



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 532

Pretoria, 28 October 2009
Oktober

No. 32663

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS · INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE		
Communications, Department of		
<i>General Notice</i>		
1409 Electronic Communications Act (36/2005): Public Service Broadcasting Bill, 2009: Charter of the Corporation and Charter of Community Broadcasting Services: For public comments	3	32663

GENERAL NOTICE

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

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

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

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

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

post to: Private Bag X 860
Pretoria
0001;

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



THE CHARTER OF THE CORPORATION

Table of Contents

1. INCORPORATION AND PURPOSES	7
1.1. Incorporation of the Corporation.....	7
1.2. Term of Charter.....	7
1.3. The Corporation's public nature and its objects.....	7
1.4. How the Corporation promotes its Public Mandate:.....	7
1.5. The independence of the Corporation.....	7
2. CONSTITUTION	7
2.1. Introduction.....	7
2.2. Relationship between the Board and the Executive Management of the Corporation.....	8
2.2. Guidance and best practice.....	8
3. THE BOARD OF THE CORPORATION	8
3.1. Legal nature of the Board.....	8
3.2. Composition of the Board.....	8
3.2. The Chairperson of the Board.....	9
3.3. The Deputy Chairperson of the Board.....	9
3.4. Length of terms.....	9
3.5. Termination of office.....	9
3.6. Disclosure of conflict of interests.....	11
3.7. Disqualification.....	11
3.8. Remuneration of members.....	12
3.9. Performance management system for the Board.—.....	12
3.10. How the Board Operates.....	13
3.10.1. Meetings of the Board.....	13
3.10.2. Committees of the Board.....	13
3.10.3. Regulations.....	13
3.11. GENERAL DUTIES	14
3.11.2. Functions of the Board.....	14
3.12. The executive Management.....	15
4. PUBLIC ACCOUNTABILITY	17

Department of Communications

5. **ORGANISATIONAL MATTERS**18

6. **GENERAL**21

7. **OVERSEAS CONCESSIONS**23

8. **COMPLIANCE WITH CHARTER AND OTHER LEGISLATIONS**23

9. **SCHEDULE: TRANSITIONAL PROVISIONS**23

Department of Communications

GUIDING PRINCIPLES

(1) The Corporation must be a leader in public service broadcasting. In pursuing this vision the Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that—

- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity;
- (b) display South African talent in education and entertainment programmes;
- (c) offer a plurality of views and a variety of news, information and analysis from a South African point of view;
- (d) advances the national and public interests.
- (e) foster inclusivity by reflecting the lives of all South Africans;
- (f) protection of children against harmful content;
- (g) contribute to moral regeneration;
- (h) respect human rights, including the right to privacy, unless a compelling public interest demands.

*Department of Communications***DEFINITION AND INTERPRETATION**

Act means the Public Service Broadcasting Act

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

Board: The Board of the Corporation

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

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

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

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

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

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

Corporation means the South African Broadcasting Corporation Limited;

Department means Department of Communications;

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

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

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

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

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

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

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

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

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

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

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

Minister means Minister of Communications;

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

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

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

President means the President of the Republic of South Africa;

Department of Communications

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

Republic means the Republic of South Africa

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

Department of Communications

1. INCORPORATION AND PURPOSES

1.1. Incorporation of the Corporation.

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

1.2. Term of Charter.

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

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

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

1.4. How the Corporation promotes its Public Service Mandate:

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

1.5. The independence of the Corporation

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

2. CONSTITUTION.

2.1. Introduction.

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

Department of Communications

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

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

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

2.2. Guidance and best practice

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

3. THE BOARD OF THE CORPORATION**3.1. Legal nature of the Board**

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

3.2. Composition of the Board.

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

Department of Communications

3.3. The Chairperson of the Board.

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

3.4. The Deputy Chairperson of the Board

- (1) The Deputy Chairperson must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson.
- (2) Whenever the office of Chairperson is vacant, the Deputy-Chairperson shall be "Acting Chairperson" with all the powers of the Chairperson.
- (3) In case of 2, such period will not exceed 6 months.

3.5. Length of terms.

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

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

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

B: Termination by the Appointing Authority

(2) The Appointing Authority—

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

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

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

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

(i) Misconduct;

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

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

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

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

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

(i) Discharging its fiduciary duties;

(ii) adhering to the Charter; and

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

(4) The appointing body—

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

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

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

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

Department of Communications

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

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

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

3.7. Disclosure of conflict of interests

(1) A person may not be appointed on the Board, unless the necessary disclosure has been made that such person—

(a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industries;

(b) or his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e).

(2) If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part—

(a) such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member is precluded from participating in such meeting by reason of a conflict of interest; and

(b) such disclosure and the decision taken by the remaining Board members regarding such determination, must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.

3.8. Disqualification

(1) A person will not qualify to be appointed to the Board if such person—

(a) is not a citizen of and not permanently resident in the Republic;

(b) is subject to an order of a competent court declaring such person to be mentally ill or disordered;

(c) is convicted, after the commencement of this Act and Charter, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;

(d) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted—

Department of Communications

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

(ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i);

(iii) whether in the Republic or elsewhere, of any other offence involving dishonesty;

(e) has been convicted of an offence under this Act without an option of a fine.

3.9. Remuneration of members.

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

3.10. Performance management system for the Board.—

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

(2) The performance management system must—

(a) set appropriate key performance indicators as a yardstick for measuring performance;

(b) set measurable performance targets; and

(c) set a procedure to measure and review performance at least once a year.

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

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

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

Department of Communications

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

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

3.10.2. Committees of the Board

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

3.10.3. Regulations

- (1) The Corporation must draw up proper financial regulations concerning the manner in which the financial affairs of the Corporation must be efficiently managed.
- (2) Such regulations must be approved by the Minister after consultation with the Minister of Finance.
- (3) The Corporation must make such regulations known in a manner it deems fit.
- (4) The Corporation must open and maintain an account with a bank registered as such in the Republic, or with any other financial institution so registered and approved by the Minister of Finance.
- (5) The Corporation may with the approval of the Minister invest any surplus funds of the Corporation.
- (6) The surplus referred to in subsection (5) must at the end of a financial year, be carried over to the next financial year and form part of the budget of the Corporation for that financial year.

Department of Communications

(7) Any dividends received by the State in respect of this surplus must be paid into the National Revenue Fund.

3.11. GENERAL DUTIES**3.11.1. Functions of the Board**

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

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

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

(4) maintain the integrity of the Corporation;

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

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

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

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

(i) News editorial policy;

(ii) programming policy;

(iii) local content policy;

(iv) educational policy;

(v) universal service and access policy;

(vi) language policy; and

(vii) religious policy.

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

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

(11) The Corporation must provide suitable means for regular inputs of public opinion on its services and ensure that such public opinion is given due consideration.

Department of Communications

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

- (a) the constitutional principle of equality;
- (b) the equitable treatment of all segments of the South African population;
- (c) the constitutional requirement of equitable treatment of all official languages;
- (d) the rights of all South Africans to receive and impart information and ideas;
- (e) the mandate to provide for a wide range of audience interests, beliefs and perspectives; and
- (f) a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest.

3.12. THE EXECUTIVE MANAGEMENT**(1) Composition of the Executive Management**

- (a) The affairs of the Corporation are administered by an executive committee consisting of the Group Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and their equivalents appointed by the Board.
- (b) The Executive management is accountable to the Board.

(2) Role of the Executive Management.

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

Department of Communications

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

(3) Performance management system of Executive Management

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

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

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

Department of Communications

- (6) It shall consist of persons not employed by the Corporation with experience and/or expertise in public broadcasting or relevant skills.
- (7) The Board shall elect one of the Council members as chairperson on rotational basis.
- (8) In the absence of the chairperson, members of audience council can elect one of their members to preside at such meetings.
- (9) A member of the public broadcasting advisory council shall hold office for a period of four years unless he or she submits his or her resignation in writing to the Board or vacates his or her office for any other reason before the expiry of such period.
- (10) A casual vacancy on the public broadcasting advisory council caused by the death of, or the vacation of his or her office by, a member shall with due regard to the provisions of subsection (6) be filled for the unexpired portion of the period of office of such member.
- (11) The meetings of the public broadcasting advisory council shall be held at such times and places as the advisory audience council may determine, and the quorum for and procedure at any meeting shall be determined by the Board.
- (12) The council must present regular reports to the Board on any public broadcasting matter referred to it by the Board and on any public broadcasting matter affecting the affairs or interests of the Corporation.
- (13) Members of the public broadcasting advisory council will not be remunerated for their services, but will be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Board.
- (14) It shall be the responsibility of the Board to ensure that the work of Audience Councils is supported by the Corporation.
- (15) The details of how the Advisory Audience Councils are to be set up, run, recruited and remunerated must be set out in a Framework developed by the Board.

4.2. Annual provincial consultative meetings

- (1) The Board hold annual public meetings in each provinces to engage with the public concerning the Corporation's public mandate and progress regarding the implementation of such a mandate.
- (2) The report of such meeting should be compiled for record purposes.

4.3. Public complaints handling framework

- (1) The Corporation should 6 months following this Charter coming into force, develop and implement a Public Complaints Handling Framework outlining methods, procedures of and office/person(s) responsible for dealing with public complaints.
- (2) The Framework shall be published for public comments and approved by the Minister.

Department of Communications

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

5. ORGANISATIONAL MATTERS.

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

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

(3) **The Corporation may—**

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

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

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

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

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

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

4. Communication with staff of the Corporation:-

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

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

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

Department of Communications

(2) The arrangements are for—

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

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

6. REPORTS AND ACCOUNTS.

(1) Financial year and annual financial statements

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

(2) Accounts

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

Department of Communications

(3) Auditing

(1) In addition to the annual financial statements to be prepared in terms of the Companies Act and also in terms of the Public Finance Management Act the Corporation must cause its books and accounts must to be audited annually by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), and appointed as auditor of the Corporation.

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

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

(4) The auditor must—

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

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

(c) charge against the person responsible therefore—

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

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

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

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

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

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

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

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

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

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

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

Department of Communications

4. Inspection of accounts

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

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

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

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

5. Annual report

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

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

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

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

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

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

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

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

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

(3) The Board must ensure that the Corporation complies with the provisions of the Public Finance Management Act relating to the preparation and submission of annual reports by public entities.

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

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

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

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

Department of Communications

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

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

(2) Borrowing powers

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

(3) Rights and obligations

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

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

8. ARTICLES OF ASSOCIATION

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

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

Department of Communications

9. OVERSEAS CONCESSIONS.

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

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

10. COMPLIANCE WITH CHARTER AND OTHER LEGISLATIONS.

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

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

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

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

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

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

11. SCHEDULE: TRANSITIONAL PROVISIONS

(1) During the Transitional Period—

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

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

Charter ends!

or fax to: (012) 427 8059

or e-mail to: miyelani@doc.gov.za

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

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