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## GENERAL NOTICE

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**NOTICE 1409 OF 2009**  
**MINISTER OF COMMUNICATIONS**  
**ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**

**NOTICE INVITING COMMENTS ON PUBLIC SERVICE BROADCASTING BILL  
2009, CHARTER OF THE CORPORATION, AND CHARTER OF COMMUNITY  
BROADCASTING SERVICES.**

The Department hereby, in terms of section 3(1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), gazettes the Public Service Broadcasting Bill, Charter of the Corporation and the Charter of Community Broadcasting Services as a process to repeal the Broadcasting Act no.4 of 1999,

Interested persons are invited to furnish comments on the Public Broadcasting Service Bill, Charter of the Corporation and Charter of Community Broadcasting Services within 30 days of the date of publication of this notice at any of the following addresses:

For attention: Dr. Mashilo Boloka  
The Director, Broadcasting Policy  
Department of Communications;

post to: Private Bag X 860  
Pretoria  
0001;

or deliver to: First Floor, Block A3  
iParioli Office Park  
399 Duncan Street  
Hatfield;

or fax to: (012) 427 8059

or e-mail to: [miyelani@doc.gov.za](mailto:miyelani@doc.gov.za)

The closing date is **7<sup>th</sup> December 2009** (Earlier submissions are encouraged to expedite the analysis). Please note that comments received after the closing date may be disregarded.

For further enquiries related to the Bill, contact **Miyelani Khosa** and/or **Humbulani Rambau** @ (012) 427 8174 and 012 421 7046 respectively.

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*Department of Communications*

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**REPUBLIC OF SOUTH AFRICA**

**PUBLIC SERVICE BROADCASTING BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in  
Government Gazette No. of 2009)  
(The English text is the official text of the Bill)*

**(Minister of Communications)**

[B -2009]

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*Department of Communications***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.

**BILL**

To repeal the Broadcasting Act, 1999, so as to align the broadcasting system to the developmental goals of the Republic and to establish a Public Service Broadcasting Fund to fund public service broadcasting in the Republic; to abolish television license fees; to establish within the Corporation International Broadcasting Services and transfer Channel Africa to the International Broadcasting Services; clarify the role of the Corporation's International Broadcasting Services; revise the composition of the Board of the Corporation; to introduce a performance management system for the Board; to outline the mandate of Sentech as a common carrier; to clarify the powers of the Minister in respect of public service broadcasting; to provide Charters for the Corporation and Community Broadcasting Services; to create a competitive local content industry and for this purpose, establish the Local content Advisory Body; to amend the Income Tax Act, 1962, and the Electronic Communications Act, 2005; and to provide for matters connected therewith."

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

**Preamble**

NOTING that South Africa is a developmental state, with enormous challenges relating to unemployment and rural development and that public service broadcasting is not the sole responsibility of public broadcasting services;

ACKNOWLEDGING that the South Africa's 3 tier broadcasting system (public, community, and commercial), makes use of radio frequencies that are finite public resources;

REALISING that the broadcasting system is an important vehicle to foster development of the Republic and in the African continent,

ENCOURAGING the development of South African expression by providing a wide range of programming that refers to South African opinions, ideas, values and artistic creativity by displaying South African talent in radio and television programming and by making use of radio frequencies that are public property and that provide a public service necessary for the maintenance of national identity, universal access, equality, unity and diversity; and

RESOLVING to align the broadcasting system to:

- (a) the developmental goals of the Republic for the benefit of the citizens and create a strong and sustainable funding model concomitant with this developmental objective,
- (b) the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens,



*Department of Communications***CHAPTER 1****DEFINITIONS AND INTERPRETATIONS**

**Advisory Body** means the Local Content Advisory Body established in terms of this Act

**Appointing Authority** often referred to as the appointing body to refer to the body charged with the appointment of the members of the Board in terms of this Act

**Appointing body** means the body charged with the appointment of members of the Board in terms of this Act;

**Authority** means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;

**Board** means Board of the Corporation;

**Broadcasting** means any form of multidirectional electronic communications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio frequency spectrum or any other electronic communications network or any combination of the aforementioned, and 'broadcast' is construed accordingly;

**Broadcasting service licence** means a licence granted by the Authority to a person in terms of section 5(2)(b) or section 5(4)(b) OF THE Electronic Communications Act;

**Broadcasting service licensee** means a person to whom a broadcasting service licence has been granted in terms of the Electronic Communications Act;

**Broadcasting licence** means a licence granted and issued by the Authority in terms of the Electronic Communications Act, to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act or the Electronic Communications Act to have been so granted and issued;

**Charter of community broadcasting services** means a charter formulated in terms of section of this Act to govern the operations of community broadcasting services

**Charter of the Corporation** means a charter formulated in terms of section of this Act to govern the operations of public broadcasting services;

**Commercial broadcasting service** means a broadcasting service operating for profit or as part of a profit entity but excludes any public service broadcasting;

**Common carrier** has a meaning corresponding with the definition of 'common carrier' in the Electronic Communications Act;

**Community** includes a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest;

**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 programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, subsidies received in terms of section 88 of the Electronic Communications Act and Public Service Broadcasting Fund or by any combination of the aforementioned;"

**Corporation** means the South African Broadcasting Corporation Limited;

**Essential facility** means an electronic communications facility or combination of electronic communications or other facilities exclusively or predominantly provided by a single or limited number of licensees and cannot feasibly (whether economically, environmentally or technically) be substituted or duplicated in order to provide a service referred to in Chapter 3 of the Electronic Communications Act;

**Digital content** means any sound, text, still picture or other audio-visual representation, tactile representation or any other preceding, which is capable of being created, manipulated, stored, retrieved or communicated electronically;

**Digital Switch-Over** means the period wherein broadcasting system is switched to digital following the switch off of the analogue signal;

**Dual illumination** means the period in which both the analogue and digital is broadcast simultaneously;

**Electronic communications network service licensee** has a meaning corresponding with the definition of 'electronic communications network service licensee' in the Electronic Communications Act;

**Family member** in relation to any person, means his or her parent, child or spouse, and includes a person living with that person as if they were married to each other;

**Financial year** – subject to the Public Finance Management Act, means a year ending 31 March.

**Governing Council** means a council charged with oversight responsibilities at community broadcasting services.

**International Broadcasting Service** means any broadcasting service, including Channel Africa and SABC News International, established by the Corporation intended to cover international news and events.

**Licence** means a broadcasting, communications and or electronic communications network service licence issued in accordance with the Electronic Communications Act;

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**Local content** means text, images (moving and/or still) that is of cultural or creative in nature that is written, presented, performed and or otherwise contributed to and owned by persons from South Africa transmitted over electronic platforms;

**Member** means a member of the Board of the Corporation;

**Public broadcasting service** means any broadcasting service, including regional broadcasting services, provided by the South African Broadcasting Corporation, excluding those services in public commercial service division of the corporation;

**Media Development and Diversity Agency** means the Media Development and Diversity Agency established under the Media Development and Diversity Agency Act, 2002 (Act No. 14 of 2002);

**Metro Content** means content produced and packaged in the metropolitan areas of Johannesburg, Cape Town and Durban;

**Out-of-metro content** means content produced and packaged in the Republic that is not metro content;

**Provincial government** means the provincial government as contemplated in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

PFMA means the Public Finance Management Act 1999 (Act 1 of 1999)

**Public Broadcasting Service** means any broadcasting service provided by the South African Broadcasting Corporation excluding commercial services;

**Public service broadcasting** means a broadcasting service whether public, community and or commercial that is rendered by a broadcasting service licensee to the public in pursuance of national goals relating to democracy, culture and development;

**Public commercial broadcasting services** means services established for commercial purposes to primarily provide subsidies to the public service mandate of the corporation;

**Public Service Broadcasting Fund** means the fund established in terms of this Act;

**Regional broadcasting service** means a service including radio and television service provided by the Corporation or any other entity licenced in terms of the ECA for this purpose to foster regional development;

**Sentech** means Sentech Limited established in terms of the Sentech Act of 1996;

**Specialist channels** means channels established in terms of section 41 of this Act;

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**CHAPTER 2**

**1. Objects**

- (1) The object of this Act is to align the broadcasting services to the developmental goals of the Republic in the public interest and for that purpose to—
- (a) provide for a three tier system of public, commercial and community broadcasting services that contribute to development;
  - (b) promote universal access to broadcasting services by all the citizens of the Republic by-
    - (i) establishing a strong and committed public and community broadcasting service which will service the needs of all South African society;
    - (ii) provide access to signal distribution services for broadcast content providers and receivers
  - (c) safeguard the country's national interest;
  - (d) ensure that broadcasting infrastructure benefits all the citizens of the Republic;
  - (e) sustain public broadcasting services consistent with section 2(t) of the Electronic Communications Act;
  - (f) ensure that community broadcasting services fulfil its mandate including serving as conduits of development;
  - (g) promote stability in the community broadcasting sector;
  - (h) promote the local content industry;
  - (i) promote access to content of national interest by all the citizens of the Republic;
  - (j) provide access to broadcasting signal distribution by the public service broadcasting systems;
  - (k) contribute to democracy, development of society, gender equality, nation building, provision of education and strengthening the spiritual and moral fibre of society;
  - (l) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;
  - (m) ensure plurality of news, views and information and provide a wide range of entertainment and education programmes;
  - (n) cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;
  - (o) encourage the development of human resources and training, and capacity building within the broadcasting sector especially amongst historically disadvantaged groups, and;
  - (p) contribute to a better Africa.

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**CHAPTER 3****2. The South African Broadcasting System**

(1) The South African broadcasting system—

(a) serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;

(b) operates in the public interest and strengthens the spiritual and moral fibre of society;

(c) contribute to the development of the Republic;

(d) ensures that the broadcasting system is controlled by persons or groups of persons from a diverse range of communities in South Africa and within each element promotes ownership, control and management of broadcasting services by persons from historically disadvantaged groups, and;

(e) encourages fair competition in the provision of programmes and services.

(2) Public and commercial broadcasting services must comply with international technical standards and the broadcasting system must be readily adaptable to scientific and technological advances.

(3) The broadcasting system, as a whole, must provide educational programming, and where such programming is provided by a dedicated education service, must be extended throughout the Republic within the financial resources.

(4) The programming provided by the South African broadcasting system must—

(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;

(b) be varied and offer a range of South African content and analysis from a South African perspective;

(c) must be predominantly local and drawn from local, regional and national sources;

(d) provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern;

(e) provide a significant place for programmes produced by the independent production sector, and;

(f) comply with a code of conduct for broadcasting services as prescribed in terms of the Electronic Communications Act.

(5) A range of programming in the Republic's official languages must be extended to all South Africans as circumstances permit

(6) assist during the case of national emergency

(7) contribute to a better Africa

**3. Applications for licences in respect of Public Service Broadcasting**

(1) Subject to the provisions of this Act, all the licences applied for, amended, renewed and conditions for such licences shall be determined by the Authority in accordance with the Electronic Communications Act.

**CHAPTER 4****FUNDING FOR DEVELOPMENT BROADCASTING: THE PUBLIC SERVICE BROADCASTING FUND****4. Establishment of Public Service Broadcasting Fund —**

- (1) There is hereby established a Public Service Broadcasting Fund.
- (2) The Fund shall comprise—
  - (a) personal income tax collected in terms of the Income Tax Act, 1962 (Act No. 58 of 1962);
  - (b) money appropriated by Parliament;
  - (c) contribution from the broadcasting services licencees in accordance with section 89(3) of the Electronic communications Act;
  - (d) contributions from business; and;
  - (e) money accruing to the Public Service Broadcasting Fund from any other source
- (3) The basis and manner of contributions in respect of subsection (2) (a) (c) and (d) must not exceed 1 percent of the total income and annual turnover per annum for persons identified as determined by the Minister in consultation with the Minister of Finance by notice in the *Gazette*.
- (4) All money received, the amounts of which in terms of subsection (2) must be credited to the Public Service Broadcasting Fund.
- (5) Any changes to the contributions in respect of (2) (a), (b), (c) and (d) shall be approved by Parliament on the advice of the Minister after consultation with Minister of Finance and shall be published in the *Gazette*.

**5. Administration of Public Service Broadcasting Fund:**

- (1) The Public Service Broadcasting Fund shall be managed and distributed by Media Development and Diversity Agency (MDDA) as part of its mandate relating to media development and diversity.

**6. Uses of money in Public Service Broadcasting Fund**

- (1) The money in the Public Service Broadcasting Fund must be utilized exclusively to fund —
  - (a) the public service division of the corporation, including regional television and international broadcasting services;
  - (b) content development ;
  - (c) community broadcasting services;
  - (d) signal distribution activities by a common carrier to ensure universal access;
  - (e) the Broadcasting and Signal-distribution Museum;
  - (f) for the payment of subsidies to any broadcasting service licensees pursuing public services broadcasting as defined in this Act; and;
  - (g) such other public services broadcasting uses determined from time to time by the Minister after consultation with the Minister of Finance.
- (2) The funds granted to the common carrier in respect of subsection (1) (d) shall only be used for this purpose and a separate statement of account should be included in the companies' Annual Report.

**7. Criteria for Allocations of PSB Funds**

- (1) The MDDA must develop criteria for allocation of PSB Funds for approval by the Minister in consultation with the Minister of Finance.
- (2) The criteria developed by the agency as indicated by in subsection 4 above, must be published in the gazette for 30 days allowing the public to make comments.
- (3) Should the agency deem it necessary, public hearings can be conducted.
- (4) Final criteria must be published in the gazette and shall be valid for three years.
- (5) Should the agency consider it necessary to change the criteria, it must inform the Minister in writing 30 days of its intentions prior to the changes being made.
- (6) Beneficiaries of PSB Fund should be financially accountable in terms of Public Finance Management Act and general Treasury regulations.

**8. Access to PSB Fund**

- (1). Access to PSB Fund shall be through request made to the MDDA before the commencement of the new financial year.
- (2). Based on the request, the MDDA shall publish its allocation for the new financial year in the gazette prioritising —
  - (a) public broadcasting services, including regional services;
  - (b) content development;
  - (c) community broadcasting services; and;
  - (d) signal distribution by a common carrier.

**9. Accounts of Public Service Broadcasting Fund**

- (1) The MDDA must—
  - (a) cause full records to be kept of the transactions of the Public Service Broadcasting Fund;

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(b) as soon as possible, but not later than three months after 31 March in each year, cause the books and accounts relating to such transactions to be balanced as at that date and thereafter prepare a statement showing in all necessary detail—

(i) the income and expenditure of the Fund during the preceding financial year, and;

(ii) a balance sheet showing the assets and liabilities of the Fund as at the end of that year.

(2) The accounts and balance sheet of the Fund must be audited by the Auditor-General.

(3) As soon as possible after the accounts and balance sheet for any year have been audited, the Corporation must submit a copy of the accounts and balance sheet to the Minister.

(4) The Minister must table a copy of the audited accounts and balance sheet in Parliament—

(a) within 30 days after they have been received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session; or (b) if so determined by the Minister, together with the annual report of the MDDA in regard to the period concerned."

**CHAPTER 5****10. PUBLIC BROADCASTING SERVICES**

- (1) Public broadcasting services exist to serve the public interest.
- (2) The mandate of the public broadcasting services shall be to:
  - (i) provide quality broadcasting services that inform, educate and entertain;
  - (ii) promote social cohesion and national identity;
  - (iii) serve as a vehicle to access information and overcome digital divide;
  - (iv) promote fundamental democratic ethos and principles consistent with the Constitution of the Republic;
  - (v) supports rural development, particularly in the areas of agriculture, job creation and economic well-being of the people;
  - (vi) Contribute to the development of Africa.
- (3) In pursuit of the mandate in subsection (2), its objectives are to—
  - (a) make its services available throughout the Republic by offering programming that -
    - (i) informs, educates and entertains;
    - (ii) supports rural development, particularly in the areas of agriculture, job creation and economic well-being of the people;
    - (iii) is predominantly and distinctly South African reflecting the Republic nationally and regionally while serving the special needs of the regions;
    - (iv) promote national integration by broadcasting in a manner that facilitates communication in the official languages of the Republic;
    - (v) respond to audience needs, including the needs of the deaf and the blind and account on how to meet those needs;
    - (vi) promote social cohesion and national identity;
  - (b) to acquire from time to time a licence or licences for such period and subject to such regulations, provisions and licence conditions as may be prescribed to pursue public service broadcasting mandate;
  - (c) to provide other services, whether or not broadcasting or programme supply services, such services being ancillary services;
  - (d) 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;
  - (e) to provide to other bodies by such means and methods as may be convenient, services, programmes and materials to be transmitted or distributed by such bodies and to receive from such other bodies services, programmes and materials to be transmitted by stations of the Corporation for reception as above;
  - (f) to commission, compile, prepare, edit, make, print, publish, issue, circulate and distribute, with or without charge, such books, magazines, periodicals, journals, printed matter, records, cassettes, compact disks, video tapes, audio-visual and interactive material, whether analogue or digital and whether on media now known or hereafter invented, as may be conducive to any of the objects of the Corporation;
  - (g) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available to the public such libraries and archives with or without charge;
  - (h) to organise, present, produce, provide or subsidise concerts, shows, variety performances, revues, musical and other productions and performances and other entertainment whether live or recorded in connection with the broadcasting and programme supply services of the Corporation or for any purpose incidental thereto;
  - (i) to collect news and information in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies;
  - (j) to carry out research and development work in relation to any technology relevant to the objects of the Corporation and to acquire by operation of law, registration, purchase, assignment, licence or otherwise copyright and designs, trade marks, trade names and any other intellectual, industrial and commercial property rights;
  - (k) contributes to the reconstruction and development of Africa;
  - (l) take South Africa to the World and the World to South Africa;
  - (m) to develop and extend the services of the Corporation beyond the borders of South Africa, as part of its contribution to regional integration and a sense of affinity and understanding with the citizens of the Southern African region;
  - (n) to facilitate the distribution of broadcasting services in the different region of the Republic, and;
  - (o) assist in overcoming the digital divide in the Republic.

**11. Organisation**

- (1) The Corporation must consist of three separate operational divisions, namely—
  - (a) a public service division;
  - (b) a commercial service division; and;
  - (c) an international broadcasting service division.
- (2) The public, commercial and international\_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.

*Department of Communications***12. Public Service Division**

- (1) The public broadcasting service provided by the Corporation must—
- (a) make services available to South Africans in all the official languages;
  - (b) reflect both the unity and diverse cultural and multilingual nature of South Africa and all of its cultures and regions to audiences;
  - (c) strive to be of high quality in all of the languages served;
  - (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
  - (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;
  - (f) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
  - (g) strive to offer a broad range of services targeting, particularly, children, women, the youth and the disabled;
  - (h) include programmes made by the Corporation as well as those commissioned from the independent production Sector, and;
  - (i) include national sports programming as well as developmental and minority sports.
- (2) The public broadcasting service division of the Corporation consists of—
- (a) services to promote official languages in accordance with the Constitution of the Republic;
  - (b) regional television services, and;
  - (c) additional channels established in terms of subsection (12)(4)(a) of this Act.
- (3) Regional television services
- (a) In the performance of its public service mandate and in the interest of regional development, the Corporation must provide additional television services which broadcast—
    - (i) regionally;
    - (ii) in such official languages as are appropriate, having regard to language usage within respective regions served by the proposed services;
    - (iii) 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.
  - (b) As public service channels, the regional services provided by the Corporation must be funded by Public Service Broadcasting Fund, money appropriated by provincial government through the provincial legislatures, donations and sponsorship.
  - (c) The Authority must determine the extent to which these services may draw limited revenues from advertising.
  - (d) The Corporation must draw up proper financial regulations for these services.
  - (e) Regulations must prescribe the percentage of out-of-metro content that the Corporation must carry on its regional services.
  - (f) To ensure attachment of the regional television services to the regions they serve-
    - (i) News reporting and current affairs coverage shall predominantly be regional; and;
    - (ii) Programming and content offering shall reflect regional diversity
- (4) Additional Channels by the Corporation:-
- (a) In the performance of its public service mandate under section 10, the Corporation must, within 12 months of the commencement of this Act, or any period lesser during dual illumination, apply to the Authority in terms of the Electronic Communications Act, 2005, to license it to provide additional television services which cater for and prioritise –
    - (i) education;
    - (ii) health;
    - (iii) youth;
    - (iv) sports;
    - (v) Small Micro and Medium Enterprises;
    - (vi) Parliamentary services; and;
    - (vii) Government and interactive services as provided for in the Broadcasting Digital Migration policy.
  - (b) The additional services provided by the Corporation must be funded by PSB Fund intended for public service division, and may draw revenues from grants, donations and sponsorship.
  - (c) The Authority must determine the extent to which these services may draw revenues from advertising.

**13. Funding Public Broadcasting Services:**

- (1) The public service divisions, including regional television services, provided by the Corporation shall be funded by:-
- (a) Public Service Broadcasting Fund;
  - (b) Subsidies derived from its commercial services division outlined in section 14 of this Act, and;



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- (c) Grants, non-commercial sponsorship and donations.
- (2) advertising and commercial sponsorship which must not exceed the total contribution from subsection (1) (a) and (b) above;
- (3) In cases of revenue specified in subsection (2) above, regulations by the Minister in accordance with section (31) of this Act should determine the percentages and further limiting this revenue on certain programmes where it should be prohibited.
- (4) In case of contravention of subsection (2), fines and or penalties shall be imposed by the Authority in terms of section (26) of this Act.

**14. Commercial Service Division**

- (1) The commercial service division is established to provide subsidies for the pursuance of public broadcasting mandate provided by the Corporation.
- (2) Pursuant to this objective, the commercial services must—
  - (a) be subject to the same policy and regulatory structures as outlined in the ECA for commercial broadcasting services;
  - (b) comply with the values of the public broadcasting service in the provision of programmes and service;
  - (c) commission a significant amount of their programming from the independent production sector;
  - (d) be operated in an efficient manner so as to maximise the revenues provided to its shareholder.
- (2) The revenues maximised by the commercial services in accordance with subsection (2) (d) shall predominantly be used to subsidise the public broadcasting services.
- (3). The amounts used in respect of subsection (2) (d) shall be determined by the Minister.
- (4) To ensure public accountability and transparency, the amounts used in respect of 2 (d) shall be reported in the Annual Report,

**15. Establishment of International Broadcasting Services**

- (1) The International Broadcasting Services of the Corporation to –
  - (a) contribute to a diversity of views and content on the African continent,
  - (b) promote regional integration; and;
  - (c) promote South Africa's foreign policy.
- (2) The International services provided by the Corporation must: -
  - (a) be subject to the Republic's foreign policy relating to inter alia Africa's development, reconstruction, peace and stability;
  - (b) commission a fair amount of their programming from various African countries as part of developing and promoting the African content industry;
  - (c) comply with the values of international broadcasting services, in the provision of its programmes and services;
  - (d) be operated in an efficient manner so as to promote the interests of the Republic;
  - (e) be made available free-to-air in the Republic to create a dialogue between South African citizens and citizens in the neighbouring countries, and;
  - (f) its programming, including news and current affairs, sports must be predominantly African.
- (3) The international broadcasting service provided by the Corporation shall draw revenues from the Public Services Broadcasting Fund and grants from the State and may in addition thereto, draw minimum revenue from advertising and sponsorships, grants and donations as determined by the Minister.
- (4) The establishment of any international broadcasting service channel shall require approval from the Minister, after consultation with the Minister of International Relations and Cooperation.
- (5) The Corporation must operate the international broadcasting service division in accordance with any regulatory requirements prescribed by the Authority.

**16. Transfer of Channel Africa to Corporation —**

- (1) Channel Africa is hereby transferred to the Corporation's International Broadcasting service on a date determined by the Minister in the Gazette and will form part of the international Broadcasting Service division.
- (2)(a) Every person who is in the service of Channel Africa immediately before the transfer date contemplated in subsection (1) is, as from that date, transferred to the service of the Corporation.
- (b) Every person so transferred must be regarded as having been appointed in terms of this Act.
- (3) The remuneration and other terms and conditions of service of any person transferred as contemplated in subsection (2) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the transfer date and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including, where applicable -
  - (a) membership of a pension fund;
  - (b) membership of a medical aid scheme;
  - (c) employer contributions in connection with the memberships contemplated in paragraphs (a) and (b);
  - (d) accrued pensionable service;
  - (e) accrued leave benefits; and
  - (f) retirement at a specific age.

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(4) Any person transferred to the service of the Corporation as contemplated in subsection (2), who immediately before such transfer was a member of a pension fund of Channel Africa, remains a member of that pension fund upon such transfer despite any provision to the contrary in any law or in the rules of that pension fund and the Corporation must contribute to the pension fund in respect of that person to the same extent as an employer is required in terms of the laws and rules regulating that pension fund to contribute in respect of an employee who is a member of that fund.

(5) For purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person is transferred to the service of the Corporation as contemplated in subsection (2) and the position of those persons in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, must be regarded as remaining unchanged.

(6) All assets, rights, liabilities and obligations which, immediately before the transfer date, vest in Channel Africa pass to the Corporation on that date.

(7) The registrar of deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (6), and no transfer fee, office fee or other charge is payable in respect of that entry or endorsement.

(8) All licences issued, rights granted and undertakings given to Channel Africa must be regarded to have been issued, granted or given to the Corporation.

**17. Governance**

The Board of the Corporation

(1) The Corporation is controlled by the Board.

(2) **Composition of Board.**—The Board consists of twelve members who are appointed on a non-executive basis.

(3) 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, 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 and different regions of the Republic;

(d) be persons who are committed to the objects and principles as enunciated in the Charter of the Corporation.

(4) It shall be the primary responsibility of the Board as the accounting Authority to ensure that the corporation fully complies with the Charter of the Corporation, including putting in place effective mechanisms and instruments for public accountability.

**18. Members of Board**

(1) The twelve members of the Board must be appointed by the President on the advice of the National Assembly.

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

(5) 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.

(6) Nine members of the Board, which must include the Chairperson or the Deputy-Chairperson, will constitute a quorum at any meeting of the Board.

**19. Charter of the Corporation-**

(1) In pursuit of its mandate, public broadcasting services shall be guided by the Charter of the Corporation developed in terms of this Act.

(2) The Charter of the Corporation shall be a legal instrument to govern the operations, management and overall governance of public broadcasting services in accordance with this Act.

(3) The Charter of the Corporation shall include elements not limited to:-

(a) Incorporation of the Corporation;

(b) Governance structure;

(c) Public Accountability measures;

(d) Organisational matters;

(e) Financial matters;

(f) Powers and obligations;

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(4) Fines and or penalties shall be imposed for any failure to strictly comply with the Charter of the Corporation consistent with section 31 of the Act.

(5) The Charter shall be determined, amended and reviewed by Parliament by notice in the *Gazette* and shall be valid for a period of 10 years or any lesser period not less than 5 years.

(6). **Oath or Affirmation:** - A member must, before performing his or her functions, take an oath or affirmation that he or she is committed to-

(a) fairness, freedom of expression, openness and accountability;

(b) serving public interest; and;

(c) upholding and protecting the Charter and the other law of the Republic, including the Constitution.

**CHAPTER 6****COMMUNITY BROADCASTING SERVICES****20. Objectives of Community Broadcasting Service**

- (1) The objectives of the Community Broadcasting Service are to —
- (a) provide access to the means of communications by the communities;
  - (b) contribute to community development by —
    - (i) providing access to communications to communities in the local languages;
    - (ii) content and programming that reflect the culture and language of the community;
    - (iii) providing for content that promotes community development;
    - (iv) serve as a vehicle of community development;
    - (v) use local languages, religion, culture to inform, educate and entertain;
  - (c) offer developmental programming that —
    - (i) strengthens communities' rights of access to and protection of cultural and linguistic diversity;
    - (ii) foster exchange between community broadcasting stations to develop greater understanding and support of community safety and security initiatives, tolerance and democracy;
    - (iii) foster community participation in the production and ownership of broadcasting content;
- (2) Community Broadcasting Services must —
- (a) ensure that programming provided by a community broadcasting service reflects the needs of the people in the community, which must include amongst others; cultural, religious, language and demographic needs and must —
    - (i) provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the public broadcasting services covering the same area;
    - (ii) be informational, educational and entertaining;
    - (iii) focus on the provision of programmes that highlight but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international affairs, and the reflection of local culture;
    - (iv) promote the development of a sense of common purpose within a democracy and improve the quality of life;
  - (b) ensure community integration and social cohesion;
  - (c) offer content, including news and current affairs, documentaries and sport that is predominantly local drawn from community sources; and;
  - (d) must forge partnership with local municipalities as locus of development.

**21. The organisation-**

- (1) A community broadcasting service shall comprise sound or television station or a combination thereof licensed by the Authority to foster development.

**22. Governance – (Station Governing Council)**

- (1) The affairs of the community station shall be controlled by a Governing Council Governing Council comprising a minimum of 5, but not exceeding 7 members appointed by the Community at a properly constituted Annual General Meeting or appropriate forum.
- (2) The members of the Governing Council shall serve for a period not exceeding 3 years and shall when viewed collectively be —
- (a) be persons who are suited to serve on the Governing Council by virtue of relevant experience and expertise;
  - (b) be persons who are committed to community development;
  - (c) represent a broad cross-section of the community including gender;
  - (d) persons represent the community within the coverage of the station;
  - (e) Persons with passion and commitment for development;
  - (f) Resides in the area of coverage on full-time basis;
  - (g) be persons who are committed to the objects and principles as enunciated in the charter of community broadcasting services;
  - (h) The Members of the Governing Council shall possess requisite skills and experience in broadcasting, education, management, community development, religion, culture, finance and any other skills relevant for the effective functioning of the Governing Council.

**23. Filling of Vacancies -**

- (1) A member of the Governing Council appointed to fill a casual vacancy must hold office for the unexpired portion of the period for which the vacating member was appointed;
- (2) Every vacancy on the Governing Council must be advertised in a medium accessible to the community, including the stations for a period not less than 30 days.
- (3) Three members of the Governing Council, which must include the Chairperson or the Deputy Chairperson, will constitute a quorum at any meeting of the Governing Council;

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(4) Two members of the Governing Council appointed to the first Governing Council constituted after the commencement of the Broadcasting Amendment Act, 2008, as shall be determined by lot by the Governing Council, shall hold office for an additional period of two years after the expiration of their period of office.

**24. Funding Community Broadcasting Services**

(1) Community Broadcasting services shall be funded through-

(a) Public Service Broadcasting Fund;

(b) Grants and donations;

(c) Advertising

(2) In case of community broadcasting services deriving its revenues from subsection 1(a)-

(a) strict compliance with PFMA must be maintained; and;

(b) regulations should determine the percentage of advertising revenues to be received by such a service.

**25. Community Broadcasting services and Development-**

(1) In pursuance of their developmental mandate, community broadcasting services shall be partnership with municipalities.

(2) The partnership shall include amongst other things:

(a) Availability of information about development to by local municipalities;

(b) Availability of physical spaces, facilities and infrastructure for use by the community broadcasting services;

(c) Facility sharing;

(d) General support, including, financial support, by municipalities to the community broadcasting; and;

(e) Comprehensive approach to development.

(3) To safeguard the independent functioning of the community broadcasting services, a Standard Terms of Agreement Framework shall be developed by the Authority outlining the terms of the partnership.

(4) It shall be the responsibility of the Authority to monitor the partnership and revise Standard Terms of Agreement Framework from time to time.

**26. Charter of Community Broadcasting Services-**

(1) In pursuit of its mandate, community broadcasting services shall be guided by the Charter of community broadcasting services developed in terms of this Act.

(2) The Charter of community broadcasting services shall be a legal instrument to govern the operations, management and overall governance of community broadcasting services in accordance with this Act.

(3) The Charter of community broadcasting services shall include elements not limited to:-

(a) Incorporation of community stations;

(b) Governance structure;

(c) Public Accountability measures;

(d) Organisational matters;

(e) Financial matters;

(f) Powers and obligations;

(4) Fines and or penalties shall be imposed for any failure to strictly comply with the Charter of community broadcasting services consistent with section 31 of the Act.

(5) The Charter shall be determined, amended and reviewed by Parliament by notice in the *Gazette* and shall be valid for a period of 10 years or any lesser period not less than 5 years.

**27. COMMERCIAL BROADCASTING SERVICES**

(1) Commercial broadcasting services are encouraged by this act to contribute to public service broadcasting.

(2) Commercial Broadcasting service licencees wishing to pursue public service broadcasting should apply for PSB Fund.

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**CHAPTER 7****ENSURING UNIVERSAL ACCESS TO BROADCASTING SERVICES****28. Objectives of a Common Carrier are -**

- (1) (a) to ensure access to broadcasting services by the citizens and content providers to Availability of robust transmission network infrastructure.
- (2) Sentech's signal distribution network is declared an essential facility and therefore a common carrier, subject to the National key Points Act 102 of 1980
- (3) As a common carrier Sentech must-
  - (a) ensure universal access to broadcasting services by rolling-out the transmitter network prioritising rural areas;
  - (b) maintain and ensure availability of robust transmission network infrastructure;
  - (c) carry both public and community broadcasting service on reasonable costs; and;
  - (d) Contribute to information society by rolling out broadband infrastructure to the rural communities.
- (4) For the purpose of subsection 2 Sentech shall receive money from Public Service Broadcasting Fund
- (5) Money received from PSB Fund shall be used exclusively for signal distribution services

**29. Obligations and powers of Sentech**

- (1) Sentech must provide a transparent mechanisms for its tariff structure.
- (2) Maintain separate accounts in respect of money received from PSB Fund.
- (3) Borrow money on the approval of the Minister in consultation with the Minister of Finance.

**30. Annual Reporting by Sentech** - It shall be duty of Sentech to report annually on its mandate in outlined in subsection 1 to the Authority, the Minister and Parliament

**CHAPTER 8****THE FUNCTIONS OF THE AUTHORITY IN PUBLIC SERVICE BROADCASTING****31. GENERAL FUNCTIONS**

(1) The Authority must monitor and enforce strict compliance with the public service broadcasting in general and the Charters for both Public and Community broadcasting services.

**(32) SPECIFIC FUNCTIONS****(1) The Function of the Authority in relation to the Public Broadcaster:-**

- (a) conduct public hearings, at least biannually, in respect of the Corporation's compliance with the Charter;
- (b) investigate public complaints by the public and summon the Board to a hearing regarding the complaints;
- (c) usage of money received from Public Service Broadcasting Fund;
- (d) Impose fines and penalties.
- (e) Any matter relevant to the function of the Corporation in fulfilling its mandate;

(2) Monetary fines imposed on the public broadcaster shall be paid into the PSB Fund.

**33. Functions of the Authority in relation to Community Broadcasting services**

(a) For the purposes of carrying this function, the Authority shall have the powers and duties conferred to it by this Act, including

- i) strict compliance with the community broadcasting services Charter;
- ii) suspend and revoke a licence in case of instability or conflicts arising at the stations upon evidence of non-compliance with this Act on matters pertaining to corporate governance mandate, community participation; programming, financial accountability in addition to licence conditions and inability to comply with other relevant legislation;
- iii) managed approach to the licensing of sector to ensure sustainability
- iv) dispute resolutions at the stations;
- v) conduct hearings on the performance of the sector against the objectives.

(b) The powers and actions contained in subsection 30 (a) shall occur in cases where a community broadcasting service licensee has been:

- (i) Given a reasonable opportunity to be heard; and;
- (ii) Failed on numerous occasions to remedy the deficiency.

**34. Functions of the Authority in relation to a Common Carrier**

(1) For the purposes of carrying out this function, the Authority is to have the powers and duties conferred to it by this Act, including-

- (a) Monitoring the transmitter rollout plans to ensure universal access to transmitter networks by broadcasters, content providers and broadcasting services by the citizens;
- (b) Conduct inquiries and review tariff structures set by the common carrier;
- (c) Conduct investigation into the quality of signal distribution services provided by the common carrier;
- (d) Powers to inspect books in respect of the money received from PSB Fund and direct subsidies and or grants from the State;
- (e) Impose fines and penalties in cases where the Common carrier continuously fail to fulfil its mandate in respect of public service broadcasting;
- (f) Any matter relevant to the function of the common carrier fulfilling its mandate consistent with this Act
- (g) The Authority is entitled, to the extent that they are authorised to do so by the Minister or under the provisions of this Act, to act on his behalf.

**35. Functions of the Authority in relation to MDDA and PSB Fund**

(1) The Authority shall have the powers and duties conferred to it by this Act, including the powers to:-

- (a) hold public hearings on the performance of the MDDA in relation to the fund
- (b) investigate complaints regarding the fund from the beneficiaries and interested persons;
- (c) receive annual reports on the usage of the fund;
- (d) make recommendations to the Minister in respect of the fund

(2) Fines and penalties imposed by the Authority in terms of this Act may be money and or additional obligations in accordance with the objectives of this Act.

(3) In case of case, the fine shall be paid into the PSB Fund.

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**CHAPTER 9****36. THE ROLE OF THE MINISTER**

- (1) The Minister is ultimately responsible for the effective monitoring of the implementation of this Act
- (2) The Minister may establish an advisory body to assist him/her in performing the function indicated in subsection 1.
- (3) The nature, terms of such a body and its conditions and composition must be determined by the Minister.
- (4) Upon establishment, the body shall monitor and advise the Minister on the implementation of Public service broadcasting matters including—
  - (a) mandate fulfillment by the different broadcasters, particularly public and community broadcasting services;
  - (b) funding matters;
  - (c) signal distribution;
  - (d) policy and regulations
  - (e) local content matters and/or;
  - (f) any other matters that may be critical to the successful implementation and within the scope of this Act and public service broadcasting in general.
- (5) In case of subsection (4) (d) the body shall work in close collaboration with Local Content Advisory Body established in terms of section 28 of this Act.

**37. Regulations by the Minister**

- (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
  - (a) the contributions to PSB Fund and the usage of such a Fund
  - (b) exemptions from the obligation to contribute to PSB Fund, and;
  - (c) any matter connected to Public service broadcasting except those prohibited in the ECA

**38. Interventions by the Minister****General Intervention****Intervention by the Minister in relation to this Act**

- (1) Subject to the provisions of the ECA and the Constitution, the Minister may direct any of the entities specified in this Act to take any action pursuant to Public Service Broadcasting if the entity is unable to perform its functions as prescribed in this Act
- (2) A directive contemplated in subsection (1) must state—
  - (a) the nature of the deficiency;
  - (b) the steps which must be taken to remedy the situation; and
  - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) Excluding the Authority, the Minister may further recommend that penalties or fines be imposed by the Authority.
- (4) The penalties or fines shall be determined by the Authority

**39. Intervention by the Minister in respect of the Corporation**

- (1) The Minister may, subject to this Act and the ECA, instruct the Board to take any action specified by the Minister if the Corporation—
  - (a) is in financial difficulty or is being otherwise mismanaged;
  - (b) is unable to perform its functions effectively;
  - (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act or related Act;
  - (d) has failed to comply with any law;
  - (e) has failed to comply with any directive given by the Minister under this Act; or
  - (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state—
  - (a) the nature of the deficiency;
  - (b) the steps which must be taken to remedy the situation; and
  - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) If the Corporation fails to remedy the situation within the stated period, the Minister may—
  - (a) after having given the Corporation a reasonable opportunity to be heard; and
  - (b) after having afforded the Corporation a hearing on any submissions received, write to the Appointing Authority, or the Authority to take appropriate action.
- (4) Such an action may include, but not limited to, conducting inquiries, recommendations for replacement or removal of the Board member(s) by Parliament.



**CHAPTER 10****40. Establishment of Broadcasting and Signal-distribution Museum**

- (1) The Corporation shall jointly with the Common carrier establish and manage a Broadcasting and Signal-distribution Museum that depicts the evolution and the history of broadcasting and signal-distribution in South Africa within 18 months of the commencement of this Act.
- (2) The museum must be funded by money appropriated by Parliament and may draw revenues from grants, donations, sponsorship, subsidies from the Public Services Broadcasting Fund;
- (3) The Corporation may charge reasonable access fee to the museum and should encourage the public to visit it.
- (4) The museum and its contents are part of the national estate as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999).
- (5) The contents of the museum must be transferred to the Electronic Communications and ICT Museum established in terms of section 72 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) within six months after the Electronic Communications and ICT Museum has been established."

**CHAPTER II****LOCAL CONTENT INDUSTRY AND THE ADVISORY BODY TO MINISTER****41. Specialist Channels:-**

- (1) To increase production and heighten demand of local content in the Republic, the Authority must 9 months after the Digital Switch-Over issue invitation for interested persons to apply for specialist channels prioritising Children programming, ethno-documentaries and wild-life.
- (2) Such specialist channels may be public, commercial or a combination thereof (public-private partnership ventures) with significant ownership by people from historically disadvantaged background;
- (3) Depending on the nature of ownership, specialist channels may draw revenues from Public Service Broadcasting Fund, donations and sponsorships.
- (4) The Authority shall determine how they can also derive their revenue from advertising.
- (5) Specialist channels shall-
  - (a) have a national coverage and be made available free-to-air;
  - (b) owned by persons or groups who are the permanent citizens of the Republic;
  - (c) offer specialist programming that is predominantly local;
  - (d) provide a significant place for programmes produced by the independent production sector;

**42. Local Content Advisory Body**

- (1) The Minister must establish a Local Content Advisory Body to advise him or her on how the development, production and display of local content can be supported.
- (2) The terms and conditions of allowances, composition and meetings applicable to the Advisory Body by virtue of its appointment in terms of subsection (1) must be as determined by the Minister in concurrence with the Minister of Finance.
- (3) The Advisory Body must advise the Minister on how to encourage, facilitate and offer guidance and advice in respect of any scheme and to promote—
  - (a) the production of broadcast materials that reflect the cultural needs of South Africans;
  - (b) the screening and airplay of South African content on digital platforms;
  - (c) marketing of local content in South African and foreign markets;
  - (d) distribution and exhibition of local content in foreign markets;
  - (e) equity in the local content production industry;
  - (f) human resource development of local content providers;
  - (g) co-productions and international agreements;
  - (h) measures to combat signal piracy, intellectual property protection and cyber security;
  - (i) protection of copyrighted works and children against harmful content.
- (4) The Advisory Body must, after consultation with the National Film and Video Foundation and the broadcasting industry and other relevant authorities, make recommendations for the Minister to determine after consultation with the Minister of Arts, Culture, Science and Technology, the Minister of Trade and Industry and the Minister of Finance—
  - (a) policies and strategies to give effect to the production and display of local content;
  - (b) financing strategies to support the production and display of local content;
  - (c) supply-side measures and initiatives to support the production of local content;
  - (d) policies to enhance the production of local content for the multi-channel and digital broadcasting environment.

**CHAPTER 12****TRANSITIONAL PROVISIONS****43. Compliance with the Charters**

(1) Both the Corporation and the Community Broadcasting services shall be afforded 12 months to align their operations to the Charters developed in terms of this Act.

**44. Existing licences**

(1) All the licences currently operated by the Corporation for Channel Africa and SABC News international shall be deemed to have been issued for the Corporation for its International Broadcasting Services.

**45. Existing TV licences**

(1) The existing TV licences shall remain valid and therefore payable until the end of the financial year upon which this Act comes into force.

(2) All debt owed to the Corporation by the TV owning households in respect of television licence shall remain valid until fully paid up.

**46. Existing Regulations**

(1) Within 24 months of this Act coming into force, the Authority may, if it considers it necessary, amend or repeal the regulations made under the –

(a) Broadcasting Act, 1999

(b) Sentech Act

which were in force prior to the commencement of this Act.

(2) The regulations referred to in subsection (1) remain valid until they are amended or repealed in terms of this Act.

**47. New Regulations**

(1) Following the promulgation of this Act, the Authority must develop a regulatory framework for the Corporation's International Broadcasting services.

(2) The Minister must 6 months following the establishment of the Public Service Broadcasting Fund, publish regulations detailing the contributions to the Fund.

(3) The regulations published by the Minister should include:-

(a) The contributions by the different sectors;

(b) The contribution levels by the different income groups

(c) Categories of exemptions;

(d) Validity of the contributions; and;

(e) Other public service broadcasting initiatives to benefit from the Fund.

**48. Application of the Act**

This Act binds the State.

**49. Repeal and amendment of laws**

The laws referred to in the first column of the Schedule are repealed or amended to the extent indicated in the third column.

**50. Short title and commencement**

This Act is called the Public Services Broadcasting Act, 2009 and comes into force on a date determined by the President by proclamation in the Gazette.

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No. and year of Act	Short Title	Extent of repeal or amendment
Act No. 1999	Broadcasting Act, 1999	The Whole
Act No. 36 of 2005	Electronic Communications Act, 2005	<p>Amendment of section 1—</p> <p>By the insertion of the following definitions:</p> <p>“free-to-air broadcasting service” means a service which is broadcast and capable of being received without payment of subscription fees;</p> <p>“low power sound broadcasting service” means a community, private or public sound broadcasting service which radiates power not exceeding one watt;</p> <p>“satellite subscription broadcasting service” means a broadcasting service provided to an end user upon the payment of a fee which is broadcast by transmitters situated on a satellite;</p> <p>“terrestrial subscription broadcasting service” means a broadcasting service provided to an end user upon the payment of a fee that is broadcast from a transmitter situated upon the earths surface;</p> <p>By the amendment of the following definition:</p> <p>“common carrier” means [a person licensed to provide an electronic communications network service who is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis] <u>Sentech Limited, a public company established in terms of the Sentech Act, 1996 (Act No. 63 of 1996) ;</u></p> <p>Insertion of the following section after section 48:</p> <p>“Classes of licences</p> <p>48A —(1) Subject to the provisions of this Act, the Authority may, on such conditions as it may determine, issue a sound or television broadcasting service licence for a specified area in the following broadcasting service categories:</p> <p>(a) A public broadcasting service;</p> <p>(b) a community broadcasting service; and</p> <p>(c) a commercial broadcasting service.</p> <p>(2) Subject to this Act, broadcasting licences are categorised as—</p> <p>(a) free-to-air broadcasting service;</p> <p>(b) terrestrial subscription broadcasting service;</p> <p>(c) satellite subscription broadcasting service;</p> <p>(d) cable subscription broadcasting service;</p> <p>(e) low power sound broadcasting service; and</p> <p>(f) any other class of licence prescribed by the Authority from time to time.”</p> <p>Amendment of section 61 of Act 36 of 2005</p> <p>Section 61 of the principal Act is hereby amended by the substitution for the following section:</p> <p>“61. Preservation of South African programming.—(1) The Authority may prescribe regulations applicable to broadcasting service licensees regarding the commissioning of independently produced South African programming.</p> <p>(2) For purposes of this section—</p>

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		<p>(a) “local television <u>or</u> radio content” means a television <u>or</u> radio programme, excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements, which is produced—</p> <p>(i) by a broadcasting service licensee;</p> <p>(ii) by a person who is a citizen of, and permanently resident in, the Republic;</p> <p>(iii) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;</p> <p>(iv) in a co-production in which persons referred to in subparagraphs (i), (ii) or (iii) have at least a fifty percent financial interest;</p> <p>(v) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed number of key personnel who are involved in the production of the television <u>or</u> radio programme, are citizens of, and permanently resident in, the Republic; or</p> <p>(vi) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;</p> <p>(vii) <u>in the case of community radio broadcasting, by the community about the community.</u></p> <p>(b) “independent television <u>or</u> radio production” means a production of local television <u>or</u> radio content—</p> <p>(i) by a person not directly or indirectly employed by any broadcasting service licensee; or</p> <p>(ii) by a person who is not controlled by or is not in control of any broadcasting service licensee; and</p> <p>(c) a musical work broadcast by a broadcasting service licensee qualifies as “South African music” if such work complies with at least two of the following criteria, namely—</p> <p>(i) if the lyrics (if any) were written by a South African citizen;</p> <p>(ii) if the music was written by a South African citizen;</p> <p>(iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;</p> <p>(iv) if the musical work consists of a live performance which is—</p> <p>(aa) recorded wholly in the Republic; or</p> <p>(bb) performed wholly in the Republic and broadcast live in the Republic.</p> <p>(3) The Authority may, in respect of [the] a television <u>or</u> radio broadcasting service licence, impose and specify in that licence, such conditions, as prescribed, regarding local television <u>or</u> radio content and independent television <u>or</u> radio production, which without derogating from the generality of the foregoing, may include any conditions requiring the broadcasting service licensee—</p> <p>(a) to annually expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of its gross revenue, on programmes which have local television <u>or</u> radio content;</p> <p>(b) to allocate a specified minimum</p>
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		<p>percentage of its total broadcasting time to television programmes which have local television <u>or radio</u> content;</p> <p>(c) in the case where the broadcasting service licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television <u>or radio</u> programmes which have been produced in the relevant region or locality; and</p> <p>(d) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b) or (c), whichever is applicable, to a prescribed diversity of television <u>or radio</u> programmes which are independent television <u>or radio</u> productions.</p> <p>(4) The Authority may, in relation to a sound broadcasting service, prescribe conditions in terms of which the broadcasting service licensee is required to broadcast a specified minimum percentage of musical works which qualify as South African music.</p> <p>(5) In prescribing any amount or percentage in terms of subsections (3) or (4), the Authority may prescribe the application thereof with regard to—</p> <p>(a) any of the categories of broadcasting service licence referred to in sections 49, 50 and 51;</p> <p>(b) defined viewing and listening times, where applicable;</p> <p>(c) various categories of television <u>or radio</u> programmes, where applicable; and</p> <p>(d) the period within which the broadcasting service licensee must comply with the provisions of this section.”</p> <p>Amendment of section 62 of Act 36 of 2005</p> <p>Section 62 of the principal Act is hereby amended by –</p> <p>(a) the insertion of the following paragraph after paragraph (c) in subsection (2):</p> <p>“(d) do skills and human resource development in broadcasting signal distribution”.</p> <p>(b) the substitution for subsection (3) of the following subsection:</p> <p>“(3) A common carrier must—</p> <p>(a) subject to its technological capacity to do so and to the provisions of paragraph (b), provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis;</p> <p>(b) in determining its tariffs, duly take into account the following:</p> <p>(i) the different categories of broadcasting service licenses referred to in sections 49, 50 and 51; and</p> <p>(ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the</p>
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		<p>different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate;</p> <p>(a) carry public broadcasting services, including educational, commercial and community services[.];</p> <p>(b) <u>provide broadcasting signal distribution with a national geographic coverage area in the interest of universal service and access by no later than 01 November 2011; and</u></p> <p>(c) <u>Provide quarterly reports to the Authority on its compliance with paragraph (d) until national geographic coverage has been achieved.</u></p> <p>(c) by the addition of the following subsection:  <u>"(4)The Authority must conduct public hearings, at least biannually, in respect of the common carrier's compliance with the subsection (3)."</u></p>
Act No. 58 of 1962	Income Tax Act, 1962	<p>Amendment of section 5 by the insertion of the following subsection:          "(1B) (a) There shall be paid annually for the benefit of the Public Service Broadcasting Fund contemplated in the Broadcasting Act, 1999 (Act No. 4 of 1999) , a public service broadcasting levy as contemplated in paragraph (b).</p> <p>(b) The public service broadcasting levy is applicable where the taxable income received by or accrued to or in favour of—</p> <p>(i) any person (other than a company) during the year of assessment ended the last day of February each year is as indicated in the following table:</p> <p>(ii) any company during every financial year of such company, is as indicated in the following table:</p> <p>(c) The Minister of Communications, after consultation with the Minister of Finance and approval by Parliament, may by notice in the Gazette, increase the public service broadcasting levies in paragraph (b)."</p>
Act No. 63 of 1996	Sentech Act, 1996	<p>Amendment of section 1—          By the amendment of the following definition:          "common carrier" [means the holder of a broadcasting signal distribution licence contemplated in section 33 (1) (a) (i) of the Independent Broadcasting Authority Act] <u>has a meaning corresponding with the definition of 'common carrier' in the Electronic Communications Act;</u></p>



## **THE CHARTER OF THE CORPORATION**



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**GUIDING PRINCIPLES**

(1) The Corporation must be a leader in public service broadcasting. In pursuing this vision 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;
- (b) display South African talent in education and entertainment programmes;
- (c) offer a plurality of views and a variety of news, information and analysis from a South African point of view;
- (d) advances the national and public interests.
- (e) foster inclusivity by reflecting the lives of all South Africans;
- (f) protection of children against harmful content;
- (g) contribute to moral regeneration;
- (h) respect human rights, including the right to privacy, unless a compelling public interest demands.

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**DEFINITION AND INTERPRETATION**

**Act** means the Public Service Broadcasting Act

**Appointing Authority** means the body responsible for the appointment of the Board as outlined in the Act

**Board:** The Board of the Corporation

**Broadcasting means** any form of multidirectional electronic communications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio frequency spectrum or any other electronic communications network or any combination of the aforementioned, and 'broadcast' is construed accordingly; [Definition of 'broadcasting' amended by s. 97 of Act 36 of 2005.]

**Broadcasting service license** means a licence granted by the Authority to a person in terms of section 5(2)(b) or section 5(4)(b)

**Broadcasting service licensee** means a person to whom a broadcasting service license has been granted in terms of the ECA

**Broadcasting licence** means a licence granted and issued by the Authority in terms of the Electronic Communications Act, to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act or the Electronic Communications Act to have been so granted and issued;

**Charter** of the Corporation means a charter formulated in terms of section of this Act to govern the operations of public broadcasting services.

**Common carrier** has a meaning corresponding with the definition of 'common carrier' in the Electronic Communications Act;

**Corporation** means the South African Broadcasting Corporation Limited;

**Department** means Department of Communications;

**Executive member:** refers to the GCEO, CFO, COO or their equivalents appointed by the Board;

**Financial year** – subject to the Public Finance Management Act, means a year ending 31 March;

**International Broadcasting Service** means any broadcasting service, including Channel Africa and SABC News International, established by the Corporation intended to cover international news and events;

**Licence:** licence issued to the Corporation in terms of the Electronic Communications Acts;

**Local content** means text, images (moving and/or still) that is of cultural or creative in nature that is written, presented, performed and or otherwise contributed to and owned by persons from South Africa transmitted over electronic platforms;

**Mandate** means the mandate of the public broadcasting services as outlined in section 10(2) of the Act.

**Member** means a member of the Board of the Corporation;

**Media Development and Diversity Agency** means the Media Development and Diversity Agency established under the Media Development and Diversity Agency Act, 2002 (Act No. 14 of 2002);

**Metro Content** means content produced and packaged in the metropolitan areas of Johannesburg, Cape Town and Durban;

**Out-of-metro content** means content produced and packaged in the Republic that is not metro content;

**Provincial government** means the provincial government as contemplated in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**Minister** means Minister of Communications;

**public broadcasting service** means any broadcasting service, including regional broadcasting services, provided by the South African Broadcasting Corporation, excluding those services in public commercial service division of the corporation;

**Public Service Broadcasting** has similar meaning as defined in the Public Service Broadcasting Act

**Public Service Broadcasting Fund** means a fund established in terms of the Public Service Broadcasting Act

**President** means the President of the Republic of South Africa;

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**Regional broadcasting service** means a service including radio and television service provided by the Corporation or any other entity licenced in terms of the ECA for this purpose to foster regional development.

**Republic** means the Republic of South Africa

**Transitional Period** means the period that begins at the beginning of the day after the day on which this Charter is granted and ends at the end of 31st December 2006;

**1. INCORPORATION AND PURPOSES****1.1. Incorporation of the Corporation.**

The Corporation shall continue to exist as a body corporate by the name of the South African Broadcasting Corporation (SABC) whose purpose is to serve public interest.

**1.2. Term of Charter.**

This Charter shall come into effect upon the promulgation of the Public service Broadcasting Act and it shall remain valid for a period of 10 years or any lesser period determined by Parliament. This lesser period shall not be less than five years.

**1.3. The Corporation's public nature and its objects.**

- (1) The Corporation exists to serve the public interest. Its main object is to promote public mandate.
- (2) The Corporation may maintain, establish or acquire subsidiaries through which commercial activities may be undertaken to any extent permitted by this Charter and the Public Finance Management Act (PFMA) on the approval of the Minister in consultation with the Minister of Finance.
- (3) The Act empowers the Corporation to maintain, establish or acquire subsidiaries for purposes sufficiently connected with its pursuance of public service broadcasting as outlined in the Public Service Broadcasting Act.

**1.4. How the Corporation promotes its Public Service Mandate:**

- (1) The Corporation's mission is to inform, educate and entertain and be a leader in public service broadcasting.
- (2) It should strive to fulfil this mission by means of—
  - (a) television, radio and online services;
  - (b) similar or related services which make output generally available and which may be in forms or by means of technologies which either have not previously been used by the Corporation or which have yet to be developed.
- (2) The Corporation may also carry out other activities which directly or indirectly promote the Public mandate, but such activities should be peripheral, subordinate or ancillary to its main activities.

**1.5. The independence of the Corporation**

- (1) Under this Charter, the Corporation, in pursuit of its mandate and in the exercise of its powers, enjoys freedom to express and journalistic, creative and programming independence as enshrined in the Constitution.

**2. CONSTITUTION.****2.1. Introduction.**

- (1) Within the Corporation, there shall be a Board and an Executive management. These two interlinked bodies shall each play a very important, but yet complementary, roles within the Corporation.
- (2) The primary role of the Board is to set the overall strategic direction of the Corporation, including its priorities, and in exercising a general oversight of the work of the Executive management.

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- (3) The Executive Management has responsibility for delivering the Corporation services in accordance with the priorities set by the Board and for all aspects of operational management and efficient use of resources in accordance with the provisions of the PFMA and other relevant legislations.

**2.2. Relationship between the Board and the Executive Management of the Corporation.**

- (1) In performing its duties, Executive management shall take instructions from the Board.
- (2) The Board shall be the sovereign body within the Corporation, in the sense that wherever it has a function under this Charter or the Act, it may always fully exercise that function as it sees fit.
- (3) Where the Executive Management has operational responsibility for activities which are subject to a Board function of approval, supervision, review or enforcement, any decision of the Board in exercise of such a function shall be final within the Corporation, unless in areas where the activity in question may also be subject to regulation by external bodies, such as the Authority.

**2.2. Guidance and best practice**

- (1) The Board and the Executive management, in performing their respective functions, must have regard—
- (a) to general guidance concerning the management of the affairs of public bodies as they consider relevant and appropriate; and
  - (b) to generally accepted principles of good corporate governance, but only—
    - (i) where to do so would not be incompatible with sub-paragraph (a), and
    - (ii) to the extent that such principles may reasonably be regarded as applicable in relation to their respective functions and within the particular constitution of the Corporation as a chartered Corporation.

**3. THE BOARD OF THE CORPORATION**

**3.1. Legal nature of the Board**

As a guardian of the public interest, the Board is a body which discharges a public mandate in accordance with the Public Service Broadcasting Act, this Charter and any other appropriate legislation, including the PFMA .

**3.2. Composition of the Board.**

- (1) The Board shall comprise 12 members consisting of:
- (a) a Chairperson and a Deputy Chairperson, and;
  - (b) 10 other ordinary members appointed by the President on the advice of the National Assembly following a process outlined in section 19 of the Act.
- (2) **Oath or Affirmation:** - A member must, before performing his or her functions, take an oath or affirmation that he or she is committed to-
- (a) fairness, freedom of expression, openness and accountability;
  - (b) serving public interest; and;
  - (c) upholding and protecting the Charter and the other law of the Republic, including the Constitution.

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**3.3. The Chairperson of the Board.**

- (1) The Act mandates the President to appoint both the Chairperson and the Deputy Chairperson of the Board.
- (2) It shall be the duties of the Chairperson as the figure-head of the Corporation to ensure that:
  - (a) that the Board performs its fiduciary duties as a cohesive unit;
  - (b) Strategic leadership to the Board and the Corporation;
  - (c) Effective functioning of the Board and its committees;
  - (d) Strategies are implemented and performance management systems with Executive management are in place; and
  - (e) The Corporation account to the shareholder and the public at all time.

**3.4. The Deputy Chairperson of the Board**

- (1) The Deputy Chairperson 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.
- (2) Whenever the office of Chairperson is vacant, the Deputy-Chairperson shall be "Acting Chairperson" with all the powers of the Chairperson.
- (3) In case of 2, such period will not exceed 6 months.

**3.5. Length of terms.**

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

**3.6. Termination of office.****A: General Termination**

- (1) A member of the Board (whether Chairperson, Deputy-Chairperson or ordinary member) shall cease to hold his/her office—
  - (a) on the expiration of the period for which he had most recently been appointed ;
  - (b) if he/she resigns by written notice to the President;
  - (c) if his/her appointment is terminated by the President;
  - (d) if—
    - (i) he/she becomes bankrupt,
    - (ii) his/she estate is sequestrated,
    - (iii) he/she grants a Board deed for his creditors, or
    - (iv) he/she makes any arrangement or composition with his creditors generally;
  - (e) if he/she is, or may be, suffering from mental disorder; or
  - (f) if—
    - (i) he/she fails to attend meetings of the Board continuously for three months or longer without the consent of the Board, and
    - (ii) the Board recommends to the appointing authority that he/she be removed due to any of the reason stipulated in subsections (d) and (f) above or any other reasons may deem to affect the effective smooth functioning of the Board and the Corporation.



**B: Termination by the Appointing Authority****(2) The Appointing Authority—**

(a) may remove a member from office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board; or

(b) must remove a member from office after a finding to that effect by a committee of the National Assembly and the adoption by the National Assembly of a resolution calling for that member's removal from office in terms of this section.

(3) A Board member may resign by three months' written notice addressed to the Appointing Authority via the Minister, provided that the Appointing Authority may on good cause shown allow a shorter period.

(a) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the removal of a member from office on account of any or all of the following:

(i) Misconduct;

(ii) inability to perform the duties of his or her office efficiently;

(iii) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown;

(iv) failure to disclose an interest or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in 3.11; and;

(v) his or her becoming disqualified as contemplated in 3.12.

(b) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the dissolution of the Board if it fails in any or all of the following:

(i) Discharging its fiduciary duties;

(ii) adhering to the Charter; and

(iii) carrying out its duties as contemplated in 24.

**(4) The appointing body—**

(a) may suspend a member from office at any time after the start of the proceedings of the National Assembly for the removal of that member;

(b) must act in accordance with a recommendation contemplated in subsection (1) within 30 days;

(c) must dissolve the Board if the resolution recommends the removal of all the members of the Board.

(5) Upon the dissolution of the Board, the appointing body must appoint an interim Board consisting of the five persons recommended by the National Assembly.

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(7) The interim Board must be appointed within 10 days of receiving such recommendations and is appointed for a period not exceeding six months.

(8) The appointing authority, on the recommendation of the National Assembly, must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board.

(5) A quorum for any meeting of the interim Board is six members.

**3.7. Disclosure of conflict of interests**

(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 industries;

(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.

**3.8. Disqualification**

(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 and Charter, 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—

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(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958) the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004,

(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 without an option of a fine.

**3.9. Remuneration of members.**

Members of the Board shall be remunerated by the Corporation at a rate determined by the Minister in accordance with National Treasury Regulations .

**3.10. Performance management system for the Board.—**

(1) The Minister must, in consultation with the National Assembly, establish a performance management system to monitor and evaluate the performance of the chairperson and other members of the Board.

(2) The performance management system must—

- (a) set appropriate key performance indicators as a yardstick for measuring performance;
- (b) set measurable performance targets; and
- (c) set a procedure to measure and review performance at least once a year.

(3) As soon as is practicable after the appointment of the chairperson or other non-executive members of the Board a performance agreement must be concluded between the chairperson or other non-executive members of the Board and the Minister.

(4) The evaluation of the performance of the chairperson or other members of the Board must be conducted by a panel constituted by the Minister, in consultation with the National Assembly for that purpose.

(5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson or other non-executive members of the Board, submit a report to the National Assembly for consideration.

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**3.11. How the Board Operates.****3.11.1. Meetings of the Board**

- (1) The Board shall meet for the transaction of its business and affairs.
- (2) The Board must make standing orders dealing with the summoning, notice, time, place, quorum, management and adjournment of its meetings, including provision for the exercise of a casting vote.
- (3) The standing orders may make provision for meetings of the Board to be held in circumstances in which members participate without being physically present in the same place as other participating members (for example, by means of telephone or video-conferencing).
- (4) seven members of the Board, which must include the Chairperson and or the Deputy Chairperson, shall constitute a quorum at the meeting of the Board.

**3.10.2. Committees of the Board**

- (1) The Board must establish a public service subcommittee, a commercial service subcommittee and an international service subcommittee and such other subcommittees as it deems appropriate from time to time —
  - (a) to report to the Board on the extent to which the public service division, including regional television service, the commercial service division and the international service division have achieved their objectives during the relevant period; and
  - (b) to perform such other functions regarding the organisation of the Corporation into the public service division, the commercial service division and the international service division, respectively, as may be delegated to them by the Board; and
- (2) The number, remit and composition of such committees are a matter for the Board, but no such committee shall include anyone who is not a member of the Board.
- (3) The Board may delegate particular functions, including decision-making, to such a committee on terms and conditions as it thinks fit.

**3.10.3. Regulations**

- (1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be efficiently 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 in respect of this surplus must be paid into the National Revenue Fund.

### **3.11. GENERAL DUTIES**

#### **3.11.1. Functions of the Board**

(1) As the accounting authority, the Board controls the affairs of the Corporation.

(2) In consultation with the Minister, appoint the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer of the Corporation and their equivalents;

(3) ensure that the functions of the Corporation are performed efficiently and with maximum benefit to the citizens of the Republic;

(4) maintain the integrity of the Corporation;

(5) ensure that the Corporation's complies with the Republic's broadcasting policies and regulatory framework;

(6) monitor the management of the Corporation's performance relative to the Corporation's targets and objectives as mandated by this Charter;

(7) The Board must ensure that the Corporation is accountable to the public at all times;

(8) The Board must prepare and submit to the Authority not later than 12 months following the commencement of this Act, submit to the Minister revised policies that will ensure compliance with Public Service Broadcasting Act, the Authority's Code of Conduct as prescribed and the Corporation's licence conditions and the objectives contained in this Act, including:

(i) News editorial policy;

(ii) programming policy;

(iii) local content policy;

(iv) educational policy;

(v) universal service and access policy;

(vi) language policy; and

(vii) religious policy.

(9) The Corporation must notify the Authority in writing of any amendments to the policies referred to in paragraph (8) within 30 days.

(10) The Board must ensure that there is public participation in the development of the policies referred to in subsection (8) by inviting and considering public comment on such draft policies and by other means.

(11) 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.

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(12) The Corporation must develop a Code of Practice that ensures that the services and the personnel comply with—

- (a) the constitutional principle of equality;
- (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;
- (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.

### **3.12. THE EXECUTIVE MANAGEMENT**

#### **(1) Composition of the Executive Management**

- (a) 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 their equivalents appointed by the Board.
- (b) The Executive management is accountable to the Board.

#### **(2) Role of the Executive Management.**

- (a) The Executive management is the executive body of the Corporation and is responsible for—
  - (i) the delivery of the Corporation's services in accordance with the priorities set by the Board in accordance with the Charter;
  - (ii) the direction of the Corporation's editorial and creative output;
- (b) the operational management of the Corporation;
- (c) ensuring compliance with all legal and regulatory requirements placed upon the Corporation (including the effective maintenance of public audience advisory councils and initial handling of complaints about the Corporation) except to the extent that they relate to the affairs of the Board;
- (d) ensuring compliance with requirements placed upon the Executive management by the Board;
- (f) making proposals to the Board for anything which is for the Board's approval in accordance with 3.14;
- (e) the day-to-day management of the Corporation and its subsidiaries;
- (f) the conduct of the Corporation's operational financial affairs (except those relating directly to the affairs of the Board) in a manner best designed to ensure value for money; and;

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- (g) accounting to the Board for its own performance and the performance of the Corporation and its subsidiaries.
- (h) In addition, the Executive Management has all the functions expressly or impliedly conferred upon it elsewhere by or under this Charter.
- (i) In the exercise of its functions, the Executive Management shall be subject to the Board approval.

**(3) Performance management system of Executive Management**

- (a) The Chairperson must establish a performance management system to monitor and evaluate the performance of the executive members of the Corporation.
- (b) The performance management system must—
  - (i) set appropriate key performance indicators as a yardstick for measuring performance and ;
  - (ii) set measurable performance targets; and
  - (iii) set a procedure to measure and review performance at least once a year.

**4. PUBLIC ACCOUNTABILITY****4.1. Public Broadcasting Audience Advisory Council**

- (1) The Board must establish a Public Broadcasting Audience Advisory Council to serve as a link between the Corporation and the public.
- (2) The Audience Council shall comprise 9 members representing the diverse perspectives of the provinces and regions to bear on the work of the Corporation and its services to the public, including regional television services.
- (3) Each Board member shall be allocated a Council member and it shall be the responsibility of such a member to work closely with a Council member to ensure that the needs of such a province are addressed.
- (4) It shall be the responsibility of the Council member to ensure that a forum or platform exist for members of the public in the province to discuss public broadcasting issues including access, content offerings, and the promotion of the public mandate, etc.
- (5) The Council should:
  - (a) be consulted on the Corporation's performance in promoting the Public mandate;
  - (b) submit a report to the Board every 6 months on the Corporation's performance in each province and advise on issues arising; and
  - (c) publish an Annual Review Report each year, assessing the extent to which the Corporation is meeting the public mandate as outlined in this Charter for inclusion in the Corporation's Annual Report for presentation to Parliament.

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(6) It shall consist of persons not employed by the Corporation with experience and/or expertise in public broadcasting or relevant skills.

(7) The Board shall elect one of the Council members as chairperson on rotational basis.

(8) In the absence of the chairperson, members of audience council can elect one of their members to preside at such meetings.

(9) A member of the public broadcasting advisory council shall hold office for a period of four years unless he or she submits his or her resignation in writing to the Board or vacates his or her office for any other reason before the expiry of such period.

(10) A casual vacancy on the public broadcasting advisory council caused by the death of, or the vacation of his or her office by, a member shall with due regard to the provisions of subsection (6) be filled for the unexpired portion of the period of office of such member.

(11) The meetings of the public broadcasting advisory council shall be held at such times and places as the advisory audience council may determine, and the quorum for and procedure at any meeting shall be determined by the Board.

(12) The council must present regular reports to the Board on any public broadcasting matter referred to it by the Board and on any public broadcasting matter affecting the affairs or interests of the Corporation.

(13) Members of the public broadcasting advisory council will not be remunerated for their services, but will be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Board.

(14) It shall be the responsibility of the Board to ensure that the work of Audience Councils is supported by the Corporation.

(15) The details of how the Advisory Audience Councils are to be set up, run, recruited and remunerated must be set out in a Framework developed by the Board.

**4.2. Annual provincial consultative meetings**

(1) The Board hold annual public meetings in each provinces to engage with the public concerning the Corporation's public mandate and progress regarding the implementation of such a mandate.

(2) The report of such meeting should be compiled for record purposes.

**4.3. Public complaints handling framework**

(1) The Corporation should 6 months following this Charter coming into force, develop and implement a Public Complaints Handling Framework outlining methods, procedures of and office/person(s) responsible for dealing with public complaints.

(2) The Framework shall be published for public comments and approved by the Minister.



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(3) A register of public complaints should be maintained and made available on request by the Minister, Parliament or the Authority.

## 5. ORGANISATIONAL MATTERS.

(1) **The Group Chief Executive Officer-** The Group Chief Executive Office shall be the editor-in-chief of the Corporation. As such, he/she shall be accountable for the editorial and creative output and general management of resources of the Corporation.

(2) **Staff of the Corporation** - The Corporation may engage such officers and other employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their other conditions of service in general.

(3) **The Corporation** may—

(a) establish a housing fund or in any other manner provide for housing to its officers and other employees on such terms and conditions as it may determine;

(b) establish or support associations or institutions for the promotion of the interests of its officers and other employees of their dependants;

(c) establish or support aid funds for the rendering of assistance to its officers and other employees or their dependants under such circumstances as it may approve;

(d) establish a bursary fund to finance or assist in financing in the interest of the Corporation the training or further training of existing or prospective officers and other employees of the Corporation; and;

(e) provide for its officers, other employees and pensioners or their dependants, by means of insurance with an insurance company or by means of a pension or provident fund or in any other manner, pecuniary benefits upon retirement or termination of service or at any other time.

Except in case of Executive staff, **the appointment of general staff**, and their terms and conditions, shall be a responsibility for the Executive management.

## 4. Communication with staff of the Corporation:-

(1) The Board and the Executive management must each ensure that at all times they have in place suitable arrangements under which they (or their representatives) will, where appropriate—

(i) consult staff of the Corporation on all matters affecting the interests of those staff; and;

(ii) seek to consult with any appropriate organisation with a view to maintaining or (as the case may be) establishing and maintaining adequate arrangements of the kind mentioned in paragraph (2).

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(2) The arrangements are for—

- (a) the settlement by negotiation of the terms and conditions of staff; and
- (b) the discussion of matters of mutual interest to the Corporation and its staff, including—
  - (i) the health, safety and welfare of such staff;
  - (ii) equal opportunities and training; and;
  - (iii) efficiency in the operation of the Corporation's services.

The arrangements must in particular be in keeping with the respective functions of the Board and the Executive Management under this Charter and with the general nature of the relationship between the Board and the Executive Management described in this Charter.

## **6. REPORTS AND ACCOUNTS.**

### **(1) Financial year and annual financial statements**

- (a) Subject to the provisions of section 285 of the Companies Act, the financial year of the Corporation commences on 1 April and ends on 31 March of the following year.
- (b) In addition to the annual financial statements to be drawn up in terms of the Companies Act, the Minister may direct the Corporation to draw up annual statements in a form determined by him or her.
- (c) The annual financial statements must be tabled by the Minister in the National Assembly.

### **(2) Accounts**

- (a) The Corporation must keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.
- (b) The Corporation must as soon as practicable after the end of each financial year, prepare statements of accounts and a balance sheet showing in appropriate detail the revenues and expenditure of the Corporation during that financial year, and its assets and liabilities as at the end of each financial year.
- (c) The Corporation must in its accounts referred to in subsection (2) reflect separately the accounts of the public, commercial services and International Broadcasting services.
- (d) The Board must ensure that the Corporation complies with the Public Finance Management Act in relation to accounting procedures by public entities.

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**(3) Auditing**

(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 must to be audited annually by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), and appointed as auditor of the Corporation.

(2) The Board must produce and lay before the auditor accounts of the Corporation.

(3) For the purposes of the audit the auditor may hear and receive evidence upon oath, and may by written notice under his/her hand require any person to appear before him/her in person at a time and place stated in such notice, to give information or produce any document necessary for the audit.

(4) The auditor must—

(a) disallow any payment made without proper authority according to law, and report the disallowance to the Board;

(b) charge against the person who made or authorised the payment in question, so much of the payment as is not condoned by the Board;

(c) charge against the person responsible therefore—

(i) as much of the amount of any deficiency or loss arising from negligence or misconduct of that person as is not condoned by the Board;

(ii) as much of any amount which ought to have been but was not brought into account by that person as is not condoned by the Board, provided that no amount must be condoned where such deficiency or loss is the result of theft or fraud by that person, and certify in every case that the amount so charged is correct.

(5) Any amount so charged and certified by the auditor must be paid by the person against whom it has been charged to the Corporation within fourteen days after it was so certified, and, if not so paid, may be recovered from that person as a debt by the Corporation.

(6) It must be the duty of the auditor, in addition to his or her ordinary duties as an auditor, to certify not less than once in every year—

(a) whether or not, in his or her opinion—

(i) the accounts of the Corporation are in order;

(ii) such accounts present a true and correct view of the financial position of the Corporation and of its transactions;

(iii) due provision has been made for the redemption and repayment of loans raised by the Corporation;

(iv) the value of the assets of the Corporation has been correctly stated; and

(b) whether or not all his or her requirements and recommendations as auditor have been complied with and carried out.

(8) The expenses of or incidental to any audit must be borne by the Corporation.

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**4. Inspection of accounts**

(1) The Corporation must at all reasonable times upon demand—

allow any of the persons mentioned in paragraph (2) to examine any of the accounts of the Corporation;

(b) furnish any of those persons with all forecasts, estimates, reconciliations information and documents which she/he may require, in such format as she/he may require, with regard to the financial transactions and engagements of the Corporation.

The persons are the Minister, and any person nominated for the purposes of this article by either of the Minister.

**5. Annual report**

(1) The Board must furnish to the Minister, on or before 30 September in each year, a report on the work of the Corporation of the previous financial year, together with a balance sheet and a complete statement of revenue and expenditure for that financial year audited by the auditor referred to in section 25, and the report of that auditor, and must give particulars as to—

(a) the book value of all classes of property owned by the Corporation;

(b) the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid;

(c) the position of every fund established in terms of this Act;

(d) the expenses of management and administration and all other expenses of the Corporation;

(e) the erection and construction, repair, improvement or alteration of any plant, equipment or building, and the cost thereof;

(f) the price or rent of any land or any other immovable property acquired or hired;

(g) any other matters which the Minister may require the Board to deal with.

(2) The Minister must table every report furnished in terms of subsection (1) in Parliament, within seven days after receiving it if Parliament is in session, or, if Parliament is not in session, within seven days after the commencement of its next ensuing session.

(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.

**7. GENERAL****(1) Power to exist as a natural person**

(a) The Corporation shall continue to exist as a legal person, regardless of changes in its composition which occur when particular individuals cease to be members of the Corporation and are succeeded by other individuals.

(b) The Corporation shall have the capacity to sue and be sued operate within the ambits of the body corporate.

(c) In addition, the Corporation shall have all the capacity of a natural person.

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(d), the Corporation may use these general powers only for the purposes set out in this Charter.

(e) Subject to any overriding rules of law, such a use of powers shall, be valid and enforceable against the Corporation for so long as it continues to exist, to any extent permitted by law.

**(2) Borrowing powers**

The Corporation must not borrow money without prior written approval of the Minister and the Minister of Finance.

**(3) Rights and obligations**

(a) The Corporation may not by virtue of the powers conferred upon it by this Charter do anything for which a licence is required in terms of the Electronic Communications Act, unless it has obtained the licence in question and complies with the conditions thereof.

(b) Notwithstanding anything to the contrary contained in the Electronic Communications Act, or any other law, the Corporation is entitled, against payment of the annual fees which the Authority may from time to time determine, to be issued with a licence contemplated in subsection (a).

**8. ARTICLES OF ASSOCIATION**

(1) There exist articles of Association outlining the relationship between the Board and the Minister. It is expected that content of the Articles shall be revised consistent with this Charter and the Act.

(2) In the event of any contradiction arising from this Charter and the article of Association, the terms of this Charter shall prevail.

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**9. OVERSEAS CONCESSIONS.**

(1) The Corporation must obtain the consent of the Minister in consultation with the Minister of International Relations and Cooperation before it—

- (a) acquires any licence, concession, right or privilege from, or
- (b) enters into any arrangement with, the Government of any country or place overseas.

**10. COMPLIANCE WITH CHARTER AND OTHER LEGISLATIONS.**

(1) The Corporation shall strictly and faithfully comply with this Charter. This includes complying with requirements set out in other appropriate legislations which have effect by virtue of provisions of this Charter.

(2) Where the Corporation fails to comply with paragraph (1) of this article in any respect, anyone who is aggrieved and/or adversely affected may be entitled to seek an appropriate remedy.

(3) The Corporation's complaints handling framework is intended to provide appropriate, proportionate and cost effective methods of securing that it complies with its obligations and that remedies are provided which are proportionate and related to any alleged non-compliance.

(4) Complaints can sometimes also be made to other bodies with regulatory and law enforcement powers such as ICASA and the Competition Commission

(5) The courts may have an appropriate role to play in exercising judicial review according to normal principles of public law.

(6) This article does not seek to exclude any other remedy which may be available but, so far as relevant, it is the intention of this Charter that remedies should be appropriate and proportionate.

**11. SCHEDULE: TRANSITIONAL PROVISIONS**

(1) During the Transitional Period—

(a) anything duly done by the Board and/or the Executive Management during the Transitional Period or prior to the commencement of this Charter shall be taken to have been done for and on behalf of the Corporation.

(b) the Board and the Executive Management may each do anything that appears to it necessary or expedient to do in order to be prepared to exercise any of its functions under or by virtue of this Charter when that period ends.

Charter ends!

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A CHARTER COMMUNITY BROADCASTING SERVICES

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**PREAMBLE**

Community broadcasting services is a non-profit broadcasting service which is for, by and about the community, whose ownership and management is representative of the community in pursuit of a social development agenda. In pursuit of this objective, community broadcasting services shall be guided by the following principles which underpin their operations:

- (a) Community development and participation;
  - (b) offers a plurality of views and a variety of news, information and analysis from a South African point of view;
  - (b) advances community interests.
  - (c) foster inclusivity by reflecting the diverse lives of South African communities;
  - (d) protection of children against harmful content;
  - (e) contribute to moral regeneration;
  - (f) respect human rights, including the right to privacy, unless a compelling public interest demands.
-

**DEFINITIONS AND INTERPRETATIONS**

**Advisory Body** means the Local Content Advisory Body established in terms of this Act

**Appointing Authority** often referred to as the appointing body to refer to the body charged with the appoint of the members of the Board in terms of this Act

**Appointing body** means the body charged with the appointment of members of the Board in terms of this Act;

**Authority** means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;

**Broadcasting means** any form of multidirectional electronic communications intended for the public, sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried by means of radio frequency spectrum or any other electronic communications network or any combination of the aforementioned, and 'broadcast' is construed accordingly; [Definition of 'broadcasting' amended by s. 97 of Act 36 of 2005.]

**Broadcasting service license** mean a licence granted by the Authority to a person in terms of section 5(2)(b) or section 5(4)(b)

**Broadcasting service licensee** means a person to whom a broadcasting service license has been granted in terms of the ECA

**Broadcasting licence** means a licence granted and issued by the Authority in terms of the Electronic Communications Act, to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act or the Electronic Communications Act to have been so granted and issued;

**Common carrier** has a meaning corresponding with the definition of 'common carrier' in the Electronic Communications Act;

**Community** includes a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest

**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 programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, subsidies received in terms of section 88 of the Electronic Communications Act and Public Service Broadcasting Fund or by any combination of the aforementioned;"

**Essential facility** means an electronic communications facility or combination of electronic communications or other facilities exclusively or predominantly provided by a single or limited number of licensees and cannot feasibly (whether economically, environmentally or technically) be substituted or duplicated in order to provide a service referred to in Chapter 3 of the ECA

**Digital content** means any sound, text, still picture or other audio-visual representation, tactile representation or any other preceding, which is capable of being created, manipulated, stored, retrieved or communicated electronically;

**Family member** in relation to any person, means his or her parent, child or spouse, and includes a person living with that person as if they were married to each other;

**Financial year** – subject to the Public Finance Management Act, means a year ending 31 March;

**Governing Council** means a council charged with oversight responsibilities at community broadcasting services.

**Media Development and Diversity Agency** means the Media Development and Diversity Agency established under the Media Development and Diversity Agency Act, 2002 (Act No. 14 of 2002);

**Metro Content** means content produced and packaged in the metropolitan areas of Johannesburg, Cape Town and Durban;

**Out-of-metro content** means content produced and packaged in the Republic that is not metro content;

**Provincial government** means the provincial government as contemplated in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**PFMA** means the Public Finance Management Act 1999 (Act 1 of 1999)

**Public service broadcasting** means a broadcasting service, public, community and or commercial that is rendered by a broadcasting service licensee to the public in pursuance of national goals relating to democracy, culture and development;

**Licence** means a broadcasting, communications and or electronic communications network service licence issued in accordance with the Electronic Communications Act;

**Local content** means text, images (moving and/or still) that is of cultural or creative in nature that is written, presented, performed and or otherwise contributed to and owned by persons from South Africa transmitted over electronic platforms;

**Member** means a member of the Governing Council of the Community Broadcaster;

**Public Service Broadcasting Fund** means the fund established in terms of this Act;

**Regional broadcasting service** means a service including radio and television service provided by the Corporation or any other entity licenced in terms of the ECA for this purpose to foster regional development.

**Sentech** means Sentech Limited established in terms of the Sentech Act of 1996;

**Transitional Period** means the period that begins at the beginning of the day after the day on which this Charter is granted and ends at the end of 31st December 2016;

## 1. INCORPORATION AND PURPOSES

### 1.1. *Community Broadcasting Services*

- (1) Community Broadcasting Services shall continue to exist as entities referred to as community stations to serve community interest.
- (2) Community broadcasting is owned and controlled by a non-profit organisation whose structure provides for membership, management, operation and programming primarily by members of the community at large.
- (3) This can be a radio and/or television facility whose affairs are controlled by the Governing Council.

### 1.2. *Term of Charter*

- (1) This Charter shall come into effect upon the promulgation of the Public service broadcasting Act and it shall remain valid for a period of 10 years or any lesser period determined by Parliament.
- (2) This lesser period shall not be less than five years.

### 1.3. *The Community Broadcasting Services' nature and objects*

- (1) Community Broadcasting services exist to serve community interests.
- (2) Community broadcasting services may maintain, establish or acquire services through which commercial activities may be undertaken to any extent permitted by this Charter pursuant to the public service broadcasting mandate as outlined in the Public Service Broadcasting Act.

### 1.4. *How the Community Broadcasting Services promote community development Mandate*

- (1) The mission of community broadcasting services is to inform, educate and entertain and be a conduit of development in the communities.
- (2) Community broadcasting services should strive to fulfil this mission by means of—
  - (a) television, radio and online services;
  - (b) similar or related services which make output generally available and which may be in forms or by means of technologies which either have not previously been used by community broadcasting services or which have yet to be developed.
- (3) community broadcasting services may also carry out other activities which directly or indirectly promote their mandate, but such activities should be peripheral, subordinate or ancillary to broadcasting services as its core activities.

### 1.5. *Guaranteeing the editorial independence of the Community Broadcasting Services*

- (1) Under this Charter, Community Broadcasting services, in pursuit of its objectives and mandate enjoys

journalistic, creative and programming independence as enshrined in the Act.

(2) Notwithstanding the provision of physical space to community broadcasting stations, community broadcasting services must remain editorially independent from any municipality.

## **2. CONSTITUTION**

### **2.1. Introduction**

- (1) Within the Station, there shall be a Governing Council and a Station Management. These two interlinked bodies shall each play a very important, but yet complementary, roles within the station.
- (2) The primary role of the Governing Council is to set the overall strategic direction of the station, including its priorities, and in exercising a general oversight of the work of the Station Management.
- (3) The Station Management has responsibility for delivering the Station services in accordance with the priorities set by the Governing Council and for all aspects of operational management and efficient use of resources in accordance with the provisions of the PFMA and other relevant legislation.

### **2.2. Relationship between the Governing Council and the Station Management**

- (1) In performing its duties, Station Management shall take instruction from the Governing Council.
- (2) The Governing Council shall be the sovereign body within the station, in the sense that wherever it has a function under this Charter or the Act, it may always fully exercise that function as it sees fit and require the Station Management to act in ways which respect and are compatible with how the Governing Council has seen fit to exercise that function.
- (3) Where the Station Management has operational responsibility for activities which are subject to a Governing Council function of approval, supervision, review or enforcement, any decision of the Governing Council in exercise of such a function shall be final within the station, unless in areas where the activity in question may also be subject to regulation by external bodies, such as the Authority.

### **2.3. Guidance and best practice**

- (1) The Governing Council and the Station Management, in performing their respective functions, must have regard—
  - (a) to general guidance concerning the management of the affairs of public bodies as they consider relevant and appropriate; and
  - (b) to generally accepted principles of good corporate governance, but only—
    - (i) where to do so would not be incompatible with sub-paragraph (a), and
    - (ii) to the extent that such principles may reasonably be regarded as applicable in relation to their respective functions and within the particular constitution of the station as a community facility.

### 3. THE GOVERNING COUNCIL

#### 3.2. *Legal nature of the Governing Council*

- (1) As a guardian of community interest, the Governing Council is a body which discharges a mandate in accordance with the Public Service Broadcasting Act, this Charter and any other appropriate legislation, including the PFMA.

#### 3.3. *Composition of the Governing Council*

- (1) The Governing Council of a community broadcasting station consists of not more than five non-executive members democratically elected and appointed by the Community, from members of the community in the licensed geographic area, using an open and transparent process.
- (2) Officials of the local municipalities may be co-opted to the Governing Council as ex-officio members.
- (3) The community contemplated in subsection (1) must designate one of the members of the Governing Council referred to in subsection (1) as the chairperson and another member as a deputy chairperson.

#### 3.4. *The Chairperson of the Governing Council*

- (1) It shall be the duties of the Chairperson as the figure-head of the Corporation to ensure that:
  - (a) that the Body performs its fiduciary duties as a cohesive unit;
  - (b) Strategic leadership to the Governing Council and the Corporation;
  - (c) Effective functioning of the Governing Council and its committees;
  - (d) Strategies are implemented and performance management systems with Executive management are in place; and
  - (e) The Corporation account to the shareholder and the public.

#### 3.5. *The Deputy Chairperson of the Governing Council*

- (1) The Deputy Chairperson 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.
- (2) Whenever the office of Chairperson is vacant, the Deputy-Chairperson shall be "Acting Chairperson" with all the powers of the Chairperson.

#### 3.6. *Length of terms*

The members of the Governing Council must hold office for such period as the community may determine which period must not exceed four (4) years.

#### 3.7. *Termination of office*

- (1) A member of the Governing Council (whether Chairperson, Deputy-Chairperson or ordinary member) shall cease to hold his office—
  - (a) on the expiration of the period for which he had most recently been appointed ;
  - (b) if he resigns by written notice;
  - (c) if the community resolves that he be removed on account of-

- (d) misconduct;
- (e) absence from three meetings of the Governing Council without any apology;
- (f) inability to perform the duties of his or her office efficiently;
- (g) disqualification in terms of section 3.7.

**3.8. *Disqualification.***

- (1) A person will not qualify to be appointed to the Governing Council if such person—
  - (a) is not a citizen of the Republic or a member of the community served by the station;
  - (b) is an office bearer or employee of any party, movement or organization of a party-political nature;
  - (c) is a member of Parliament, any provincial legislature or any municipal council;
  - (d) has a family member, business partner or associate that has a direct or indirect financial interest in or is employed by that community broadcasting service;
  - (e) has at any time been convicted, whether in the Republic or elsewhere, of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or
    - (ii) an offence under this Act or the Electronic Communications Act;
  - (f) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine;
  - (g) has at any time been removed from an office of trust on account of misconduct.

**3.9. *Disclosure of conflict of interests.***

- (1) A member of the Governing Council may not vote at, attend or in any other manner participate in, any meeting of the Governing Council, if in relation to any matter before the Governing Council —
  - (a) he or she or his or her family member, business partner or associate has an interest in the proceedings before the Governing Council; or
  - (b) he or she has any interest which may preclude him or her from performing his or her functions as a member of the Governing Council in a fair, unbiased and proper manner.
- (2) If, during the course of any proceedings before the Governing Council, there is reason to believe that a member of the Governing Council has any interest contemplated in subsection (1), that member must immediately fully disclose the nature of his or her interest and leave the meeting in question so as to enable the remaining members of the Governing Council to discuss the matter and determine whether or not that member should be allowed to participate in the proceedings.



(3) The disclosure, and the decision taken by the remaining members of the Governing Council, must be recorded in the minutes of the proceedings in question.

(4) If any member fails to disclose any interest as required by subsection (2) or, subject to that subsection, in any manner participates in the proceedings of the Governing Council, the relevant proceedings of the Governing Council shall be null and void.

**3.10. *Remuneration of members***

(1) Members of the Governing Council shall not be paid any remuneration but shall be paid reasonable expenses properly and necessarily incurred concerning the affairs of the community broadcasting station, provided funds are available at the time such expense is incurred.

(2) Any expenses paid in terms of subsection (1) must be duly reported in the annual report of the community broadcasting station.

**3.11. *How the Governing Council Operates.***

**3.11.1. *Meetings of the Governing Council***

(1) The meetings of the Governing Council shall be held at such times and places as determined by the Governing Council.

(2) The Chairperson of the Governing Council shall be the Chairperson for each meeting, provided that if the Chairperson is not present or willing to act, the Deputy Chairperson shall act in his or her absence and when so acting exercise or perform any functions of the Chairperson.

(3) Meetings of the Governing Council shall be recorded and minutes thereof made available to the community on request.

**3.11.2. *Committees of the Governing Council.***

(1) The Governing Council may any subcommittees as it deems appropriate from time to time —

(a) to report to the Governing Council on the extent to which the public service division, including regional television service, the commercial service division and the international service division have achieved their objectives during the relevant period; and

(b) to perform such other functions regarding the organisation of the Corporation into the public service division, the commercial service division and the international service division, respectively, as may be delegated to them by the Governing Council; and

- (2) The number, remit and composition of such committees are a matter for the Governing Council, but no such committee shall include anyone who is not a member of the Governing Council.
- (3) The Governing Council may delegate particular functions, including decision-making, to such a committee on terms and conditions as it thinks fit.

### **3.12. *Role of the Governing Council as guardians of community interest***

#### **3.12.1. *General duties of the Governing Council***

- (1) The Governing Council must -
- (a) control the affairs of the station;
  - (b) appoint the Station Management of the community broadcasting station.
- (2) The Governing Council is the accounting authority of the community broadcasting station.
- (3) The Governing Council may establish standing or special committees where necessary to assist it in carrying out its functions.

## **4. STATION MANAGEMENT**

### **4.1. *Constitution of the station management***

- (1) The affairs of the community broadcasting station are administered by an Station Management appointed by the Governing Council.
- (2) The Station Management is accountable to the Governing Council.
- (3) The Station Management must perform such functions as may be determined by the Governing Council.
- (4) Notwithstanding the provisions of subsection (2) and (3), the Governing Council may not interfere with the day to day administration of the community broadcasting station.
- (5) Governing Council members may only be appointed to the Station Management as an interim measure for a period not exceeding six months.

### **4.2. *Composition of the Station Management***

- (1) The affairs of the station are administered by a station management consisting of the Station Manager, Programme manager and their equivalents appointed by the Governing Council.
- (2) The station management is accountable to the Governing Council.

### **4.3. *Role of the Station Management.***

- (1) The station management is responsible for—

- (a) the delivery of the Corporation's services in accordance with the priorities set by the Governing Council in accordance with the Charter;
- (b) the direction of the Corporation's editorial and creative output;
- (c) the operational management of the Corporation;
- (d) ensuring compliance with all legal and regulatory requirements placed upon the Corporation (including the effective maintenance of public audience advisory councils and initial handling of complaints about the Corporation) except to the extent that they relate to the affairs of the Governing Council;
- (d) ensuring compliance with requirements placed upon the Executive management by the Governing Council;
- (e) making proposals to the Governing Council for anything which is for the Governing Council's approval in accordance with 3.14;
- (f) the day-to-day management of the Corporation and its subsidiaries;
- (f) the conduct of the station's affairs (except those relating directly to the affairs of the Governing Council) in a manner best designed to ensure value for money; and;
- (g) accounting to the Governing Council for its own performance and the performance of the Corporation and its subsidiaries.
- (h) In addition, the station management has all the functions expressly or impliedly conferred upon it elsewhere by or under this Charter.
- (2) In the exercise of its functions, the station Management shall be subject to the Governing Council approval.
- (3) Notwithstanding the provisions of subsection (2), the Governing Council may not interfere with the day to day administration of the community broadcasting station.

## 5. COMMUNITY PARTICIPATION AND DEVELOPMENT

### 5.1. Editorial policies

- (1) The Governing Council must prepare and submit to the Authority not later than 12 months following the commencement of this Act, revised policies that will ensure compliance with Public Service Broadcasting Act, the Authority's Code of Conduct as prescribed and the station's licence conditions and the objectives contained in this Act.
- (2) The mentioned in subsection (1) shall cover the following areas:

- (a) News and current affairs;

- (b) Programming and content;
  - (c) Community empowerment and participation;
  - (d) access to the station by the community;
  - (e) language use and distribution at the station.
- (3) The Governing Council must ensure that there is public participation in the development of the policies referred to in subsection (8) by inviting and considering public comment on such draft policies and by other means.
- (4) The Station must provide suitable means for regular inputs of community opinion on its services and ensure that such community opinion is given due consideration.
- (5) The station must develop a Code of Practice that ensures that the services and the personnel comply with—
- (a) the constitutional principle of equality;
  - (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;
  - (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 community interest.

## 5.2. *Community Audience Advisory Council.*

- (1) To encourage participation by the community in the affairs, selection and provision of programmes at the station, the Governing Council must establish a Community Audience Advisory Council.
- (2) The Community Audience Council shall serve as a link between the station and the community.
- (3) The Council shall comprise persons representing the diverse perspectives of the station's coverage to bear on the work of the station's and its services to the community.
- (4) It shall be the responsibility of the Governing Council member to ensure that a forum or platform exist for members of the community to discuss issues including access, content offerings, and the promotion of the station's developmental mandate, etc.

(5) The Council should:

(a) be consulted on the station's performance in promoting the mandate;

(b) submit a report to the Governing Council every 6 months on the station's performance in each community of coverage and advise on issues arising; and

(c) publish an Annual Review Report each year, assessing the extent to which the station is meeting the mandate as outlined in this Charter for inclusion in the station's Annual Report for presentation to Parliament.

(6) It shall consist of persons not employed by the station with experience and/or relevant skills for the effective functioning of the station.

(7) The Governing Council shall elect one of the Council members as chairperson on rotational basis.

(8) In the absence of the chairperson, members of audience council can elect one of their members to preside at such meetings.

(11) The meetings of the advisory council shall be held at such times and places as the advisory audience council may determine.

(12) Since this is an ad hoc structure, its work shall not be determined on the basis of the quorum.

(13) The council must present regular reports to the Governing Council on any matter, including community complaints, and on any matter affecting the affairs or interests of the station.

(14) Members of the advisory council will not be remunerated for their services, but will be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Governing Council.

(15) It shall be the responsibility of the Governing Council to ensure that the work of Audience Councils is supported by the station.

(16) The detail of how the Advisory Audience Councils are to be set up, run and recruited must be set out in a Framework developed by the Governing Council.

### 5.3. *Language Obligations*

(1) Unless exempted by the Electronic Communications Act, community broadcasting services shall broadcast in the languages of their coverage area.

(2) Programming offered by community broadcasting services, news and current affairs, sports, shall predominantly be community-oriented

### 5.4. *Partnership for Development*

(1) Community Broadcasting services are established to foster development in communities.

(2) To promote this mandate, community broadcasting services must partner relevant institutions, bodies and persons, particularly local municipalities in pursuance of this developmental mandate.

## 6. ORGANISATIONAL MATTERS

### 6.1. *The Station Manager*

The Station manager shall be the editor-in-chief of the station. As such, he/she shall be accountable for the editorial and creative output and general management of resources of the station.

### 6.2. *Staff of the station*

(1) The station may engage such officers and other employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their other conditions of service in general.

(2) The station may—

(a) in any other manner provide for housing to its officers and other employees on such terms and conditions as it may determine;

(b) establish or support associations or institutions for the promotion of the interests of its officers and other employees of their dependants;

(c) establish or support aid funds for the rendering of assistance to its officers and other employees or their dependants under such circumstances as it may approve;

(d) assist in financing the training or further training of its existing or prospective officers and other employees of the Corporation; and;

(e) provide for its employees by means of insurance with an insurance company or by means of a pension or provident fund or in any other manner, pecuniary benefits upon termination of service or at any other time.

(3) Except in case of station management positions, **the appointment of general staff**, and their terms and conditions, shall be a responsibility for the station management.

### 6.3. *The staff of the Station*

(1) A community station may engage such employees as it may deem necessary for the attainment of its objects, and may determine their duties and salaries, wages, allowances or other remuneration and their other conditions of service in general such circumstances permit

(2) Such employees on a full-time, part-time or voluntary basis depending on the financial position of the station.

### 6.4. *Communication with staff of the Station*

(1) The Governing Council and the station management must each ensure that at all times they have in place suitable arrangements under which they (or their representatives) will, where appropriate—

(a) consult staff of the station on all matters affecting the interests of those staff; and;

(b) seek to consult with any appropriate organisation with a view to maintaining or (as the case may be) establishing and maintaining adequate arrangements of the kind mentioned in paragraph (2).

(2) The arrangements are for—

(a) the settlement by negotiation of the terms and conditions of staff; and

(b) the discussion of matters of mutual interest to the station and its staff, including—

(i) the health, safety and welfare of such staff;

(ii) equal opportunities and training; and;

(iii) efficiency in the operation of the Station's services.

(3) The arrangements must in particular be in keeping with the respective functions of the Governing Council and the station management this Charter and with the general nature of the relationship between the Governing Council and the station management described in this Charter.

## 7. REPORTS AND ACCOUNTS

### 7.1. *Annual reports and statements of accounts*

(1) The Governing Council shall keep-

(a) Such accounting records as are necessary fairly to reflect and explain the state of affairs—

(i) of all moneys received or expended by it;

(ii) of all its assets and liabilities;

(iii) of all its financial transactions and the financial position of its business; and

(iv) as soon as possible, but not later than six months after the end of each financial year, annual financial statements to be prepared showing, with all the appropriate particulars, the moneys received and the expenditure incurred by it during, and its assets and liabilities at the end of, the financial year.

(2) The accounting records and financial statements referred to in subsection (2) shall be audited by an auditor appointed by the Governing Council.

(3) The Governing Council must prepare an annual report on the work and activities of the community broadcasting station of the previous financial year, that includes a balance sheet and a complete statement of revenue and expenditure for that financial year audited by the auditor referred to in subsection (2), and the report of that auditor, within four months of the end of the financial year.

(4) The Governing Council must make the annual report available to the community and to the Authority immediately after its preparation.

- (5) The annual report must be presented by the Governing Council to the community at a meeting called for this purpose and be available at the community broadcasting station for inspection by any interested person.

**7.2. *Inspection of accounts***

- (1) All surplus funds derived from the operations of a community broadcasting station must be invested for the benefit of the particular community and monitored by the Authority, which has the power to audit the financial records of the community broadcasting station.

**8. GENERAL.**

**8.1. *The Station's nature and powers***

- (1) The station may not by virtue of the powers conferred upon it by this Charter do anything for which a licence is required in terms of the Electronic Communications Act, unless it has obtained the licence in question and complies with the conditions thereof.
- (2) Notwithstanding anything to the contrary contained in the Electronic Communications Act, or any other law, the station is entitled, against payment of the annual fees which the Authority may from time to time determine, to be issued with a licence contemplated in subsection (a).

**8.2. *Compliance with Charter and other legislations***

- (1) The station shall strictly and faithfully comply with this Charter. This includes complying with requirements set out in other appropriate legislations which have effect by virtue of provisions of this Charter.
- (2) Where the station fails to comply with paragraph (1) of this article in any respect, anyone who is aggrieved and/or adversely affected may be entitled to seek an appropriate remedy.

**9. SCHEDULE: TRANSITIONAL PROVISIONS**

- (1) Community Broadcasting Stations must, within 24 months from after the promulgation of this Act comply with the provisions of the Charter of Community Broadcasting Services.
- (2) During the Transitional Period—
- (a) anything duly done by the Governing Council and/or the station management during the Transitional Period or prior to the commencement of is Charter shall be taken to have been done for and on behalf of the station.



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(b) the Governing Council and the station management may each do anything that appears to it necessary or expedient to do in order to be prepared to exercise any of its functions under or by virtue of this Charter when that period ends .

Charter Ends!