘Public Finance Management Act’ means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (u) by the insertion after the definition of “radio” of the following definitions:
 “ ‘record’ means the information as prescribed which must be provided by a business or dealer or such information as is reasonably required by an authorised inspector in order to determine whether a business or dealer has complied with this Act;
 ‘Registrar’ means the Registrar of Companies, as defined in the Companies Act;
 ‘regulation’ means a regulation made under section 40 but excludes financial regulations made under section 18;”;
- (v) by the insertion after the definition of “television broadcasting service” of the following definitions:
 “ ‘television licence’ means a current and valid written licence issued in terms of this Act for the use of a television set;
 ‘television licence fee’ means a fee prescribed in terms of this Act and payable for the use of a television set;”;
- (w) by the insertion after the definition of “terrestrial broadcasting service” of the following definitions:
 “ ‘use’ means the use or possession of a television set or permitting any other person to use or possess a television set and the words ‘user’ and ‘used’ are construed accordingly;”;
- (x) by the deletion of the definition of “transfer date”;
- (y) by the deletion of subsection (3).

Amendment of section 3 of Act 4 of 1999

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

- “(a) be varied and comprehensive, providing a balance of information, education and entertainment meeting the broadcasting needs of the entire South African population in terms of age, race, gender, religion, interests and backgrounds;” and
- (b) by the substitution in subsection (5) for paragraph (f) of the following paragraph:
 - “(f) comply with **[the]** a code of conduct for broadcasting services as prescribed in **[Schedule 1]** terms of the IBA Act.”.

Substitution of section 4 of Act 4 of 1999

4. The following section is hereby substituted for section 4 of the principal Act: 10

“Licences

4. (1) (a) Notwithstanding section 39 of the IBA Act, any person who, immediately before the commencement of this Act, provided a broadcasting service without a broadcasting licence is deemed to have permission to continue to provide such service if such person applies to the Authority for the necessary licence within six months after the commencement of the Broadcasting Amendment Act, 2002. 15

(b) The permission is deemed to continue until the Authority has refused the application or, in the event of a decision to grant the application, has issued the licence. 20

(2) This section must not be construed to mean that a broadcasting service licensed to provide such service to a foreign country by the appropriate authority and whose signal is incidentally received in South Africa, is required to hold a broadcasting licence issued by the Authority. 25

(3) Subject to subsection (5), a person who provides a licensed broadcasting service consisting of more than one channel may not include a channel in such a service unless the Authority, on application by such person, has authorised the channel. 25

(4) The Authority must prescribe the procedure and the appropriate conditions for the authorisation of channels, which must include how channels are defined. 30

(5) (a) Any person who immediately before the commencement of this Act provided an unlicensed broadcasting service consisting of more than one channel is deemed to have permission to continue to include those channels if such person applies to the Authority for the authorisation of the channels within three months after the publication of the regulations contemplated in subsection (4). 35

(b) The permission is deemed to continue until the Authority has granted or refused such application.”. 35

Amendment of section 5 of Act 4 of 1999 40

5. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) Subject to this Act, broadcasting licences are categorised as—
 - (a) free-to-air broadcasting service;
 - (b) terrestrial subscription broadcasting service; 45
 - (c) satellite subscription broadcasting service;
 - (d) cable subscription broadcasting service;
 - (e) low power sound broadcasting service; and
 - (f) any other class of licence prescribed by the Authority from time to time.”; and 50
- (b) by the addition of the following subsection:
 - “(3) Applications for broadcasting licences must be made in terms of the applicable provisions of the IBA Act and any regulations prescribed thereunder.”.

Substitution of section 6 of Act 4 of 1999

6. The following section is hereby substituted for section 6 of the principal Act:

“Charter of Corporation

6. (1) The Corporation must comply with the Charter as outlined
in this part. 5
- (2) The Authority must monitor and enforce compliance with the Charter
by the Corporation.
- (3) In terms of this Charter, the Corporation, in pursuit of its objectives
and in the exercise of its powers, enjoys freedom of expression and
journalistic, creative and programming independence as enshrined in the
Constitution. 10
- (4) The Corporation must encourage the development of South African
expression by providing, in South African official languages, a wide range
of programming that—
- (a) reflects South African attitudes, opinions, ideas, values and artistic
creativity; 15
- (b) displays South African talent in education and entertainment
programmes;
- (c) offers a plurality of views and a variety of news, information and
analysis from a South African point of view; 20
- (d) advances the national and public interest.
- (5) (a) The Board must prepare and submit to the Authority not later than
three months after the date of conversion, policies that will ensure
compliance with the Authority’s Code of Conduct as prescribed and with
the Corporation’s licence conditions and with the objectives contained in
this Act, including: 25
- (i) News editorial policy;
- (ii) programming policy;
- (iii) local content policy;
- (iv) educational policy; 30
- (v) universal service and access policy;
- (vi) language policy; and
- (vii) religious policy.
- (b) The Corporation must notify the Authority in writing of any
amendments to the policies referred to in paragraph (a) as soon as
reasonably possible. 35
- (6) The Board must ensure that there is public participation in the
development of the policies referred to in subsection (5) by inviting and
considering public comment on such draft policies and by other means.
- (7) The Corporation must provide suitable means for regular inputs of
public opinion on its services and ensure that such public opinion is given
due consideration. 40
- (8) The Corporation must develop a Code of Practice that ensures that the
services and the personnel comply with—
- (a) the constitutional principle of equality; 45
- (b) the equitable treatment of all segments of the South African
population;
- (c) the constitutional requirement of equitable treatment of all official
languages;
- (d) the rights of all South Africans to receive and impart information and
ideas; 50
- (e) the mandate to provide for a wide range of audience interests, beliefs
and perspectives; and
- (f) a high standard of accuracy, fairness and impartiality in news and
programmes that deal with matters of public interest.” 55

Repeal of section 7 of Act 4 of 1999

7. Section 7 of the principal Act is hereby repealed.

Amendment of section 8 of Act 4 of 1999

8. Section 8 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph: 5

“(e) to be responsive to audience needs, including the needs of the deaf and the blind and account on how to meet those needs;”.

Insertion of section 8A in Act 4 of 1999

9. The following section is hereby inserted after section 8 of the principal Act:

“Conversion

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8A. (1) The old Corporation is, with effect from a date determined by the Minister by notice in the *Gazette*, which may be a date prior to the commencement of this Act, deemed to be a public company incorporated in terms of the Companies Act, to be known as the South African Broadcasting Corporation Limited. 15

(2) The Corporation must have a share capital as contemplated in section 19 of the Companies Act with the State as its sole shareholder with effect from the date of conversion.

(3) The Minister must determine the memorandum and articles of association of the Corporation and must submit these to the Registrar at least a week prior to the date of the notice contemplated in subsection (1). 20

(4) The Registrar must, on the date of the notice contemplated in subsection (1), register the memorandum and the articles of association of the Corporation in terms of section 63(1) of the Companies Act and issue a certificate of incorporation and a certificate to commence business to the Corporation, but no fees are payable in respect of such registration or issue. 25

(5) With effect from the date of conversion the Companies Act applies to the Corporation as if it had been incorporated in terms of the Companies Act on that date, save to the extent stipulated in this Act.

(6) Sections 32, 44, 54(2), 60, 63(2), 64, 65, 66, 172, 190 and 344(b) and (d) of the Companies Act do not apply to the Corporation. 30

(7) All references in this Act to the conversion of the old Corporation must be construed as references to the conversion of the old Corporation into a public company having a share capital and having been incorporated in terms of the Companies Act as stipulated in subsection (2). 35

(8) Neither the repeal of the Broadcasting Act, 1976 (Act No. 73 of 1976), nor the conversion of the old Corporation affects—

(a) the continued corporate existence of the old Corporation with separate legal personality as from the date of its first establishment;

(b) any of the rights, assets, liabilities or obligations acquired or incurred by the old Corporation or on behalf of the old Corporation at any time before its conversion; 40

(c) the terms and conditions of service and accrued benefits of its employees; or

(d) the validity of any act lawfully performed by or on behalf of the old Corporation prior to the date of conversion. 45

(9) With effect from the date of conversion—

(a) any reference to the old Corporation in any contract, statute, licence or other written instrument is deemed to be a reference to the Corporation; 50

(b) (i) any reference to the old Corporation in the patents register, trade marks register, design register, deeds register or any other register in the Republic is, with effect from the date of conversion, deemed to be a reference to the Corporation;

(ii) the relevant registrar must make such entries or endorsements in any register referred to in paragraph (i) or other documents in the registrar's office or submitted to the registrar as are necessary to give effect to the conversion;

(iii) no fees or other levies are payable in respect of such entries or endorsements.

(10) Any legal proceedings instituted by or against the old Corporation prior to the date of conversion may, notwithstanding such conversion, be proceeded with by or against the Corporation subject to the law governing the prescription of claims.

(11) (a) The Minister of Finance, after consultation with the Minister, must determine the tax values of the assets owned by the Corporation as at the date of conversion for the purpose of calculating any wear and tear or capital allowance or any deduction as contemplated in the Income Tax Act, 1962 (Act No. 58 of 1962).

(b) The assets contemplated in paragraph (a) are for the purposes of sections 11(e), 12C and 13 of the Income Tax Act, 1962 (Act No. 58 of 1962), deemed to have been brought into use for the first time at a cost equal to the value determined in terms of paragraph (a).

(12) (a) The old Corporation must before the date of conversion conduct a legal and financial due diligence investigation into the state of its affairs for the purposes of identifying and establishing the status of all its assets, rights, obligations and liabilities.

(b) The old Corporation must submit to the Minister, by not later than three months prior to the date of conversion, a legal and a financial due diligence report containing details of all of such assets, rights, obligations and liabilities and the implications of the contracts concluded by or on behalf of the old Corporation in respect of such assets, rights, obligations and liabilities.

(13) The old Corporation must, after submitting the due diligence report to the Minister and before the date of conversion, submit to the Minister—

(a) an inventory of all its assets and liabilities;

(b) details of its financial policies relating to the allocation of such assets and liabilities between the public service division, the commercial service division and the shared group services of the Corporation; and

(c) details of its financial policies governing internal transfer pricing between the public service division, the commercial service division and the shared group services of the Corporation.

(14) The Minister must submit a copy of the inventory referred to in subsection 13(a) to the National Treasury and the Auditor-General.

(15) (a) Any use by the public service division or the commercial service division of any asset allocated to another division of the Corporation must be accounted for in the respective financial records of the public service division and commercial service division to ensure that such use took place on an arms length commercial basis.

(b) Any service rendered by or to the public service division or the commercial service division to or by another division of the Corporation must be accounted for in the respective financial records of the public service division and commercial service division to ensure that such service was rendered on an arms length commercial basis."

Substitution of section 9 of Act 4 of 1999

10. The following section is hereby substituted for section 9 of the principal Act:

"(1) The Corporation [**consists**] must consist of two separate operational **[entities] divisions**, namely—

(a) a public service division; and

(b) a commercial service division.

(2) The public and commercial [**services of the Corporation**] service divisions must be separately administered and a separate set of financial records and accounts are to be kept in respect of each such division."

Amendment of section 10 of Act 4 of 1999

11. Section 10 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraph (e) of the following paragraph:
 “(e) include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity;”;
- (b) the addition of the following subsections:
- “(3) The old Corporation shall, by no later than three months prior to the date of conversion, submit to the Minister for approval—
- (a) a proposed budget in respect of the public service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
- (b) a three year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the public service of the Corporation and in compliance with the general objectives of this Act covering the public service obligation of the Corporation in respect of the conduct of the business of the public service division for the three financial years following the date of conversion.
- (5) The Board must—
- (a) keep proper and accurate books and records of the financial affairs of the public service division separately from those of the commercial service division;
- (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the public service division in accordance with generally accepted accounting practice separately from those in respect of the commercial service division; and
- (c) submit to the Minister within four months after the end of the financial year of the Corporation—
- (i) an annual written report on the activities of the public service division during the financial year of the Corporation preceding the date of the report;
- (ii) the financial statements of the public service division for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and
- (iii) the report of the auditors on the financial statements of the public service division for the financial year of the Corporation.”.

Amendment of section 11 of Act 4 of 1999

12. Section 11 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

- “(2) The Corporation must, by not later than a date three months prior to the date of conversion, submit to the Minister for approval—
- (a) a proposed budget in respect of the commercial service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
- (b) a three-year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the commercial service of the Corporation and in compliance with the general objectives of this Act covering the commercial service obligation of the Corporation in respect of the conduct of business of the commercial service division for the three financial years following the date of conversion.

- (3) The Board must—
- (a) keep proper and accurate books and records of the financial affairs of the commercial service division separately from those of the public service division;
 - (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the commercial service division in accordance with generally accepted accounting practice separately from those in respect of the public service division; and
 - (c) submit to the Minister within four months after the end of the financial year of the Corporation—
 - (i) an annual written report on the activities of the commercial service division during the financial year of the Corporation preceding the date of the report;
 - (ii) the financial statements of the commercial service division for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and
 - (iii) the report of the auditors on the financial statements of the commercial service division for the financial year of the Corporation.”

Amendment of section 12 of Act 4 of 1999 20

13. Section 12 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraph:

- “(b) the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer or their equivalents, who are the executive members of the Board.” 25

Amendment of section 13 of Act 4 of 1999

14. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (9) of the following subsection:

“(9) The Board of the old Corporation as constituted on the date of conversion constitutes the first Board of the Corporation.”; and 30
- (b) by the addition of the following subsections:

“(12) The Board—

 - (a) must establish a public service subcommittee and a commercial service subcommittee—
 - (i) to report to the Board on the extent to which the public service division and the commercial service division have achieved their objectives during the relevant period; and 35
 - (ii) to perform such other functions regarding the organisation of the Corporation into the public service division and the commercial service division, respectively, as may be delegated to them by the Board; and 40
 - (b) may establish such other subcommittees as it deems appropriate from time to time.

“(13) The Board is the accounting authority of the Corporation.” 45

Substitution of section 14 of Act 4 of 1999 45

15. The following section is hereby substituted for section 14 of the principal Act:

“Executive committee

14. (1) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and [six] no more than 11 other members [appointed by the Board]. 50

[2] **The Group Chief Executive Officer will be the accounting officer of the Corporation.**

(3) (2) The executive committee is accountable to the Board.

[(4)] (3) The executive committee [will] must perform such functions as may be determined by the Board.”.

Repeal of section 19 of Act 4 of 1999

16. Section 19 of the principal Act is hereby repealed.

Substitution of section 22 of Act 4 of 1999

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17. The following section is hereby substituted for section 22 of the principal Act:

“Amendment of broadcasting licences

22. (1) The Corporation must, within six months after the date of commencement of the Broadcasting Amendment Act, 2002, or the conversion date, whichever is the later, apply to the Authority for such amendments to its existing licences as are necessary in order to reflect the reorganisation of the Corporation into the public service division and the commercial service division and its related obligations in terms of this Act and the IBA Act.

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(2) The relevant provisions of the IBA Act apply with the necessary changes to the applications referred to in subsection (1) but, irrespective of the contents of the application of the Corporation, the Authority may impose any appropriate licence conditions which are necessary in order to reflect the reorganisation of the Corporation into the public service division and the commercial service division and its related obligations in terms of this Act and the IBA Act.”.

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Insertion of section 22A in Act 4 of 1999

18. The following section is hereby inserted in the principal Act after section 22:

“Regional television services

22A. (1) In the performance of its public service mandate under section 10(1)(a) and (b), the Corporation must, within nine months of the commencement of the Broadcasting Amendment Act, 2002, apply to the Authority in terms of section 41(4) of the IBA Act, read with section 45(2) of that Act, to license it to provide additional television services which broadcast—

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- (a) regionally;
- (b) in such official languages as are appropriate, having regard to language usage within respective regions served by the proposed services;
- (c) so as to ensure that between these regional services, broadcasting in the languages of Sepedi, Sesotho, Setswana, siSwati, TshiVenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu is provided on an equitable basis.

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(2) The regional services provided by the Corporation must be funded by money appropriated by Parliament and may draw revenues from grants, donations and sponsorship.

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(3) The Authority must determine the extent to which these services may draw revenues from advertising.

(4) The Corporation must draw up proper financial regulations for these services consistent with section 18.”.

Amendment of section 24 of Act 4 of 1999

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19. Section 24 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The Board must ensure that the Corporation complies with the Public Finance Management Act in relation to accounting procedures by public entities.”.

Amendment of section 25 of Act 4 of 1999

20. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In addition to the annual financial statements to be prepared in terms of the Companies Act and also in terms of the Public Finance Management Act the Corporation must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed as auditor of the Corporation.”.

Amendment of section 26 of Act 4 of 1999

21. Section 26 of the principal Act is hereby amended by the deletion of subsections (3), (4), (5), (6) and (7).

Substitution of section 27 of Act 4 of 1999

22. The following section is hereby substituted for section 27 of the principal Act:

“Television licences

27. (1) (a) No person may use any television set unless such person is in possession of—

- (i) a television licence issued by the Corporation against payment of the prescribed fee for each television set so used, unless exempted by regulation; or
 - (ii) a written exemption pursuant to the regulations; or
 - (iii) written confirmation, issued by the lessor of the television set in question that such person is a person to whom that television set has been rented, or otherwise made available in accordance with this Act.
- (b) No business, dealer or lessor may use any television set unless—
- (i) such business, dealer or lessor is in possession of a television licence issued against payment of a prescribed fee in terms of this Act for each television set so used, unless exempted by regulation;
 - (ii) such television set is used in accordance with such licence; and
 - (iii) such business, dealer or lessor is able to produce such licence on demand.

(c) A user who is required to be in possession of a television licence must possess all the categories of television licences as prescribed, which pertain to such use.

(2) Subsection (1) does not apply to a person who manufactures or repairs television sets, or who acts in the execution of his or her duties in the service of such a person, in so far as he or she uses any television set manufactured or repaired by him or her, in or on the premises where it was manufactured or repaired or on any other premises approved by the Corporation, for the purposes of testing such a television set.

(3) Any person who contravenes subsection (1) is, in addition to payment of the prescribed licence fee, liable—

- (a) to pay to the Corporation by way of a penalty an amount equal to double the amount of the applicable prescribed licence fee; or
- (b) in the event of a user proving that he or she had used the television set for a period of less than one year, to pay to the Corporation, by way of a penalty, in respect of every month or part of a month during which such a person had failed to take out such television licence, an amount equal to 10% of the applicable prescribed television licence fee: Provided that the total amount of the penalty may not exceed the amount of such television licence fee, unless otherwise prescribed.

(4) A dealer who sells or alienates a television set to a person who is not in possession of a television licence and who is not exempted from the obligation to be in possession of a television licence, is liable to pay a penalty of R3 000 or such higher amount as may be prescribed, but such

penalty may not exceed R10 000 in respect of each television set sold or alienated to such person.

- (5) Notwithstanding subsections (3) and (4), any person who—
- (a) contravenes or fails to comply with any provision of this section or any regulations pertaining to television licence matters; or
- (b) after an authorised inspector, referred to in subsection (6), has produced his or her written authority to such person fails, without good reason, to comply with any lawful demand made by that authorised inspector,

is guilty of an offence in relation to each television set in respect of which the offence is committed and is liable upon conviction to a fine not exceeding R500 in relation to each such offence or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) (a) The Corporation may appoint any person as an authorised inspector.

- (b) An authorised inspector may—
- (i) require a person who is required in terms of subsection (1) to be in possession of a television licence to produce such television licence for inspection;
- (ii) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to produce such television set for examination, in order to determine whether the provisions of this Act have been complied with;
- (iii) require a person who uses a television set to furnish his or her identity document or licence registration number, whichever is applicable;
- (iv) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to furnish such information as may be prescribed or necessary in order to determine whether this Act has been complied with;
- (v) require a business, dealer or lessor to produce records relating to transactions involving television sets for inspection, and make extracts therefrom or copies thereof;
- (vi) enter upon any land, in so far as this may be necessary, in order to exercise a power conferred on him or her by this Act: Provided that entry may not be gained to a residence after dark without a warrant or the occupier's permission.

(7) A television licence is not transferable, save as may be prescribed.

(8) All television licence fees collected by the Corporation must be used by the Corporation solely for the public service to be provided by the Corporation.

(9) To enable the Corporation to establish and maintain a national database register listing all sales of new television sets in the Republic, dealers, lessors and businesses must provide the Corporation with all information prescribed in respect of sales of new television sets.”

Amendment of section 28 of Act 4 of 1999

23. Section 28 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Board must ensure that the Corporation complies with the provisions of the Public Finance Management Act relating to the preparation and submission of annual reports by public entities.”

Amendment of section 30 of Act 4 of 1999

24. Section 30 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) reflect the culture, character, religion, needs and aspirations of the people in the regions that they are licensed to serve subject to licence conditions;”;

(b) by the addition of the following subsection:

“(8) A subscription broadcasting service must contribute to South African television and music content in terms of regulations prescribed by the Authority.”

Amendment of section 31 of Act 4 of 1999

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25. Section 31 of the principal Act is hereby amended—

(a) by the deletion of subsection (1);

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Authority must as soon as reasonably possible conduct a licensing process [immediately if it finds that the provision of additional subscription television services is feasible] for licences classified under section 5(2)(c), (d) and (f).”; and

(c) by the addition of the following subsections:

“(3) Pursuant to an inquiry in terms of section 28 of the IBA Act, the Authority must issue recommendations as to whether sections 49 and 50 of the IBA Act are applicable to broadcasting services carrying more than one channel and the extent and terms upon which such sections must apply.

(4) Sections 49 and 50 of the IBA Act must not apply to such broadcasting services until the Authority has issued such a recommendation and that recommendation has been submitted to the Minister for tabling in the National Assembly, and has been adopted by the National Assembly.”

Amendment of section 33 of Act 4 of 1999

26. Section 33 of the principal Act is hereby amended by the deletion of subsections (2) and (3). 25

Amendment of section 34 of Act 4 of 1999

27. Section 34 of the principal Act is hereby amended—

(a) by the addition to subsection (2) of the following paragraph:

“(g) the provision of efficient delivery of programming using the most effective technologies available at reasonable cost.”; and

(b) by the addition of the following subsection:

“(4) (a) Any person who immediately before the commencement of this Act, provides a broadcasting signal distribution service without a broadcasting signal distribution licence is deemed to have permission to provide such service if such person applies to the Authority for the licence within six months after the commencement of the Broadcasting Amendment Act, 2002.

(b) The permission remains until the Authority has refused the licence or, in the event of a decision to grant the application, has issued the licence.”

Amendment of section 35 of Act 4 of 1999

28. Section 35 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Multi-channel distributors must hold a [separate class of] licence issued by the Authority.”

Amendment of section 40 of Act 4 of 1999

29. Section 40 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph:

- “(c) (i) the television licence fee which is payable for any television licence issued in terms of this Act, including the manner of payment and the collection thereof, penalties and ancillary costs;
- (ii) the period of validity of a television licence; 5
- (iii) the purpose for which and the place where a television set may be used;
- (iv) different categories of television licences which any user of a television set may be required to possess; 10
- (v) the duty to keep, maintain and furnish records and information, including a duty to supply the Corporation with such records and information as may be prescribed;
- (vi) exemptions from the obligation to be in possession of a television licence; and
- (vii) the transferability of a television licence.”

Repeal and amendment of laws

30. The laws specified in Schedule 1 are repealed or amended to the extent indicated in the third column thereof. 15

Short title and commencement

31. This Act is called the Broadcasting Amendment Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 153 of 1993	Independent Broadcasting Authority Act, 1993	<p>1. Amendment of section 13 by the insertion after paragraph (b) of the following paragraphs:</p> <p><u>“(c) to administer, manage and plan the broadcasting services frequency bands in accordance with bilateral, multilateral or international regulations agreed to or adopted by the Republic;</u></p> <p><u>(d) to approve technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;</u></p> <p><u>(e) to inspect transmitters and other apparatus used by any licensee or prospective licensee;</u></p> <p><u>(f) to assist the Government 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.”.</u></p> <p>2. Substitution for section 21 of the following section:</p> <p><u>“Establishment of Broadcasting Monitoring and Complaints Committee</u></p> <p><u>21.</u> <u>The Council shall establish a Broadcasting Monitoring and Complaints Committee.”.</u></p> <p>3. Section 30 is hereby repealed.</p> <p>4. Amendment of section 44 by the substitution for subsection (2) of the following subsection:</p> <p><u>“(2) An application for the renewal of a broadcasting licence shall be in the prescribed form, and in all other respects sections 41, 42 and 43 shall apply with the necessary changes in rela-</u></p>

No. and year of Act	Short title	Extent of amendment or repeal
		<p>tion to an application for the renewal of a broadcasting service.”</p> <p>5. Amendment of section 56 by the substitution for subsection (1) of the following subsection: “(1) Subject to the provisions of subsection (2), all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as [set out in Schedule 1] prescribed.”</p> <p>6. Substitution for section 69 of the following section: “Delegations</p> <p>69. (1) The Council may in writing— (a) <u>delegate to any councillor or any of its committees or to the chief administrative officer any power, function or duty conferred or imposed upon the Authority by or in terms of this Act: Provided that a power, function or duty so delegated to the chief administrative officer may be exercised or performed by any other staff member of the Authority specially authorized thereto except where the terms of such delegation preclude such officer from doing so:</u> and (b) <u>authorize a standing committee or a special committee to exercise or perform any power, function or duty assigned to the Authority by or in terms of this Act.</u> (2) <u>Any delegation or authorization under subsection (1) may be made subject to such conditions and restrictions as the Council may determine, and may at any time be amended or revoked by the Council.</u></p>

No. and year of Act	Short title	Extent of amendment or repeal
		<p>(3) <u>The Council shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision made in terms of such a delegation.</u></p> <p>(4) <u>The power to make regulations shall not be delegated under subsection (1).</u></p> <p>(5) <u>Notwithstanding the provisions of this section, any committee delegated with the power to grant, amend, revoke, transfer or renew a licence in terms of this Act, must report its decision to the Council.”.</u></p> <p>7. Schedule 1 is hereby repealed.</p>
Act No. 13 of 2000	Independent Communications Authority of South Africa Act, 2000	<p>1. Amendment of section 17 by the substitution for subsection (8) of the following subsection:</p> <p>“(8) The members of any committee, including the [Broadcasting Technical Committee and] Broadcasting Monitoring and Complaints Committee referred to in section 21 of the IBA Act, who are not councillors or members of the staff of the Authority must be paid such remuneration and allowances as the Council determines.”.</p>

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL OF 2002

SUMMARY

1. The Broadcasting Amendment Bill seeks to address and give clarity relating to the following policy imperatives:

- * The amendment Bill closes the gap that currently exists by requiring not only broadcasting services but all distribution services to hold licenses prior to commencing operations.
- * The Bill seeks to harmonise the licensing processes and procedures relating to broadcasting and distribution services with the provisions of the IBA Act, 1993 (Act No.153 of 1993). The Bill makes sections 35, 36, 37, 41, 43, 44, 45(2), 46(1), 47(2), 48, 51, 52 and 74 of the IBA Act, 1993, applicable to any application for a broadcasting or distribution license in terms of this section.
- * The Bill seeks to provide for the SABC (hereinafter referred to as "the Corporation") to develop policies that clarify its role and achieve its mandate. The Bill requires the Corporation in all its reporting to be accurate, accountable, fair and to advance national and public interest of the Republic in accordance with the Constitution.
- * The Bill outlines a clear procedure for the incorporation of the Corporation into a public company. The Bill requires the Corporation to conduct an extensive legal and financial due diligence investigation for the purposes of identifying all of its assets, liabilities, rights and obligations in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), prior to the incorporation. Two sets of financial records, one for the public broadcasting service and another for the commercial broadcasting service division of the Corporation must be prepared. The Bill seeks to ensure that the public broadcasting service division of the Corporation does not subsidise the commercial broadcasting service of the Corporation. It is provided that the current Corporation continues to exist until the date of its incorporation.
- * The amendment Bill incorporates provisions that require the Board to prepare and submit to the Minister for approval business plans, financial statements, and a set of policies of both the public service division and commercial service division.
- * The Bill introduces a provision that requires the Board to establish two standing committees to ensure that the mandates and policies of the public broadcasting service and commercial broadcasting service are achieved and to allocate clear responsibility to the members of the Board .
- * Section 27 of the Act is amended to provide for a detailed television license collection mechanism and to prohibit the use of a television set by individuals and businesses without a television licence.
- * Section 30 is amended to provide for commercial broadcasters to pay license fees, and to have South African content in their programmes. ICASA is empowered to prescribe conditions in ethics regards.
- * Section 31 is amended to empower ICASA to conduct a licensing process for additional subscription services and to promote competition in that area.
- * Section 32 is amended to provide for the establishment of two regional television services in the country which will assist the national broadcaster in rolling out programming in indigenous languages which are not adequately covered by the national broadcaster.
- * The Bill provides that existing signal distribution services and multi-channel distribution services must apply to ICASA for a licence to continue with their operations. ICASA is empowered to impose licence conditions.

AMENDMENTS TO THE IBA ACT, 1993 AND ICASA ACT, 2000

Schedule 1 to this Bill seeks to—

- * repeal the provisions which refer to the Broadcasting Technical Committee in sections 21 and 30 of the IBA Act, 1993, and section 17 of the ICASA Act, 2000;

- * empower ICASA in section 56 and Schedule 1 to the IBA Act, 1993, to promulgate the code of Broadcasters in the form of regulations in accordance with section 78 of the IBA Act, 1993.

FINANCIAL IMPLICATIONS

The Broadcasting Amendment Bill contains no financial implications for the National Revenue Fund, the State, the SABC or the Regulator prior to the passing of the Bill into law. There will be financial implications for the National Revenue Fund in the implementation process of certain provisions of the Bill, for example, the rolling out of regional television services and the mechanism for the collection of television licence fees.

OTHER DEPARTMENTS/AGENCIES CONSULTED

An extensive consultative process was followed in the development and finalisation of the drafting of the Broadcasting Amendment Bill. The following stakeholders were consulted and their input taken into account:

- * The South African Broadcasting Corporation (SABC)
- * Independent Communications Authority of South Africa (ICASA)
- * The National Treasury
- * The Department of Trade and Industry
- * The Department of Education
- * The Department of Sports and Recreation
- * The Department of Labour
- * The Departments of Agriculture and of Land Affairs
- * Government Communication and Information Systems
- * The Department of Housing
- * The Department of Social Development
- * The Department for Public Enterprises
- * The Department of Health
- * The Department of Arts, Culture, Science and Technology
- * The Department of Water Affairs
- * The Department of Public Works
- * The Department of Home Affairs
- * The Department of Public Service and Administration
- * The Department of Minerals and Energy
- * The Department of Environmental Affairs and Tourism
- * The Department of Transport
- * Intelligence Services
- * The Department of Provincial and Local Government
- * The Department of Foreign Affairs

The Bill was sent to all Directors-General of the Departments mentioned above for comments.

PARLIAMENTARY PROCEDURE

The Department of Communications and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by Section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.