

FORMER STATES BROADCASTING REORGANISATION ACT, 1996.

PRESIDENT'S OFFICE

No. 1890. 22 November 1996

NO. 91 OF 1996: FORMER STATES BROADCASTING REORGANISATION ACT, 1996.

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

GENERAL EXPLANATORY NOTE:

Words in italics indicate insertions in existing enactments.

ACT

To provide for the abolition of broadcasting services in the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; and to provide for the transfer of the broadcasting enterprises and broadcasting signal distribution enterprises conducted by those services as well as certain land used by them for that purpose to the SABC and Sentech; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 12 November 1996.)

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

Definitions

1. In this Act, unless the context indicates otherwise-

(i) "broadcaster" means the Transkei Broadcasting Corporation referred to in section 2 of this Act, the Bophuthatswana Broadcasting Corporation referred to in section 2 of the North West Broadcasting Corporation Act, 1995 (Act No. 9 of 1995), the Bureau for Information and Broadcasting referred to in section 3 of this Act and the Ciskeian Broadcasting Corporation referred to in section 4 of this Act; (viii)

(ii) "broadcasting enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions, of a broadcaster which relate to or are used in connection with the conduct of the broadcasting service, as determined by the Minister; (ix)

(iii) "broadcasting service" means a single defined service consisting of the broadcasting of television or sound material to the public or sections of the public or to the subscribers to such service; (vii)

(iv) "broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any geographical broadcast target area by means of a telecommunications process, but excluding the use of facilities which operate on frequencies outside the broadcasting service frequency bands; (x)

(v) "broadcasting signal distribution enterprise" means all assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions, of a broadcaster which relate to or are used in connection with broadcasting signal distribution, as determined by the Minister; (xi)

(vi) "department" means the Department of Posts and Telecommunications; (ii)

(vii) "fixed establishment" means the posts created for the normal and regular requirements of a public broadcasting service conducted by a broadcaster which were filled on a fixed basis before 1 October 1995 and which are still so filled by the transfer date; (xii) of

(viii) "Minister" means the Minister responsible for the administration broadcasting; (iii)

(ix) "operating loss" means excess of operating expenditure over operation income and for that purpose capital gain shall be left out of account; (i)

(x) "SABC" means the South African Broadcasting Corporation contemplated in section 2 of the Broadcasting Act, 1976 (Act No. 73 of 1976); (v)

(xi) "Sentech" means Sentech (Pty) Ltd, a private company which is a wholly-owned subsidiary of the SABC and which is registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and licensed to provide broadcasting signal distribution; (vi)

(xii) "transfer date", with regard to a particular broadcaster, means the date determined by the Minister in terms of section 5. (iv)

Abolition of Transkei Broadcasting Corporation

2. The Transkei Broadcasting Corporation, established by Government Notice No. 200 of 12 December 1980 of the former Republic of Transkei, shall cease to exist with effect from the transfer date.

Abolition of Bureau for Information and Broadcasting of former Republic of Venda

3. The Bureau for Information and Broadcasting of the former Republic of Venda, referred to in section I of the Republic of Venda Broadcasting Act, 1979 (Act No. 14 of 1979), shall cease to exist with effect from the transfer date.

Abolition of Ciskeian Broadcasting Corporation

4. The Ciskeian Broadcasting Corporation, established by section 2 of the Broadcasting Act, 1985 (Act No. 8 of 1985), of the former Republic of Ciskei shall cease to exist and the Board of the Ciskeian Broadcasting Corporation is hereby dissolved, with effect from the transfer date.

Transfer date

5. The Minister shall, in respect of each broadcaster, determine a transfer date in consultation with the SABC and Sentech and shall announce the date by the notice in the Gazette.

Transfer of broadcasting and broadcasting signal distribution enterprises of broadcasters

6. (1) On the transfer date-

(a) the broadcasting enterprise of the broadcaster shall be transferred to the SABC;

(b) the broadcasting signal distribution enterprise of the broadcaster shall be transferred to Sentech;

(2) (a) The values of the broadcasting enterprise and the broadcasting signal distribution enterprise to be transferred in terms of subsection (1) shall be as determined by the SABC and Sentech, in consultation with the Minister and with the concurrence of the Minister of Finance.

(b) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other law in terms of which a tax or levy may be imposed, it shall be deemed that valuable consideration was actually paid by the SABC or Sentech in acquiring the enterprises transferred to it in terms of subsection (1) and that, notwithstanding any other law, such consideration equals the corresponding values determined in terms of paragraph (a).

(3) (a) State land of which a broadcaster had the exclusive use immediately before the transfer date shall, as the SABC or Sentech elect with the concurrence of the Minister, on the transfer date pass to the SABC or Sentech, as the case may be, and shall be deemed to have been sold on that date in terms of the State Land Disposal Act, 1961 (Act No. 48 of 1961), to the SABC or Sentech at an agreed value.

(b) Notwithstanding section 5 of the State Land Disposal Act, 1961, and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him or her of a certificate by the Minister of Public Works that State land has passed in terms of paragraph (a), make such entries and endorsements as he or she may deem necessary

free of charge in or on any relevant register, title deed or other document in his or her office or laid before him or her, in order to register the transfer in the name of the SABC or Sentech, as the case may be.

(c) If a particular portion of State land was used by a broadcaster for the conduct of broadcasting services as well as broadcasting signal distribution immediately before the transfer date, and the SABC and Sentech agree to divide that piece of land between them after that date without the payment of compensation by one party to the other or without giving anything in exchange therefor, the subdivision of the land in question shall be exempt from the payment of transfer duty, stamp duty, taxes, levies or other fees if, upon the registration of the subdivision, a certificate signed by the Chief Executive of the SABC and the Managing Director of Sentech is submitted in which it is certified that an agreement as contemplated in this paragraph has been concluded.

(4) (a) Any servitude, other real right or lease existing immediately before the transfer date in favour of the State or a broadcaster and which was exercised in favour of such broadcaster shall on the transfer date pass to the SABC or Sentech, as the case may be.

(b) The registrar referred to in subsection (3)(b) shall, on submission to him or her of a certificate by the Minister of Public Works that a servitude, other real right or lease has passed in terms of paragraph (a) or that a servitude exists over land which has passed in terms of subsection (3)(a), free of charge make such entries and endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office or laid before him or her, in order to-

(i) register the passing of the servitude, other real right or lease to the SABC or Sentech in terms of paragraph (a); or

(ii) confirm the existence of the servitude in favour of any other person, over the State land in question.

(5) (a) Subject to paragraph (b), the SABC and Sentech shall have the right to use immovable property passing to it in terms of this Act for the purposes for which a broadcaster used that property immediately before the transfer date or for which it was intended to be used before that date.

(b) If land referred to in paragraph (a) of a broadcaster has not been zoned, or has in terms of an applicable township or development scheme, guide plan or statutory provision been zoned or intended for purposes other than those for which it is to be used on or after the transfer date, the SABC or Sentech, as the case may be, shall as soon as practicable conclude an agreement with the local authority responsible for the zoning or re-zoning of land in the area in question in relation to the zoning or re-zoning of that land for a purpose which is in accordance with the intended use thereof on or after the transfer date: Provided that if such agreement-

(i) is concluded, it shall be reduced to writing and the local authority in question shall, if necessary, amend its township or development scheme or guide plan accordingly, free of charge; or

(ii) cannot be concluded, the matter shall be referred to the Premier of the province in question, who may grant permission for or approval of the zoning or re-zoning of the land on such conditions as he or she may deem necessary.

(c) The local authority-

(i) with which an agreement has been concluded in terms of paragraph (b); or

(ii) within whose area of jurisdiction the land in question is situated, in the case where the Premier of the province in question has granted permission for or approval of the zoning or re-zoning thereof, shall record, free of charge in respect of the land in question, the appropriate zoning, after which such zoning shall for all purposes be deemed to be the zoning of such land.

(6) In any pending litigation, including arbitration, to which a broadcaster is a party immediately before the transfer date, the SABC or Sentech, as the case may be, shall be substituted as a party in the place of the broadcaster.

(7) The SABC or Sentech, as the case may be, may apply for the registration of any registrable right relating to intellectual property or inventions, including the registration as patents of patentable inventions, transferred from a broadcaster to it in terms of this section.

(8) The Registrar of Trade Marks shall make such entries, notes and endorsements as he or she may deem necessary in or on any relevant register, certificate or other document in his or her office or submitted to him or her so as to effect the transfer of trade marks to the SABC or Sentech, as the case may be, in terms of this section, and may request the SABC or Sentech to submit or produce to him or her such information or document as he or she may deem necessary for such purpose.

(9) If, for the purposes of this Act, the question arises whether anything pertains to or is connected with the broadcasting enterprise or the broadcasting signal distribution enterprise, it shall be determined by the Minister.

(10) No stamp duty, transfer duty or any other tax or levy shall be payable in respect of the transfer of a broadcasting enterprise or a broadcasting signal distribution enterprise in terms of this section.

Transfer of staff

7. (1) (a) Any person on the fixed establishment of a broadcaster shall, without interruption in service, on the transfer date become an employee of the SABC or Sentech, as the case may be.

(b) The conditions of employment prevailing in either the SABC or Sentech in relation to the post in question shall be applicable to any such employee as from the transfer date.

(2) If, for the purposes of subsection (1), the question arises whether any person performs functions pertaining to the broadcasting service, it shall be determined by the Minister.

(3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), it shall be deemed that no change of employer took place in respect of an employee referred to in subsection (1).

(4) When any person becomes an employee of either the SABC or Sentech in terms of subsection (1)-

(a) he or she shall retain all vacation leave which accrued to his or her credit with the broadcaster up to the date immediately before the transfer date, adjusted in accordance with the conditions of employment of the SABC or Sentech;

(b) any pending enquiry or any other action instituted or intended to be instituted in respect of alleged misconduct committed by such a person before the transfer date, shall be disposed of or instituted by the SABC or Sentech, as the case may be, and the SABC or Sentech shall take the appropriate steps against the person concerned in accordance with the laws, policy and conditions of service applicable to him or her immediately before the transfer date;

(c) he or she shall cease to be a member of any pension fund of which he or she was a member on the date immediately before the transfer date, and shall have no claim against the fund concerned after payment by that fund of the amount referred to in paragraph (f);

(d) and if he or she was a member of a pension fund immediately before the transfer date, he or she shall become a member of the appropriate pension fund applicable to the SABC or Sentech, as the case may be, as from the transfer date;

(e) and if he or she has interrupted membership, it shall be deemed that pensionable service has begun accruing to him or her as from the date of resumed contribution to a pension fund;

(f) (i) the pension fund referred to in paragraph (c) shall pay to the fund contemplated in paragraph (d) an amount equal to the actuarial liability of the former fund in respect of the member as determined by the actuary of that fund, multiplied by the funding level;

(ii) the actuarial basis on which the liability of the pension fund referred to in paragraph (c) is calculated, shall be agreed upon by the fund's actuary and the actuary of the fund referred to in paragraph (d), as the case may be;

(iii) the funding level of the pension fund referred to in paragraph (c) shall be the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund as determined by the most recent actuarial valuation of the fund and agreed to by the funds referred to in paragraph (d);

(g) and if he or she becomes a member of the SABC or Sentech pension fund in terms of paragraph (d) the amount transferred to the SABC or Sentech pension fund in terms of paragraph (f)(i) shall be utilised to purchase pensionable service for him or her as determined by the actuary of the SABC or Sentech pension fund;

(h) the amounts referred to in paragraph (f) shall be payable as at the transfer date, and interest thereon calculated at the bank rate as determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), shall be added to those amounts for the period from the transfer date to the date of actual payment thereof.

Finance

8. (1) (a) Any operating loss incurred by the SABC or Sentech due to the transfer of the broadcasting enterprise or broadcasting signal enterprise of a broadcaster contemplated in this Act shall be reimbursed by the State over a period of 48 months as from the transfer date.

(b) The loss contemplated in paragraph (a) shall be determined by the SABC and Sentech in consultation with the Minister and the Minister of Finance.

(2) The books of account of a broadcaster shall on the transfer date be balanced, audited and balances left open for adjustments that may occur.

(3) All costs relating to the transfer of the broadcasting enterprise or broadcasting signal distribution enterprise of a broadcaster in terms of this Act shall be borne by the State as agreed to by the Minister with the concurrence of the Minister of Finance.

Repeal and amendment of laws

9. (1) Government Notice No. 200 (Transkei), of 12 December 1980, is hereby withdrawn with effect from the transfer date and the laws referred to in Part I of the Schedule are hereby repealed with effect from the transfer date.

(2) The Act referred to in Part II of the Schedule is hereby amended to the extent indicated in column 3 of that Part.

Act binding on State

10. This Act shall bind the State.

Transitional provision

11. All radio and television licences issued under the laws referred to in section 9 shall be valid for the remainder of the licence period irrespective of where they were issued.

Short title and commencement

12. (1) This Act shall be called the Former States Broadcasting Reorganisation Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act, and dates so fixed may differ in respect of different broadcasters.\$

SCHEDULE

(Section 9)

Part I

No. and year of law	Short title
Act No. 22 of 1936	Broadcasting Act, 1936 (Transkei)
Act No. 14 of 1979	Republic of Venda Broadcasting Act, 1979
Act No. 8 of 1985	Broadcasting Act, 1985 (Ciskei)
Proclamation No. 23 of 1991	Broadcasting Amendment Proclamation, 1991 (Venda)

Part II

No. and year of law	Short title	Extent of amendment
Act No. 73 of 1976	Broadcasting Act, 1976	The following section is hereby inserted in the Broadcasting Act, 1976, after section 17: "Application of Act 18. This Act shall apply throughout the Republic."