

PRESIDENT'S OFFICE

No. 1051.
19 July 1995

NO. 36 OF 1995: INDEPENDENT BROADCASTING AUTHORITY AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

- ** ** Words between two asterisks indicate omissions from existing enactments.
- << >> Words between two pointed brackets indicate insertions in existing enactments.

ACT

To amend the Independent Broadcasting Authority Act, 1993, so as to replace a definition; to further regulate the constitution of certain committees; to dispense with the requirement that the Authority may only issue broadcasting licences after three different inquiries have been held; to empower the Authority to require persons to make statements, to answer questions and to produce documents or objects, and to prescribe certain procedure at certain inquiries and hearings; to provide that the powers which formerly vested in the Minister of Posts and Telecommunications and the Postmaster General in respect of the broadcasting services frequency bands vest in the Authority; to provide that the Broadcasting Technical Committee shall perform its functions subject to the directions of the Council; to empower the Authority to issue broadcasting licences without the frequency plan having been finalised; to further regulate the rights of persons lawfully engaged in broadcasting signal distribution; to impose a limitation on the foreign control of broadcasting signal distribution licensees; to amend the text; to provide for the confidentiality of certain information furnished by certain applicants; to remove a limitation on the Authority's right to information; to empower the Authority to amend the terms, conditions and obligations of existing broadcasting licenses; to empower the Broadcasting Monitoring and Complaints Committee to hear complaints behind closed doors; to impose penalties on certain conduct; to extend the power of the Council to make regulations; and to regulate anew the commencement of the said Act; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 10 July 1995.)

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

Amendment of section 1 of Act 153 of 1993

1. Section 1 of the Independent Broadcasting Authority Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "Constitution Act" of the following definition:

" 'Constitution **Act**' means the Constitution of the Republic of South Africa **Act**, 1993;"

Amendment of section 22 of Act 153 of 1993

2. Section 22 of the principal Act is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1) of the

following paragraph:

(b) ****two or**** <<not more than>> four additional members, as the Council may determine from time to time."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) (a) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge ****or a retired judge**** of the Supreme Court of South Africa, ****a practising**** <<whether on active service or not, an>> advocate or attorney of at least 10 years' standing or a magistrate <<or retired magistrate>> with at least 10 years' appropriate experience.

(b) In the case of any other standing committee, the chairperson shall be ****the**** <<any>> councillor ****concerned**** <<appointed as the chairperson by the Council>>. "

Amendment of section 28 of Act 153 of 1993, as amended by Proclamation 55 of 28 March 1994

3. Section 28 of the principal Act is hereby amended by the deletion of subsection (9).

Insertion of section 28A in Act 153 of 1993

4. The following section is hereby inserted in the principal Act after section 28:

"Powers and procedure in relation to inquiries or hearings

<<28A. (1) The Authority may for the purposes of any inquiry conducted in terms of section 28 or any hearing held in terms of section 42-

(a) through a councillor by notice in writing in the prescribed form require from any person such particulars and information as may be reasonably necessary, material and relevant in connection with any such inquiry or hearing;

(b) by notice in writing in the prescribed form under the hand of a councillor, addressed and delivered by an authorized person or a sheriff to any person, require such person, in relation to any such inquiry or hearing, to appear before it at a time and place specified in such notice, to make a statement and to produce to it all documents or objects in the possession or custody or under the control of any such person and which may be reasonably necessary, material and relevant in connection with that inquiry or hearing;

(c) through the chairperson presiding at any such inquiry or hearing in which not less than three councillors are participating, after explaining applicable rights under the Constitution and this section, question any person referred to in paragraph (b) in connection with any matter which may be reasonably necessary, material and relevant in connection with that inquiry or hearing.

(2) Any person appearing before the Authority in terms of subsection (1) (b) and who is not in the public service, is entitled to receive from moneys referred to in section 15(1), as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.

(3) (a) Subject to the provisions of this Act, the chairperson presiding at the inquiry or hearing referred to in subsection (1) shall determine

the procedure thereat: Provided that a person appearing in terms of subsection (1) (b) may have a legal representative or other adviser present.

- (b) The Authority may inspect, and retain for such period as may be reasonable for the purposes of this Act, any document or object produced to it.
- (4) A person appearing before the Authority to make a statement or to produce any document or object is entitled to any privilege to which a person appearing as a witness in criminal proceedings before the Supreme Court is entitled.
- (5) The chairperson presiding at an inquiry or hearing referred to in subsection (1) may, in exceptional circumstances, after hearing the relevant representations from any party who is at the time present at and concerned with the inquiry or hearing, and having regard to-
 - (a) any reasonable apprehension of prejudice or harm to the person to be questioned; and
 - (b) the rights of reply and rebuttal of any person whose rights may be adversely affected, if it is in the interest of the achievement of the objects of the inquiry or hearing that any part of the inquiry or hearing be held behind closed doors, direct that the public or any class thereof, including the representatives of interested parties, other than the legal representative or other adviser to the person being questioned, shall not be present. (6) The nature of the documents or objects referred to in subsection (1) (b) and the matter upon which information is sought shall be mentioned in the notice concerned.>>"

Amendment of section 29 of Act 153 of 1993

5. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding any provisions of the Radio Act, 1952 (Act No. 3 of 1952), or of any other ****relevant**** law to the contrary-

<<(a)>> all powers, functions and duties in relation to the administration, management, planning and use of the broadcasting services frequency bands; <<and>>

<<(b)>> all powers in relation to the broadcasting services frequency bands which in terms of that Act, the regulations made thereunder and any broadcasting licence issued thereunder vested in the Minister of Posts and Telecommunications and the Postmaster General,>> shall as from ****the date of commencement of this Act**** <<28 January 1994>> devolve upon <<or vest in>> the Authority, <<as the case may be,>> subject to the provisions of subsection (4). "

Amendment of section 30 of Act 153 of 1993

6. Section 30 of the principal Act is hereby amended-

(a) by the substitution for the words preceding paragraph (a) of the following words:

"The Broadcasting Technical Committee shall <<make recommendations to the Council on, and shall, to such extent as the Council may expressly direct, and on behalf of the Council>>, be responsible for-";

(b) by the substitution for paragraphs (d) and (e) of the following paragraphs:

(d) <<the administration, management and planning of>> the inspection of the plant, installations, transmitters and other apparatus used or to be used by any licensee or prospective licensee;

(e) <<the administration, management and planning of>> all the monitoring and investigative functions of the Authority with regard to contraventions of sections 32 and 39;" and

(c) by the substitution for paragraphs (i) and (j) of the following paragraphs:

"(i) consultation with the bodies which, in neighbouring states, are charged with responsibility in respect of broadcasting in such states**, subject to the directions of the Authority (if any)**;

(j) the performance of all other technical functions of the Authority**, subject to the directions of the Authority (if any)**.

Amendment of section 31 of Act 153 of 1993

7. Section 31 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

Amendment of section 33 of Act 153 of 1993

8. Section 33 of the principal Act is hereby amended-

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

"(2)<<(a)>> Notwithstanding the provisions of section 32, any person who, immediately prior to **the date of commencement of this Act, is** <<30 March 1994, was lawfully>> engaged in broadcasting signal distribution in a manner not inconsistent with the provisions of this Act shall, for a period of 12 months from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in subparagraph (i), (ii) or (iii) of subsection (1)(a) if such person, within such period, applies to the Authority for a broadcasting signal distribution licence.

<<(b) (i) Any person who has by 30 March 1995 applied to the Authority for a broadcasting signal distribution licence in terms of paragraph (a) and provided the Authority with satisfactory proof that he or she is entitled to the granting of such a licence, shall be deemed to be the holder of such a licence for a further period not extending beyond 30 March 1996 or until the date of the granting of such a licence to which he or she is entitled, whichever occurs first.

(ii) The Authority shall as soon as possible issue a certificate to a person referred to in subparagraph (i) stating that he or she is entitled to the granting of such a licence and confirming that the Authority will apply itself with reasonable expedition to determining the conditions of the licence>>." and

(b) by the substitution for subsection (4) of the following subsection:

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

Insertion of section 38A in Act 153 of 1993

9. The following section is hereby inserted in the principal Act after section 38:

"Limitations on foreign control of broadcasting signal distribution licensees

<<38A. (1) One or more foreign persons shall not, whether directly or indirectly-

(a) exercise control over a broadcasting signal distribution licensee; or

(b) have financial or voting interests in a broadcasting signal distribution licensee exceeding forty per cent in total.

(2) Not more than forty per cent of the directors of a broadcasting signal distribution licensee may be foreign persons.

(3) The preceding provisions of this section shall not apply in respect of any person who-

(a) by subsection (2) of section 33 is deemed; or

(b) by virtue of subsection (4) of section 33 being read with the said subsection (2), is by the said subsection (2) deemed, to be a broadcasting signal distribution licensee, for the duration of a period of twelve months deemed to constitute the first term of his or her licence.>>".

Amendment of section 41 of Act 153 of 1993

10. Section 41 of the principal Act is hereby amended by the substitution in the Afrikaans text for paragraph (a) of subsection (7) of the following paragraph:

"(a) Enige persoon wat vertoe indien na aanleiding van 'n kennisgewing ingevolge subartikel (6), moet ten tyde van indiening ten genoee van die Owerheid bewys ****oorle**** <<lewer>> dat hy of sy ****per geregistreerde pos**** 'n afskrif van sodanige vertoe of per geregistreerde pos gestuur het aan of dit afgelewer het by die betrokke aansoeker."

Amendment of section 42 of Act 153 of 1993

11. Section 42 of the principal Act is hereby amended-

(a) by the substitution for subsection (4) of the following subsection:
"(4) <<Subject to section 28A(5)>>, hearings held in terms of this section shall be open to the public.";

(b) by the addition to paragraph (b) of subsection (5) of the following proviso:

"<<: Provided that the Authority may, before, at or after any

hearings, in terms of this section at the request of an applicant, if it is in the public interest, treat as confidential the following material or information if such material or information can be separated from the application and is marked 'confidential':

- (i) Financial statements of an applicant who holds a broadcasting licence;
 - (ii) evidence of the financial capacity of any person participating in an application; and
 - (iii) the names of prospective employees and business plans of an applicant>>. "; and
- (c) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) <<Subject to the proviso to paragraph (b),>> the Authority shall at the request of any interested person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in paragraph (a).".

Amendment of section 43 of Act 153 of 1993

12. Section 43 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

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

Amendment of section 44 of Act 153 of 1993

13. Section 44 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 45 of Act 153 of 1993

14. Section 45 of the principal Act is hereby amended by the substitution for the expression "41(1)(a)(i)" in subsection (3) of the expression "40(1)(a)(i)".

Amendment of section 46 of Act 153 of 1993

15. Section 46 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) Notwithstanding the provisions of this Act, <<but subject to any regulation made under section 78>>, any person who immediately prior to **the date of commencement thereof provides** <<30 March 1994 provided>> a private broadcasting service under a valid licence in terms of the provisions of any law in force at the time (hereinafter referred to as an existing licence), shall be deemed to be the holder of a broadcasting licence contemplated in section 40(1)(a)(ii) or (b)(ii), as the case may be, granted and issued in terms of this Act, on the <<said>> date **of commencement thereof**, for a period of six years and eight years, respectively, on the same terms, conditions and obligations as those applicable in respect of the existing licence immediately prior to **such** <<the said>> date **of commencement**:

Provided that the terms, conditions and obligations of the existing licence as on the day immediately prior to **such** <<the said>> date **of commencement** shall-

- (i) only for the duration of the said period of six years or eight years (as the case may be) be deemed to be in accordance with the provisions of this Act; and **shall** upon the expiration of such period be subject to amendment by the Authority to such extent as may be necessary so as to excise from such licence any such term, condition, obligation or other provision as may be inconsistent with the provisions of this Act, and thereupon the Authority may substitute therefor any other new term, conditions or obligation

<<(ii) be subject to amendment in accordance with section 52.>>".

Amendment of section 52 of Act 153 of 1993

16. Section 52 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

Subject to the provisions of section 46(2), A broadcasting licence may be amended by the Authority only-";

- (b) by the addition of the word "or" at the end of paragraph (c) of subsection (1);

- (c) by the addition to subsection (1) of the following paragraph:

<<(d) to ensure fair competition between licencees, to comply with such of the terms, conditions and obligations as the Authority may at that time be generally applying to all licences issued in the same category.>>"; and

- (d) by the substitution for subsections (2), (3), (4), (5) and (6) of the following subsections:

"(2)<<(a)>> Whenever the Authority considers amending a broadcasting licence in terms of subsection (1), it shall cause notice of the proposed amendment <<and the date upon which the proposed amendment is to take effect>> to be published in the Gazette and **, in the case of an amendment contemplated in paragraph (a) or (c) of that subsection,** invite interested persons to make their representations <<to the Authority>> within a period of **14** <<21>> days **to a person specified in such notice**."

<<(b) The provisions of subsections (3), (4), (5), (6) and (7) of section 28 shall mutatis mutandis apply to any amendment of a broadcasting licence contemplated in this section.

- (3) The provisions of section 42 shall mutatis mutandis apply to any oral representations contemplated in this section.>>

- (4) After having decided to amend a broadcasting licence, <<otherwise than under paragraph (d) of subsection (1)>>, the Authority shall cause such amendment to be published in the Gazette as soon as possible.

- (5) <<(a) After having decided to amend a broadcasting licence under paragraph (d) of subsection (1) the Authority shall cause a notice of the proposed amendment to be published in the Gazette as soon as possible together with its proposal in regard to the date upon

which the amendment is to take effect in whole or in part and invite interested persons to make representations on such proposals.

(b) The procedures set out in subsections (2) and (3) shall thereafter mutatis mutandis be repeated in regard to such proposals.

(6) After having decided on the date upon which the amendment referred to in subsection (5) is to take effect, the Authority shall cause its decision to be published in the Gazette: Provided that, unless the licensee otherwise agrees in writing, such amendment shall not take effect until after the expiration of a reasonable time, which shall not be less than 18 months from the date of publication of the notice referred to in subsection (5).

(7) In regard to the taking effect of any amendment of a broadcasting licence, the Authority may propose or fix different dates for different matters dealt with in the amendment and may, in stead of proposing or fixing dates, specify means of determining dates.

(8) The Authority may only exercise its powers under paragraph (d) of subsection (1) so that an amendment takes effect, in the case of a single licence-

(a) on the grant or renewal of the licence; or

(b) after half of the term of the original licence or any renewal has run; and

(c) once during a complete licence term>>".

Amendment of section 63 of Act 153 of 1993

17. Section 63 of the principal Act is hereby amended by the addition to subsection (8) of the following proviso:

"<<:Provided that the Broadcasting Monitoring and Complaints Committee may, in exceptional circumstances, after hearing the relevant representations from any party who is at the time present at and concerned with the hearing, and having regard to-

(a) any reasonable apprehension of prejudice or harm to the person to be questioned; and

(b) the rights of reply and rebuttal of any person whose rights may be adversely affected, if it is in the interest of the achievement of the objects of the hearing that any part of the hearing be held behind closed doors, direct that the public or any class thereof, including the representatives of interested parties, other than the legal representative or other adviser to the person being questioned, shall not be present.>>".

Amendment of section 67 of Act 153 of 1993

18. Section 67 of the principal Act is hereby amended-

(a) by the insertion after paragraph (e) of subsection (2) of the following paragraphs:

"<<(f) has been required in terms of section 28A(1) (b) to attend and

make a statement or to produce any document or object before the Authority who, without sufficient cause, fails to attend at the

time and place specified in the notice, or to remain in attendance until the conclusion of the inquiry or hearing for the purpose he or she is required or until he or she is excused by the chairperson from further attendance, or having attended, refuses to make a statement after he or she has been required by the chairperson to do so or fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any document or object in his or her possession or custody or under his or her control, which he or she has been required to produce;

(g) makes a false statement before the Authority on any matter, knowing such statement to be false or not knowing or believing it to be true;

(h) wilfully interrupts the proceedings at any such inquiry or hearing or wilfully hinders or obstructs the Authority or any member thereof in the performance of its or his or her functions at the inquiry or hearing,>>";

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

"(i) in the case of an offence contemplated in paragraph (a) of this **section** <<subsection>>, to a maximum fine of R250 000;"; and

(c) by the addition to subsection (2) of the following paragraphs:

"<<(vi) in the case of an offence contemplated in paragraph (f) or (g) of this subsection, to a maximum fine of R100 000;

(vii) in the case of an offence contemplated in paragraph (h) of this subsection, to a maximum fine of R20 000.>>".

Amendment of section 78 of Act 153 of 1993

19. Section 78 of the principal Act is hereby amended-

(a) by the insertion after paragraph (b) of subsection (1) of the following paragraphs:

"<<(bA) payment to the Authority of charges and fees in respect of the supply by the Authority of facilities for the inspection, examination or copying of material under the control of the Authority, including the transcription of material from one medium to another, for the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies;

(bB) payment to the Authority of charges and fees in respect of broadcasting licences, including applications of all descriptions, the issue, renewal, amendment, transfer or other disposal of broadcasting licences or any interest in broadcasting licences and the periodical maintenance of the force and effect of such licences;>>"; and

(b) by the insertion after subsection (1) of the following subsection:

"<<(1A) Different charges and fees may be prescribed under paragraph (bB) of subsection (1) in respect of different licensees and different categories and types of licensees based on any characteristic or criterion whatsoever, including the income, revenue or audience size of a licensee or the antenna height, power output, or radiation pattern.>>".

Amendment of section 83 of Act 153 of 1993

20. Section 83 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) This Act shall be called the Independent Broadcasting Authority Act, 1993, and shall, subject to the provisions of paragraph (b), **come into operation on a date to be determined by the Transitional Executive Council, which date shall be made known by the State President by proclamation in the Gazette** <<be deemed to have come into operation as follows:>>

<<(i) Sections 3, 4, 5 and 6, on 28 January 1994; and

(ii) the remaining sections, on 30 March 1994.>>" ; and

(b) by the deletion of subsection (2).

Substitution of expression in Act 153 of 1993

21. The principal Act is hereby amended by the substitution for the expression "Constitution Act" wherever it occurs of the expression "Constitution".

Short title and commencement

22. This Act shall be called the Independent Broadcasting Authority Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.