THE INDEPENDENT BROADCASTING AUTHORITY BILL, 2002

MEMORANDUM

The object of this Bill is to —

(a) establish the Independent Broadcasting Authority and to define its functions;

(b) provide for the regulation of broadcasting and diffusion services; and

(c) provide for matters connected with or incidental to the foregoing.

,

G. Kunda,
Attorney-General

N.A.B. 23, 2002
30th October, 2002

THE INDEPENDENT BROADCASTING AUTHORITY ACT, 2002

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GOVERNMENT OF ZAMBIA

ACT

No. 17 of 2002

I hereby signify my assent to the Bill

Date of Assent: 31st December, 2002

An Act to establish the Independent Broadcasting Authority and to define its functions; to provide for the control and regulation of broadcasting and diffusion services; and to provide for matters connected with or incidental to the foregoing.

[31st December, 2002

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY

1. (1) This Act may be cited as the Independent Broadcasting Authority Act, 2002.

Short title and commencement

(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint, provided that the Minister shall not appoint a day that is later than six months after the enactment of the Act.

(3) Where a day is not appointed under subsection (2), the Act shall be deemed to come into force on the date of expiration of the period referred to in that subsection.

2. In this Act, unless the context otherwise requires —

Interpretation

" appointments committee " means an appointments committee appointed under section *eight*;

" Authority "means the Independent Broadcasting Authority established by section *four*;

" Board " means the Board of the Authority constituted under section *seven*;

" broadcasting " means the distribution of television or radio, by means of terrestrial or satellite

transmitter received on suitable apparatus by the public;

" community " includes a geographically defined community or any group of persons or sector of the public having a specific, ascertainable common interest;

" community broadcasting " 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; and

(d) may be funded by donations, grants, sponsorship or advertising or membership fees, or by a combination of any of them;

" commercial broadcasting " means a broadcasting service operated for profit and controlled by a person who is not a public or community broadcaster;

" Corporation "means the Zambia National Broadcasting Corporation established under section *three* of the Zambia National Broadcasting Corporation Act;

Cap. 154

" Chairperson " means the person elected as Chairperson of the Board under section *seven*;

" diffusion service " means —

(a) the dissemination by wires otherwise than within the precincts of a single private residence of the whole or part of a broadcasting service; or

(b) the dissemination of music or speech by means of wires; and

(c) " diffuse " shall be construed accordingly;

" Director-General " means the person appointed Director-General under section *seventeen*;

" local authority " means a city council, municipal council, district council or township council established under the Local Government Act;

Cap. 281

" media support organisation " means an organisation which provides material or technical assistance to media organisations;

" member " means a member of the Board appointed under section *seven;*

" public broadcasting "means a broadcasting service which serves the overall public interest and is accountable to the public as represented by an independent board, and defined by the Zambia National Broadcasting Corporation Act; Cap. 154

" radio " means the conveyance of one or more channels of audio information by means of an electromagnetic wave most usually propagated in space, having a frequency below 3000 GHZ;

" receiver " means an apparatus in respect of which no licence is required in terms of the Radio Communications Act, which is designated to be used for the reception of a broadcasting service; Cap. 169

" religious broadcasting " means a broadcasting service which transmits programmes of a religious nature, "

" television "means the conveyance of visual information, together with one or more channels or associated audio or suitably encoded textual information; and

" Vice-Chairperson " means the person elected as Vice-Chairperson of the Board under section *seven*.

Supremacy of Act

3. If any inconsistency arises between the provisions of this Act and those of any other written law relating to the regulation of broadcasting and diffusion services the provisions of this Act shall prevail to the extent of the inconsistency.

PART II
INDEPENDENT BROADCASTING AUTHORITY

Establishment of Authority

4. There is hereby established the Independent Broadcasting Authority which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

Functions of Authority

5. (1) Subject to the provisions of this Act and the Radiocommunications Act, the functions of the Authority shall be to regulate the broadcasting industry in Zambia. Cap. 169

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall be —

(a) to promote a pluralistic and diverse broadcasting industry in Zambia;

(b) to establish guidelines —

(i) for the development of broadcasting in Zambia through a public process which shall determine the needs of citizens and social groups in regard to broadcasting;

(ii) for the issuing of licences, giving due regard to the need to discourage monopolies in the industry in accordance with the Competition and Fair Trading Act;

Cap. 417

(iii) on the required levels of local content and other issues that are relevant for a pluralistic and diverse broadcasting industry;

(c) to safeguard the rational and efficient use of the frequencies allocated to broadcasters by developing a frequency plan for broadcasting, which shall be a public document, in compliance with international conventions;

(d) to grant, renew, suspend and cancel licences and frequencies for broadcasting and diffusion services in an open and transparent manner;

(e) to enforce the compliance of broadcasting and diffusion services with the conditions of the licences issued under this Act;

(f) to issue to any or all broadcasters, advisory opinions relating to broadcasting standards and ethical conduct in broadcasting;

(g) to oblige broadcasters to develop codes of practice and monitor compliance with those codes;

(h) to develop program standards relating to broadcasting in Zambia and to monitor and enforce compliance with those standards;

(i) to receive, investigate and decide on complaints concerning broadcasting services including public broadcasting services;

(j) to develop regulations in regard to advertising, sponsorship, local content, and media diversity and ownership;

(k) to perform such other functions as may be conferred on it by this or any other Act; and

(l) to do all such other acts and things as are connected with or incidental to the functions of the Authority under this Act.

Authority not subject to direction or control of other person

6. Except as otherwise provided in this Act, the Authority shall not be subject to the direction of any other person or authority.

Constitution of Board

7. (1) There is hereby constituted the Independent Broadcasting Authority Board which shall, subject to the provisions of this Act, perform the functions of the Authority under this Act.

(2) The Board shall consist of nine part-time members appointed by the Minister, on the recommendation of the appointments committee, subject to ratification by the National Assembly.

(3) A person shall not be qualified to be appointed to the Board unless the person is committed to fairness, freedom of expression, openness and accountability and when viewed collectively the persons so appointed shall be representative of a broad cross section of the population of the Republic.

(4) The Chairperson and the Vice-Chairperson shall be elected by the members from amongst themselves.

(5) A person shall not be appointed as a member of the Board if that person —

(a) is not a citizen of Zambia;

(b) is not permanently resident in Zambia;

(c) is a member of Parliament or local authority;

(d) is an office-bearer or employee of any political party;

(e) is a director or has direct or indirect financial interest in the broadcasting industry; or

(f) is an immediate family member of a person referred to in paragraph *(d)* or (e).

(6) A member may not become a shareholder or otherwise participate as an applicant for a broadcasting licence within twelve months of ceasing to be a member of the Board.

Appointments committee

8. (1) The Minister shall, for the purposes of section *seven*, constitute an *ad hoc* appointments committee consisting of the following:

(a) one member nominated by the Law Association of Zambia;

(b) one member nominated by a Non-Governmental Organisation active in human rights;

(c) one member nominated by religious organisations;

(d) one member nominated by a media support organisation; and

(e) one member nominated by the ministry responsible for

information and broadcasting.

(2) The Chairperson of an appointments committee shall be appointed by the members from amongst their number.

(3) The members of an appointments committee shall be appointed on such terms and conditions as the Minister may determine.

(4) The functions of an appointments committee shall be—

(a) to invite applications from persons with such qualifications as may be specified for appointment to the Board;

(b) to interview the applicants and nominees referred to in paragraph (a); and

(c) following the interview referred to in paragraph (b), to select the candidates for appointment to the Board and to submit a recommendation to the Minister.

(5) An appointments committee shall determine its own procedure.

(6) There shall be paid to the members of an appointments committee such allowances as the Minister may determine.

(7) The Authority shall pay the expenses incurred by an appointments committee in the performance of its functions under this Act.

Seal of Authority

9. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence without further proof, unless the contrary is proved.

Tenure of office and vacancy

10. (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be re-appointed for one further term of three years.

(2) On the expiration of the period for which a member is appointed, the member shall continue to hold office until the member's successor is appointed but in no case shall such further period exceed three months.

(3) The office of a member shall become vacant —

(a) upon resignation;

(b) upon the death of the member;

(c) if that member without good cause or approval of the Chairperson is absent from three consecutive meetings of the Board of which that member had notice;

(d) if that member is adjudged bankrupt;

(e) if the member is declared to be of unsound mind; or

(f) if the member is convicted by any court of an offence involving dishonesty.

(4) A member may resign from office by giving one month's notice in writing to the Minister.

(5) Whenever the office of a member becomes vacant

before the expiry of the term of office the Minister may, on the recommendation of the appointments committee and subject to ratification by the National Assembly, appoint another member in place of the member who vacates office but such member shall hold office only for the unexpired part of the term.

Proceedings of Board

11. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the initial transaction of business at such place and time as the Chairperson may determine, and thereafter the Board shall meet for the

transaction of business at least once in three months at such places and at such times as the Board may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) There shall preside at any meeting of the Board —

(a) the Chairperson; or

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and the Vice-Chairperson such member as the members present may elect for the purpose of that meeting.

(5) Five members shall form a quorum at any meeting of the Board.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) The Board may invite any person whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(8) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of

any member or by reason that any person not entitled so to do took part in the proceedings.

(9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

Committees of Board

12. (1) The Board may, for the purpose of performing the Authority's functions under this Act, establish committees and may delegate to any such committee such of its functions as it thinks fit.

(2) The Board may appoint as members of a committee established under subsection (1), persons who are or are not members of the Board except that at least one member of a committee shall be a member of the Board.

(3) A person appointed as a member of a committee under subsection (2) shall hold office for the period which the Board shall determine.

(4) Subject to any specific or general directions of the Board any committee established under subsection (1) may regulate its own procedure.

(5) The Board shall appoint the Chairperson of a committee from amongst the members who are Board members.

Allowances of members

13. A member of the Board or any committee of the Board shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Disclosure of interest

14. (1) If a member or person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member, person or that member,s or person's immediate family member is directly or indirectly interested in a private capacity, the member or that person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) If a member or person participates in the proceedings of the Board while knowingly holding a conflict of interest, the member or person commits an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity of members

15. No action or other proceedings shall lie or be instituted against any member or member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of that member or committee member's functions under this Act.

Prohibition of disclosure of information

16. (1) A person shall not without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person otherwise than in the course of the person's duties, the contents of any document, communication or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) Any person who contravenes subsection (1)commits an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, that person commits an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART III
ADMINISTRATION

Director-General

17. (1) The Board shall appoint the Director-General on such terms and conditions as the Board may, with the approval of the Minister, determine.

(2) The Director-General shall be the Chief Executive Officer of the Authority, and shall be responsible for the management of the affairs of the Authority in accordance with the policies and directions of the Board.

Secretary and other staff

18. (1) The Director-General shall be the Secretary to the Board.

(2) The Board shall appoint, on such terms and conditions as the Board may, with the approval of the Minister, determine such other staff of the Authority as it considers necessary for the performance of the functions of the Authority under this Act.

PART IV
BROADCASTING SERVICES AND LICENCES

Prohibition of provision of broadcasting service without broadcasting licence

19. (1) Subject to the provisions of this Act, no person shall operate or provide a broadcasting service in Zambia otherwise than in accordance with the terms and conditions of a licence issued by the Authority and on payment of such fees as the Minister may, on the recommendation of the Authority, prescribe.

(2) The Authority may issue a commercial, community, religious, subscription or public broadcasting licence, subject to the provisions of this Act and to the conditions as determined by the Authority:

Provided that —

(a) a political party or organisation or a legal entity founded by a political party or organisation shall not qualify to hold a broadcasting licence; and

(b) a person who is not a citizen of Zambia shall not qualify to hold a broadcasting licence.

(3) In this section, " citizen of Zambia " in relation to a body corporate means a company in which not less than seventy five percent of shares are held by citizens of Zambia.

(4) Subject to subsection (1) a broadcasting licence shall authorise the licensee to provide any of the following classes of broadcasting services:

(a) a public broadcasting service;

(b) a commercial broadcasting service;

(c) a community and religious broadcasting service; or

(d) a subscription broadcasting service.

(5) The Minister may, in consultation with the Authority, by Statutory instrument, exempt any person, institution or organisation from any of the provisions of this section.

Application for licence

20. (1) The Authority shall, if it determines that there is need for the provision of additional broadcasting services, publish a notice in the *Gazette* and in a national newspaper inviting applications for licences to provide the broadcasting service specified in the notice.

(2) Notwithstanding subsection (1) and subject to the provisions of this Act, an application for a broadcasting service licence shall be submitted to the Authority in the prescribed form and manner and shall be accompanied by the prescribed fee and such information or documents as may be prescribed or as the Authority may require.

(3) The Authority shall examine all applications submitted under subsection (2) with a view to short-listing those applicants who, in its opinion, may qualify to be licensed.

(4) Every applicant short-listed in terms of subsection (3) shall be required to attend a public inquiry conducted by the Authority for the purposes of determining the applicant's suitability to be licensed at a time and place to be determined in a written notice to such applicant.

(5) The Authority may refuse to consider an application, upon receiving satisfactory proof of service of the notice referred to in subsection (4), if the applicant fails to attend the inquiry.

(6) After considering an application for a licence in terms of this section, the Authority may issue or refuse to issue a broadcasting licence to the applicant and shall notify the applicant in writing of the decision and in the case of a refusal to issue a licence, of the reasons for the refusal.

(7) The Authority shall, from time to time, conduct a public inquiry to determine priorities within the broadcasting industry.

Commercial Broadcasting Services

21. (1) A commercial broadcasting licence may be granted by the Authority to —

(a) provide a diverse range of programming addressing a wide section of the Republic;

(b) provide programming in the official language or in any other local language of the Republic widely spoken in the Republic or any particular area; and

(c) provide within a reasonable time comprehensive coverage of the areas which they are licensed to serve.

(2) All programmes by a commercial broadcasting service shall, subject to the conditions of a licence and regulations of the Authority —

(a) reflect the culture, character, needs and aspirations of the people in the areas that they are licensed to serve;

(b) provide an appropriate amount of local or national programming;

(c) include news and information programmes on a regular basis, including discussion on matters of national, regional, and where appropriate, local significance; and

(d) meet the highest standards of journalistic professionalism.

Community and religious broadcasting services

22. (1) Notwithstanding the provisions of this Act or of any other law, a community or religious broadcasting service licence may be granted by the Authority in the following categories:

(a) free-to-air radio broadcasting service; or

(b) free-to-air television service.

(2) The licence of a community or religious broadcasting service shall be held by a licensee.

(3) The programming provided by a community broadcasting service shall reflect the needs of the people in the community which shall include the cultural language and demographic needs and shall—

(a) provide a district broadcasting service dealing specifically with issues which are not predominantly dealt with by the broadcasting service covering the same area;

(b) be informative, educational and entertaining;

(c) focus on the provision of programmes that highlight grassroots community issues including but not limited to developmental and general, educational affairs, environmental affairs, local, international and current affairs reflection of local culture; and

(d) promote the development of a sense of common purpose and improved quality of life.

(5) The programming provided by a licenced religious broadcasting service shall reflect the religious beliefs and needs of the people and shall —

(a) provide a distant broadcasting service dealing specifically with religious issues;

(b) be informative, educational and entertaining;

(c) focus on the provision of programmes that highlight grassroots issues including but not limited to developmental issues, health care, basic information and general education, environmental affairs and other spiritual matters; and

(d) promote the development of a sense of common religious purpose and improve the quality of life.

Subscription broadcasting services

23. (1) A subscription broadcasting service licensee may, for purposes of providing the broadcasting service, draw revenue from subscription, advertising and sponsorship.

(2) A subscription broadcasting service licensee in providing subscription broadcasting services, may not acquire exclusive rights to the broadcasting of any national, sporting, or other event which is identified, by the Authority, to be in the public interest.

Free to air broadcasting services

24. (1) All commercial broadcasting service licensees shall, subject to the conditions of the licence, provide such free-to-air broadcasting services as may be determined by the Authority.

(2) Where programming is provided by free-to-air television broadcasting the programmes shall, as a whole include significant proportions of Zambian drama, documentaries and children's programmes that reflect Zambian themes, literature and historical events:

Provided that the Authority may make regulations on the proportion of Zambian programming and other matters to be broadcast by a broadcasting licensee and may require such broadcasting licensee to provide programming which reflects Zambian circumstances in accordance with the provisions of this Act.

Licensing of operator of diffusion service

25. (1) Subject to the provisions of this Act, no person shall operate a diffusion service in Zambia otherwise than in accordance with the terms and conditions of a licence issued by the Authority and on payment of such fees as the Authority may determine.

(2) The provisions of subsections (2) and (3) of section *nineteen* shall apply with necessary modification to operators of diffusion services.

Licensing procedures

26. (1) The Authority shall put the frequencies assigned to the various broadcasting sectors up for public tender as soon as they become available and state the deadline for receiving the applications.

(2) An application for a licence shall be made to the Board and

shall be accompanied by the following particulars:

(a) the name of the broadcasting service;

(b) the name and place of residence of the directors or producers of the broadcasting service;

*(c)*the name, place of business and place of residence, if any, of the proprietor thereof;

(d) the nationality of the applicant;

(e) evidence of financial capability to operate a broadcasting service; and

(f) such other information as the Authority may require and as may be prescribed.

(3) Thirty days after the deadline for applications, the Board shall publish a list of all applicants by *Gazette* notice and in the national media, giving particulars of the applicant, the licence area and the nature of the proposed service.

(4) The Board shall by *Gazette* notice and national media invite interested persons to lodge with the Board their written objections in relation to these applications within two weeks from the date of the notice, and a person with an objection shall send a copy of the objection to the applicant by registered mail.

(5) Where objections have been received, the Board shall within thirty days from the expiry of the period referred to in subsection (4), convene a public hearing to which the applicants and persons who have lodged objections and the general public as observers shall be invited.

(6) Within sixty days after the receipt of the applications, or in the case where there are objections, within sixty days after the public hearing, the Board shall decide on the applications and provide written reasons for its ruling.

(7) The Board may decide under subsection (6) to grant a temporary licence subject to such conditions as it considers fit.

Conditions of licences

27. (1) A licence issued under this Act shall be subject to such conditions as the Board may specify in the licence when it is granted and to such other conditions as may be prescribed by regulation.

(2) Without prejudice to the generality of subsection (1), the conditions of a licence may —

(a) specify the site or sites at which any broadcasting station to be operated under the Authority of the licence are to be

located and regulate the manner of their installation;

(b) specify the kind of broadcasting authorised by the licence and regulate the type and standard of broadcasting station apparatus to be used in any such broadcasting station;

(c) require the payment to the Authority of a fee on grant of the licence and of annual or other periodic licence fees;

(d) require the licensee or any other person concerned in providing any service authorised by the licence to furnish to the Authority such documents, accounts, returns, estimates and other information as the Board considers necessary for the purposes of exercising or performing the powers and functions of the Authority under this Act;

(e) require the licensee to refer specified matters to the Authority for determination;

(f) require the licensee to comply with directions given by the Authority from time to time in relation to specified matters;

(g) provide for arbitration of disputes arising in connection with the terms and conditions of, or otherwise concerning, the licence in accordance with the Arbitration Act; and

(h) require and regulate the payment of fines and penalties by the licensee for breaches of any specified terms and conditions of the licence.

Act No. 19 of 2000

(3) If a broadcaster plans to change the character of its programming, the broadcaster shall apply to the Board for variation of the character of its programming and where the Board determines that the envisaged change has significant public interest, the Board may call a public hearing on the matter.

Duration of licences

28. (1) A licence issued under this Act shall remain in force unless sooner revoked or suspended, for the period specified in the licence but shall, subject to this Act, be renewed on its expiry on such terms and conditions and on the payment to the Authority of such fees as the Minister, may, on the recommendation of the Board, by statutory instrument, prescribe.

(2) The Authority may issue a temporary licence on such terms and conditions as it considers appropriate.

(3) A temporary licence may be renewed by the Authority on such terms and conditions as it considers appropriate.

Licences not transferable

29. A licence shall not be capable of being bought, sold, leased, mortgaged or charged or in any manner assigned, demised or encumbered.

Suspension or cancellation of licences

30. (1) Subject to the other provisions of this section the Authority may suspend or cancel a licence issued under this Act if —

(a) the broadcaster or operator of diffusion service informs the

Authority in writing that it does not intend to broadcast or operate a diffusion service any longer;

(b) it is determined that the broadcaster or the operator of a diffusion service presented incorrect data when applying for the licence;

(c) the broadcaster or operator of a diffusion service has not started broadcasting programmes or operating the diffusion service within one hundred and twenty days of the issue of the licence;

(d) the broadcaster or operator of a diffusion service without a justified reason, stopped broadcasting or operating the diffusion service for more than sixty consecutive days or ninety days with intermissions during the calender year;

(e) the broadcaster or operator of a diffusion service has failed in spite of written notice, to comply with the conditions of a licence; or

(f) the broadcaster or operator of a diffusion service in spite of a written warning, does not pay the prescribed fees.

(2) Where a licenced broadcaster or operator of a diffusion service does not comply with this Act or with the conditions of the licence, the Authority shall notify the licensee

with a warning of the measures that the broadcaster or operator of a diffusion service should undertake within a specified period in order to comply with the conditions of a licence under this Act.

(3) If a broadcaster or operator of a diffusion service does not comply with the notice, under subsection (2), within a specified period of time, the Authority may, suspend the licence for a specified period of time or cancel the licence.

(4) Before deciding on a suspension or cancellation of a licence, the Authority shall afford an opportunity to the licensee to be heard.

(5) Any decisions of the Authority under this section shall be subject to judicial review.

(6) The Authority shall not be liable to refund a broadcaster or operator of a diffusion service whose licence is cancelled in terms of this section, the fee or any portion of the fee paid on the issue of the licence.

Cancellation or refusal to renew a licence for interference with postal and telecomu-nication apparatus

31. (1) Notwithstanding the provisions of section *thirty* the Authority may cancel or refuse to renew a licence if satisfied that the broadcasting station or the receiver or the apparatus or equipment used in connection with the broadcasting service or the diffusion service —

(a) prevents the erection or installation of plant, post apparatus or equipment for Zambia Postal Services Corporation and Zambia Telecommunications Company Limited;

(b) injures or interferes with the working of a radio station or the carrying on of a radio- communication telephone or telegraph services established by the Zambia Telecommunications Company Limited;

(c) is likely to injure or interfere with apparatus, equipment, circuits, instruments, wires and the like installed, created or operated by the Zambia Telecommunications Company Limited.

(2) The provisions of subsection (6) of section *thirty* shall apply with necessary modification to a cancellation or refusal to renew a licence under this section.

Powers of President in public emergency Cap. 1

32. (1) Where there is in force a proclamation of a state of public emergency or threatened public emergency under the Constitution the President may make an order authorising an officer or an authority, in the public interest, to —

(a) take over all broadcasting stations or any particular broadcasting station in Zambia; and

(b) control and direct all broadcasting services from the broadcasting stations or broadcasting station to which the provisions of paragraph (a) relate for so long as the President considers it expedient;

and in so doing may require the exclusive services of the persons employed in working, maintaining or carrying on the same.

(2) When an officer or an authority is authorised to take over a broadcasting station in terms of subsection (1), the person owning or controlling the broadcasting station shall give up possession to the President or the officer or authority, and the person employed in working or maintaining the broadcasting station or in carrying on a broadcasting service from the broadcasting station shall, if the President in terms of that subsection requires their exclusive services, diligently and faithfully obey, during the period the broadcasting station is in

possession of the officer or authority all such orders and other directions as the officer or authority may give in connection with the working or maintenance of the broadcasting station or the carrying on of broadcasting services from the broadcasting station.

(3) Reasonable compensation shall be paid from monies appropriated for the purpose by Parliament, to a person who suffers loss or damage through the exercise of the powers conferred by this section in such amount as may be agreed between the person and the Minister.

(4) If a dispute arises as to the amount of compensation payable in terms of subsection (3), any person claiming to be entitled to compensation may refer such dispute to a court.

(5) In determining the amount of any compensation (including costs or expenses) payable under this section, the Court and every other person shall have due regard to the fact that the take-over has been necessitated by a state of public emergency.

(6) The provisions of this section shall, with necessary modification, apply in relation to diffusion services, the premises, apparatus, equipment and wires required in connection therewith and the persons employed in working, maintaining or operating the same.

PART V

PROGRAMME STANDARD AND COMPLAINTS RELATING TO BROADCASTING SERVICES

Broadcasters to determine programme standards

33. The Corporation and every licensed broadcasting service, shall develop a code of professional standards which shall comply with the following minimum requirements:

(a) respect for human dignity and human rights and freedoms, and contribution to the tolerance of different opinions and beliefs;

(b) comprehensive, unbiased and independent news broadcast and current affairs programmes with commentary clearly distinguished from news;

(c) observance of procedures for correcting factual errors and redressing unfairness;

(d) observance of the principle of the right to reply;

(e) protection of the integrity of minors by clearly classifying and distributing programmes that could endanger the development of a child in a way with the least possibility for a child to use it; and

(f) clear separation of advertisements from other programme outputs.

Complaints relating to public broadcasting or broadcasting services

34. (1) Where —

(a) a person has made a complaint—

(i) to the Corporation; or

(ii) to a broadcasting licensee;

on the ground that the Corporation or broadcasting licensee has in providing a broadcasting service acted contrary to a code of practice developed by broadcasters referred to in section *thirty-three*; and

(b) the person has not received a response within fourteen days after making the complaint, or the person has received a response within that period but considers that response to be inadequate;

that person may make a complaint to the Authority about the matter.

Investigation of complaints relating to the Corporation or other broadcaster

35. (1) Subject to subsection (2) the Authority shall investigate the complaint submitted under section *thirty-four*.

(2) The Authority shall not investigate the complaint if it is satisfied that —

(a) the complaint is frivolous or vexatious or was not made in good faith;

(b) the complaint is not relevant to a code of practice developed by the Corporation or any other broadcasting licensee; or

(c) the complaint is brought more than three months after the broadcast in question was made.

Action of Authority where complaint justified

36. (1) If, having investigated a complaint, the Authority is satisfied that —

(a) the complaint is justified; and

(b) the Authority should take action to obligate the Corporation or other broadcasting licensee to comply with the relevant code of practice;

the Authority may, by notice in writing given to the Corporation, or other broadcasting licensee, recommend that the Corporation or the broadcasting licensee, as the case may be, take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.

(2) The other action referred to in subsection (1) may include broadcasting or otherwise publishing an apology or retraction.

(3) The Authority shall notify the complainant of the results of such an investigation.

Proceedings on failure by Corporation or broadcasting licensee to comply with recommendation

37. (1) If the Authority has made a recommendation to the Corporation or a broadcasting licensee under section *thirty-six* and the Corporation or broadcasting licensee, as the case may be, does not, within fourteen days after the recommendation was given, take action that the Authority considers to be appropriate, the Authority may by notice in writing, require the Corporation or broadcasting licensee to make good the default within a specified time.

(2) If the Corporation or broadcasting licensee fails to comply with the notice referred to in subsection (1), the Authority shall apply to the High Court for an order compelling

the Corporation or broadcasting licensee to remedy the default

and the Court may make such order on the application as it thinks fit.

Obligations to keep records

38. A broadcasting licensee shall —

(a) keep and store sound and video recordings of all programmes broadcast or re-broadcast for a minimum period of three months after the date of transmission or the broadcast or re-broadcast, or for such further period as may be directed by the Board; and

(b) on demand by the Board produce such material that has been broadcast for examination or reproduction.

PART VI

Financial Provisions

Funds of Authority

39. (1) The Funds of the Authority shall consist of —

(a) such moneys as may be appropriated by Parliament for the purposes of the Authority;

(b) such moneys or assets as may accrue to, or vest in, the Authority by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interests or royalties;

(c) such sums as may be realized from the sale of any property by or on behalf of the Authority;

(d) fees payable in respect of licences issued under this Act; and

(e) such moneys or assets as may howsoever accrue to or vest in the Authority.

(2) The Authority may —

(a) accept moneys by way of grants or donations from any source in the Republic and, subject to the approval of the Minister from any source outside Zambia;

(b) raise moneys by way of loans or otherwise from any source in the Republic and, subject to the approval of the Minister, from any source outside Zambia, as it may require for the discharge of its functions; and

(c) in accordance with the Regulations made under this Act charge and collect fees for services provided by the Authority.

(3) There shall be paid from the funds of the Authority-

(a) the salaries, allowances and loans of the staff of the Authority;

(b) such reasonable travelling, transport and subsistence allowances for the members and members of any committee of the Authority when engaged in the business of the Authority, and at such rates as the Authority may determine; and

(c) any other expenses incurred by the Authority in the performance of its functions.

Financial year

40. The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year.

Accounts

41. (1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority.

Annual report

42. (1) As soon as practicable, but not later than three months after the financial year, the Authority shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Authority and there shall be appended thereto —

(a) a balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than thirty days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.

PART VII

INSPECTION AND GENERAL PROVISIONS

Inspectorate

43 . (1) In order to ensure compliance with the provisions of this Act, the Authority shall establish an inspectorate unit and may appoint such inspectors as may be necessary for the performance of its functions.

(2) Every inspector shall be provided with a certificate of appointment which shall be *prima facie* evidence of the inspector's appointment as such.

(3) Any inspector carrying out any functions under this Act shall on demand by any person who is affected by the inspector's exercise of power, produce for inspection the certificate referred to in subsection (2).

Powers of inspectors

44. (1) To ensure that the provisions of this Act are being complied with, an inspector shall have power, on production of the certificate of appointment issued under section *forty-three* to demand the production of, and to inspect or make copies of a licence issued under Part IV.

(2) An inspector may upon probable cause shown on oath to a magistrate court obtain a warrant to enter upon and search or examine the premises prescribed in the warrant in order to ascertain whether any offence under this Act is being committed in such premises.

(3) Where an inspector is satisfied that a person does not have a valid licence in respect of a matter for which a licence is required under this Act, the inspector or police officer may serve on that person notification in the prescribed form.

Offences and penalties

45. A person who —

(a) fails or refuses to register as a dealer with the Authority when required to do so under this Act;

(b) fails or refuses to furnish a return or to supply information to the Authority in the manner and in the time prescribed;

(c) furnishes a false or incomplete return or incomplete information to the Authority;

(d) on being required to do so fails or refuses to produce to an inspector a licence issued under this Act or a book, record or document relating to receivers which is in that person's possession or under that person's control;

(e) wilfully delays or obstructs an inspector of the Authority in the exercise of the powers conferred upon the inspector by or under this Act;

(f) fails or refuses without reasonable cause to give information to an inspector of the Authority in the exercise of the powers conferred upon the inspector by or under this Act;

(g) fails or refuses, without reasonable cause to do anything when required to do so by an inspector in terms of section *forty-four*;

(h) makes a declaration or statement which the person knows to be false in any material particular or does not know or believe to be true or knowingly makes use of a declaration or statement of document containing the same for the purposes of obtaining whether for oneself or another person, the issue of a license in terms of this Act; or

(i) contravenes or fails to comply with any provision of any regulations, order or notice made or issued under this Act;

commits an offence and shall be liable, on conviction, to a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Recovery of licence fees

46. The Authority may by warrant of distress recover the amount of a licence fee payable by a broadcasting licensee in terms of sections *nineteen* and *twenty-five*:

Provided that the Authority shall, before issuing the warrant referred to in this section, give the broadcasting licensee or licensee of diffusion service thirty days' notice of the Authority's intention to issue a warrant if the default is not rectified within that period.

Regulations

47. (1) The Minister may, on the recommendation of the Authority, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the regulations made under that subsection may provide for—

(a) the registration of dealers with the Authority and the information to be supplied to the Authority in connection with applications for registration;

(b) the fees payable under the Act;

(c) the form and manner in which applications for licences are to made and the information to be supplied in connection therewith;

(d) the form of licences, the terms and conditions subject to which the licences shall be issued and the periods for which licences shall remain in force; and

(e) anything which is required to be prescribed under the Act.

Transitional provisions

48. (1) On or after the appointed date a broadcasting service or diffusion service licenced before the commencement of this Act, shall be deemed to have been licenced under this Act for a period not exceeding one year from the commencement of this Act.

(2) At least three months before the expiry of the period specified in subsection (1) the broadcasting service or diffusion service shall apply to the Authority for renewal of the licence.

Act not to affect Radio-communications Act

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49. Nothing in this Act shall be construed as exempting a broadcasting operator from compliance with the provisions of the Radiocommunications Act or of the subsidiary legislation made thereunder which relate to —

(a) the establishment of radio transmitting stations and the erection of radio apparatus at sites approved by the Communications Authority;

(b) the allocation of frequencies by the Communications Authority in consultation with the Authority;

(c) the approval of the Communications Authority, in consultation with the Authority, of —

(i) the mode of transmission to be used in connection with radio transmitting stations and the power to be radiated therefrom;

(ii) the classes, types and standards of radio receiving stations and radio and other apparatus to be used in connection with diffusion services; and

(iii) the classes, types and standards or radio stations, radio apparatus, or apparatus used for operating diffusion services;

(d) the prevention of harmful interference;

(e) the making of distress calls, messages and signals;

(f) the manner of carrying on radio communication services governed by the provisions of conventions; and

(g) the inspection and testing of radio stations, radio apparatus used for operating diffusion services and premises used in connection therewith.