THE SWAZILAND BROADCASTING BILL, 2009

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Bill No ……………. Of 2009

(To be presented by the Minister of Information Communication and Technology)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to –

(a) provide for television and sound program services;
(b) provide for types of broadcasting licences;
(c) provide for licensing terms and conditions;
(d) provide for content and scheduling of programs and advertising; and
(e) provide for other matters incidental to broadcasting.

J. M. DLAMINI
ATTORNEY-GENERAL
A BILL
Entitled

An Act to provide for television and sound program services, community radio services and other services provided on television or radio frequencies, to provide for licensing terms and conditions and revocation of licences and matters incidental to broadcasting.

ENACTED by the King and the Parliament of Swaziland.

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PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Swaziland Broadcasting Act, 2009 and shall come into force on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“broadcasting” means the distribution of television and radio services by means of terrestrial or satellite transmitter received on suitable apparatus by the public;

“broadcasting service” has the same meaning assigned to it in the Electronic Communications Act;

“Code of Conduct” means a code of conduct developed by the Commission under this Act;

“Code of Ethics and advertising practices” means the code drawn up by the standards committee under section 29;

“Commission” means the Swaziland Communications Commission established in terms of section 4 of the Swaziland Communications Commission Act;

“community” includes a geographically defined community or any group of persons or sector of the public having a specific and ascertainable common interest;

“community broadcasting” means a broadcasting service which –

(a) is fully controlled by a non-profit entity and carried on for non-profit purposes;

(b) serves a particular community;

(c) encouraged members of the community served by it or persons associated with promoting the interests of such community to participate in the selection and provision of programs to be broadcast; and

(d) is funded by donations, grants, sponsorship or advertising or membership fees, or by a combination of any of them;
“commercial broadcasting” means a broadcasting service operated for profit and controlled by a person who is not a public or community broadcaster;

“Corporation” means the Swaziland Public Broadcasting Corporation established in terms of the Swaziland Public Broadcasting Corporation Act;

“diffusion service” means –

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

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

“diffuse” shall be accorded the same meaning as diffusion service;

“information” includes signs, signals, writing, pictures, sounds or other information of any nature which constitutes the content transmitted by electronic communication;

“licence” means an authorization granted by the Commission for the provision of television, radio frequencies and sound program services under the Electronic Communications Act and subject to this Act;

“licensee” means a person who holds a valid broadcasting licence granted by the Commission;

“licensed service” means a service that is authorized to be undertaken under a licence granted by the Commission under the Electronic Communications Act and subject to this Act;

“Minister” means the Minister responsible for Information Communication and Technology;

“person” means any individual, partnership, association, joint venture, trust, company or corporation;

“prescribed” means prescribed by statutory instrument by the Minister;

“public broadcasting service” means –

(a) any broadcasting service provided by the Swaziland Public Broadcasting Corporation;

(b) a broadcasting service provided by any other statutory body; or

(c) a broadcasting service provided by a person who receives revenue from the State;
“subscription broadcasting service” means a broadcasting service provided to an end user upon payment of a fee;

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

“television broadcasting service” means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

(2) In this Act, unless the content otherwise indicates, words and terms used shall have the same meaning as defined in the Electronic Communications Act.

PART II

PRINCIPLES, TYPES OF LICENCES AND LICENSING PROCEDURES

Objects of Act

3. The purpose and object of this Act is to –

(a) safeguard, enrich and strengthen the cultural, political, social and economic fabric of Swaziland;

(b) contribute to democracy, development of society, gender equality, nation building and provision of education;

(c) encourage the development of local programming content;

(d) ensure fair competition in the broadcasting sector; and

(e) provide for public, commercial and community broadcasting services.

Functions of Commission

4. (1) Subject to the other provisions of this Act, the Commission shall regulate broadcasting services in a manner that would inform, educate and entertain the public and that would ensure a balanced development of broadcasting on radio and television.

(2) The Commission shall in the discharge of its duties in relation to the issue of licences and spectrum to any application under the Electronic Communications Act be guided by the following:
(a) upholding of the unity and integrity of Swaziland and the values enshrined in the Swaziland Constitution Act, 2005;

(b) safeguarding citizen’s rights to be informed freely, truthfully and objectively on all matters of public interest, national or international;

(c) promoting the development of broadcasting services which are responsive to the needs of the people of Swaziland;

(d) ensuring that licensees include in their services regular locally produced programs;

(e) preserving and promoting Swaziland culture by ensuring that licensees include in their services programs reflecting the linguistic and cultural diversity of Swaziland;

(f) promoting the provision of a diverse range of radio and television broadcasting services throughout Swaziland;

(g) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated by licensees; and

(h) ensuring fair competition between broadcasting licensees.

**Powers of Commission**

5. The Commission shall have power to -

   (a) inquire into public complaints against a licensee and take any action it considers appropriate;

   (b) set acceptable standards for programs and advertising and monitor compliance with those standards; and

   (c) ensure that broadcasting services –

      (i) are of such a nature as not to encourage or incite crime or racial hatred leading to disorder or offending public feeling;

      (ii) give adequate coverage to information, education, culture, entertainment and recreation; and

      (iii) are impartial and accurate.
Prohibition of provision of broadcasting service without a licence

6. (1) Notwithstanding the Electronic Communications Act, and subject to the provisions of this Act, no person shall operate or provide a broadcasting service in Swaziland otherwise than in accordance with the terms and conditions of a licence issued by the Commission and on payment of such fees as the Minister may, on the recommendation of the Commission, prescribe.

(2) Subject to subsection (1), a broadcasting licence shall authorize the licensee to provide any of the following classes of broadcasting services -

(a) a public broadcasting service;
(b) a commercial broadcasting service;
(c) a community broadcasting service; or
(d) a subscription broadcasting service.

Commercial broadcasting services

7. (1) A commercial broadcasting licence may be granted by the Commission to provide –

(a) a diverse range of programming addressing a wide section of the Kingdom;
(b) programming in the official language or in any other local language of the Kingdom widely spoken in the Kingdom or any particular area; and
(c) within a reasonable time, comprehensive coverage of the areas which a licensee is licensed to serve.

(2) All programs by a commercial broadcasting service shall, subject to the conditions of a licence and regulations of the Commission –

(a) reflect the culture, character, needs and aspirations of the people in the areas that the licensee is licensed to serve;
(b) provide an appropriate amount of local or national programming as may be prescribed;
(c) include news and information programs on a regular basis, including discussion on matters of national, regional, and where appropriate, local significance; and
(d) meet the highest standards of journalistic professionalism.
Community broadcasting services

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

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

(b) free-to-air television services.

(2) Any person who wishes to apply for a community broadcasting service licence shall do so in accordance with the provisions of the Electronic Communications Act relating to the application for a radio licence.

Criteria for community broadcasting service licence

9. A community broadcasting service shall be –

(a) for community purposes;

(b) received by commonly available equipment;

(c) free to the public; and

(d) produced and broadcast in the language of the community.

Eligibility for community broadcasting licence

10. (1) An applicant shall not be eligible for a community broadcasting licence if the applicant –

(a) is profit making;

(b) is wholly foreign owned;

(c) has been convicted of any offence involving dishonesty;

(d) is a political party or entity or holds office in such entity; or

(e) is an operator, shareholder, employee or holds an interest in any media establishment.

(2) A newspaper, private radio, commercial radio or television station proprietor shall not own or control any share or interest in a community radio station.
Community to run broadcast

11. (1) A community broadcasting service shall serve a community, and the members of such a community that it is intended to serve shall be given an opportunity to run the service.

(2) The programming provided by a community broadcasting service shall reflect the needs of the people in the community which shall include culture, language and demographic needs, and shall –

(a) provide a distinct broadcasting service dealing specifically with issues which are nor predominantly dealt with by the broadcasting service covering the same area;
(b) shall serve to eradicate information poverty through participatory communication in the community;
(c) be informative, educational and entertaining;
(d) focus on the provision of programs that highlight grass root community issues including but not limited to developmental and general educational, environmental, local, international and current affairs and reflect local culture;
(e) promote the development of a sense of common purpose and improve the quality of life; and
(f) help foster cultural and communal identity.

Availability of frequency

12. Subject to Part VII of the Electronic Communications Act with regard to radio frequency management, the Commission shall, before issuance of a community broadcasting service licence, be guided by the number of available frequencies for community broadcasting.

Duration of community broadcasting service licence

13. A community broadcast licence shall be for a period of two (2) years, and shall be renewable subject to such terms and conditions that the Commission may stipulate.

Prohibition of holding more than one community radio

14. (1) A person shall not hold more than one community radio licence at any one time.
(2) A community radio station shall have, and use equipment in accordance with the International Telecommunication Union specifications.

**Subscription broadcasting services**

15. (1) A subscription broadcasting service licence shall, for purposes of providing the broadcasting service, draw revenue from subscription, advertising and sponsorship.

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

**Free to air broadcasting services**

16. (1) Every commercial broadcasting service licence shall, subject to the conditions of the licence, provide such free-to-air broadcasting services as may be determined by the Commission.

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

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

**Licensing of operator of diffusion service**

17. (1) Subject to the other provisions of this Act, no person shall operate a diffusion service in Swaziland otherwise than in accordance with the terms and conditions of a licence issued by the Commission and on payment of such fees as may be prescribed.

(2) The provisions of subsections (2) and (3) of section 20 shall apply with the necessary medication to operators of diffusion services.
Licensing procedure for diffusion service

18. (1) Subject to the provisions of the Electronic Communications Act, the Commission shall put the frequencies assigned to the various broadcasting sector up for public tender as soon as they become available and state the deadline for receiving the applications.

(2) An application for a licence shall be made to the Commission in accordance with the Electronic Communications Act and shall, in addition to the requirements under that Act, be accompanied by the following particulars:

(a) the name of the broadcasting service;
(b) the name and place or residence of the directors or procedures of the broadcasting service;
(c) the name, place of business and place of residence, if any, of the proprietors of the business;
(d) the nationality of the applicant;
(e) evidence of financial capability to operate a broadcasting service; and
(f) such other information as the Commission may require and as may be prescribed.

(3) The Commission shall, thirty days after the deadline for applications referred to in subsection (1), publish a list of all applicants by notice in the Gazette and in the national and print media, giving particulars of the applicant, the licence area and the nature of the proposed service.

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

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

(6) The Commission shall make a decision within sixty days after the receipt of the applications, or in the case where there are objections, within sixty days after the public hearing.
Subject to subsection (6), the Commission may decide to grant a temporary licence subject to such conditions as it considers necessary.

Notwithstanding the provisions of the Electronic Communications Act, the Commission shall not grant a licence where the applicant –

(a) already holds a licence directly or indirectly, controls or has an interest in an organization, association or company which already holds a licence;
(b) is not a Swazi citizen or is not ordinarily resident in Swaziland;
(c) is an office bearer in a political party or is actively engaged in politics;
(d) is a political party or association;
(e) has been declared bankrupt or insolvent by a court of law, or has been convicted of any offence involving fraud or dishonesty; or
(f) is a body corporate which is registered in a foreign country or where twenty percent or more of the directors are foreign nationals.

Consideration of application

19. (1) In addition to the provisions of the Electronic Communications Act, the Commission shall, in determining whether to grant an application for a licence, have regard to -

(a) any objection made under section 17;
(b) the objects of this Act specified in section 3;
(c) whether or not the applicant is qualified to offer the broadcasting service;
(d) the likelihood that the applicant shall comply with any condition of the licence and
(e) the ability of the applicant to satisfy the Commission that it shall comply with the code of conduct specified in the Schedule.

(2) The Commission shall promote pluralism in the media by giving priority of consideration to applicants who are able to satisfy the Commission that their broadcasting
services shall be subject to no editorial control other than an independent editorial control exercised from within the broadcasting of the prospective licensee.

**Grant or refusal of licence**

20. (1) Subject to section 18, the Commission shall inform the applicant and the objector, if any –

(a) of its decision to grant or refuse the application for a licence; and
(b) of the reasons for its decision.

(2) Where the Commission does not make a decision on an application at the end of the period of sixty days specified in section 18, the Commission shall be deemed to have refused the licence.

(3) The Commission may grant a licence subject to such terms and conditions as it thinks fit to impose.

(4) Notwithstanding the other provisions of this Act and the Electronic Communications Act, where the Commission is of the opinion that, by granting the application, the attainment of the objective of promoting a diverse range of radio and television broadcasting services and the plural nature of Swaziland may be impeded, the Commission may refuse an application.

**Conditions of licence**

21. (1) A broadcasting licence granted under the Electronic Communications Act and subject to this Act shall be granted subject to the additional conditions as may be prescribed in the licence.

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

(a) the site or sites at which any broadcasting stations to be operated under the licence are to be located and the manner of their installation;

(b) the kind of broadcasting authorized by the licence and the type of and standard of broadcasting stations apparatus to be used in any such broadcasting station;
(c) the payment to the Commission of any annual or other periodic licence fees;

(d) the furnishing of such document, accounts, returns, estimates and other information as the Commission considers necessary for the purposes of exercising or performing the powers and functions of the Commission under this Act and the Swaziland Communications Commission Act;

(e) reference of specified matters to the Commission for determination;

(f) compliance with directions given by the Commission from time to time in relation to specified matters;

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

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

(i) a requirement that the licensee shall afford, in such manner as may be prescribed, a right of reply to a person whose character, goodwill or reputation has been adversely affected by a broadcast; and

(j) the amount of any charge or fee leviable by the licensee from any person who avails themselves of the broadcasting service provided by the licensee.

(3) A licensee shall comply with the terms and conditions of licence and shall be subject to the Electronic Communications Act.

(4) A licensee shall carry out its activities in compliance with the code of conduct specified in the Schedule.

**Payment of fees**

22. (1) The conditions of a licence shall require the payment to the Commission of a prescribed fee on grant of a licence and of annual or other periodic fees.

(2) The fees required to be prescribed under subsection (1) shall be in accordance with such tariff as may be from time to time be fixed by the Commission.
Offence by licensee

23. The licensee commits an offence he is required by virtue of any condition imposed under this Act to provide the Commission with any information; and in compliance with the condition, provides the Commission with information which is false in a material particular.

Assignment or transfer of licence

24. (1) A licence cannot be capable of being bought, sold, leased, mortgaged or charged or in any manner assigned, demised or encumbered.

(2) A licence shall not be transferred or ceded to any other person without the consent of the Commission in writing.

(3) The Commission shall not give its consent to a transfer of a licence unless it is satisfied that the person to whom the licence is being transferred shall comply with all of the conditions of the licence.

Variation and revocation of licence

25. (1) Notwithstanding the Electronic Communications Act, a licensee may make a written application to the Commission to vary the terms and conditions of the licence and the Commission may vary the licence subject to such conditions as it thinks fit.

(2) Subject to subsections (5) and (7), the Commission may vary the terms and conditions of a licence for the reasons specified in subsection (3).

(3) Notwithstanding the Electronic Communications Act, and subject to subsections (5) and (7), the Commission may revoke a licence where it is satisfied that –

(a) the licensee has failed to operate within one hundred and twenty (120) days of the issue of the licence or within such additional period as may be allowed by the Commission;
(b) the licensee has ceased operating under the licence;
(c) the licensee has given the Commission information which is false or misleading in a material particular;
(d) the licensee has failed to comply with the code of conduct specified in the Schedule;
(e) it is in the public interest to do so; or
(f) the licensee no longer satisfies any of the conditions set out under section 21.

(4) Subject to subsections (5) and (7), the Commission may revoke a licence where it is satisfied that the licensee has contravened this Act, or any regulations made under this Act or a term or condition of the licence.

(5) Where the Commission is of the view that a licence should be revoked or varied, it shall give written notice of its intention to the licensee together with the reasons thereof.

(6) The Commission shall, in a notice under subsection (5), require the licensee to show cause in writing, within such time as may be specified in the notice, why the licence should not be revoked or varied.

(7) The process for considering and deciding on any amendment, suspension and termination of a licence under the Electronic Communications Act shall apply in the case of revocation, variation or suspension under this Act.

Notification of material change

26. (1) A licensee shall inform the Commission of any relevant change that may occur after the granting of a licence.

(2) Where a licensee fails to notify the Commission of any material change, the Commission may revoke the licence by notice served on the licensee and such revocation shall take effect on a date specified in the notice.

(3) The Commission shall not serve any such notice on the licensee unless the licensee has been given an opportunity to be heard in accordance with the Electronic Communications Act.

(4) In this section, “material change” in relation to a body to which a licence has been granted, means –
(a) any change affecting the characteristics of the body; or

(b) any change in the persons having control over or interests in the body.

**PART III**
**PROGRAMMING, SCHEDULING AND ADVERTISING**

*General guidelines in programming*

27. (1) A licensee shall, in its broadcasting of a licensed service, comply with the following requirements:-

(a) that nothing in its programs shall offend against good tastes, morality or decency or is likely to encourage or incite crime or lead to disorder, or be offensive to public feeling, repugnant, or conducted in bad faith;

(b) that any news given, in whatever form, in its programs is presented with due accuracy and impartiality;

(c) that due impartiality is preserved on the part of the person providing the service as respect matters of political or industrial controversy or relating to current public policy;

(d) that due responsibility is exercised with respect to the content of any of its programs which are religious programs, which do not involve -

   (i) any improper exploitation of susceptibilities of those watching the programs; or

   (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination;

(e) that its programs do not include any technical device which, by using images of brief duration or by other means, exploit the possibility of conveying a message to, or otherwise influencing the minds of persons watching the programs without their being aware, or fully aware, of what has occurred; and

(f) that its programs do not encourage or foster hatred or racial tension.

(2) A series of programs may be considered as a whole in determining whether the requirements of subsection (1) are being complied with.
**Broadcasters to determine program standards**

28. (1) Every licensee shall develop a code of professional standards which shall comply with the minimum requirements of –

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

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

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

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

(e) protection of the integrity of minors by clearly classifying and distributing programs that may endanger the development of a child; and

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

**PART IV**

**CONTENTS OF PROGRAM**

**Standards and Ethics**

29. (1) The Commission shall set up a Standards Committee.

(2) The Standards Committee shall consist of –

(a) a chairperson; and

(b) six (6) persons who shall not be members of the Commission.

(3) The chairperson and members of the Standards Committee shall be appointed by the Commission on such terms and conditions as it thinks fit.

(4) The Standards Committee shall, with the approval of the Commission, draw up a code of ethics and advertising practices for licensees.

(5) The code of ethics and advertising practices specified in subsection (4) shall give guidance to -
(a) the technical standards required in the preparation, production and presentation of broadcast programs including the need for subtitling for the benefit of the deaf where applicable;

(b) the standards and practice in advertising and in the sponsorship of programs, including the absence of discrimination;

(c) the promotion of locally-produced programs;

(e) the optimization of air-time occupancy; and

(e) standards of taste and decency for broadcasting programs particularly having regard to the portrayal of violence or sexual conduct.

(6) When drawing up or reviewing the code of ethics and advertising practice, the Standards Committee shall consult –

(a) every licensee; and

(b) a spectrum of listeners and viewers.

(7) The Standards Committee shall conduct audience research in such manner and at such times as the Commission may determine.

(8) The Standards Committee shall, in light of the research conducted under subsection (7), make periodic reports to the Commission on the standards attained by every licensee.

(9) The Commission may make different provisions in the code of ethics and advertising for different cases or circumstances.

Review of Code

30. (1) The Commission shall, from time to time, review the code under section 29, and shall give guidance as to -

(a) the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programs included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programs;

(b) the rules to be observed with respect to the inclusion in such programs of appeals for donations; and
(c) such other standards and practices for such programs as the Commission may consider necessary.

(2) The licensee shall comply with the provisions of the code.

(3) The Commission shall, in drawing up or revising the code under this section, take into account the international obligations of Swaziland.

(4) The Commission shall publish the code drawn up under section 29 and every revision of it, in such manner as it considers appropriate.

PART V
ADVERTISING

Advertising

31. (1) A licensee shall comply with the rules specified in subsection (2) hereof in relation to a licensed service.

(2) A licensed service shall not include –

(a) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature;

(b) any advertisement which is directed towards any political end;

(c) any advertisement which has any relation to any industrial dispute other than an advertisement of a public service nature inserted by, or on behalf of a government department;

(d) unreasonable discrimination either against or in favour of any particular advertiser; and

(e) without the prior approval of the Commission, a program which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licensee is prohibited from advertising by virtue of any provision of section 9.

(3) Nothing in subsection (1) shall be construed as prohibiting the inclusion in a licensed service of any broadcast which complies with any rules prescribed by the Commission.

(4) The Commission shall not act as an advertising agent.
Classification and description of advertisements

32. The Commission shall –
   (a) consult the Minister as to the classes and descriptions of advertisements
       which shall not be included in licensed services and the methods of
       advertising or sponsorship which shall not be employed in, or in connection
       with, the provision of such service; and

   (b) carry out any directions which the Minister may give to the Commission in
       such matters.

Power to give directions

33. (1) The Commission may exercise methods of control for the purposes of ensuring
    that the provisions of the code are complied with, and for the purpose of securing
    compliance with requirements imposed under subsection (5) which go beyond the
    requirements of the code, shall include a power to give directions to the licensee -

    (a) with respect to the classes and descriptions of advertisements and methods
        of advertising or sponsorship to be excluded, or to be excluded in
        particular circumstances; or

    (b) with respect to the exclusion of a particular advertisement, or its
        exclusion in particular circumstances.

    (2) The Commission may give directions to any person holding any class of licence
        with respect to the times when advertisements are to be allowed.

    (3) Directions under this section may, to any degree, either be general or specific,
        qualified or unqualified; and directions under subsection (2) may, in particular, relate to –

        (a) the maximum amount of time to be given to advertisements in any
            hour or other period;

        b) the minimum interval which shall lapse between any two periods given
            to advertisements and the number of each period to be allowed in any
            program or in any hour or day; and
c) the exclusion of advertisements from a specified part of a licensed service.

(4) The Commission may make different provision for different parts of the day, different days of the week, different types of programs or for other differing circumstances.

PART VI
COMPLAINTS

Complaints relating to public broadcasting or broadcasting services

34. Where a person has made a complaint to the Corporation or to a broadcasting licensee on the ground that the Corporation or licensee has, in providing a broadcasting service, acted contrary to a code of practice as provided under the Schedule; and such person has not received a response within fourteen (14) days after making the complaint, or the person has received a response within that period but considers that response to be inadequate, such person may lodge a complaint with the Commission about the matter.

Investigating of complaints relating to Corporation or other broadcaster

35. (1) Subject to subsection (2), the Commission shall investigate the complaint made under section 34.

(2) The Commission shall not investigate a complaint if it is satisfied that –

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

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

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

(3) When considering a complaint under subsection (2), the Commission shall afford a hearing to every interested person.

(4) A hearing may, at the discretion of the Commission, be held in private.

(5) The Commission shall notify the complainant of the results of such an investigation within a reasonable time.
**Action of Commission where complaint justified**

36. (1) If, having investigated a complaint, the Commission is satisfied that –

   (a) the complaint is justified; and
   (b) the Commission should take action to obligate the Corporation or other licensee to comply with the relevant code of practice;

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

   (2) Subject to subsection (1), a licensee may be required to broadcast or publish an apology or retraction.

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

37. (1) If the Commission has made a recommendation to the Corporation or licensee under section 36 and the Corporation or licensee, as the case may be, does not take action that the Commission considers to be appropriate within fourteen (14) days after the recommendation was given, the Commission may by notice in writing, require the Corporation or licensee to make good the default within a specified time.

   (2) If the Corporation or licensee fails to comply with the notice referred to in subsection (1), the Commission shall apply to the High Court for an order compelling the Corporation or licensee to remedy the default and the court may make such order on the application as it thinks fit.

**Obligation to keep records**

38. A licensee shall –

   (a) keep and store sound and video recordings of all programs that have been broadcast or re-broadcast for a minimum period of three (3) months after the date of transmission of the broadcast or re-broadcast, or for such further period as may be directed by the Commission; and

   (b) on demand by the Commission, produce such material that has been broadcast for examination or reproduction.
PART VII
GENERAL

Directives from Minister

39. (1) The Minister may at any time by notice, require the Commission to direct the licensees specified in the notice to publish, at such times as may be specified in the notice, such announcement as is so specified, with or without visual images of any picture, scene or object mentioned in the announcement.

(2) Where the licensee publishes any announcement under subsection (1), the licensee may announce that the publication is pursuant to a direction by the Minister.

(3) The Minister may at any time by notice, require the Commission to direct any licensee specified in the notice to refrain from including in the programs included in their licensed services, any matter or classes of matter specified in the notice.

(4) Where the Commission –

   (a) gives a licensee a direction in accordance with a notice under subsection (3);

   (b) in consequence of the revocation by the Minister of such a direction notice; or

   (c) in consequence of an expiry of a notice;

the licensee in question may publish an announcement stating the giving or revocation of the direction, or of the expiration of the notice, as the case may be.

(5) The powers conferred by this section are in addition to any power specifically conferred on the Minister by any provision of this Act.

Supervision of programs

40. (1) For the purpose of maintaining supervision over the programs included in a licensed service, the Commission may make and use recordings of those programs or any part of them.

(2) Nothing contained in this Part shall be construed as requiring the Commission in the discharge of its duties under this Part with regard to licensed services and the programs included in them, to view such programs in advance of their being included in such services.
Ascertainment of public opinion

41. (1) The Commission shall make arrangements –
   (a) for ascertaining –
       (i) the state of public opinion concerning programs included in licensed services;
       (ii) any effects of such programs on the attitudes or behaviour of persons who watch them; and

   (b) for the purpose of assisting the licensee to perform their functions under this Act in relation to the programs to be included in the various services for purposes of ascertaining the types of programs that members of the public would like to be included in licensed services.

(2) Subject to subsection (1), the Commission shall –

   (a) ensure that any research undertaken in pursuance of the arrangement is undertaken by persons who are neither members nor employees of the Commission; and

   (b) include provision for full consideration by the Commission of the full results of any such research.

Offence of providing unlicensed television services

42. A person who provides any unlicensed television service under this Part commits an offence and shall be liable on conviction of the offence to a fine not exceeding two hundred and fifty thousand Emalangeni (E250,000.00), or to imprisonment for a period not exceeding twenty four months, or to both fine and imprisonment.

Powers of the King in public emergency

43. (1) Where there is in force a proclamation of a state of public emergency or threatened public emergency under the Constitution of the Kingdom of Swaziland Act, 2005, the King may make an order authorising any officer or any authority to -
(a) take over all broadcasting stations or any particular broadcasting station in Swaziland; and

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

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

(2) When an officer or an authority is authorized to take over a broadcasting station in terms of subsection (1), the person owning or controlling the broadcasting station shall give up possession to the King or the officer or authority, and the person employed in, working or maintaining the broadcasting station, or in carrying on a broadcasting service from the broadcasting station shall, if the King in terms of that subsection requires their exclusive services, diligently and faithfully obey, during the period the broadcasting station is in possession of the officer or authority all such orders and other directions as the officer or authority may give in connection with the working or maintenance of the broadcasting station.

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

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

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

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

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

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

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

(b) the fees payable under the Act;

(c) the form and manner in which an application for a licence is to be made and the information to be supplied in connection therewith; and

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

FIRST SCHEDULE
(Under section 29)

CODE OF CONDUCT FOR BROADCASTING SERVICES

Preamble

1. The fundamental principle to be upheld is that freedom of all licensees is indivisible from, and subject to, the same restraints as those relevant to the individual person, and is founded on the individual’s right to be informed and to freely receive and disseminate opinions.

General

2. A licensee shall –

(a) not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or public order or relations between sections of the population;
(b) not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity; and 
(c) exercise due care and responsibility in the presentation of programs where a large number of children are likely to be part of the audience.

*News*

3. (1) A licensee shall report news truthfully, accurately and objectively.

(2) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by -

(a) distortion, exaggeration or misrepresentation;
(b) material omission; or
(c) summarization.

(3) News that may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact shall be broadcast fairly with due regard to context and importance:

Provided that where a report is not based on fact or is founded on opinion, supposition, rumors or allegations, it shall be presented in such manner as to indicate clearly that such is the case.

(4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified, and where such verification is not practicable, that fact shall be mentioned in the report.

(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified without reservation or delay, and such rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.

(6) Reports, photograph or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity, due regard being had to the prevailing moral climate, and a licensee shall avoid the broadcasting of obscene or lascivious matter.

(7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.
Commentary

4. (1) A licensee shall be entitled to comment on and criticize events of public importance.

(2) Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

(3) Comment shall be an honest expression of opinion.

Controversial issues of public importance

5. (1) In presenting a program in which controversial issues of public importance are discussed, a licensee shall make reasonable efforts to fairly present significant points of view either in the same program or in a subsequent one forming part of the same series of programs presented within a reasonable period of time and in substantially the same slot.

(2) A person whose views have been criticized in a broadcasting program on a controversial issue of public importance, shall be given reasonable opportunity by the licensee to reply to such criticism, should that person so request.

Elections

6. During any period of general, local or parliamentary election, and on the day of such election and ending on the day the poll is to be taken, every licensee shall comply with such guidelines as shall be issued by the Commission and Elections and Boundaries Commission.

Privacy

7. In so far as both news and comment are concerned, a licensee shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

8. A licensee shall not make any payment to any person involved in crime or other notorious behavior, or to persons who have been engaged in crime or other notorious behavior, in order to obtain information concerning any such behavior, unless compelling societal interests indicate the contrary.