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An Act to provide for the establishment and functions of a National Broadcasting Board, to provide for the issue of broadcasting licences; and for other matters incidental thereto or connected therewith.

Date of Assent: 5th August, 1999.

Date of Commencement: On Notice.

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Short title
and com-
mencement

1. This Act may be cited as the Broadcasting Act, 1998, and shall come into operation on such day as the Minister may by order made by statutory instrument appoint.

Interpretation

2. In this Act unless the context otherwise enquires —

Act No. 15
of 1996

“the Authority” means the Telecommunications Authority established under section 3 of the Telecommunications Act, 1996;

“the Board” means the National Broadcasting Board established under section 3.

“broadcasting” means the distribution of television or radio, as defined herein, by means of terrestrial, satellite, cable or optical fibre and capable of being received on suitable apparatus by the public;

“broadcasting service” means a single defined service which consists in the broadcasting of television or sound material to the public or sections of the public or the subscribers to such service;

“the Committee” means the Nominating Committee established under section 8;

“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 services; and

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

“licensee” means any person to whom a broadcasting or re-broadcasting licence has been issued under this Act;

“private broadcasting service” means a broadcasting service operated for profit and controlled by a person who is not a public or community broadcasting licensee;

- “public broadcasting service” means a broadcasting service provided by any statutory body which is funded either wholly or partly through State revenues;
- “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;
- “register” means the register of licensees established under section 15 (7);
- “television” means the conveyance of visual information, together with one or more channels of associated audio or suitably encoded textual information, or both.

PART II — *National Broadcasting Board*

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| <p>3. There is hereby established a National Broadcasting Board (in this Act referred to as “the Board”) which shall perform such functions as may be conferred on it by this Act or any other enactment.</p> | <p>Establishment of the Board</p> |
| <p>4. The Board shall consist of 11 members who shall be appointed in accordance with the provisions of section 5.</p> | <p>Composition of the Board</p> |
| <p>5. The Minister shall appoint the following persons as members of the Board, namely —</p> <ul style="list-style-type: none"> (a) an officer from the Office of the President; (b) an officer from the Ministry of Commerce and Industry who is responsible for administering copy right legislation in that Ministry; (c) an officer from the Department of Cultural and Social Welfare in the Ministry of Labour and Home Affairs; (d) a representative of the Authority; and (e) seven persons, one of whom shall be designated as Chairman of the Board, appointed from a list of 10 candidates nominated by the Nominating Committee in accordance with the provisions of section 8. | <p>Appointment of members of the Board</p> |
| <p>6. (1) Subject to the following provisions of this section, each member of the Board shall hold and vacate office in accordance with the terms of his or her appointment ;</p> <p>(2) A person shall not be appointed to be a member of the Board for more than five years at a time, but shall be eligible for re-appointment on the expiry of the period of appointment.</p> <p>(3) Any member of the Board may at any time resign his or her office by notice in writing to the Minister.</p> | <p>Tenure of office</p> |
| <p>7. The Board may pay to each member such allowances as the Minister may, after consulting the Ministry of Finance and Development Planning, determine.</p> | <p>Remuneration of members</p> |
| <p>8. (1) There shall be established for the purposes of this Act a Committee which shall be called the Nominating Committee (in this Act referred to as “the Committee”).</p> | <p>Nominating Committee</p> |

- (2) The Committee shall consist of the following members —
- (a) a Chairman who shall be a member of the Law Society of Botswana nominated by the Council of the Law Society;
 - (b) the Vice-Chancellor of the University of Botswana or “his or her nominee;
 - (c) a representative of the Office of the President.
- (3) The Committee shall, by consensus, nominate 10 candidates desirous of being appointed as members of the Board and shall submit their names and recommendations on each candidate to the Minister.
- (4) Every candidate to be nominated shall be interviewed by the Committee.
- (5) For the purpose of interviewing candidates for nomination under subsection (3), the Committee shall cause to be advertised in the Botswana Government Gazette and in any local newspaper inviting candidates desirous of being appointed to the Board to apply to the Committee to be interviewed for nomination.

Secretariat of
the Board

(6) The interview of candidates for nomination under subsection (3) shall be conducted in accordance with the principles of transparency and openness.

9. (1) The Authority shall be the Secretariat of the Board and shall discharge such functions of the Board as may be delegated to it.

(2) The Authority shall designate to the Board such officers of the Authority as may be necessary for the performance of the functions of the Board and the administration of this Act.

(3) Without prejudice to the preceding provisions of this section, the Authority shall advise the Board on technical matters in relation to its functions.

(4) Regulations may provide for the payment to the Authority of any expenses or costs incurred by it in the performance of its functions under this Act.

Functions
of the Board

10. (1) The functions of the Board shall be —

- (a) to issue broadcasting licences;
- (b) to exercise control over and to supervise broadcasting activities, including the relaying of radio and television programmes from places in and out of Botswana to places in and outside Botswana;
- (c) to allocate available spectrum resources in such manner as to ensure the widest possible diversity of programming and optimal utilisation of the spectrum resources.

(2) The Board may establish different application and assessment procedures for private, community and public broadcasting including invitations through tendering process and shall, to the maximum extent possible, consistent with safety, efficiency and economy, give preference to enterprises which are owned by citizens or in which citizens have significant shareholding.

Proceedings
of the Board

11. Arrangements relating to the meetings of the Board shall be such as the Board may determine.

(2) The quorum at any meeting of the Board shall not be less than a half of the number of the members of the Board.

12. (1) No person shall carry out any broadcasting or re-broadcasting activities except under and in accordance with a licence issued under this section to such person conferring on him or her the right to use a station for broadcasting or re-broadcasting.

Application
for broad-
casting and
re-broad-
casting
licences

(2) An application for a broadcasting or re-broadcasting licence shall be made to the Secretariat and shall be accompanied with 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) any prescribed fees; and
- (e) such other information as the Secretariat may require or as may be prescribed.

(3) Regulations may provide for —

- (a) the payment of an annual or other fees for broadcasting or re-broadcasting licences;
- (b) the frequencies that may be used in the operation of a station, the power limitations in respect of a station and any other technical specifications;
- (c) the prevention of electric and other disturbances of radio reception or of transmissions over any telegraph line;
- (d) the location of a transmitter station and the geographical area to which the broadcast or re-broadcast may be made.

13. (1) Subject to the availability of frequencies, and subject to the provisions of subsection (2), the Board may, on receipt of an application for a broadcasting or re-broadcasting licence, if it is satisfied that the applicant has fulfilled all the requirements for a grant of licence, issue a licence to the applicant.

Issue of
licences

(2) A licence issued under subsection (1) may be issued subject to such conditions and restrictions, including geographical restrictions, as the Board may consider necessary, and such conditions and restrictions shall be endorsed on the licence.

14. A licensee shall not broadcast or re-broadcast —

- (a) any material or programme of which he or she is not the copyright owner; or
- (b) any broadcasting signal received by him or her for the purpose of re-broadcasting,

Restrictions on
on broadcasting
or re-broad-
casting of
programmes

unless he or she has, prior to the broadcast or re-broadcast, obtained a written permission of the copyright owner of the material, programme, or re-broadcasting signal, as the case may be, to do so.

15. (1) Whenever —

- (a) the name of any broadcasting or re-broadcasting service licensed under this Part is changed;
- (b) any person acquires the proprietorship or any interest in the proprietorship of any broadcasting or re-broadcasting service under this Part;
- (c) the director, producer or proprietor of any such broadcasting or re-broadcasting service is changed,

the proprietor of such broadcasting or re-broadcasting service shall lodge a notice of such change or acquisition with the Secretariat, and subject to the provisions of subsections (2) to (4), the Secretariat shall cause to be made such correction in the register as may be necessary.

(2) The Secretariat shall refer, a notice of change or acquisition submitted to it under subsection (1), to the Chairman of the Board for his or her consideration and approval before any correction is made in the register.

(3) Where the Chairman of the Board, after considering any notice of change or acquisition referred to him or her under subsection (2), is of the opinion that such change or acquisition, as the case may be, would be detrimental to the development of the broadcasting sector, he or she shall refer the matter to the Board for its decision.

(4) The Board may —

- (a) approve the change or acquisition, in which case, it shall cause the Secretariat to make the necessary correction in the register; or
- (b) refuse to approve of the change or acquisition and revoke the licence of the licensee.

(5) Every return and notice mentioned in this section, except a notice in relation to the change in name of any broadcasting or re-broadcasting service, shall be signed by every person therein named.

(6) Any person who —

- (a) knowingly lodges or causes to be lodged with the Secretariat any return or notice under this section which is false in any material particular; or
- (b) carries out any broadcasting or re-broadcasting activities in contravention of this section,

shall be guilty of an offence.

(7) For the purposes of this section the Board shall cause to be established and maintained a register of licensees wherein shall be entered every return made under this section.

16. Every person required to be in possession of a broadcasting or re-broadcasting licence in accordance with the provisions of this Part shall produce the licence for inspection on demand by any person authorised thereto by the Board.

17. (1) Where a licensee has failed to comply with any material condition included in his or her licence or has defaulted in payment of any fees imposed under this Part, the Board may by notice in writing to the licensee revoke the licence.

(2) A licence shall not be revoked, nor shall its renewal be refused without giving the licensee a reasonable opportunity to be heard by the Board.

18. Any person aggrieved by the revocation of his or her licence, or by the Board's refusal to renew his or her licence may appeal to the High Court within such time as may be prescribed.

Appeal

19. A licensee shall —

Record to be kept by licensee

- (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 of 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.

20. Without prejudice to the provisions of section 178 of the Penal Code (relating to obscene publications) a licensee shall, where a programme to be broadcast or re-broadcast is not suitable to be exhibited to children, advise or warn members of the public accordingly.

Programmes not suitable for exhibition to children

21. Regulations may prescribe a code of practice which shall be observed by all licensees.

Code of practice

PART IV — *Miscellaneous Provisions*

22. A person who —

Offences

- (a) is guilty of an offence under this Act; or
- (b) contravenes any provisions of this Act shall be guilty of an offence and,

shall be liable on conviction, to a fine not exceeding P5 000 or to a term of imprisonment not exceeding three months, or to both.

23. The Minister may by statutory instrument make regulations providing for any matter which under this Act is to be prescribed or is to be provided for by regulations or which otherwise is necessary or expedient for carrying into effect the provisions of this Act.

Regulations

24. (1) Nothing in this Act shall affect the validity of the processing of any licensing application submitted to the Authority or any broadcasting licence issued by the Authority in accordance with the provisions of the Telecommunications Act, 1996, immediately before the commencement of this Act, and such application shall be dealt with in terms of this Act, and any licence issued by the Authority shall continue in force as if it had been issued under this Act.

Amendment of section 2 of Act 15 of 1996

(2) The proprietor of any radio or television station operating in Botswana immediately before the commencement of this Act shall within six months of such commencement apply for a licence under this Act.

25. In consequence of the provisions of this Act, section 2 of the Telecommunications Act, 1996, is hereby amended by inserting at the end of the definition of "telecommunication service" the words "but excluding a broadcasting service as defined in section 2 of the Broadcasting Act, 1998;".

PASSED by the National Assembly this 6th day of August, 1998.

C.T. MOMPEI,
Clerk of the National Assembly.