



***BROADCASTING
DIVISION***

The Broadcasting Division comprised of the Policy Development and Research, and the Licensing, Monitoring and Complaints departments. Its responsibilities were to develop policy and regulations, issue licences, monitor the activities of all broadcasters and their compliance with licence conditions, develop standards for the content of programmes, determine limitations on advertisements, and encourage programming diversity by public, commercial and community broadcasters.

The Division also sought to promote language diversity at the national and regional levels in broadcasting, to set appropriate local content quotas, keep broadcasting rules up to date in the face of technological change, and promote ownership and control of broadcasting services by previously disadvantaged individuals and groups.

POLICY DEVELOPMENT AND RESEARCH

The Policy Development and Research Department (PDRD) comprised of two units, namely Policy Development and Projects. The Policy Development Unit conceptualised and researched policies for the regulation of the broadcasting industry.

Policy development processes entailed public participation and consultation with key stakeholders. Once comment and input has been solicited from stakeholders, the information is analysed and developed into policy recommendation for Council's approval.

The end product of this process is the publication of a Position Paper. The Projects' unit then drafts regulations on the basis made in the recommendations of the Position Paper.

The PDRD delivered the following policy development and research initiatives:

- Ten-year Review of Broadcasting Regulation
- Code of Good Practice
- Research on programming for children, the youth, women, and people with disabilities

- Community Sound Broadcasting Policy Position Paper
- Digital Migration Strategy
- Licensing, Monitoring and Complaints Department
- Commercial Broadcasting Services
- Africa Media and Broadcasting Congress
- Digital Broadcasting Switchover Forum.

Ten-year Review of Broadcasting Regulation

The PDRD embarked on a consultative process to review its role as a regulator of the broadcasting industry since the advent of the new democratic dispensation. The purpose of this exercise was to assess the regulatory impact of the Authority's policies and regulations since inception to determine whether the objectives set out for the Authority have been achieved.

Code of Good Practice

The PDRD published a Code of Good Practice to provide guidelines to broadcasters in servicing the needs of people with disabilities.

Research on programming for children, the youth, women, and people with disabilities

The PDRD conducted research to determine how current licensees are meeting the programming needs of children, the youth, women and people with disabilities. The research process solicited input from relevant stakeholders.

As part of this consultative process, workshops and meetings were held in May, June and July 2006 with community sound broadcasting licensees, commercial sound broadcasting licensees, the SABC, youth groups, National Youth Commission, Disabled People of South Africa and relevant Non-Governmental Organisations.

A Research Report is being prepared to guide the process.

Community Sound Broadcasting Policy Position Paper

In June 2006, the PDRD published the Position Paper and Regulations on Community Sound Broadcasting Services. The Regulations provided for two annual window periods (April and October) during which eligible communities or entities could lodge their applications for community radio licences with the Authority.

The Position Paper and Regulations also provided for a new policy and licensing framework that enabled the Authority to speedily consider and take decisions regarding applications for community sound broadcasting licences so as to add diversity through the licensing of more community sound broadcasting services.

From September to November 2006, the Authority conducted several workshops in all the provinces to familiarise communities with the new framework and regulations.

Digital Migration Strategy

The Authority participated in a range of activities related to the Digital Migration process as initiated by the Minister to develop a national strategy for the transition from the use of analogue to digital technology platforms, including the adaptability of receiver sets.

To drive the process, the Minister established the Digital Migration Working Group. The final recommendations of the Working Group were presented to the Minister on 29 November 2006 and culminated in the development of a draft Digital Migration Strategy and Digital Broadcasting Implementation Plan for South Africa.

Once the Ministry has published a White Paper on Digital Migration, the Authority will develop a regulatory framework on digital broadcasting. The Authority has had to postpone the following projects since their regulatory frameworks are dependent on the finalisation of the Digital Migration Strategy:

- Satellite/cable/DVB-H (mobile broadcasting)

- Review of commercial free-to-air policies
- Review of Signal Distribution policy.

In addition to participating in the Digital Migration Working Group, the Authority attended the following conferences to enhance its understanding of digital broadcasting policy and licensing issues:

Africa Media and Broadcasting Congress

Held in October 2006 at the Sandton Convention Centre, the conference sought to clarify concepts and the technical aspects around digital migration, and to assist future role players to adapt to the convergence environment. Issues covered included the benefits and challenges of digital migration for consumers, manufacturers, suppliers and the media.

Commonwealth Telecommunications Organisation Digital Broadcasting Switchover Forum

Held from 29 January to 1 February 2007, the focus of this conference was to deliberate policy issues for a seamless transition from the analogue to the digital environment.

LICENSING, MONITORING AND COMPLAINTS DEPARTMENT

The Licensing, Monitoring and Complaints Department (LMCD) comprised of two units, namely, the Licensing Unit and the Monitoring and Complaints Unit. The Licensing Unit was responsible for processing applications for Signal Distribution and broadcasting licences for Sound and Television Broadcasting Services.

The Monitoring and Complaints Unit was responsible for protecting the public interest by ensuring that licensed broadcasters and signal distributors comply with their licence conditions. This included control, ownership, programme content and funding.

The unit, together with the Authority's Engineering Division, also ensured that broadcasters used the assigned frequencies and complied with the technical standards stipulated in their licence conditions.

The Monitoring and Complaints Unit also received complaints from the public and forwarded serious complaints to the Broadcasting Monitoring and Complaints Committee (BMCC) for adjudication. The BMCC was a standing committee, established in terms of the Independent Broadcasting Authority (IBA) Act.

Licensing Unit

The Licensing Unit issued, renewed and amended applications from the following categories of broadcasting services:

- Public Broadcasting Services
- Commercial Broadcasting Services
- Community Broadcasting Services

Public Broadcasting Services

Renewal of SABC Licence

The Authority renewed the licence of XK FM, a Northern Cape-based radio station serving the Khoisan communities.

Umhlobo Wenene FM amendment

The Authority granted an amendment to allow the expansion of the Umhlobo Wenene FM broadcasting footprint in the Eastern Cape and other parts of the country, as recommended by the Triple Enquiry Report. The application was made to increase access to Umhlobo Wenene FM in the greater Eastern Cape and to increase its national coverage from 74.08% to 83.41%.

Commercial Broadcasting Services

Renewal of Commercial Broadcasting Licences

The Authority approved the following Commercial Broadcasting Licence renewals:

- *702 Talk Radio*

702 Talk Radio applied for the renewal of its commercial sound broadcasting licence. The Authority was satisfied with its compliance with the licence conditions during its licence period. The Authority renewed the 702 Talk Radio

licence for a further 6-year period, until October 2012.

- *Midi TV*

Midi TV applied for a renewal of its commercial television broadcasting licence in respect of e-tv. The Authority was satisfied that e-tv had complied with its licence conditions during its licence period and had taken measures to address all the complaints and judgments made against it by adjusting its programming schedule. Midi's television broadcasting licence was renewed for a further 8 years and will expire in December 2014.

Licences amendments

The Authority approved the following licence amendments:

- *Kaya FM*

The Authority granted an amendment to Kaya FM's licence with regard to its shareholding structure. Kaya FM sold 24.9% of its shares to Shanike Investments No. 42 (Pty) Ltd ('Shanike'), a special-purpose vehicle, and disposed of equity shares held by Motsamai and Makana SPV.

- *702 Talk Radio*

The Authority approved the application made by Primedia Limited ('Primedia') for an amendment to 702 Talk Radio, its commercial sound broadcasting licence, to allow 702 Talk Radio to migrate from the medium-wave frequency to FM frequencies on 92.7 MHz in Johannesburg and 106.0 MHz in Pretoria, and allowed for a double-illumination period of 12 months.

The Authority also granted an application for exemption received from Primedia to allow it to control and own more than two FM stations, namely Highveld and KFM.

Broadcasting Licence Prior Written Approvals

The Authority received and considered request for prior written approvals in respect of shareholding structure of licensees, provided that such amendments would not result in change in ownership and control.

The Authority granted Kagiso Media Limited prior written approval in respect of the Jacaranda FM shareholding

structure. Kagiso Media Investment had decided, through an internal restructuring, to hold its 60% stake in Jacaranda FM (Proprietary) Limited directly, and not through Naledi Investment Holdings.

Licensing of Commercial Sound Broadcasting

Licences in secondary markets

In February 2005, the Authority invited applications for Commercial Sound Broadcasting Services in the secondary markets. In response to the invitation, the Authority received five applications from Limpopo, three from North West and three from Mpumalanga. No applications were received from the Northern Cape.

Hearings and deliberations in respect of the above-mentioned applications were held in September 2006 and recommendations regarding the preferred applicants were submitted to Council for consideration.

In March 2007, the Authority granted commercial sound broadcasting licences to:

- Capricorn FM, Limpopo
- M-Power, Mpumalanga
- Radio North West.

Test Licences

The Authority generally received and considered applications for Test Licences from individuals who wished to test new technologies or technological innovation within the broadcasting sector. This was in line with the provisions of the Electronic Communications Act aimed at encouraging research and development within the ICT sector.

Community Broadcasting Services

Licensing of Community Sound Broadcasting Services in Nodal Point areas:

In November 2004, the Authority invited applications for four-year community sound broadcasting licences in the Nodal Point Areas in terms of the government's urban renewal and integrated sustainable rural development strategy.

In June 2006, the Authority conditionally granted the following 11 community sound broadcasting licences:

- Alex FM
- Inanda Community Radio
- Vibe FM
- Alfred Nzo Community Radio
- Forte Community Radio
- Ekhephini Community Radio
- Inkonjana Community Radio
- Radio Gamkaland
- Sekhukhune Community Radio
- Tubatse Community Radio
- Ubuhlebeshowe Community Radio.

Special Event applications

The Authority generally received and considered applications for licences for Special Community Broadcasting Events from any persons, natural or juristic, for the broadcasting, on a non-profit or not-for-gain basis, of a special event taking place in communities. These non-renewable events licences were granted for a maximum of 30 days.

The Authority received 30 applications for Special Event licences:

- Radio Al-Ansaar X2
- Eastern CAPE Muslim Association
- Festival Radio
- Itheke FM X2
- Karabo FM
- KNI Radio X2
- Mafikeng FM
- MEFM Plett X2
- Ndwedwe Community Radio
- Phalaborwa Community Radio X2
- Radio Veritas
- Rainbow FM X2

- Siyaya FM
- Southern Cape Community Radio X3
- Soweto TV X2
- Star FM X3
- Ulwazi FM
- Midrand Community Radio

Special event applications from MEFM Plett and Chai FM were refused licences:

Renewals of Community Broadcasting Licences

The term of validity of a community sound broadcasting licence is four (4) years. The Authority can refuse an application for the renewal of a broadcasting licence only if the licensee has failed to materially comply with the licence conditions, and if the Authority is satisfied that the applicant would not so comply if the licence were to be renewed.

The Authority granted nine (9) four-year community sound broadcasting renewal applications to Radio TNG, Radio Namakwaland, Radio Helderberg, Radio Zibonele, Radio Maputaland, Voice of the Cape, Radio Atlantis, Radio Khwezi and East Wave Radio.

Amendments to Community Sound Broadcasting Licences

The following Community Sound Broadcasting Licence amendments were granted:

- *Radio Oranje Farm*

Oranje Farm Community Radio applied to change its name to Thetha FM.

- *Radio TNG*

An amendment was sought to enable the Radio TNG to change its name from Community Radio Technikon Northern Gauteng to Community Radio Tshwane University of Technology. This application was made in the light of the change in the name of the institution previously known as Technikon Northern Gauteng, which had been renamed Tshwane University of Technology.

- *Zibonele Community Radio*

Zibonele Community Radio applied to change its legal form from a voluntary association to a registered Section 21 company.

Low-power licences

The Authority invited applications for Low-power Sound Broadcasting Licences in February 2005. Subject to approval by the Authority, low-power sound broadcasting licences can be granted to cover small areas. A Low-power Sound Broadcasting Service is defined as a community, private or public sound broadcasting service that radiates power not exceeding one (1) watt.

The Authority turned down the application for a low-power sound broadcasting licence received from Harmony Gold Mining Company Limited. However, the applicant was given an opportunity to remedy the shortcomings in its application as per the provisions of the Electronic Communications Act. The Authority is still awaiting a response from Harmony.

Monitoring and Complaints Unit

The Monitoring and Complaints Unit (MCU) was comprised of the Monitoring and Complaints Sections. The Monitoring section monitored compliance by licensed broadcasters with the IBA Act and the Broadcasting Act, as amended, and with relevant regulations and license conditions.

The Complaints Section was responsible for the receipt, processing and investigation of complaints. This section also played the role of Registrar of Complaints for the Broadcasting Monitoring and Complaints Committee (BMCC).

The Monitoring and Complaints Unit dealt with the following:

- Monitoring of broadcasts
- Complaints
- Complaints Compliance Committee

Monitoring of broadcasts

The Monitoring Section compiled and published sixty (60) monitoring reports and paid monitoring visits to 64 licensed broadcasters.

A breakdown of the monitoring visits is given below.

| Province | Commercial | Community |
|--------------------|------------|------------|
| Gauteng | 3 | 9 |
| Mpumalanga | | 2 |
| Limpopo | | 10 |
| KZN | 2 | 9 |
| Eastern Cape | | 6 |
| North West | | 3 |
| Northern Cape | | 2 |
| Western Cape | 3 | 6 |
| Free State | 1 | 8 |
| Subtotal | 9 | 55 |
| Grand Total | 18 | 110 |

The following table was compiled on the basis of a number of reports:

| Sector | Number |
|--------------|-----------|
| Community | 40 |
| Private | 11 |
| Public | 9 |
| Total | 60 |

Complaints

The Complaints Section was responsible for receiving and investigating complaints about licenced broadcasters. If a complainant was not satisfied with the response received from broadcaster, the matter would be referred to the Broadcasting Monitoring and Complaints Committee. Complaints that fell within the Authority's area of jurisdiction were investigated. Legislation provides that complaints must

be investigate and finalised within fourteen working days. Complaints that fell outside the Authority's jurisdiction were referred to the relevant bodies, such as the Broadcasting Complaints Commission of South Africa (BCCSA) or the Advertising Standards Authority (ASA).

In the year under review, the Complaints Section received 75 complaints, which can be categorised as follows:

| Complaints | Number |
|---------------|-----------|
| Advertising | 1 |
| Blasphemy | - |
| Defamation | 3 |
| Hate speech | 1 |
| Mismanagement | 14 |
| Pornography | 3 |
| Programming | 7 |
| Technical | 7 |
| Other | 39 |
| TOTAL | 75 |

The geographical breakdown of complaints received is as follows:

| Province | Number |
|---------------|-----------|
| Gauteng | 33 |
| KZN | 9 |
| Eastern Cape | 8 |
| Western Cape | 7 |
| Free State | 4 |
| Northern Cape | 4 |
| North West | 2 |
| Mpumalanga | 4 |
| Limpopo | 4 |
| TOTAL | 75 |

Broadcasting Monitoring and Complaints Committee (BMCC)

Established in terms of the now repealed Independent Broadcasting Act, 153 of 1993, the BMCC, a standing Committee of Council was comprised of eleven (11) members namely:

- Advocate Jules Browde, SC (Chairperson),
- Ms Irene Baloyi,
- Mr Yaswant Gordhan,
- Advocate Fayeeza Kathree,
- Ms Irene Menell,
- Dr Sophia Mosime,
- Prof. Nomvula Mtetwa,
- Advocate Mhlahiseni Mthembu,

- Prof. Nomvula Mosime,
- Ms Renee Smith, and
- Prof. Tina Uys.
- Councillor Nadia Bulbulia represented ICASA.

The BMCC met on a quarterly basis or at such intervals as were deemed necessary. Three hearings were held during the period under review in respect of the following licensees:

- *Highway Radio*

In March 2006, the BMCC heard a submission against Highway Radio on allegations of failure to submit audited financial statements, failure to hold an Annual General Meeting (AGM), failure to submit minutes of the Board of

Directors' meetings, lack of community participation and mismanagement.

The BMCC found that the animosity that existed between various factions at Highway Radio resulted in the radio station's inability to effectively conduct its service to the benefit of the community.

The BMCC recommended that a widely publicised meeting be held within thirty (30) days to address the serious differences existing among employees at the radio station.

- *South African Jewish Board of Deputies vs. Radio 786*

A meeting was held by the BMCC in March 2006 to discuss a complaint lodged with the Authority by the Jewish Board of Deputies. This complaint, which dated back to 1998, was about broadcasts by the Islamic Unity Convention (IUC) under the auspices of Radio 786. The Jewish Board alleged that a programme broadcast by the radio station violated the Code of Conduct for broadcasting services contained in Schedule 1 of the repealed IBA Act of 1993.

The BMCC found that the licensee had contravened the Code as it broadcast material that was intended to prejudice relations between Jewish and Muslim communities.

In its ruling the BMCC recommended that the licensee be ordered to

- desist from any further non-compliance with the Act, including but not limited to the broadcasting and publication of hate speech, and
 - broadcast and/or publish the ruling of the BMCC, as well as its full judgment and this Order, at its own cost.
- *M-NET*

A BMCC hearing was held in April 2006 in respect of M-Net's alleged contravention of its licence conditions regarding the

payment of an annual licence fee.

The BMCC ruled as follows:

- M-NET was not in contravention of any provision of its licence.
- M-NET had correctly calculated the turnover with both the M-net and CSN channels as required by its licensee.
- Value-added tax could not be levied on any fees payable by M-NET.
- The question of the quantum would be resolved outside the BMCC proceedings.

Complaints Compliance Committee

The Electronic Communications Act (the EC Act), which came into effect in July 2006, provides for the dissolution of the BMCC and its replacement by the Complaints and Compliance Committee. At the time of dissolution, a number of outstanding complaints were still awaiting formal hearings. These were complaints against Nkqubela Community Radio, Radio 786, Kaya FM, Moretele Community Radio, Radio Mafisa, Radio Lentswe and Radio Platorand. The complaints awaiting formal hearing will be adjudicated by the CCC.

The Committee is constituted of seven (7) members, namely:

- Councillor Jacobus Van Rooyen , SC
- Elizabeth Kealeboga Moloto-Stofile (Chairperson)
- Suvendra Thakur
- Daniel Moalosi
- Refiloe Mzisa
- Nomveliso Ntanjana
- Izak Redelinghuys