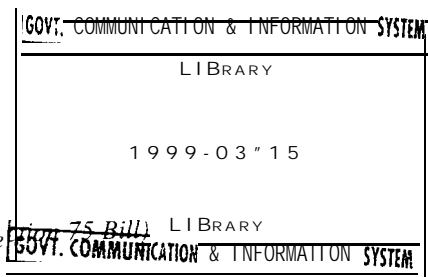


REPUBLIC OF SOUTH AFRICA

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# TELECOMMUNICATIONS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)



(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 30—99]

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP TELEKOMMUNIKASIEWESE

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWESE)

[W 30—99]

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**GENERAL EXPLANATORY NOTE:**

- [                    ]    Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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# BILL

To amend the Telecommunications Act, 1996, so as to substitute certain definitions and to insert new definitions; to make certain textual alterations; to provide for telecommunication interconnection, roaming, facilities sharing as well as for number portability; and to amend the Independent Broadcasting Authority Act, 1993, so as to substitute a certain definition; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa. as follows:—

**Amendment of Section 1 of Act 103 of 1996**

1. Section 1 of the Telecommunication Act, 1996 (hereinafter referred to as the principal Act), is hereby amended—

(u) by the insertion after the definition of “councillor” of the following definition:

“ ‘customer premises equipment’ means telecommunication equipment employed to originate, route or terminate telecommunication on the premises of a person other than a provider of a telecommunication service contemplated in ~~section 4(2) a)~~”;

(b) by the substitution for the definition of “interconnect” of the following definition:

“ ‘interconnect. means the provision of telecommunication and ancillary services by one provider of a telecommunication service to another provider of a telecommunication service in such a way that users of one system may communicate with users of, or use services provided by means of, another telecommunication system, including—

(a) the establishment of a physical connection that links telecommunication systems;

(b) the provision of services that facilitate roaming; and

(c) the provision of facilities, services, information or rights ancillary to the connection or services contemplated in paragraphs (a) and (b) and ‘interconnection’ has a corresponding meaning.”;

(c) by the insertion after the definition of “interconnect” of the following definition:

“ ‘Internet’ means an integrated computer network or networks through which users’ computers connect to each other by means of the TCP/IP family of protocols or related successor protocols.”;

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- (d) by the insertion after the definition of “Minister”, of the following definition:  
“number portability, means the ability of a user to retain the number, code or other addressing information assigned to that user, when that user changes location, or to another provider of a telecommunication service or telecommunication system.”; 5
- (e) by the insertion after the definition of “regulation” of the following definitions:  
“ ‘resell’ means to sublet, cede or assign rights over telecommunication facilities, systems or services or the capacity therefor, or in any way to part with control over, or dispose of, such facilities, systems or services or the capacity therefor; and ‘resale, has a corresponding meaning; ‘roaming’ means the ability of a subscriber to one telecommunication service provider to use the telecommunication system of another telecommunication service provider while continuing as a subscriber of the first telecommunication service provider in relation to such use; and ‘roam’ has a corresponding meaning.”; 10
- (f) by the insertion after the definition ‘telecommunication.. of the following definition:  
“ telecommunication equipment, means equipment used by a provider of telecommunication services contemplated in section 34(2)(a), to provide telecommunication services, and includes software integral to the use of such equipment and customer premises equipment.”; 15
- (g) by the substitution for the definition of “telecommunication facility” of the following definition:  
“ telecommunication facility’ [includes] means any wire, cable, antenna [mast or other thing] or any apparatus or device which is used, or may be used, for [or in connection with telecommunication] purposes of telecommunication but does not include a facility used for purposes of broadcast signal distribution or transmission or satellite news-gathering for broadcast purposes.”; 20
- (h) by the insertion after the definition of “Universal Service Fund” of the following definition:  
“ Value-added network services’ means any value-added network service including, without limitation, electronic data interchange, electronic mail, protocol conversion, access to a data base or a managed data network service, voice mail, store-and-forward fax, video-conferencing, electronic or printed telecommunication related publishing and advertising services, electronic information services, Internet service provision and any other telecommunication service in respect of which the conveyance of signals is no more than is incidental to, and necessary for, the provision of that service; but not including mobile telecommunication services or public switched telecommunication services.”; 25

#### **Amendment of section 36 of Act 103 of 1996**

2. Section 36 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph: 45  
 “(i ) national long-distance and international telecommunication services, subject to [the provisions of] section 48 [(4)]; and”.

#### **Amendment of section 41 of Act 103 of 1996**

3. Section 41 of the principal Act is hereby amended by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph: 50  
 “(ii) any private telecommunication network maintained by Transnet, [or] Eskom, the South African National Defence Force or the South African Police Services.”;

**Amendment of section 43 of Act 103 of 1996**

## 4. Section 43 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (e) of the following paragraph:

“(f) Where a person who provides a telecommunication service is required to provide interconnection in terms of this section or to make available or lease facilities in terms of section 44, that person shall, in such a manner as the Authority may determine, also provide access to any land, building, site, mast, space or any other structure that facilitates interconnection or the leasing or making available of facilities.”; and

(b) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) in the case of unwillingness or inability by the parties to negotiate or agree, propose terms and conditions **[in accordance]** not inconsistent with the guidelines contemplated in subsection (3) which, subject to renegotiation, shall be agreed by the parties within such period as the Authority may specify, failing which the Authority shall declare the terms and conditions so proposed, subject to any variation which the Authority deems fit, to be applicable between the parties;”

**Insertion of section 43A in Act 103 of 1996**

## 5. The following section is hereby inserted in the principal Act after section 43:

**“Roaming**

**43A. (1)** Any provider of a telecommunication service, when requested by another provider of a telecommunication service to provide for roaming on its network, shall agree thereto unless such a request is unreasonable.

**(2)** For the purposes of subsection (1), a request shall not be unreasonable where the Authority determines that such request is not inconsistent with the guidelines issued in terms of subsection (3).

**(3)** The Authority shall issue guidelines relating to the form, content and period for which agreements contemplated in subsection (1) shall be concluded: Provided that such guidelines shall be enforceable with respect to an area where the requesting licensee has not installed the network if such lack of installation is not inconsistent with the network installation schedule for which that licensee has been licensed.”

**Amendment of section 44 of Act 103 of 1996**

## 6. Section 44 of the principal Act is hereby amended—

(a) by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

“(b) Any provider of a telecommunication service shall, when requested by another provider of a telecommunication service, lease or otherwise make available telecommunication facilities to such other provider pursuant to an agreement to be entered into between the parties, unless such request is unreasonable.”;

(b) by the substitution for subsection (7) of the following subsection:

“(7) In the application of this section [43(1)(e) (iii) and **(4)(b)** in relation to making the telecommunication facilities of Telkom available to another person] and section 43 and where the Authority is satisfied that Telkom is unwilling or unable to provide interconnection or to make suitable facilities available to **[that]** a person requesting such interconnection or facilities within a reasonable period of time, the Authority may **[instead of proposing terms and conditions as contemplated in section 43(4)(b)] determine** terms and conditions not

inconsistent with the prescribed guidelines and, with regard to unwillingness or inability to provide facilities, the Authority may instead of determining terms and conditions authorise **[that] the requesting** person to provide or obtain any necessary telecommunication facilities other than from Telkom on conditions determined by the Authority, notwithstanding the provisions of section 37(2)(c), 38(2), 40(2), **[and] 41(z)(a) and this section.**”; and

(c) by the addition of the following subsections:

“(9) The provisions of sections 43 and 44 shall apply, with the necessary changes, in relation to the guidelines and agreements contemplated in section 43A. 10

“(10) The guidelines issued in terms of sections 43 and 44 shall have general applicability, as long as they are not inconsistent with the guidelines issued by the Minister.”.

#### **Amendment of section 56 of Act 103 of 1996**

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7. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person shall supply telecommunication facilities or equipment unless, subject to subsection (2), he or she has been registered by the Authority and is in possession of a permit contemplated in section 31 20 or unless the telecommunication facilities or equipment have been approved by the Authority as contemplated in section 54(1), or do not require approval as contemplated in section 54(2).”.

#### **Amendment of section 61 of Act 103 of 1996**

8. The English text of section 61 of the principal Act is hereby amended— 25

(a) by the substitution for subsection (2) of the following subsection:

“(2) The **[Authority] Agency** shall utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).”.

(b) by the substitution in subsection (3) for the introductory words of the following introductory words:

“(3) The **[Authority] Agency—**”.

#### **Amendment of section 66 of Act 103 of 1996**

9. Section 66 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the introductory words of the following introductory words:

“(1) The money in the Universal Service Fund shall be utilised **[exclusively] for the payment of subsidies—**”;

(b) by the addition to subsection (1) of the following paragraph:

“(c) for the establishment of such telecommunication universal access points 40 as may be prescribed from time to time.”.

#### **Amendment of section 89 of Act 103 of 1996**

10. Section 89 of the principal Act is hereby amended by the addition of the following subsections:

“(4) The numbering plan may include provision for number portabil- 45 ity.

(5) The Authority may determine that any licensee shall implement number portability in the prescribed manner.

(6) Without limitation of the powers of the Authority under subsection (5), the Authority may prescribe— 50

(a) the technical method of facilitating number portability;

(b) the time by which number portability shall be implemented; and

(c) any charges that may be made in relation to number portability.’..

**Amendment of section 96 of Act 103 of 1996**

**11. Section 96 of the principal Act is hereby amended by the substitution** in subsection (5) for the introductory words of the following introductory words:

“(5) The provisions of subsection [(1)](4) shall not apply in respect of—”.

**Amendment of section 98 of Act 103 of 1996**

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**12. Section 98 of the principal Act is hereby amended by the substitution** for subsection (4) of the following subsection:

“(4) When an inspector performs any function in terms of section [100] 99, he or she shall have such certificate of appointment in his or her possession and show it at the request of any person affected by the performance of that function.”.

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**Amendment of section 102 of Act 103 of 1996**

**13. Section 102 of the principal Act is hereby amended by the substitution** for subsection (2) of the following subsection:

“(2) The court convicting a person of any offence contemplated in section 101 may, in addition to any fine or imprisonment which it may impose in terms of [that] subsection (1), declare any telecommunication facility or equipment and any other article, object or thing by means of which such offence was committed, to be forfeited to the Authority for the credit of the [Telecommunications] National Revenue Fund: Provided that no such declaration shall be so made upon proof to the satisfaction of the court that such facility, equipment, article, object or thing is not the property of the person so convicted and that its owner was unable to prevent it from being used as a means to commit such offence. . . .”

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**Amendment of section 1 of Act 153 of 1993**

**14. Section 1 of the Independent Broadcasting Authority Act, 1993, is hereby** amended by the substitution for the definition of ‘broadcasting signal distribution.’ of the following definition:

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“ ‘broadcasting signal distribution’ means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed, to any geographical broadcast target area by means of a telecommunications process [ , but excluding the use of facilities which operate on frequencies outside the broadcasting services frequency bands,] regardless of the number of point-to-point links used when such links are used for the ultimate geographical multipoint destination in any area:”.

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**Short title**

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15. This is the Telecommunications Amendment Act, 1999.

## **MEMORANDUM ON THE OBJECTS OF THE TELECOMMUNICATIONS AMENDMENT BILL**

The proposed granting of additional mobile cellular telephone licences necessitates amendments to the Telecommunications Act, 1996 (Act No. 103 of 1996).

The Bill seeks to add a number of definitions and to amend others. The added definitions are those of "customer premises equipment", "internet", "number portability", "resell", "roaming", "telecommunications equipment", and "value-added network services (VANS)". VANS, Internet and telecommunications equipment are defined as they appear in the Telkom Licence. The definitions of "Interconnect" and "telecommunication facility" are amended so as to provide for the changed circumstances that will be brought about when additional cellular licences are issued.

The Bill also seeks to correct certain textual errors in the principal Act.

The Bill proposes to amend section 43 of the principal Act so as to provide for roaming on the different cellular networks in South Africa. The Authority must issue guidelines in respect of roaming. It is foreseen that roaming will be required temporarily until the new licencees have established a network.

The Bill also proposes to amend section 89 so as to provide for number portability. In future it will be possible for a subscriber to, for example MTN, to migrate to Vodacom without losing his or her telephone number. This will result in savings as documentation such as letterheads and business cards need not be amended.

The Bill also seeks to amend the definition of "broadcasting signal distribution" in section 1 of the Independent Broadcasting Authority Act consequentially.

### **PARLIAMENTARY PROCEDURE**

The Department of Communications and the State Law Advisers are of the opinion that the procedure established by section 75 of the Constitution should be followed in respect of this Bill since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.