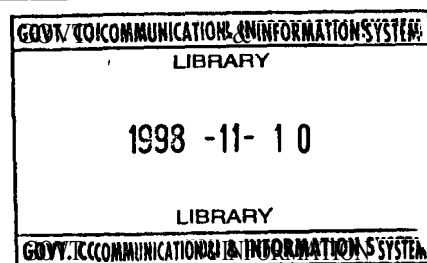


REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
BROADCASTING BILL**

[B 94-98]



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*(As agreed to by the Portfolio Committee on Communications (National Assembly))*

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[B 94A—98]

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REPUBLIEK VAN SUID-AFRIKA

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**PORTEFEULJEKOMITEE-AMENDEMENTE  
OP  
UITSAAIWETSONTWERP**

[W 94—98]

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*(Soos goedgekeur deur die Portefeuljekomitee oor Kommunikasie (Nasionale Vergadering))*

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[W 94A—98]

ISBN O 621286281

## AMENDMENTS AGREED TO

### BROADCASTING BILL [B 94–98]

#### GENERAL EXPLANATORY NOTE

1. That the following sentence be added:

The explanatory introductory provisions in **bold type and italics** do not form part of the provisions of this Act.

#### PREAMBLE

1. On page 2, in line 1, to omit “the history of”.

#### CLAUSE 1

Clause rejected.

#### NEW CLAUSE 1

##### **Definitions and interpretation**

**1. (1)** In this Act, unless the context otherwise indicates, radio, sound broadcasting service and television set have the meaning assigned thereto in the **IBA Act**, and—

- (i) “Advisory Body”, means the South African Broadcast Production Advisory Body established in terms of section 38 of this Act;
- (ii) “appointing body” means the body charged with the appointment of members of the Board in terms of section 13 of this Act;
- (iii) “Authority” means the **Independent Broadcasting Authority** established by section 3 of the **IBA Act**;
- (iv) “Board” means Board of South African Broadcasting Corporation Limited;
- (v) “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 to the subscribers to such a service irrespective of technology used;
- (vi) “broadcasting” means any form of **unidirectional** telecommunications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio or any other means of telecommunication or any combination of the aforementioned, and “broadcast” is construed accordingly;
- (vii) “broadcasting licence” means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act to have been so granted and issued;
- (viii) “broadcasting licensee” means the holder of a broadcasting licence;
- (ix) “broadcasting service” means any service which consists of the broadcasting of television or sound **broadcasting** material to the public, sections of the public or to subscribers to such a service but does not include—

- (a) a service (including text service) that provides no more than data, or no more than text (with or without associated still images);
- (b) a service that makes programmed available on demand on a point-to-point basis, including a dial-up service; and
- (c) a service or a class of service that the Minister determines, by notice in the *Gazette*, not to fall within this definition;
- (x) “broadcasting services frequency bands” means that part of the electromagnetic radio frequency spectrum which is allocated for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such allocation has been agreed to or adopted by the Republic;
- (xi) “broadcasting signal distribution” means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area by means of a telecommunication process and includes multi-channel distribution;
- (xii) “broadcasting signal distribution licence” means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing signal distribution for broadcasting purposes, or deemed by this Act to have been so granted and issued;
- (xiii) “broadcasting signal distribution licensee” means the holder of a broadcasting signal distribution licence;
- (xiv) “channel” means a single defined television programming service of a licensee other than a video on demand programming service;
- (xv) “commercial broadcasting service” means a broadcasting service operating for profit or as part of a profit entity but excludes any broadcasting service provided by a public broadcasting licensee;
- (xvi) “common carrier” means a service for broadcasting signal distribution as provided by Sentech Limited, established in terms of the Sentech Act, 1996;
- (xvii) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (xviii) “community” includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;
- (xix) “community broadcasting service” means a broadcasting service which—
  - (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
  - (b) serves a particular community;
  - (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmed to be broadcast in the course of such broadcasting service; and
  - (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;
- (xx) “Corporation” means the South African Broadcasting Corporation Limited established in terms of section 7 of this Act;
- (xxi) “Department” means the Department of Communications;
- (xxii) “direct to home broadcasting” means broadcast via satellite directly to individual users and includes multi-channel satellite distribution;

- (xxiii) “encryption” means a method for changing a broadcasting signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment;
- (xxiv) “free-to-air service” means a service which is broadcast without encryption and capable of being received on universal receivers without payment by the end user to the broadcaster and without the use of receiving equipment;
- (xxv) “IBA Act” means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);
- (xxvi) “incorporation date” means the date on which the Corporation is incorporated into a public company and issued with a certificate to commence business;
- (xxvii) “licence area” means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence;
- (xxviii) “licensee” means the holder of any licence granted and issued under this Act or deemed by this Act to have been so granted or so issued;
- (xxix) “local content” has a meaning similar to the meaning set out in section 53 of the IBA Act;
- (xxx) “local delivery service” means a broadcast service using multi-channel terrestrial distribution systems such as cable, micro-wave multi-point distribution systems;
- (xxxi) “low power sound broadcasting service” means a community, private or public sound broadcasting service which radiates power not exceeding one watt;
- (xxxii) “member” means executive and non-executive members of the Board referred to in sections 12 and 13 of this Act;
- (xxxiii) “Minister” means the Minister charged with the administration of this Act;
- (xxxiv) “multi-channel distribution service” means a service which transmits more than one broadcasting service at the same time by means of radio waves or telecommunications;
- (xxxv) “National Revenue Fund” means the Fund established by section 213 of the Constitution;
- (xxxvi) “old Corporation” means the South African Broadcasting Corporation established in terms of the Broadcasting Act, 1976 (Act No. 73 of 1976);
- (xxxvii) “prescribed” means prescribed by regulation;
- (xxxviii) “President” means the President of the Republic of South Africa;
- (xxxix) “public broadcasting service” means—
  - (a) any broadcasting service provided by the South African Broadcasting Corporation;
  - (b) a broadcasting service provided by any other statutory body;
  - (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 must include a commercially operated broadcasting service provided by a person referred to in this definition;
- (xl) “radio” means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz;
- (xli) “satellite broadcasting service” means a service which is broadcast by transmitters situated on a satellite;
- (xlii) “sound broadcasting service” means a broadcasting service destined to be received by a sound radio set;

- (xlili) “-sound radio set” means any apparatus designed or adapted to be capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or other visible signs or signals;
  - (xliv) “subscription broadcasting service” means a broadcasting service provided to an end user upon the payment of a fee;
  - (xlv) “telecommunications” means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun “telecommunication” must be construed accordingly;
  - (xlvi) “television broadcasting service” means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;
  - (xlvii) “terrestrial broadcasting service” means a service that is broadcast from a transmitter situated upon the earth’s surface;
  - (xlviii) “transfer date” means a date announced by the Minister by proclamation in the *Gazette*.
- (2) Any interpretation of the provisions of this Act must be construed and applied in a manner which is consistent with freedom of expression and the journalistic, creative and programming independence of the broadcasters guaranteed by the Constitution.
- (3) The provisions of the Companies Act are applicable to the Corporation except where otherwise stated in this Act.

## CLAUSE 2

1. On page 10, from line 30, to omit “in order to regulate and control broadcasting”.
2. On page 10, in line 31, after “Republic” to insert “in the public interest”.
3. On page 10, in line 32, after “development of society,” to insert “gender equality,”.
4. On page 10, in line 36, after “broadcasting services” to insert “through participation”.
5. On page 10, in line 42 to omit paragraph (f) and to substitute:
  - (f) encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups;
6. On page 12, in line 4, to omit “policy”.

## CLAUSE 3

1. On page 12, in line 25 after “persons” to omit “form” and to substitute “from”.
2. On page 12, in line 43, to omit “should” and to substitute “must”.

#### CLAUSE 4

1. On page 14, in line 9, after “terrestrial”, to insert “or any other form of distribution”.
2. On page 14, in line 10, after “licence”, to omit “or authorisation”.
3. On page 14, from line 12, to omit subsection (2) and to substitute with the following subsection:

(2) A broadcasting service existing at the commencement of this Act, upon application to the Authority for a broadcasting licence, is deemed to have the necessary permission to continue its activities for a period not exceeding six months from the commencement of this Act unless the Authority decides anything to the contrary.

4. On page 14, after line 24, to insert the following new subsections:

(6) Each channel provided in a multi-channel environment must be authorised by the Authority upon application by the person offering a broadcasting service to the public.

(7) Any channel carried by a broadcasting service at the commencement of this Act, upon application to the Authority for authorisation, is deemed to have the necessary permission to continue its activities unless the Authority decides anything to the contrary.

#### CLAUSE 5

1. On page 14, in lines 34 and 35, to omit the word “broadcasting”.
2. On page 14, from line 41, after “service” to omit “Including multi-channel terrestrial distribution such as cable, microwave multi-point distribution systems and local multi-point distribution systems”.
3. On page 14, after line 44, to add the following paragraphs:

(j) low power radio service;

(k) any other class of licence as determined from time to time.

#### CHAPTER IV

1. On page 14, from line 49, to omit “The Authority monitor-s compliance with the Charter by the Corporation. Parliament will enact the Charter.” and to substitute:

The Authority monitors and enforces compliance with the provisions of the Charter of the Corporation.

#### CLAUSE 6

1. on page 16, from line 4, to omit subsection 2) and to substitute with the following new subsection:

(2) In terms of this Charter, the Corporation will in pursuit of its objectives and in exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.

2. On page 16, in line 6, after “monitor” to insert “and enforce” and to omit “and complaints arising from it”.

## CHARTER OF CORPORATION

1. On page 16, in line 9, after “Part 2:” to insert “Establishment,”.

### CLAUSE 7

1. On page 16, in line 11, to omit “Upon” and to substitute “On”.
2. On page 16, in line 11, before “incorporation” to insert “establishment by”.
3. On page 16, in line 24, to omit “may” and to substitute “must”.
4. On page 16, in line 25, to omit “direction” and to insert “directive”.
5. On page 16, from line 26, to omit subsection (7) and to insert a new subsection:

(7) The Minister must, when in his or her opinion the old Corporation has properly discharged its functions and all directives issued under subsection (5), by notice in the *Gazette*, fix the date of establishment and incorporation.

### CLAUSE 8

1. On page 16, in line 39, to omit paragraph (c)
2. On page 18, after line 32, to insert the following paragraph:

(p) to provide television and radio programmes and any other material to be transmitted or distributed by the common carrier for free to air reception by the public subject to section 33 of this Act.

### C L A U S E 9

1. On page 18, in line 35, to omit “broadcasting”.
2. On page 18, in line 36, to omit “public” and “broadcasting”.

### PART 3

1. On page 18, in line 39, to omit “broadcasting”.
2. On page 18, in line 40, to omit “broadcasting”.

### CLAUSE 10

1. On page 18, in line 41, to omit “broadcasting”.
2. On page 18, in line 42, to omit “strive to”.

3. on page I 8, in line 43, to omit “as circumstances permit”.
4. on page I 8, in line 44, after “reflect” to insert “both” and after “the” to insert “unity and”.

#### PART 4

1. on page 20, in lines 5 and 6, to omit “Public” and “Broadcasting”.

#### CLAUSE 11

1. On page 20, in line 7, to omit “broadcasting”.
2. on page 20, in line 14, to omit “broadcasting”.

#### CLAUSE 12

Clause rejected.

#### NEW CLAUSE

1. That the following be a new Clause:

##### **Composition of Board**

12. The Board consists of—
  - (a) twelve non-executive members;
  - (b) the Group Chief Executive Officer; and
  - (c) the Chief Operations Officer and the Chief Financial Officer or their equivalent who will be executive members of the Board.

#### CLAUSE 13

Clause rejected.

#### NEW CLAUSE

1. That the following be a new Clause:

##### **Members of Board**

- 13. (1)** The twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly.
- (2)** The three executive members of the Board must be appointed in a manner ensuring—
  - (a) participation by the public in a nomination process;
  - (b) transparency and openness; and



(c) that a shortlist of candidates for appointment is published, taking into account the objects and principles of this Act.

(3) The President must designate one of the members of the Board referred to in subsection (2) as the chairperson and another member as a deputy chairperson, both of whom must be non-executive members of the Board.

(4) The members of the Board must, when viewed collectively—

- (a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education, social and labour issues;
- (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) represent a broad cross-section of the population of the Republic;
- (d) be persons who are committed to the objects and principles as enunciated in the Charter of the Corporation.

(5) The members of the Board must hold office for such period as the President may determine which period must not exceed five years.

(6) The deputy chairperson referred to in subsection (3) must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson.

(7) Every appointment of a member of the Board must be published in the *Gazette*.

(8) A member of the Board appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed.

(9) Members of the Board appointed immediately before the transfer date will retain their appointments with all existing benefits.

(10) Nine members of the Board, which must include the chairperson or the deputy chairperson, will constitute a quorum at any meeting of the Board.

(11) The Board controls the affairs of the Corporation and must protect matters referred to in section 6(2) of this Act.

#### CLAUSE 14

Clause rejected

#### NEW CLAUSE

1. That the following be a new Clause:

##### **Executive committee**

**14. (1)** The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer and six other members appointed by the Board.

(2) The Group Chief Executive Officer will be the accounting officer of the Corporation.

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

(4) The executive committee will perform such functions as determined by the Board.

## CLAUSE 15

Clause rejected.

## NEW CLAUSES

1. That the following be new Clauses:

### **Removal from office**

**15.** The appointing body may remove a member from the office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board.

### **Disqualification**

**16. (1)** A person will not qualify to be appointed to the Board if such person—

- (a) is not a citizen of and not permanently resident in the Republic;
- (b) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (c) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- (d) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted—
  - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992);
  - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i);
  - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act.

### **Disclosure of conflict of interest**

**17. (1)** A person may not be appointed on the Board, unless the necessary disclosure has been made that such person—

- (a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industry;
- (b) 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).

(2) If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part—

- (a) such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member 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 Board members regarding such determination, must be recorded in the minutes of the meeting in question.
- (3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

### **Financial regulations**

**18.** (1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be managed.

(2) Such regulations must be approved by the Minister after consultation with the Minister of Finance.

(3) The Corporation must make such regulations known in a manner it deems fit.

(4) The Corporation must open and maintain an account with a bank registered as such in the Republic, or with any other financial institution so registered and approved by the Minister of Finance.

(5) The Corporation may with the approval of the Minister invest any surplus funds of the Corporation.

(6) The surplus referred to in subsection (5) must at the end of a financial year, be carried over to the next financial year and form part of the budget of the Corporation for that financial year.

(7) Any dividends received by the State must be paid into the National Revenue Fund.

### **CLAUSE 16**

1. On page 22, in line 29, to omit subsection (4)

### **CLAUSE 17**

1. On page 22, in line 37, after “annual” to insert “financial” and “in,” and to omit “Parliament” and insert “the National Assembly”.

### **CLAUSE 18**

- i. On page 22, in line 45, after “with” to omit “any” and to substitute “a”.

### **CLAUSE 21**

1. Clause rejected.

### **CLAUSE 22**

1. On page 24, in line 40, after “of” to omit “that” and to substitute “each”.

2. On page 24, after line 40, to insert a new subsection:

(3) The Corporation must in its accounts referred to in subsection (2) reflect separately the accounts of the public and commercial services.

#### CLAUSE 23

1. On page 24, in line 44, to omit "a public" and before "accountant" to insert "an".
2. On page 26, in line 2 I, to omit "auditor" and to insert "Corporation"
3. On page 26, in lines 22 to 24, to omit subsections (7) and (8).

#### CLAUSE 24

1. On page 26, in line 44, to omit "by means of the establishment of" and to insert "establish".
2. On page 26, in line 45, to omit "the provision 01".
3. On page 28, in lines 1 and 2, to omit "South African Broadcasting Corporation" and to substitute "old Corporation".
4. On page 28, in line 3, to omit "shall" and to substitute "must".
5. On page 28, in line 7, to omit "transferring to the employ of" and to substitute "-transferred to" and to omit "shall" and to substitute "must".
6. On page 28, in line 9, to omit "advantages" and to substitute "privileges".
7. On page 28, in line 12, to omit "Upon the transfer of the" and after "employees" to omit "the" and to insert "transferred from".
8. On page 28, in line 13, to omit "such employees".
9. On page 28, in line 17, to omit "employment by" and to substitute "transfer to".
10. On page 28, in line 18, to omit "is to" and to substitute "will"
11. On page 28, after line 24, to insert the following new Clause:

#### **Television licenses**

27. (1) The Corporation may issue a television licence conferring to the holder the right to use a television set or any number of television sets specified in the licence.

(2) The licence is renewable annually.

(3) The holder of any television set which was used without authorisation before the date of commencement of this Act, must within 12 months after the date and subject to the rules of the Corporation relating to the authorisation, apply for such licence.

(4) The Corporation must maintain a register of all the licences.

(5) For the purposes of this Act, “holder” means—

- (a) any owner of a television set;
- (b) any business or institution with reference to a category to which such business or institution belongs;
- (c) any holder of any permit registered for a place, vehicle, vessel or aircraft so specified, where a business or the affairs of that institution are carried on, or which has already been recorded on the register of the Corporation.

(6) The Authority may after consultation with the Corporation make regulations in regard to any matter pertaining to television licence fees which may be issued.

(7) The Corporation may delegate the collection of the payment of television licence fees to other persons.

(8) Failure to be in possession of a valid television licence is a civil offence.

#### CLAUSE 25

1. On page 28, in line 27, to omit “during its immediately preceding” and to substitute “of the previous”,
2. On page 28, in line 29, to omit “which have been”.
3. On page 28, in line 30, to omit “in the report so furnished”.

#### CLAUSE 26

1. On page 28, in line 50, to omit “Commercial broadcasters” and to insert “Any person intending to offer a commercial broadcasting service”.
2. On page 28, in line 50, after “each” to insert “broadcasting”.

#### CLAUSE 27

1. On page 28, in line 53, after “service:” to insert “when viewed collectively”.
2. On page 30, in line 1, after “must” to insert “as a whole”.
3. On page 30, in line 10, after “must” to insert “as a whole”.
4. On page 30, in line 11, after “aspirations” to omit “all of”.
5. On page 30, in line 12, after “to serve” to insert “subject to licence conditions”.
6. On page 30, in line 20, to omit “shall” and to substitute “must”.
7. On page 30, in line 20, after “Authority” to omit “specifically on South African local content and other conditions relating to the licence”.
8. On page 30, in line 23, after “must” to insert “as a whole”.

9. On page 30, in line 27, to omit subsection (4)(b).
10. On page 30, in line 32, before “subscription” to omit “commercial” and to substitute “broadcasting”.
11. On page 30, in line 35, before “subscription” to omit “commercial” and to substitute “broadcasting”.

#### CLAUSE 28

1. On page 30, in line 43, after “provision of” to omit “more than one”, and after “television” to omit “service” and to insert “services”.
2. On page 30, in line 46, after “provision of” to omit “more than one” and after “television” to omit “service” and to insert “services”.

#### CLAUSE 29

1. On page 30, in lines 53 and 54, to omit “terrestrial” in paragraphs (a) and (b).
2. On page 32, in line 2, after “managed” to insert “and controlled”.
3. On page 32, in line 2, to omit “Board” and to insert “board”.
4. On page 32, in line 3, after “from” to omit “a” and after “community” to omit “or communities”.
5. On page 32, in line 4, after “geographic” to omit “service”.
6. On page 32, in lines 5, 6 and 7 to omit subsection (4).
7. On page 32, in lines 7 and 8, to omit subsection (5).
8. On page 32, in line 10, after “must” to insert:
 

reflect the needs of the people in the community and which must include amongst others cultural, religious, language and demographic needs and must
9. On page 32, in lines 21 to 23, to omit subsection (7).
10. On page 32, from line 27, to omit “the terms, regulations and conditions to phase in the transition to a geographically founded community radio service and other”.

#### CLAUSE 30

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

**Signal distribution**

**33. (1)** The Authority must conduct an inquiry to determine the licence conditions, obligations, and tariff structure for signal distribution including the regulatory regime for multi-channel distribution services and convergence.

(2) Subject to subsection (1), 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 the terms upon which such sections must apply.

(3) Sections 49 and 50 of the IBA Act must not apply to such broadcasting services unless the Authority has issued such a recommendation, and that recommendation has been adopted by the National Assembly.

## CLAUSE 31

1. On page 32, in line 51, before “The signal” to insert “Subject to licence conditions determined by the Authority”.
2. On page 34, in line 1, to omit “and multi-media”.
3. On page 34, in line 4, to omit paragraph (d).
4. On page 34, in line 10, to omit subsection (3 and to substitute:

(3) The Authority must in a licensing process promote the participation by South Africans in the broadcasting signal distribution sector, provide employment and training for South Africans and ensure the payment of licence fees.

## CLAUSE 32

1. On page 34, in line 17, to omit subsection (2).

## CLAUSE 33

1. On page 34, from line 27, to omit paragraph (c).
2. On page 34, in line 33, to omit all the words after “of” up to and including “groups” in line 35, and to substitute “this Act”.

## CLAUSE 34

1. On page 34, after line 51, to insert the following new subsection:

(6) The Frequency Spectrum Directorate in the performance of its functions must co-operate with the relevant bodies where applicable.

#### CLAUSE 35

1. On page 36, in line 9, after “Minister in” to omit “a written agreement entered into for that purpose between the Minister and the Advisory Body” and to substitute “concurrence with the Minister of Finance”.
2. On page 36, in line 21, to insert a new paragraph (g):  
  
(g) co-productions and the concluding of international agreements.
3. On page 36, in line 24, after “determine” to insert “after consultation with the Minister of Arts, Culture, Science and Technology, the Minister of Trade and Industry and the Minister of Finance”.
4. On page 36, in line 25, to omit “govern” and to insert “give effect to”.

#### CLAUSE 37

Clause rejected.

#### NEW CLAUSE

1. That the following be a new Clause:

##### **Regulations of this Act**

40. ( 1 ) The Minister may by notice in the *Gazette*, make regulations regarding—

- (a) any matter which is required or permitted by this Act;
- (b) any notice required by this Act to be prescribed;
- (c) any administrative or procedural matter necessary for the provisions of this Act.

(2) In the exercise of his or her powers under subsection ( 1 ), the Minister is obliged to consider the recommendations of the Authority.

#### NEW CLAUSE

1. That the following be a new Clause:

##### **Application of this Act**

42. In the event of conflict between the provisions of this Act and any other law relating to broadcasting, the provisions of this Act must prevail.

#### SCHEDULE 1

Schedule rejected



## NEW SCHEDULE

1. That the following be a new Schedule:

## SCHEDULE

## LAWS AMENDED OR REPEALED

No. and year of law	Short title	Extent of amendment or repeal
Act No. 73 of 1976 Act No. 153 of 1993	Broadcasting Act, 1976 Independent Broadcasting Act, 1993	<p>The repeal of the whole.</p> <p>[n this Act, unless the context otherwise indicates, broadcasting, broadcasting signal distribution, broadcasting service, encryption, private broadcasting service, public broadcasting service, community, broadcasting services frequency bands, have the meaning assigned thereto in section 1 of the Broadcasting Act of 1998.</p> <p>1. Amendment of section 1 by the insertion of the following definitions:</p> <p>(a) “ ‘<b>low power sound broadcasting service</b>’ means a community, private or public sound broadcasting service which radiates power not exceeding one watt;”;</p> <p>(b) “ ‘<b>National Revenue Fund</b>’ means the Fund established by section 213 of the Constitution;”;</p> <p>(c) “ ‘<b>financial interest</b>’ means interest that may not have voting rights attached to it but which gives the person or entity a financial interest directly via shares or indirectly via an agreement giving it the power to have control of the licensee or effective say over the affairs of the licensee.”;</p> <p>2. Amendment of section 1 by the substitution for the definition of “election period” of the following definition:</p> <p>“ ‘<b>election period</b>’ means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected.”.</p> <p>3. Amendment of section 2 by the substitution for “private commercial” to “commercial”, wherever it appears.</p> <p>4. Amendment of section 10 by the substitution for subsection (4) of the following subsection:</p> <p>(4) The quorum for any meeting of the Council shall be four councillors or a majority of the total number of councillors holding office at the time, whichever is the greater.”.</p> <p>5. Substitution for section 13 of the following section:</p>

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		<p><b><u>“General powers and functions of Authority</u></b></p> <p><b><u>13. (1) Without derogation from the generality of the provisions of section 3, the Authority shall, in addition to powers conferred upon it elsewhere in this Act, or by any other law, have the power—</u></b></p> <p><b><u>(a) to administer the statutory scheme for granting, renewing and amending of broadcasting licences;</u></b></p> <p><b><u>(b) to manage broadcasting services frequency bands and other parts of the radio frequency spectrum properly delegated to it by the Minister as outlined in section 29 of this Act;</u></b></p> <p><b><u>(c) to make regulations consistent with section 2 of the Broadcasting Act, 1998, as set out in section 78 of this Act;</u></b></p> <p><b><u>(d) to design and implement broadcasting conditions of licence consistent with the objectives set out in section 2 of the Broadcasting Act, 1998, for different categories of broadcasting service, including, but not limited to conditions relating to—</u></b></p> <p><b><u>(i) local content requirements;</u></b></p> <p><b><u>(ii) programme requirements;</u></b></p> <p><b><u>(iii) coverage obligations;</u></b></p> <p><b><u>(iv) language service provision;</u></b></p> <p><b><u>(v) ownership and control compliance;</u></b></p> <p><b><u>(vi) compliance with the Code of Conduct for Broadcasting Services; and</u></b></p> <p><b><u>(vii) empowerment of historically disadvantaged groups;</u></b></p> <p><b><u>(e) to specify the frequency characteristics of broadcasting services;</u></b></p> <p><b><u>(f) to undertake inquiries on all matters within its jurisdiction, including the holding of public hearings;</u></b></p> <p><b><u>(g) to submit an annual report to the Minister on all matters within its jurisdiction, including, but not limited to—</u></b></p> <p><b><u>(i) the audited report set out in section 20 of this Act;</u></b></p>

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		<p><u>(ii) the issuance, renewal and amendment of licences as set out in section 20(3)(c) of this Act;</u></p> <p><u>(iii) compliance with standards;</u></p> <p><u>(iv) spectrum planning and allocation;</u></p> <p><u>(v) progress on meeting local content requirements;</u></p> <p><u>(vi) deals of all inquiries undertaken within the year;</u></p> <p><u>(vii) statistical overview of the broadcasting environment;</u></p> <p><u>(viii) a status quo of the organisation of the Independent Broadcasting Authority, including its executives from the rank of Head of Department and above;</u></p> <p><u>(h) to monitor the broadcasting industry to ensure compliance with broadcasting laws and regulations as well as with community standards in programming, as set out in section 66 of this Act;</u></p> <p><u>(i) to conduct research in all matters affecting broadcasting in order to perform its regulatory role;</u></p> <p><u>(j) each year to publish a proposed regulatory agenda for the ensuing three years;</u></p> <p><u>(k) to make recommendations to the Minister for amendments to this Act and the Broadcasting Act, 1998, so as to align them with the current industry and public policy environment;</u></p> <p><u>(l) to review and consider any technical matters relating to broadcasting referred to it by the Minister and to make recommendations to the Minister with respect thereto;</u></p> <p><u>(m) to be consulted by the Minister with regard to any matters to be put before Parliament pursuant to requests made under paragraph (g);</u></p>

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		<p><u>(n) to hold public hearing\.</u></p> <p><u>( 2 ) The President shall, on the ad-</u> <u>vice of the National Assembly, appoint</u> <u>he chairperson of the Authority }.”</u></p> <p><b>6.</b> Insertion of the following section after section 13:</p> <p><b>“General rule and powers of Min-</b> <b>ister</b></p> <p><b>13A.</b> <u>The role and powers of the</u> <u>Minister are as follows:</u></p> <p><u>(a) The Minister shall determine all</u> <u>matters relating to privatisation</u> <u>of government broadcasting</u> <u>enterprises.</u></p> <p><u>(b) The Minister shall direct the</u> <u>Authority to undertake special</u> <u>investigations, inquiries and</u> <u>report on any matter within its</u> <u>jurisdiction.</u></p> <p><u>(c) The Minister shall, before a</u> <u>direction contemplated in para-</u> <u>graph (b) is issued, consult the</u> <u>Authority.</u></p> <p><u>(d) The Minister may from time to</u> <u>time by notice in the Gazette</u> <u>issue to the Authority policy</u> <u>directions consistent with the</u> <u>objects mentioned in section 2</u> <u>of the Broadcasting Act, 1998.</u></p> <p><u>(e) The Minister shall, before a</u> <u>policy direction contemplated in</u> <u>paragraph (d) is issued—</u> <u>(i) consult the Authority:</u> <u>(ii) in order to obtain the view</u> <u>of interested persons, cause</u> <u>the text of such direction to</u> <u>be published in the Gazette</u> <u>together with a notice de-</u> <u>claring his or her intention</u> <u>to issue that direction and</u> <u>inviting interested persons</u> <u>to lodge written representa-</u> <u>tions in relation to the di-</u> <u>rection in the manner</u> <u>specified in such notice</u> <u>within 30 days from the</u> <u>date of the notice;</u> <u>(iii) refer the proposed direction</u> <u>for comment to the com-</u> <u>mittees of Parliament ap-</u> <u>pointed for the purpose of</u> <u>considering matters relating</u> <u>to broadcasting.</u></p>

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		<p>(f) The provisions of paragraph (e) shall not apply in respect of any amendment by the Minister of a policy direction in consequence of comments or representations received by him or her pursuant to consultation, publication or reference in terms of that paragraph.</p> <p>(g) The Authority shall perform its functions in terms of this Act in accordance with a policy direction issued under this section.</p> <p>(h) A policy direction issued under this section may be amended, withdrawn or substituted by the Minister, and the provisions of this section shall apply, with the necessary changes, in relation to any such amendment, withdrawal or substitution.</p> <p>(i) The Minister shall table in Parliament the annual or any other reports of the Authority.”.</p> <p>7. Amendment of section 14 by the substitution for subsections ( 1 ) and (3) of the following subsections:</p> <p>“(1) The Council shall appoint a suitably qualified and experienced person as <b>[chief administrative officer]</b> chief executive officer of the Authority for the purpose of assisting the Council, subject to the latter’s direction and control in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act.</p> <p>(3) Subject to the provisions of subsection (4), the Authority may pay to the persons in its <b>employ</b>, or provide them with, such remuneration, allowances, bonuses, subsidies, housing benefits, pensions and other employment benefits as <b>[the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market]</b> is consistent with the public sector.”.</p>

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		<p><b>8.</b> Amendment of section 15 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) (a) <u>The operating and capital costs of the Authority shall be financed from money appropriated by Parliament from time to time for that purpose</u></p> <p>(b) <u>The Authority shall utilise any money contemplated in paragraph (a) in accordance with the statement of estimated expenditure referred to in paragraph (c).</u></p> <p>(c) <u>The Authority—</u></p> <p>(i) <u>shall in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure for the following financial year to the Minister for his or her approval, granted in consultation with the Minister of Finance;</u></p> <p>(ii) <u>may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted in consultation with the Minister of Finance; and</u></p> <p>(iii) <u>may retain application fees for administration purposes.”.</u></p> <p><b>9.</b> Repeal of section 16.</p> <p><b>10.</b> Amendment of section 17 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any two members of the staff of the Authority <b>[from time to time authorized for that purpose by special resolution of the Council]</b> as designated by the chairperson from time to time.”.</p> <p><b>II.</b> Substitution for section 18 of the following section:</p> <p><b>“Investment of surplus moneys</b></p> <p><b>18.</b> <u>All fees and penalties received in terms of section 67 shall be paid into the National Revenue Fund.”.</u></p> <p><b>12.</b> Section 40 is hereby repealed.</p>

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		<p><b>13.</b> Amendment of section 41—</p> <p>a) by the substitution for subsection (6) of the following subsection:</p> <p>“(6) Within [14] <u>30</u> days of receipt of any application in terms of this section, the Authority shall cause to be published in the <i>Gazette</i> a notice containing all the material particulars of the application and inviting interested persons to lodge [their] written representations in relation to the application in the manner specified in such notice within <u>[one month] 30 days or such shorter period</u> as from the date of such notice <u>as may be determined by the Authority, which may not be less than 10 days.</u>”;</p> <p>b) by the substituting for subsection (8) of the following subsection:</p> <p>“(8) The applicant shall submit his or her written response (if any) to any representations lodged in terms of subsection (7) to the Authority within <u>[two months] 60 days</u> of the date of the notice contemplated in subsection (6), and shall at the same time furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such written response to the person having made such representations.”;</p> <p>c) by the insertion after subsection (X) of the following subsection, with subsection (9) becoming subsection (10):</p> <p>“(9) Save for representations <u>made under subsection (6), the response of the applicant under subsection (8) and such further information as the applicant furnishes under subsection (5) within the period specified under that subsection, no application may be amended or varied and no supplementary or additional documents may be filed after the publication of the notice under subsection (6), except with the written permission of the Authority granted upon application and upon such terms and conditions as Council may determine.</u>”.</p>

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		<p><b>14.</b> Insertion of the following section after section 4 I:</p> <p><b>“41A. (I)</b> Notwithstanding the provisions of sections 41, 42, 44 and 47 the Authority may on such terms and conditions as it may determine, issue a licence to provide a low power sound broadcasting service.</p> <p><b>(2)</b> The Authority shall prescribe the requirements and procedures applicable to applications for such licences.”</p> <p><b>15.</b> Amendment of section 42—</p> <p><b>(a)</b> by the substitution for subsection (I) of the following subsection:</p> <p>“(I) <b>[In]</b> Save as provided in section 41 A in respect of <b>[every application]</b> applications for [a] broadcasting <b>[licence]</b> licences received by the Authority, a notice of which has been published under section 41 (6), it shall at its discretion hold a hearing as provided for in this section.”;</p> <p><b>(b)</b> by the substitution for paragraph (c) of subsection (3) of the following paragraph:</p> <p>“(c) the Authority, after having <b>[duly]</b> considered the application, the representations (if any) made in accordance with the provisions of that subsection, the applicant’s written response thereto (if any ), any <b>[further]</b> other information furnished in terms of section 4 I and any other evidence [tendered to] <u>admitted by the Authority,</u> shall <u>within a reasonable time</u> grant or refuse the application and <u>shall subsequently</u> provide written reasons for its <b>[ruling]</b> decision by notice in the <i>Gazette</i> and give notice of the availability of the reasons at the office of the Authority.”.</p> <p><b>16.</b> Amendment of section 48 by the substitution for paragraph (b) of subsection (I) of the following paragraph:</p> <p>“(b) have financial interest or interest either in voting shares or paid-up capital in a private broadcasting licensee exceeding twenty per-cent.”.</p> <p><b>17.</b> Amendment of sections 48, 49, 54 and 54 by the substitution of “private commercial” with “commercial”, wherever it appears.</p>



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		<p>18. Amendment of section 50 by the substitution for subsection (2) of the following subsection:</p> <p><u>“(2)(a) No person who controls a newspaper may acquire or retain a financial control in both radio and TV licence.</u></p> <p><u>“(b) No person who is in a position to control a newspaper may be in a position to control a radio or television licence in an area where the newspaper has an average ABC circulation of 20% of the total newspaper readings in the area, if the licence area of the radio licensee overlaps substantially with the said circulation area of the newspaper.</u></p> <p><u>“(c) Substantial overlap shall be interpreted to mean an overlap by 50% or more</u></p> <p><u>“(d) A 20% shareholding in a radio or television licence shall be deemed to constitute control.</u></p> <p><u>“(e) The shareholding and financial strictures of commercial broadcasting licences will form part of the annual reports submitted to the authority.”</u></p> <p>19. Amendment of section 54—</p> <p>(a) by the substitution for paragraphs (b) and (c) of the following paragraphs:</p> <p>“(b) in the case of a public and a private sound broadcasting licence, shall be six years; [and]</p> <p>(c) in the case of a community sound or television broadcasting licence which is not a temporary community broadcasting licence within the contemplation of section 47A, shall be four years [; and]”; and</p> <p>(b) by the insertion of the following paragraph:</p> <p><u>“(d) in the case of a low power sound broadcasting licence shall be such period not exceeding three years as the Authority may determine.”</u></p>

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		<p>20. Amendment of section 63 by the substitution for subsections (2) and (3) of the following subsections:</p> <p>“(2) A complaint contemplated in subsection ( 1 ) shall be <b>[in writing and shall be served on the licensee concerned and be]</b> lodged with the Authority for consideration by the Broadcasting Monitoring and Complaints Committee.</p> <p>(3) For the purposes of subsection (2), a complaint may be delivered by hand <b>[or]</b> sent by <i>registered post</i>. <b>[fax or telex]</b> faxed, or communicated telephonically to the Authority, which shall record and transcribe such complaint.”.</p> <p>21. Amendment of section 66A by the substitution for subsections (3) and (4) of the following subsections:</p> <p>“(3)(a) No person shall use any <b>[television set]</b> apparatus for the reception of <b>[anything]</b> any broadcast by a pay-television service which has been licensed in terms of section 46, unless such person has been authorized by such licensee to do so.</p> <p><u>(b) No person shall assist any other person in receiving, in conflict with paragraph (a), any broadcast by a pay-television service.</u></p> <p><u>(c) No person shall have in his or her possession any equipment, object or electronic data intended to be used for the reception, in conflict with paragraph (a), of any broadcast by a pay-television service.</u></p> <p><u>(d) For the purposes of paragraph (b), “assist” shall include but shall not be limited to manufacturing, distributing, letting, selling or supplying any equipment, object or electronic data intended by the manufacturer, distributor, lessor, seller or supplier, as the case may be, to be used or applied, either by itself or in conjunction with any other object, for the reception, in contravention of paragraph (a), of anything broadcast by a broadcasting service.</u></p> <p><u>(4) Any person who contravenes subsection ( 1 ) or (3) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.</u></p>

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		<p>22. Amendment of section 67 by the substitution for subsection (2)(h)(ii) of (iii) of the following subparagraphs:</p> <p>i) in the case of a contravention of sections 32, 39 and 74, to a fine not exceeding R 1 000 000 per day;</p> <p>ii) in the case of a contravention of section 71(1), and in the case of an offence contemplated in paragraph (d) of this subsection, to a fine not exceeding R 100 000.”.</p> <p>23. Amendment of section 69 by the addition of the following paragraphs in subsection (1):</p> <p>“(c) <u>delegate to a committee of the Council, established pursuant to section 23 of this Act the power to hold hearings in respect of inquiries under section 28 and in respect of applications to grant, renew, amend or transfer any licence;</u></p> <p><u>(d) delegate to any committee acting in terms of subsection (c) shall as soon as reasonably possible after it has held an inquiry or hearing, provide the Council with transcripts of the proceedings together with a written report on the proceedings, oral evidence and representations. The Council shall after due consideration, decide the matter and provide written reasons as prescribed in section 42(3)(c);</u></p> <p><u>(e) the common carrier for broadcasting signal distribution shall provide signal distribution facilities to be used for emergency sound broadcasting services to the extent that they are deemed necessary in the public interest by the Minister. The common carrier shall comply with the conditions imposed by the Authority.”.</u></p> <p>24. Section 80 is hereby repealed.</p>