

REPUBLIC OF SOUTH AFRICA

TELECOMMUNICATIONS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 22630 of 29 August 2001) (The English text is the official text of the Bill)

(MINISTER OF COMMUNICATIONS)

[B 65—2001]

ISBN 0 621 31328 9

No. of copies printed 1 800

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.

BILL

To amend the Telecommunications Act, 1996 (Act No. 103 of 1996), so as to insert new definitions and substitute other definitions; to make provision for radio frequency access in the 1800 MHz frequency band; to make provision for new kinds of licences; to make further provision for applications for licences and the consideration thereof; to provide anew for the taking of decisions on applications for licences; to provide for public switched telecommunication services and public switched telecommunication networks; to further regulate mobile cellular telecommunication services; to provide for the commencement or duration of certain licences; to further regulate private telecommunication networks; to make further provision for the interconnection of telecommunication systems; to further provide for the availability of telecommunication facilities; to make provision for the establishment of the Telecommunication Mediation and Arbitration Committee; to provide for emergency centres; to further regulate numbering plans; to make further provision for certain functions of the Independent Communications Authority of South Africa; and to make provision for the establishment of a telecommunications museum; to provide for the repeal of a particular law and the amendment of two others; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 103 of 1996, as amended by section 23 of Act 13 of 2000

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

(a) by the insertion after the definition of “broadcasting signal distribution” of the following definitions:

“ ‘carrier of carriers’ means a telecommunication service (including any signal conveyed by means of the telecommunication system of that service) which—

(a) originates on the telecommunication system of a public switched telecommunication service licensee or mobile cellular telecommunication service licensee in the Republic and terminates in a telecommunication system in another country; or

(b) originates and terminates in a telecommunication system of an operator licensed in another country to provide international services, but is conveyed via a telecommunication system in the Republic on a wholesale basis,

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but which specifically excludes the termination of international telecommunication services to end-users directly;
 ‘carrier pre-selection’ means any facility by which subscribers to a telecommunications service can access the services of an interconnected national long-distance telecommunications service and international telecommunications operator;”;

- (c) by the insertion after the definition ‘Director-General’ of the following definitions:
- “ ‘directories’ means a list (which may be made available in separate parts and through different media) of customers of a designated licensee or multiple licensees and their telephone numbers which are generally arranged in alphabetical order and not by reference to a description of the trades, professions or businesses carried on by those customers;
 ‘directory enquiry service’ means the provision of information contained in directories;
 ‘end office’ means a location or a place on the public switched telecommunications network where user lines or trunks, or user lines and trunks, are interconnected;
 ‘ESI-TEL’ means a division of Eskom Enterprises (Pty) Ltd, which is a subsidiary of Eskom);”;
- (d) by the substitution for the definition of “fixed line operator” of the following definition:
- “ ‘fixed-line operator’ means [**Telkom and**] a holder of a licence to provide a public switched telecommunication service or any other person who provides a licensed telecommunication service by means of a telecommunication system consisting mainly of fixed lines, and ‘operator’ shall be construed accordingly;”;
- (e) by the insertion after the definition of “fixed-line operator” of the following definition:
- “ ‘fixed-mobile service’ means a connection to the public switched telephone network that will be provided by the holder of a public switched telecommunication service licence by means of a wireless connection between such licensee’s end-office and the end-user’s premises, provided that nothing in this definition shall exempt the provider of a fixed mobile service from holding a licence under section 30 or section 37;”;
- (f) by the substitution for the definition of “interconnect” of the following definition:
- “ ‘interconnect’ means [**to link two**] the physical or logical linking of telecommunications systems [so that users of either] in order to enable any user of a system [may] so linked to communicate with [users] any user of, or utilise services provided by means of, [the] another system [or any other telecommunication system] so linked, and ‘interconnection’ has a corresponding meaning;”;
- (g) by the insertion after the definition of “interconnect” of the following definition:
- “ ‘international telecommunication service’ means a telecommunication service (including any signal conveyed by means of the telecommunication system of such service) which—
- (a) originates in a telecommunication system in the Republic and terminates in a telecommunication system in another country or *vice versa*; or
- (b) originates and terminates in a telecommunication system in another country but is conveyed via a telecommunication system in the Republic;”;
- (h) by the substitution for the definition of “Minister” of the following definition:
- “ ‘Minister’ means the Minister [**for Posts, Telecommunications and Broadcasting**] of Communications;”;
- (i) by the insertion after the definition of “Minister” of the following definitions:
- “ ‘mobile cellular telecommunication services’ means the services referred to in section 37;

- ‘mobile operators’ means Vodacom (Pty) Ltd, Mobile Telephone Networks (Pty) Ltd and Cell C (Pty) Ltd;
- ‘multimedia service’ means a digital broadcasting service that combines various forms of media to communicate information or content in an interactive format, including services such as—
- (a) internet through television;
 - (b) pay-per-view;
 - (c) video on demand;
 - (d) electronic transactions (including e-commerce);
 - (e) text;
 - (f) data;
 - (g) graphics;
 - (h) animation;
 - (i) audio;
 - (j) visual content,
- but shall not include mobile cellular telecommunication services and public switched telecommunication services;
- ‘national long-distance telecommunication services’ means the services referred to in section 38;
- ‘number portability’ means a capability whereby a subscriber to a telecommunication service who so requests can retain his or her telephone number on a fixed or mobile public telecommunication network independently of the licensee providing the service;”;
- (j) by the insertion after the definition of “prescribed” of the following definitions:
- “‘private telecommunication network’ a network contemplated in section 41(1)(a).
- ‘public switched telecommunication networks’ means the telecommunication systems installed or otherwise provided, maintained and operated by a public switched telecommunication licensee for the purpose of providing public switched telecommunication services and fixed mobile services;
- ‘public switched telecommunication services’ means the provision of telecommunication services to the general public on a subscription basis referred to in section 36;
- ‘public switched telecommunication service licence’ means a licence referred to in section 34(2)(a)(i);”;
- (k) by the insertion after the definition of “radio apparatus” of the following definition:
- “‘radio frequency spectrum licence’ means a licence referred to in section 30;”;
- (l) by the insertion after the definition of “regulation” of the following definitions:
- “‘resale’ means the provision of any public switched telecommunication service by means of telecommunication facilities which are not owned by the public switched telecommunications service licensee selling such services to its customer, and “reseller” shall be construed accordingly;
- ‘second national operator’ means the second holder of a public switched telecommunication service licence;
- ‘Sentech’ means Sentech (Pty) Ltd, a company established pursuant to the Sentech Act, 1996 (Act No. 63 of 1996);”;
- (m) by the insertion after the definition of “signal” of the following definition:
- “‘small business’ (commonly referred to as an ‘SMME’) means a ‘small business’ as defined in section 1 of the National Small Business Act, 1996 (Act No. 102 of 1996);”;
- (n) by the substitution for the definition of “telecommunication facility” of the following the definition:
- “‘telecommunication facility’ includes any wire, cable, antenna, pole, mast, conduit, right of way, co-location space, equipment cabinet, rack or other thing or area which is or may be used for or in connection with telecommunication;”;
- (o) by the insertion after the definition of “Telkom” of the following definition:

- “‘third generation telecommunication frequency licence’ means the radio frequency spectrum licence referred to in section 30B;”;
- (p) by the insertion after the definition of “Transnet” of the following definition:
“‘Transtel’ means a division of Transnet;”; and
- (q) by the insertion after the definition of “Universal Service Fund” of the following definitions: 5
“‘value-added network service’ means a service referred to in section 40;
‘virtual private network’ means a private telecommunications network that makes use of the public switched telecommunication network or other telecommunication facility;
‘voice over internet protocol’ means a series of techniques permitting transmission of a voice over the internet or through one or more telecommunication facilities using internet protocol.’”.

Amendment of section 2 of Act 103 of 1996 15

2. Section 2 of the principal Act is hereby amended by the addition of the following paragraph:

- “(r) promote and facilitate convergence of telecommunication, broadcasting and information technology.”.

Amendment of section 3 of Act 103 of 1996 20

3. The following section is hereby substituted for section 3 of the principal Act:

- “3. This Act shall not apply in relation to broadcasting, broadcasting signal distribution or broadcasting services frequency bands, except as provided in sections [28(3)] 2(r) and 127 to 129 and in relation to multimedia services (if applicable).”.

Amendment of section 29 in Act 103 of 1996

4. Section 29 of the principal Act is hereby amended—

- (a) by the deletion of subsection (5); and
- (b) by the substitution for subsections (6) and (7) of the following subsections, respectively: 30
“(6) After **[the hearing and after]** due consideration of any written representations received pursuant to the notice mentioned in subsection (4) [or tendered at the hearing] the Authority shall adopt the frequency band plan in question, with or without amendment, and cause such plan to be published in the *Gazette*. 35
(7) (a) Any frequency band plan adopted in terms of this section and all such comments, representations and other documents as have been received in response to the notice contemplated in subsection (4) **[or tendered at the hearing]**, shall be kept at the offices of the Authority and shall, subject to paragraph (b), be open to public inspection by interested persons during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof. 40
(b) The provisions of section 34 **[(4) and (5)]** shall apply, with the necessary changes, in relation to any comments or representations 45 contemplated in paragraph (a).”.

Insertion of sections 30A and 30B in Act 103 of 1996

5. The following sections are hereby inserted in the principal Act after section 30:

“Radio frequency spectrum access in 1800 MHz frequency band

30A. (1) (a) Within six months after the date of commencement of this paragraph or such longer period as the Minister may determine, the mobile operators may apply to the Authority for access to the radio frequency spectrum in the 1800 MHz frequency band to provide mobile cellular 50

telecommunication services and such other services as the mobile operators are, from time-to-time, licensed to provide.

(b) Within 30 days of receipt of the application contemplated in paragraph (a) the Authority shall assign to each mobile operator a radio frequency spectrum—

- (i) against the payment of such once-off fee as the Minister shall determine by notice in the *Gazette*; and
- (ii) subject to such conditions as the Authority may prescribe.

(c) For purposes of paragraph (b)(i), the Minister may specify by notice in the *Gazette* a single or multiple payment schedule pursuant to which the mobile operators shall make payment, and the terms and conditions of such payment.

(d) Prior to the date a radio frequency spectrum is assigned to a mobile operator as contemplated in paragraph (b), the holder of a licence which exists at the commencement of the Telecommunications Amendment Act, 2001, shall, in accordance with radio regulations governing migration and clearing of radio spectrum bands, clear the spectrum to be occupied by such mobile operator.

(2) (a) The second national operator and Telkom shall each be deemed to be a holder of a radio frequency spectrum licence in the 1800 MHz frequency band to provide public switched telecommunication services, fixed-mobile services and such other services as the second national operator, from time-to-time, is licensed to provide.

(b) Within six months after the date the second national operator is granted a public switched telecommunication service licence, or such longer period as the Minister may determine, Telkom may apply to the Authority for a radio frequency spectrum licence in the 1800 MHz frequency band to provide public switched telecommunication services, fixed-mobile services and such other services as Telkom, from time-to-time, is licensed to provide.

(c) The Authority shall issue to the second national operator and Telkom a radio frequency spectrum licence contemplated in paragraph (a) or (b), as the case may be—

- (i) against the payment of such once-off fee as the Minister shall determine by notice in the *Gazette*; and
- (ii) subject to such conditions as the Authority may specify in that licence.

(d) For purposes of paragraph (c)(i), the Minister may specify by notice in the *Gazette* a single or multiple payment schedule pursuant to which the second national operator and Telkom, respectively, shall make payment, and the terms and conditions of such payment.

(3) (a) Holders of a radio frequency spectrum licence in the 1800 MHz frequency band shall co-ordinate, in good faith, their respective frequency usage with other such licensees to—

- (i) avoid harmful interference among licensees;
- (ii) ensure efficient use of the 1800 MHz frequency band; and
- (iii) allow for the provision of cost-efficient services.

(b) The Authority may prescribe regulations governing the co-ordination contemplated in paragraph (a), which may include a process for the speedy resolution of disputes among licensees.

(4) In determining the fees contemplated in subsections (1)(b)(i) and (2)(c)(i) the Minister shall take into account—

- (i) MHz pair per population per licence year;
- (ii) provision of paired or unpaired spectrum;
- (iii) technical and administrative cost of spectrum management, including projected costs for Authority involvement in frequency co-ordination contemplated in subsection (3); and
- (iv) any other matter that is consistent with section 2.

Third generation telecommunication radio frequency spectrum licence

30B. (1) (a) Within six months after the date of commencement of this paragraph or such longer period as the Minister may determine, the mobile operators may apply to the Authority for a third generation telecommunication radio frequency spectrum licence to provide mobile

cellular telecommunication services and such other services as the mobile operators, from time-to-time, are licensed to provide.

(b) The Authority shall issue to each mobile operator a third generation telecommunication radio frequency spectrum licence contemplated in paragraph (a)—

- (i) against the payment of such once-off fee as the Minister shall determine by notice in the *Gazette*; and
- (ii) subject to such conditions as the Authority may specify in that licence.

(c) For purposes of paragraph (b)(i), the Minister may specify by notice in the *Gazette* a single or multiple payment schedule pursuant to which the mobile operators shall make payment, and the terms and conditions of such payment.

(d) Prior to the date a third generation radio frequency spectrum licence takes effect, the holder of a licence which exists at the commencement of the Telecommunications Amendment Act, 2001, shall, in accordance with radio regulations governing migration and clearing of radio spectrum bands, clear the spectrum to be occupied by such mobile operator.

(2) (a) The second national operator and Telkom shall each be deemed to be a holder of a third generation telecommunication radio frequency spectrum licence to provide public switched telecommunications services, fixed-mobile services and such other services as the second national operator and Telkom, from time-to-time, are licensed to provide.

(b) Within six months after the date the second national operator is granted a public switched telecommunications service licence, or such longer period as the Minister may determine, Telkom may apply to the Authority for a third generation telecommunication radio frequency spectrum licence to provide public switched telecommunication services, fixed-mobile services and such other services as Telkom, from time-to-time, is licensed to provide.

(c) The Authority shall issue to the second national operator and Telkom a third generation telecommunication radio frequency spectrum licence contemplated in paragraph (a) or (b), as the case may be—

- (i) against the payment of such once-off fee as the Minister shall determine by notice in the *Gazette*; and
- (ii) subject to such conditions as the Authority may specify in that licence.

(d) For purposes of paragraph (c)(i), the Minister may specify by notice in the *Gazette* a single or multiple payment schedule pursuant to which the second national operator and Telkom, respectively, shall make payment and the terms and conditions of such payment.

(3) (a) Holders of a third generation telecommunication radio frequency spectrum licence shall co-ordinate, in good faith, their respective frequency usage with other such licensees to—

- (i) avoid harmful interference among licensees;
- (ii) ensure efficient use of any applicable frequency band; and
- (iii) allow for the provision of cost-efficient services.

(b) The Authority may prescribe regulations governing the co-ordination contemplated in paragraph (a), which may include a process for the speedy resolution of disputes among licensees.

(4) In determining the fees contemplated in subsections (1)(b)(i) and (2)(c)(i), the Minister shall take into account—

- (i) MHz pair per population per licence year;
- (ii) provision of paired or unpaired spectrum;
- (iii) technical and administrative cost of spectrum management, including projected costs for Authority involvement in frequency co-ordination contemplated in subsection (3); and
- (iv) any other matter that is consistent with section 2.”.

Insertion of sections 32A, 32B and 32C in Act 103 of 1996

6. The following sections are hereby inserted in the principal Act after section 32:

“Holders of public switched telecommunication services licences and granting of further licences

32A. (1) (a) From 7 May 2002 until 7 May 2005 Telkom and the second national operator shall be the only holders of public switched telecommunication service licences. 5

(b) Subject to the feasibility study referred to in subsection (5), one or more additional national operators may be licensed to provide public switched telecommunication services from 7 May 2005.

(c) At least one of the additional operators shall be licensed to provide service-based competition. 10

(2) (a) For a period of two years after the date of commencement of the public switched telecommunication service licence the second national operator may use Telkom’s facilities on a resale basis in accordance with agreements concluded between the parties for the purposes of providing public switched telecommunication services. 15

(b) The agreements contemplated in paragraph (a) become effective within 60 days of the issuing of the public switched telecommunication service licence to the second national operator.

(3) Where Telkom and the second national operator fail to conclude agreements contemplated in subsection (2), or after the parties have negotiated in good faith and used their reasonable endeavours to resolve disputes relating to such agreements, either party may request the Authority in writing to resolve all outstanding issues. 20

(4) (a) Where the Authority receives a request contemplated in subsection (3), it shall, within 30 days of that request, determine the terms and conditions of the agreement in a manner consistent with this Act. 25

(b) Where the Authority makes a determination in terms of paragraph (a), the determination shall be binding on the parties and shall form part of the agreement between the parties.

(c) The agreement contemplated in paragraph (b) shall lapse two years after the date of its conclusion. 30

(5) (a) Before 31 December 2004 the Minister shall—

(i) determine, by way of a market study, the feasibility of granting public switched telecommunication service licences in addition to the licences referred to in subsection (1)(a); and 35

(ii) by notice in the *Gazette*, publish the determination.

(b) In conducting the market study contemplated in paragraph (a), the Minister shall consider—

(i) the Republic’s international obligations;

(ii) national and international market conditions prevailing at the time; 40

(iii) the Republic’s policy objectives; and

(iv) and any other relevant factor.

(6) (a) If the Minister determines that any additional public switched telecommunication service licence may be granted, such licence—

(i) may be granted to provide services-based competition; and 45

(ii) may only come into effect after 7 May 2005.

(b) A holder of a licence contemplated in paragraph (a) may—

(i) compete as a service-based licensee and may not provide its own facilities until the Minister so determines; and

(ii) utilises the facilities of Telkom and the second national operator on a resale basis for a period of two years from the date of commencement of its public switched telecommunication service licence, in accordance with agreements concluded between the parties for the purposes of providing public switched telecommunication services. 50

(7) Where the Minister makes the determination contemplated in subsection (5), the Authority may prescribe regulations to ensure equal and non-discriminatory access to facilities among all licensed operators. 55

(8) In any case where telecommunication facilities are made available pursuant to section 44 or the regulations promulgated thereunder to the

holder of a license to provide public switched telecommunication services, such licence holder shall have the right of resale.

Second national operator application and qualification

- 32B.** (1) The second national operator shall be granted a public switched telecommunication service licence on no less favourable terms and conditions than those of the licence held by Telkom. 5
- (2) Subject to subsection (3), such percentage of the equity interest of the second national operator shall be set aside for Esi-Tel or Transtel, or Esi-Tel and Transtel, as the Minister, with concurrence of the Minister of Public Enterprises, may determine. 10
- (3) The final determination of the equity interest of Esi-Tel or Transtel, or of Esi-Tel and Transtel, in the second national operator shall be calculated with reference to the value of the contribution of Esi-Tel or Transtel, or Esi-Tel and Transtel, as the case may be, in the second national operator.
- (4) The contribution referred to in subsection (3) may include, among other things— 15
- (a) cash;
 - (b) rights of way;
 - (c) immovable property;
 - (d) personal rights; and 20
 - (e) other assets, including existing infrastructure, facilities and equipment.

Sentech

- 32C.** (1) With effect from 7 May 2002, Sentech Limited referred to in section 4 of the Sentech Act, 1996 (Act No. 63 of 1996), shall be granted a licence to provide— 25
- (a) an international telecommunication gateway service enabling it to operate as a carrier of carriers; and
 - (b) a multimedia service.
- (2) On or before 31 December 2001, the Authority shall publish in the *Gazette* draft licences, which shall include proposed conditions on which Sentech Limited must provide the services contemplated in subsection (1). 30
- (3) Within 30 days of the publication referred to in subsection (2), Sentech Limited and any interested party may submit written comments to the Authority in connection with the proposed conditions to the licence. 35
- (4) After due consideration of the comments contemplated in subsection (3), if any, the Authority shall finalise the licences and issue them to Sentech with effect from 7 May 2002.”.

Amendment to section 33 in Act 103 of 1996

7. Section 33 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40
- “(a) as contemplated in sections 32C(1)(b), 34(2)(a)(i) to (iv) and 39 to 41; and”.

Amendment of section 34 of Act 103 of 1996

8. Section 34 of the principal Act is hereby amended— 45
- (a) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:
 - “(b) The Minister shall, in an invitation contemplated in paragraph (a), specify—
 - (i) the kind **[of service]** or kinds of services in respect of which applications are invited; 50
 - (ii) the form in which applications shall be submitted and the manner in which it is contemplated that the service shall be provided, **[or]** and the place where and times when **[a]** any document in that regard may be obtained from the Authority;

- (iii) the period within and manner in which such applications shall be lodged.
- (c) Prior to publishing any invitation contemplated in paragraph (a), the Minister shall consult with the Authority to determine the evaluation criteria to be used by the Authority in making its recommendation to the Minister pursuant to section 35(1)(a)(i) and the weighting factor applicable to each evaluation criterion.; 5
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 10
 - “(3) In the case of an application for a licence to provide a telecommunication service referred to in subsection (2) or any other telecommunication service prescribed for the purposes of this subsection the Authority **[shall] may—**”;
- (c) by the deletion in subsection (3) of paragraph (c);
- (d) by the insertion after subsection (3) of the following subsections: 15
 - “(3A) The Authority may require an applicant or an interested party who has lodged written representations in terms of subsection (3) to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary in order to consider the application. 20
 - “(3B) No application may be amended or varied after the period contemplated in subsection (2)(b)(iii).”;
- (e) by the substitution in subsection (4) for paragraph (b) of the following paragraph: 25
 - “(b) (i) The Authority may, at the request of an applicant or person who lodged representations, determine that any document or information **[relating to the financial capacity or business plans of any person or to]** that is commercially sensitive or any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question. 30
 - (ii) For purposes of this paragraph commercially sensitive document or information or other matter reasonably justifying confidentiality shall exclude documents or information that was or becomes, or as a matter of law should be, generally available to the public.; and 35
- (f) by the deletion of subsection (5).

Substitution of section 35 of Act 103 of 1996

9. The following section is hereby substituted for section 35 of the principal Act:

“Decision on applications

- 35.** (1)(a) The Authority shall, after having duly considered any application for a licence made in terms of this Act and any written submissions in relation to the applications that may be called for by the Authority and submitted to the Authority within the period determined by the Authority— 40
- (i) notify the applicant of— 45
 - (aa) in the case of an application for a licence referred to in section 34(2)(a), the Authority’s intended recommendation to the Minister, and the proposed licence conditions; and
 - (bb) in the case of any other licence application, its decision, and the licence conditions; 50
 - (ii) on request made by the applicant within the prescribed period, furnish him or her with its reasons for such recommendation or decision.
- (2) The Authority shall, in respect of an application for a licence referred to in section 34(2)(a), and after subsection (1) has been complied with, make its recommendation to the Minister, which shall include proposed licence conditions. 55
- (3) The Minister may in respect of a recommendation by the Authority contemplated in subsection (2)—
- (a) accept it;

- (b) request further information from the Authority;
- (c) refer it back to the Authority for further consideration; or
- (d) reject it.

(4) In the consideration of applications in terms of this Act, due regard shall be given to applications—

- (a) by persons from historically disadvantaged groups; and
- (b) which promote the empowerment and advancement of women in the telecommunication industry.

(5) Without derogating from subsection (4), in the evaluation of equity ownership held by persons from historically disadvantaged groups or women in an application for a licence in terms of this Act, the Authority shall give due preference for up to 30% of such equity ownership or such higher equity ownership percentage as may be prescribed.

(6) Subject to section 36(6), a licence shall be granted on conditions appropriate to the licence and consistent with the objects referred to in section 2 and the other provisions of this Act.

(7) The Authority shall, where the application has been granted, issue the licence in question to the applicant.

(8) Any licence granted in terms of this section, shall become effective on the date specified therein.

(9) Nothing in this section derogates from the rights of an applicant to be furnished with reasons for a decision under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”

Insertion of section 35A in Act 103 of 1996

10. The following section is hereby inserted in the principal Act after section 35:

“Alternative licensing methods

35A. (1) Notwithstanding sections 34 and 35—

- (a) in the case of a licence referred to section 34(2), the Minister may in specific instances determine the manner in which applications may be made and the licensing conditions that will apply; and
- (b) for all other licences, the Authority may in specific instances prescribe the licensing conditions that will apply.”

Insertion of sections 36A and 36B in Act 103 of 1996

11. The following sections are hereby inserted in the principal Act after section 36:

“Contents of expression ‘Public switched telecommunication service’

36A. (1) A ‘Public switched telecommunication service’ shall be a telecommunication service to the general public on a subscription basis, which shall include services such as—

- (a) national long-distance telecommunication service;
- (b) international telecommunication service;
- (c) local access telecommunication service contemplated in section 39;
- (d) public pay-telephone service;
- (e) marine telecommunication service;
- (f) service comprising the provision of telegrams;
- (g) service comprising supply of telecommunication equipment on the premises of a customer;
- (h) the installation, bringing into service, maintenance and repair of that part of the public switched telecommunication network that is provided, maintained and operated by the public switched telecommunication services licensee for the purposes of providing any telecommunication service, such as the provision of telecommunication circuits for—
 - (i) private circuits;
 - (ii) links between sites of the same operator or multiple operators;

- (iii) telecommunication facilities used for the provision of private telecommunication networks, including virtual private networks;
 - (iv) telecommunication facilities used for the provision of value-added network services;
 - (v) telecommunication facilities used for the provision of telecommunication services in under-serviced areas contemplated in section 40A; 5
 - (vi) telecommunication facilities used to provide voice over internet protocol;
 - (vii) third generation telecommunication facilities; 10
 - (viii) telecommunication facilities to provide fixed-mobile services in the 1800MHz frequency band; and
 - (i) any other service reasonably complementary to the provision of those services (whether provided on a fixed or mobile basis, or a combination thereof) such as the provision, repair and maintenance of equipment located on a customer's premises and any other telecommunication apparatus of any kind. 15
- (2) Nothing in this section shall exempt the holder of a public switched telecommunication service licence from holding a licence under section 30 or 37. 20

Contents of expression 'public switched telecommunication networks'

- 36B.** (1) 'public switched telecommunication networks' shall be the telecommunication systems which are installed or otherwise provided, maintained and operated by a public switched telecommunication service licensee for the purpose of providing public switched telecommunication services and fixed-mobile services such as— 25
- (a) a local access network;
 - (b) a national long-distance network; and
 - (c) an international network;
- by whatever means such as copper cables, wireless loops, microwave links, optic fibre cables, satellite earth stations, space segments and satellite systems, by means of which signals can be conveyed between all or any of— 30
- (i) two or more terminal connection points;
 - (ii) two or more network connection points; 35
 - (iii) a terminal connection point and a network connection point;
 - (iv) a terminal connection point or a network connection point, as the case may be, and a corresponding point in another country;
 - (v) a public pay-telephone and the terminal connection point, a network connection point or a corresponding point in another country. 40
- (2) The systems contemplated in subsection (1) shall not include telecommunication equipment located on the premises of a customer, unless it is meant for public pay-telephones or mobile telecommunications on the premises of a customer." 45

Amendment of section 37 of Act 103 of 1996

- 12.** (1) Section 37 of the principal Act is hereby amended—
- (a) by the deletion of the proviso to subsection (1);
 - (b) by the substitution for subsection (2) of the following subsection: 50

"(2) Cell-C Pty Ltd, a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), shall be the holder of a licence in terms of this Act to provide a mobile telecommunication service in accordance with the terms and conditions as specified in its licence issued to it by the Authority on 22 June 2001."; and
 - (c) by the deletion of subsection (3).

Amendment of section 38 of Act 103 of 1996

- 13.** Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 55

“(1) No **[person]** persons other than Telkom shall be granted a licence to provide national long-distance telecommunication services until after **[a date to be fixed by the Minister by notice in the Gazette] 7 May 2002.**”.

Amendment of section 39 of Act 103 of 1996

- 14.** Section 39 of the principal Act is hereby amended— 5
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
- “(a) No **[person]** persons other than Telkom shall be granted a licence to provide a local access telecommunication service until after **[a date to be fixed by the Minister by notice in the Gazette] 7 May 2002.**”; and 10
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 10
- “(a) No **[person]** persons other than Telkom shall be granted a licence to provide a public pay-telephone service until after **[a date to be fixed by the Minister by notice in the Gazette] 7 May 2002.**” 15

Amendment of section 40 of Act 103 of 1996

- 15.** Section 40 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 20
- “(2) A licence to provide any **[value-added network]** electronic transaction service, including, but not limited to, electronic data interchange, **[E-mail]** electronic mail, protocol conversion, access to a database or a managed data network service, shall contain a condition that the service in question **[shall]** be provided by means of telecommunication facilities— 25
- (a) provided by Telkom or made available to Telkom as contemplated in section 44 **[until a date to be fixed by the Minister by notice in the Gazette, and a different date may be so fixed in respect of national long-distance facilities];** or 25
- (b) after 7 May 2002, provided by Telkom and the second national operator or any of them.”; and 30
- (b) by the addition to subsection (3) of the following paragraph, the existing subsection becoming paragraph (a): 30
- “(b) Without prejudice to any rights of Telkom under its public switched telecommunication service licence which exist at the commencement of the Telecommunications Amendment Act, 2001, the second national operator and the licensees contemplated in section 40A may provide voice over internet protocol after 7 May 2002.” 35

Insertion of section 40A in Act 103 of 1996

- 16.** The principal Act is hereby amended by the insertion of the following section after section 40: 40

“Under-serviced area licence

- 40A.** (1) The Minister shall by notice in the *Gazette* determine those geographic areas where less than 5% of the population has access to telecommunication services or facilities and in respect of which small businesses may apply to the Authority for under-serviced area licences to provide such services or facilities. 45
- (2) The Authority may grant an under-serviced area licence to a small business on application in the prescribed manner.
- (3) An under-serviced area licensee shall provide telecommunication services, including voice over internet protocol services, in respect of the area to which the licence applies. 50
- (4) Under-serviced area licences granted by the Minister shall become effective after 7 May 2002.
- (5) All under-serviced area licences granted under this section shall be issued on materially the same terms and conditions. 55

(6) Under-serviced area licensees may by agreement obtain interconnection to the networks of public switched telecommunication service licensees if such agreement complies with—

- (a) section 43 and any regulations prescribed to give effect to that section; and
- (b) the prescribed terms and conditions, including price, in terms of which under-serviced area licensees may obtain such interconnection.”.

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Amendment of section 41 of Act 103 of 1996

17. Section 41 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 10

“(a) A person providing a telecommunication network for purposes principally or integrally related to the operations of such person (hereinafter referred to as a private telecommunication network), shall, notwithstanding the provisions of sections 32(1) and 33(1) and regardless of whether or not such network is utilised by means of telecommunication facilities made available by Telkom, or the second national operator, not require a licence except as contemplated in paragraph (b). 15

(b) (i) **[A]** Notwithstanding subparagraph (ii), a private telecommunication network licence shall, subject to the regulations, be required for the provision of a private telecommunication network, where such network is interconnected to the telecommunication system of Telkom or any other person providing a public switched telecommunication **[network]** service. 20

(ii) Subject to section 40(3), a holder of a value-added network service licence may operate virtual private networks without first obtaining a private telecommunication network licence.”; 25

- (b) by the deletion of subsection (3); and

- (c) by the addition of the following subsections:

“(10) (a) The Minister shall, with the concurrence of the Minister of Education, establish an entity to construct and operate an educational network. 30

(b) The entity contemplated in paragraph (a) shall be deemed to have been granted a private telecommunications network licence to link all public schools and public further education and training institutions defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and the Further Education and Training Act, 1998 (Act No. 98 of 1998), respectively, as well as such other education and training institutions as may be determined by the Minister of Education. 35

(11) (a) The Minister shall, with the concurrence of the Minister of Transport, establish an entity to construct and operate a private telecommunications network to fulfil South Africa’s obligations in terms of— 40

(a) the International Convention for the Safety of Life at Sea (SOLAS) 1974/78; 45

(b) Annexure 12 to the Convention on International Civil Aviation, signed by South Africa on 7 December 1944 in Chicago; and

(c) the International Convention on Maritime Search and Rescue, 1979.

(b) The entity contemplated in paragraph (a) shall—

(i) be referred to as “Maritime and Aeronautical Radio Services”; and 50

(ii) be deemed to have been granted a private telecommunications network licence.”.

Amendment of section 43 of Act 103 of 1996

18. Section 43 of the principal Act is hereby amended—

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

“(1) (a) Any public switched telecommunication service licensee shall, when requested by any other person providing telecommunication services, interconnect its telecommunication systems to the telecommunication system of the other person, in accordance with the terms and conditions of an interconnection agreement entered into between the parties, unless such request is unreasonable. 5

(b) For the purposes of paragraph (a), a request is reasonable where the Authority determines that the requested interconnection— 10

- (i) is technically feasible;
- (ii) will promote the efficient use of the public switched telecommunication network;
- (iii) can be implemental on a reciprocal basis between the parties. 15

(c) An agreement contemplated in paragraph (a) shall be entered into within the prescribed period or such extended period as the Authority may allow in any particular case.

(d) The parties concerned shall, unless exempted by regulation—

- (i) notify the Authority if any request contemplated in paragraph (a) is made; 20
- (ii) where the reasonableness of any such request is disputed, refer the dispute to the Authority for its decision;
- (iii) where the parties are unwilling or unable to negotiate or agree on terms and conditions within the period or extended period contemplated in paragraph (c), submit all outstanding issues to the Authority for resolution.”; 25

(b) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) in the case of a dispute relating to reasonableness as contemplated in subsection (1)(d)(ii), make a determination taking into consideration the factors referred to in subsection (1)(b), and any other relevant factor; 30

(b) in the case of unwillingness or inability by the parties to negotiate or agree on the terms and conditions of interconnections, the Authority may— 35

- (i) impose terms and conditions in accordance with the guidelines contemplated in subsection (3); or
- (ii) propose terms and conditions in accordance with the guidelines contemplated in subsection (3) which, subject to renegotiations, shall be agreed to by the parties within such period as the Authority may specify. 40

(c) by the insertion after subsection (4) of the following subsection:

“(4A) If the parties fail to agree as contemplated in subsection (4)(b)(ii), the Minister shall declare that the terms and conditions proposed by the Authority apply between the parties.” 45

(d) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) Where the Authority determines that any terms and conditions are not consistent with the guidelines contemplated in subsection (3), it may direct the parties to **[negotiate]** renegotiate and agree on new terms and conditions within such period as the Authority may specify, or itself propose terms and conditions consistent with those guidelines and which, subject to renegotiation, shall be agreed by the parties within such period as it may specify, and the provisions of subsection **[(1)(e)(iii)]** (1)(d)(iii) and (4)(b) shall apply with the necessary changes.”; and 50 55

(e) by the addition of the following subsection:

“(10) (a) Five years after the date on which an interconnection agreement is concluded a party to that agreement may request the other party or parties to promptly negotiate in good faith to modify or amend some or all of the terms of such agreement.”

(b) Subsections (1) to (6) and the regulations promulgated under this section shall apply, with the necessary changes, in relation to any proposed modification or amendment of any term or condition contemplated in paragraph (a).”

Amendment of section 44 of Act 103 of 1996

19. Section 44 of the principal Act is hereby amended—

(a) by the deletion of subsection (1);

(b) by the substitution for subsections (2), (3) and (4) of the following subsections, respectively:

“(2) Telkom and any other provider of a public **[fixed]** switched telecommunication service shall, when requested by any other person providing a telecommunication service, including a private telecommunication network, lease or otherwise make available telecommunication facilities to such other person pursuant to an agreement to be entered into between the parties, unless such request is unreasonable.”

(3) The provisions of section **[43(1)(c), (d) and (e)]** 43(1)(b), (c) and (e) shall apply, with the necessary changes, in relation to any request and agreement contemplated in **[subsections (1) and]** subsection (2).

(4) Every agreement for the leasing **[or otherwise making available]** of telecommunication facilities or resale, including any agreement contemplated in **[subsections (1) and]** subsection (2), shall, unless exempted by the regulations, be lodged by the parties with the Authority to enable it to determine whether the agreement is consistent with the guidelines contemplated in subsection (5).”;

(c) by the addition to subsection (5) of the following paragraph, the existing subsection becoming paragraph (a):

“(b) The guidelines contemplated in paragraph (a) may relate to—

(i) resale, including the basis for determining wholesale and retail tariffs; and

(ii) the manner in which telecommunication facilities are made available.”; and

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

“(7) (a) In the application of section **[43(1)(e)(iii)]** 43(1)(d)(iii) and (4)(b) in relation to making the telecommunication facilities of **[Telkom]** a public switched telecommunication service licensee available to another person and where the Authority is satisfied that **[Telkom]** the holder of a public switched telecommunication service licence is unwilling or unable to make suitable facilities available to that person within a reasonable period of time, the Authority may, instead of proposing terms and conditions as contemplated in section 43(4)(b), authorise that person to provide or obtain any necessary telecommunication facilities other than from **[Telkom]** such holder on conditions determined by the Authority, notwithstanding the provisions of sections **[37(2)(c),]** 38(2), 40(2) and 41(2)(a) and this section.

(b) Subject to section 32A(2) and (4), notwithstanding the guidelines contemplated in subsection (5), no public switched telecommunication service licensee shall be required to unbundle its local loop for the period of two years referred to in section 32A(2)(a) and (4).”

Amendment of section 45 of Act 103 of 1996

20. Section 45 of the principal Act is hereby amended—

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

“(2) The manner of determining fees and charges shall be prescribed only in respect of fields where no or insufficient competition exists: Provided that within 12 months after the date of commencement of this

Act, the Minister shall determine such fees and charges in respect of Telkom, and such fees and charges shall be in force until the later of—

(a) the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 36(1)(a); and

(b) the date when the Authority prescribes a new determination of fees and charges in respect of Telkom.”; and

(b) by the addition of the following subsection:

“(3) From a date to be determined by the Minister, all public schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and all public further education and training institutions as defined in the Further Education and Training Act, 1998 (Act No. 98 of 1998), shall be entitled to a 50% discount on—

(a) all telecommunication calls to an internet service provider; and

(b) any connection or similar fees or charges levied by an internet service provider for accessing the internet or transmitting and receiving any signals via the internet or for such access and transmission and reception.”.

Amendment of section 53 of Act 103 of 1996

21. Section 53 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) (a) The Authority may, with regard to the matters referred to in subsection (1), make regulations to ensure efficient protection of consumer interests.

(b) The Authority shall report annually to the Minister on the overall status and efficiency of the regulations contemplated in paragraph (a).”.

Insertion of section 53A in Act 103 of 1996

22. The following section is hereby inserted in the principal Act, after section 53:

“Telecommunications Mediation and Arbitration Committee

53A. (1) The Minister, may at the request of the Authority and any other party to an unresolved dispute, establish a Mediation and Arbitration Committee (in this section referred to as “the Committee”), comprising of—

(i) a chairperson, who shall be Senior Counsel or other senior legal practitioner, and who must have knowledge, experience and expertise in telecommunications law; and

(ii) two other members with sufficient knowledge of matters relating to telecommunications licensing, regulations, agreements and cost accounting.

(2) Before the Committee is established, each party to the dispute must agree in writing to be bound by the decision of the Committee.

(3) Within 30 days of appointment of the Committee, the Committee shall determine its rules of procedure for the mediation or arbitration, which the Minister must publish by notice in the *Gazette*.

(4) The Committee shall mediate and endeavour to settle any dispute between the Authority and any telecommunication operator or licensee in respect of any licensing agreement, any terms and condition thereof, and any matter arising therefrom.

(5) If the dispute remains unresolved, the Committee shall arbitrate the dispute.

(6) At the conclusion of the hearing the Committee must determine the terms and conditions of the licensing agreement, and must issue written reasons for its determination.

(7) The Committee shall submit a written report to the Minister regarding the mediation or determination contemplated in subsections (4) and (5), within three days after any settlement or determination, as the case may be.”.

Amendment of section 58 of Act 103 of 1996

23. Section 58 of the Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The Minister may, by notice in the *Gazette*, appoint a board of up to seven members to provide oversight of and guidance to the Universal Service Agency.”. 5

Amendment of section 61 of Act 103 of 1996

24. Section 61 of the principal Act is hereby amended—

(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).”; and 10

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The [Authority] Agency—”.

Amendment of section 65 of Act 103 of 1996

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25. Section 65 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The Universal Service Fund shall be administered by the Agency subject to the control and in accordance with the instructions of the [Authority] Minister.”.

Amendment of section 66 of Act 103 of 1996

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

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The money in the Universal Service Fund shall be utilised exclusively for the payment of subsidies— 25

(a) for the assistance of needy persons towards the cost of the provision to or the use by them of telecommunication services;

(b) [subject to subsection (3)] to Telkom and to any other holder of a licence in terms of Chapter V which imposes obligations on the holder relating to the extension of its [public switched] telecommunication service to areas and communities which are not served or not adequately served by telecommunication services, for the purpose of financing such extension; 30

(c) to public schools and public further education and training institutions referred to section 45(3) for the procurement of internet services and equipment necessary to access the internet; 35

(d) for the establishment of centres where access can be obtained to telecommunication facilities;

(e) for the establishment of public information terminals; and 40

(f) to acquire and construct infrastructure used by licensees to provide services to areas which are not served or not adequately served by telecommunication services.

(2) The money in the fund shall be apportioned for the separate purposes [of paragraph (a) and paragraph (b) of] referred to in subsection (1) in accordance with [the prescribed] a formula determined by the Minister by notice in the *Gazette*.”; 45

(c) by the deletion of subsection (3); and

(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“The [Authority] Minister may, for the purposes of payments referred to in [subsections] subsection (1)(a) and [(3) prescribe] (b) by notice in the *Gazette* determine—”. 50

Amendment of section 67 of Act 103 of 1996

27. Section 67 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 55

“(a) the basis and manner of determination of such contributions, which shall not exceed 0.5% of a licensee’s annual turnover; and”.

Insertion of section 67A in Act 103 of 1996

28. The principal Act is hereby amended by the insertion after section 67 of the following section: 5

“Competitive tender for universal service projects

67A. (1) The Agency may award universal access projects by public competitive bid to the qualified bidder that requests subsidy for such project. 10

(2) The Agency shall in allocating the subsidy take into account, *inter alia*, the provisions of section 2.

(3) The subsidy for universal access projects shall be paid out of the Universal Service Fund.

(4) The Agency shall supervise the execution of projects awarded under subsection (1).” 15

Insertion of new Chapter X in Act 103 of 1996

29. The following Chapter is hereby inserted in the principal Act, after Chapter IX:

“CHAPTER X

EMERGENCY CENTRES

Definition 20

78. In this Chapter, unless the context otherwise indicates, ‘emergency organisation’ means, in respect of any locality, the relevant police, fire, ambulance or traffic authority or coast guard services for that locality and any other similar organisation providing assistance to the public in emergencies. 25

Establishment of 112 Emergency Centres

79. (1) The Minister may by notice in the *Gazette* establish public emergency communications centres to be known as ‘112 Emergency Centres’ 30

(2) A 112 Emergency Centre is a communications service centre by means of which the user of a public telephone system has the ability to reach an emergency centre by dialling the numerals 112 in order to request an emergency service.

(3) 112 Emergency Centres shall be accountable to the Minister.

Functions of 112 Emergency Centres 35

80. (1) 112 Emergency Centres shall transmit any telecommunication request for an emergency service to any emergency organisation.

(2) Licensees required to carry calls to 112 Emergency Centres may not levy any charge on the caller for placing calls to 112 Emergency Centres.

(3) Licensees transporting any telecommunication from 112 Emergency Centres to any emergency organisation shall be entitled to recover from the relevant emergency organisation the reasonable cost that it incurs in transporting such telecommunication. 40

Public emergency number

81. (1) The number 112 is hereby established as the exclusive national public emergency number. 45

(2) No person may apply for the registration in terms of applicable intellectual property legislation, or any other law, of any mark or domain name containing the numerals 1-1-2 in that sequence.

(3) No person may call the national emergency telecommunication number, 112, for any purpose other than a request for an emergency service contemplated in section 79(1).

Standards, capabilities and operating procedures of 112 Emergency Centres

82. (1) As far as practicably possible, 112 Emergency Centres shall have voice, data and global positioning systems capability.

(2) 112 Emergency Centres shall develop and apply common technical standards and standard operating procedures as directed by the Minister from time to time by notice in the *Gazette*.

(3) Subject to obtaining an appropriate radio frequency licence in accordance with section 30, 112 Emergency Centres may establish their own radio networks, provided such networks are used exclusively to communicate calls to 112 Emergency Centres or emergency organisations.

(4) Emergency Centres may display the 112 public emergency number on public roads and other public places without cost.”.

Amendment of section 89 of Act 103 of 1996

30. Section 89 of the principal Act is hereby amended—

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

“(1) The Authority shall prescribe—

(a) a numbering plan for use in respect of telecommunication services; and

(b) measures to ensure that number portability shall be introduced in 2005, including—

(i) the creation of a national number portability database; and

(ii) cost allocation and cost recovery among licensees.”; and

(b) by the addition of the following subsections:

“(4) The numbering plan contemplated in subsection (1)(a) shall be non-discriminatory.

(5) The Authority shall maintain and manage a central numbering database system.

(6) Every operator shall submit information on all numbers, including numbers of pre-paid subscribers, allocated to subscribers in terms of its licence to the Authority.”.

Insertion of sections 89A and 89B in Act 103 of 1996

31. The following sections are hereby inserted in the principal Act, after section 89:

“Carrier pre-selection

89A. (1) The Authority shall prescribe regulations—

(a) establishing a framework for facilities in terms of which subscribers to a telecommunication service can access the services of an interconnected national long-distance telecommunication service and an international telecommunication operator; and

(b) requiring all holders of public switched telecommunication services licences to phase in the facilities referred to in paragraph (a) from 2005.

(2) The framework contemplated in subsection (1) shall ensure that the implementation and maintenance of the facilities referred to therein are non-discriminatory and give effect to section 2(j).

Directory services

- 89B.** (1) The Authority may prescribe, or impose through licence conditions, as the case may be, measures in respect of directories and directory enquiry services, regarding—
- (a) the protection of personal data; 5
 - (b) the protection of privacy;
 - (c) language preferences;
 - (d) the prevention of fraud;
 - (e) the prohibition of marketing and unfair trading practices;
 - (f) the provision of assistance to law enforcement or other public safety officials; 10
 - (g) related charges;
 - (h) the establishment of a national directory information database; and
 - (i) such other related matters as the Authority shall determine.”.

Amendment of section 96 of Act 103 of 1996 15

- 32.** Section 96 of the principal Act is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:
 - “(4) The Authority shall, not less than **[three months]** one month before any regulation is made, cause the text of such regulation to be published in the *Gazette*, together with a notice declaring its intention to make that regulation and inviting interested persons to furnish the Authority with written comments thereon **[or representations in regard thereto]**.”. 20
 - (b) by the addition of the following subsection:
 - “(8) When prescribing any regulation, the Authority shall give due regard to section 2(j).”.

Insertion of section 96A in Act 103 of 1996

- 33.** The following section is hereby inserted in the principal Act after section 96:

“Telecommunications Museum

- 96A.** (1) The Director-General shall establish and manage a museum that depicts the evolution and the history of the telecommunication sector in South Africa. 30
- (2) The museum and its contents shall be a national asset as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999).
- (3) The content of the museum housed in the Telkom Museum on Telecommunication History shall be transferred to the museum established in terms of subsection (1).”.

Amendment of section 101 of Act 103 of 1996

- 34.** Section 101 of the principal Act is hereby amended by the deletion in paragraph (b) of the word “or” and the insertion after that paragraph of the following paragraph: 40
- “(c) contravenes the provisions of section 80(2) or (3);”.

Repeal and amendment of laws

- 35.** The laws specified in the Schedule are hereby repealed or amended, as the case may be, to the extent set out in the third column thereof.

Withdrawal of regulations 45

- 36.** The regulations made under section 52 regarding limitations on ownership and control in respect of mobile cellular telecommunication service published in *Gazette* No. 19828 on 5 March 1999, are hereby withdrawn.

Short title

- 37.** This Act is called the Telecommunications Amendment Act, 2001. 50

SCHEDULE

Laws repealed or amended

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 143 of 1993	National Emergency Telephone Service Act, 1993	1. The repeal of the whole.
Act No. 63 of 1996	Sentech Act, 1996	<p>1. The substitution for section 5 of the following section:</p> <p>“5. The main object and the main business of the Company shall be to provide—</p> <p>(i) as a common carrier, broadcasting signal distribution for broadcasting licensees in accordance with the provisions of the Independent Broadcasting Authority Act; and</p> <p>(ii) <u>telecommunication services in accordance with the provisions of the Telecommunications Act, 1996 (Act No. 103 of 1996).</u>”.</p>
Act No. 13 of 2000	Independent Communications Authority Act of South Africa, 2000	<p>1. The amendment of section 5—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“The Council consists of seven councillors appointed by the President [on the recommendation of the National Assembly], subject to subsection (1A), according to the following principles, namely—”; and</p> <p>(b) by the insertion after subsection (1) of the following subsection:</p> <p>“(1A) (a) After their nomination contemplated in subsection (1)(a) candidates for appointment to the Council must appear before a selection panel consisting of five persons with expert knowledge of broadcasting and telecommunications appointed by the Minister.</p>

No. and year of Act	Short title	Extent of amendment or repeal
		<p><u>(b) The members of the selection panel—</u></p> <p><u>(i) are appointed for four to five years;</u></p> <p><u>(ii) must question each candidate for appointment to the Council and decide on each candidate's fitness to serve as councillor; and</u></p> <p><u>(iii) must compile and publish a shortlist contemplated in subsection (1)(c) and make recommendations to the President.</u></p> <p><u>(c) After the publication of the shortlist and the receipt of the recommendations contemplated in paragraph (b)(iii), the President must consult the Portfolio Committee and the National Assembly and after receiving their consent, appoint the councillors recommended in terms of paragraph (b).</u></p>
		<p>2. The amendment of section 8—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) [Subject to subsection (2),] A councillor may at any time be removed from office by the Minister with the approval of the President and the concurrence of National Assembly and Portfolio Committee on account of—</p> <p>(a) misconduct;</p> <p>(b) inability to perform the duties of his or her office efficiently;</p> <p>(c) absence from three consecutive meetings of the Council without the prior permission of the Council, except on good cause shown;</p>

No. and year of Act	Short title	Extent of amendment or repeal
		<p>(d) [a contravention of section 7(6)] <u>his or her having performed remunerative work or occupied a remunerative post or office not related to the work of the Council without the prior written consent of the Council;</u></p> <p>(e) failure to disclose [an] any conflict of interest [in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Council while having an interest contemplated in section 12(1)]; or</p> <p>(f) [his or her becoming disqualified as contemplated in section 6(1)] <u>any other good reason.”; and</u></p> <p>(b) by the deletion of subsections (2) and (3).</p> <p>3. The repeal of section 15(1), (2) and (3).</p> <p>4. The repeal of section 16.</p>

MEMORANDUM OF OBJECTS OF THE TELECOMMUNICATIONS AMENDMENT BILL, 2001

1. PURPOSE

The Telecommunications Amendment Bill, 2001 (“Bill”), creates the legal framework for the South African telecommunications landscape following the end of Telkom’s exclusivity period. The Bill updates the Telecommunications Act, 1996 (“Act”), to bring it in line with technological, regulatory and industry developments over the past five years in South Africa and comparable international jurisdictions. The Bill includes a number of measures necessary to facilitate the IPO of Telkom.

The Bill contemplates, amongst other matters:

1.1 **Managed liberalisation** of the telecommunications industry through (a) the introduction in 2002 of the SNO (Second National Operator) in which a stake is reserved for Esi-tel and Transtel respectively and black economic empowerment; (b) the award in 2002 of an international and multimedia licence to Sentech; and (c) the introduction in 2005 of at least one service-based competitor to Telkom and the SNO. The SNO may use Telkom’s facilities, subject to an agreement to share facilities between them, for a two-year period. At the end of this period the SNO may only use its own facilities and future service-based operators will have a choice between the facilities of Telkom and the SNO.

1.2 **Convergence and technological development** in the communications industry to be recognised through inter alia allowing Telkom and the SNO to use wireless technology in its operations and the award of a multimedia licence to Sentech. This license will allow services such as video-on-demand, pay-per-view and internet over television.

1.3 **Stimulating SMME involvement** in the telecommunications industry and increasing teledensity in South Africa through the introduction of under-served area licenses in areas where teledensity is currently below five per cent (5%). In addition, the Universal Service Fund may be used to assist SMME’s in providing telecommunication infrastructure and service in these under-served areas.

1.4 **Assignment of the 1800 MHz radio frequency spectrum and 3G licenses** to Telkom, the SNO, Vodacom, MTN and the Cell C in an orderly and non-discriminatory manner.

1.5 **Restructuring of the universal service agency** and increasing the size of the Universal Service Fund. A seven-member board will provide oversight over the universal service agency. The mandate of the universal service agency is clarified to include the promotion of telecentres, internet in public schools and public information terminals.

1.6 **Introducing an e-rate** to stimulate and facilitate internet usage by public schools. The e-rate will allow public schools a 50% discount on calls to access the internet as well as internet access charges.

1.7 **A set-aside for persons from historically disadvantaged groups** in major telecommunication licenses. In the evaluation of applications for major licenses, ICASA may give preference for up to 30% (or such higher percentage as may be prescribed) of the equity held by persons from historically disadvantaged groups. In addition, in the award of licenses ICASA must give due regard to applications which include women.

1.8 **Introducing number portability and carrier pre-selection.** The managed liberalisation of the telecommunications industry requires the introduction of number portability (in 2005) and carrier pre-selection (in 2005). ICASA will prescribe detailed regulations to facilitate this.

1.9 **Establishing 112 Emergency Centers** that will enable end users to be connected to appropriate emergency organisations through dialing “112”. 112 Emergency Centres will be linked via a national radio network and may use state of the art technology.

1.10 **Miscellaneous matters** are also addressed in the Bill, such as (a) the introduction or clarification of certain definitions; (b) streamlining of the application process for licenses; (c) details on the basis of the involvement of Esi-tel and Transtel in the SNO; (d) provision for additional methods for awarding licenses; (e) the right of VANS operators to provide virtual private networks; (f) the right to renegotiate interconnection agreements that have been in place for longer than five years; (g) the repeal of the current cross-ownership regulation; (h) the provision of directory services in a post-exclusivity environment; (i) provision for the regulation of Maritime time

Services by the Minister in consultation with the Minister of Transport; and (j) establishment of a telecommunications history and development museum.

2. CLAUSE-BY-CLAUSE ANALYSIS

2.1 **Definitions** (section 1). Definitions have been inserted to—

- (a) facilitate the managed liberalisation of the telecommunications industry and to recognise that multiple operators will participate in the South African telecommunications industry following the expiration of Telkom’s exclusivity in May 2002 (for example, the definitions of “carrier of carriers”, “carrier pre-selection”, “directories” and “directory enquiry service”; “number portability”; “resale”, “second national operator”);
- (b) recognise new types of licences or technological development (e.g., the definitions of “multimedia service”; “small business”; “virtual private network”, “fixed mobile service”, “voice over internet protocol” and “third generation services licence”);
- (c) facilitate the granting of rights to certain entities (e.g., the definitions of “Esi-tel”; “Sentech” and “Transtel”); and
- (d) facilitate ease of reference (e.g., the definitions of “international telecommunication service”; “national long-distance telecommunication service”; “public switched telecommunication network”, “public switched telecommunication service”).

These definitions are also discussed below in the context of the clauses in which they appear.

2.2 **Objects of the Act** (section 2). A new section 2(r) has been inserted to recognise the convergence of the telecommunications, broadcasting and information services industries;

2.3 **Application of the Act** (section 3) In order to allow for the amendment and insertion of section 2 (r) and multi-media (to the extent that it applies to broadcasting, broadcasting signal distribution or broadcasting services frequency band) as an exception permitting application of this Act.

2.4 **Frequency Band Plans** (section 29) In order to shorten the application procedure by the Authority, the oral hearings have been excluded. This in effect brings the Bill in line with international best practice.

2.5 **1800MHz and 3G licences** (sections 30A and 30B). A statutory mechanism has been created for the award of radio frequency spectrum and 3G licences to each of the two fixed line operators and three mobile operators. The Bill also provides for the regulation by the Authority of frequency usage.

2.6 **Liberalisation** (sections 32A, 32B and 32C). The Bill specifies the introduction of competition upon the expiration of Telkom’s exclusivity period in May 2002 through—

- (a) the introduction in 2002 of the SNO in which a stake is reserved for Esi-tel, Transtel respectively and black economic empowerment;
- (b) the introduction in 2005 of an additional national operator subject to a feasibility study in which a stake is reserved for black economic empowerment;
- (b) the award in 2002 of an international and multimedia licence to Sentech; and
- (c) the introduction in 2005 of at least one service-based competitor to Telkom and the SNO.

The SNO may use Telkom’s facilities, subject to an agreement between them, for a two-year period. At the end of this period the SNO may only use its own facilities and future service-based operators will have a choice between the facilities of Telkom and the SNO.

2.7 **Kinds of licences** (section 33). The Bill expressly recognises “multimedia service” as a new licence category.

2.8 **License applications** (section 34). In order to create a licence for the SNO and the TNO that “mirrors” that of Telkom, the Bill allows the Minister to invite applications for a combination of telecommunication licences.

The Bill mandates consultation between the Minister and ICASA on evaluation criteria prior to the publication of the invitation to apply for a major telecommunication licence.

Subject to the Promotion of Administrative Justice Act and in accordance with international best practice, the Bill streamlines the application process for telecommu-

nication licences by reducing the number of oral hearings and focusing on written submissions by interested parties and applicants.

Based on practical difficulties experienced in recent application processes, the Bill simplifies the provisions relating to the confidentiality of information submitted to ICASA.

2.9 Decision on applications (section 35). In accordance with international best practice, the Bill confirms the presumed validity of licensing decisions pending litigation related to such decisions, such that litigation does not delay the licensing process.

The Minister is empowered to properly access the recommendation by the Authority and either accept, reject or alternatively request further information or clarification from the Authority in relation to a recommended applicant. The main aim is to eliminate the previous limitations to the Minister's ability to address the Authority's recommendations to the extent of fully applying his or her mind.

The Bill provides that applications from women should receive due regard in the evaluation process and also that ICASA may give preference for up to 30% (or a higher prescribed percentage) of the equity in an applicant held by persons from historically disadvantaged groups or women.

2.10 Alternative licensing methods (section 35A). In accordance with international best practice, the Bill empowers the Minister to apply alternative licensing methods. Alternative licensing methods envisaged include the auction and/or the bidding method as an alternative to the so-called beauty contest method currently contemplated in the Act.

2.11 Public Switched Telecommunications Service (section 36A). The Bill provides an elaboration to the definition of PSTS licence and provides details of services to be provided under the licence. The aim is also to ensure that there is parity between the services that Telkom at present provides in terms of its PSTS licence and what the SNO will provide.

2.12 Public Switched Telecommunication Network (section 36B) The Bill provides an elaboration on the definition of PSTN allowing for examples of networks to be maintained and operated by the relevant PSTS and fixed-mobile services licensees.

2.11 MTN, Vodacom and Cell C licences confirmed (section 37). In anticipation of the Telkom IPO, the Bill confirms the validity of MTN and Vodacom's licences until such time as they are granted their restated licenses pursuant to section 37. Further the contents of the issued Cell C licence is confirmed and given legislative effect as is the case of MTN and Vodacom.

2.12 National Long-Distance Telecommunication Service (section 38) in anticipation of the end of Telkom's exclusivity the terms of subsection 3 of this section is amended to allow the SNO to provide national long-distance services.

2.13 Local Access Telecommunication Service (section 39) in anticipation of the end of Telkom's exclusivity this section is amended to allow the SNO to provide local access telecommunications service.

2.14 Voice over internet protocol by SNO and under-serviced area licensees (section 40). In order to avoid any doubt, and consistent with the managed liberalisation of the telecommunications industry, the SNO and under-serviced area licensees are entitled to provide voice services over internet protocol from 7 May 2002.

2.15 Under-serviced area licences (section 40A). The Bill seeks to stimulate SMME involvement in the telecommunications industry through the introduction of under-serviced area licences in areas where teledensity is currently below 5%.

2.16 Virtual private networks, Edu-Net, MARS (section 41). In line with technological development, the Bill provides that VANS licensees may operate virtual private networks without obtaining a private telecommunication network licence.

Subsection 10 empowers the Minister in consultation with the Minister of Education to establish an Education network (Edu-Net), to ensure access by public schools and educational and training institutions to the network.

Subsection 11 empowers the Minister in consultation with the Minister of Transport to establish a Maritime and Aeronautical Radio Services (MARS), to ensure South Africa fulfils its obligations in terms of the International Convention on Safety and Life at Sea (SOLAS) 1974/8 and Annexure 12 to the Convention on International Civil Aviation.

2.17 Interconnection (section 43). The Bill provides parties to interconnection agreements the right to seek its renegotiation after five years. Without undermining legal certainty, this will ensure that no party is locked into an inefficient or unfair long-term

interconnection arrangement — a situation that will ultimately prejudice consumer rights.

2.18 Facility sharing (section 44). The Bill amends section 44 to be consistent with the two-year period during which Telkom and the SNO may share infrastructure, whereafter these two facilities-based competitors may no longer share facilities.

The Bill provides the basis for ICASA to prescribe detailed provisions that will deal with resale during the two-year period and thereafter.

2.17 Price regulation (section 45). In anticipation of the Telkom IPO, the Bill confirms the continued validity of Telkom's most recent price determination until such time as ICASA determines the next price determination.

An e-rate is introduced to stimulate and facilitate internet usage by public schools. The e-rate will allow public schools a 50% discount on calls to access the internet as well as internet access charges and any charges for receiving a signal via the internet.

2.18 Limitation on control of telecommunications services (section 53). In the response to inputs by industry and to promote the provisions of section 2, the Authority is obliged to provide regulations to promote consumer protection in the industry.

2.19 Telecommunications Mediation and Arbitration Committee (section 53A). The Bill allows for the creation of a Telecommunications Mediation Committee comprising of three persons. The objective of the committee is to resolve disputes or disagreements on terms and conditions of licensing agreements between the Authority and any telecommunications operator or licensee. This provision is to allow for speedy resolution of disputes in line with the dynamic nature of the industry.

2.20 Universal service agency (sections 58). In order to ensure greater accountability, the Bill provides that the Minister may appoint a seven-member board to provide oversight of and guidance to the Fund.

2.21 Universal service fund (sections 65 to 67). The Bill seeks to minimise institutional overlap in the management of universal service by bringing the Agency directly under the control of the Minister, and eliminating the role of ICASA in relation to universal service.

The Bill expands the causes for which the Universal Service Fund may be used to include the facilitation of internet usage by public schools, the establishment of telecentres and public information terminals, and to assist under-service area licensees in the provision of infrastructure in under serviced areas.

The Bill limits the maximum contribution of a licensee to the Universal Service Fund to 0.5% of its turnover. This measure will provide certainty to the telecommunications industry in relation to its future contributions.

The Bill also provides that the Agency may award universal access projects by competitive tender to bidders.

2.22 112 Emergency Centres (sections 78 to 81). The Bill empowers the Minister to establish 112 Emergency Centres that will enable end users to be connected to appropriate emergency organisations through dialing a dedicated number, "112". 112 Emergency Centres will be linked via a national radio network and may use state of the art technology.

The Bill repeals the National Emergency Telephone Service Act, 1993 and consolidates measures related to emergency telecommunications into the Act.

2.23 Numbering plans (section 89). In accordance with international best practice and the managed liberalisation of the telecommunications industry, the Bill sets 2005 as the date for the introduction of number portability and mandates ICASA to prescribe detailed regulations to deal with this and related matters.

2.23 Carrier pre-selection (section 89A). In accordance with international best practice and the managed liberalisation of the telecommunications industry, the Bill sets 2005 as the date for the introduction of carrier pre-selection and mandates ICASA to prescribe detailed regulations to deal with this and related matters.

2.24 Directory services (section 89B). In recognition of the managed liberalisation of the telecommunications industry, the Bill empowers ICASA to prescribe regulations appropriate for directory services in a post-exclusivity environment.

2.25 Regulations (section 96). In recognition of ICASA's need to act swiftly in the fast changing telecommunications environment, the Bill reduces the public notice period for draft regulations to 30 days.

With the advent of liberalisation, the Bill expressly tasks ICASA to give due regards to the need for fair competition in the telecommunications industry when it prescribes regulations.

2.26 **Museum** (section 96A). The Bill allows the establishment of a telecommunications museum, which depicts the history and evolution of the telecommunications sector in South Africa. The contents of the Museum are to be regarded as a national asset in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

3. CONSULTATION

All major stakeholders in the telecommunications industry participated in or contributed to the national policy colloquium in February 2001. In addition, the Department of Public Enterprises and the Telkom IPO office have commented on the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill has no direct financial implications for the State, but is expected to increase the State's proceeds from the Telkom IPO.

5. PARLIAMENTARY PROCEDURE

The Department of Communications and the State Law Advisers are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.