

REPUBLIC OF SOUTH AFRICA

CONVERGENCE BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27294 of 16 February 2005)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

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BILL

To promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors; to make new provision for the regulation of communications and network services; to provide for the granting of new licences and for new social obligations; to provide for the control of the radio frequency spectrum; to provide for the continued existence of the Universal Service Agency; and to provide for matters incidental thereto.

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

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

1. “**affiliate**” means with respect to any person, any other person that, directly or indirectly— 5
- (a) controls the first mentioned person;
 - (b) is controlled by the first mentioned person; or
 - (c) is under common control with the first mentioned person.
- “**Agency**” means the Universal Service Agency referred to in Chapter 12; 10
- “**apparatus**” means any apparatus or equipment used or destined, designed or adapted to be used in connection with a communications service;
- “**application**” means any technological intervention by which value is added to a communications network service which includes the—
- (a) manipulation; 15
 - (b) storage;
 - (c) retrieval;
 - (d) distribution;
 - (e) creation; and
 - (f) combination, 20
- of content, format or protocol for the purpose of making such content, format or protocol available to customers;
- “**application service**” means a communications service provided by means of applications;
- “**application service licensee**” means a person licensed to provide an application service; 25
- “**Authority**” means the Independent Communications Authority of South Africa established by section 3 of the ICASA Act;
- “**broadcasting**” means any form of unidirectional communications service intended for— 30
- (a) the public;
 - (b) sections of the public; or
 - (c) subscribers to any broadcasting service,
- having appropriate receiving facilities, whether carried by means of radio frequency spectrum or any other communications network or any combination thereof, and “broadcast” is construed accordingly; 35
- “**Broadcasting Act**” means the Broadcasting Act, 1999 (Act No. 4 of 1999);
- “**broadcasting service**” means any service which consists of the broadcasting of television or sound broadcasting material to— 40
- (a) the public,
 - (b) sections of the public; or
 - (c) subscribers to such a service,
- but does not include—
- (i) a service (including text service) that provides no more than data, or no more than text (with or without associated still images); or 45
 - (ii) a service or components of a service that make programmes available on demand on a point-to-point basis, including a dial-up service;
- “**broadcasting service frequency band**” means that part of the electro-magnetic radio frequency spectrum which is allocated for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such allocation has been agreed to or adopted by the Republic; 50
- “**broadcasting service licence**” means a licence granted and issued by the Authority in terms of this Act for the purpose of providing a defined category of broadcasting services;
- “**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 broadcast target area by means of a communications process and multi-channel distribution; 55

- “**carrier pre-selection**” means the ability of a subscriber to a communications service provided by a communications service licensee to access the communications services of another communications service licensee;
- “**channel**” means a single defined programming service of a broadcasting services licensee; 5
- “**class licence**” means a licence authorising a person to provide a class of communications services;
- “**commercial broadcasting**” means a broadcasting service operating for profit or as part of a profit entity but excludes any broadcasting service provided by a public broadcasting licensee; 10
- “**communications**” means the—
- (a) emission;
 - (b) transmission; or
 - (c) reception by circuit-switched and packet-switched or other means, of voice, sound, data, text, video, visual images, signals or a combination thereof, including applications, 15
- by means of electricity, magnetism, radio or other electromagnetic waves, optical electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conductors, but does not include content services;
- “**communications facility**” means any— 20
- (a) wire;
 - (b) cable (including undersea and land-based fibre optic cables);
 - (c) optic;
 - (d) antenna;
 - (e) mast; 25
 - (f) switch;
 - (g) router;
 - (h) satellite transponder;
 - (i) circuit;
 - (j) cable landing station; 30
 - (k) international gateway;
 - (l) earth station or other thing, allowing for carrier pre-selection and number portability; or
 - (m) an apparatus,
- which can be used for, or in connection with, communications, including where applicable— 35
- (i) collocation space;
 - (ii) monitoring equipment;
 - (iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and 40
 - (iv) certain associated services,
- ancillary to such communications facilities or otherwise necessary for proper functionality and utilisation of such communications facilities;
- “**communications network**” means—
- (a) any transmission system and associated communications facilities; and 45
 - (b) other equipment, interfaces, protocols and software (excluding end user equipment),
- used in connection with such transmission system, which permits conveyance of signals, whether switched or unswitched, by— 50
- (i) wire;
 - (ii) radio;
 - (iii) optical; or other electromagnetic means or similar technical systems, including—
- (aa) satellite systems;
 - (bb) fixed systems (circuit-switched and packet-switched); 55
 - (cc) mobile systems;
 - (dd) fibre optic cables (undersea and land-based);
 - (ee) electricity cable systems (to the extent used for communications services); and
 - (ff) transmission systems, 60

used for content services, including radio and television broadcasting, and cable television, irrespective of the type of information conveyed (to the extent such transmissions systems used for content services are also used for communications services);

“communications network service” means a communications service whereby a communications network service licensee makes available a communications network or communications facilities, whether by sale, lease or otherwise— 5

- (a) for its own use for the provision of communications services or any other services contemplated by this Act or the related legislation;
- (b) to another communications network service licensee for that licensee’s use in providing communications services or any other service contemplated by this Act or the related legislation; or 10
- (c) for resale to a communications service licensee, or to any person providing content services or any other licensed service contemplated by this Act or the related legislation; 15

“communications network service licensee” means a person licensed to provide communications network services;

“communications service” means any service provided in terms of this Act or the related legislation which is normally provided for remuneration to—

- (a) the public; 20
- (b) sections of the public; or
- (c) the subscribers to such service,

and consists wholly or mainly of the conveyance of communications over communications networks, including transmissions over communications networks used for broadcasting, but excluding content services; 25

“communications service licensee” means a person authorised to provide communications services in terms of a class license issued under this Act;

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

“community broadcasting” means a broadcasting service which— 30

- (a) is fully controlled by a non-profit entity and carried on for non-profit purposes;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and 35
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;

“Complaints and Compliance Committee” means the committee established by the Authority in terms of section 17H of the ICASA Act; 40

“content” means any—

- (a) sound;
- (b) text;
- (c) still picture; 45
- (d) moving picture;
- (e) other audio visual representation or sensory representation; or
- (f) any combination of the preceding,

which is capable of being—

- (i) created; 50
- (ii) manipulated;
- (iii) stored;
- (iv) retrieved; and
- (v) communicated,

but excludes content contained in private communications between consumers; 55

“content service” means the—

- (a) provision of content; or
- (b) the exercise of editorial control over the content conveyed via a communications network to the public or sections of the public, such as online publishing and information services; 60

“Director-General” means the Director-General of the Department of Communications;

- “**election**” means any election for any legislature contemplated in the Constitution;
- “**election period**” means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected; 5
- “**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;
- “**end user**” means a subscriber or a person who uses the services of a licensed service referred to in Chapter 3; 10
- “**end user equipment**” means—
- (a) a telephone;
 - (b) a handset;
 - (c) a computer;
 - (d) a computing device; or 15
 - (e) other device or equipment,
- and any associated software—
- (i) located at the end user’s premises;
 - (ii) located within the end user’s custody; or
 - (iii) made available to the end user, 20
- such as publicly available telephones, which can be connected to a communications network for communicating over such communications network or otherwise receiving communications or utilising a communications service;
- “**essential facility**” means a communications facility or combination of communications facilities within a communications network that— 25
- (a) are exclusively or predominantly provided by a single or limited number of communications network licensees and cannot feasibly (whether economically or technically) be replaced in order to provide a communications service; or
 - (b) are declared by the Authority to be an essential facility in terms of this Act or the related legislation; 30
- “**existing licences**” means the licences referred to in Chapter 13 and licences granted in accordance with the provisions of the related legislation;
- “**financial interest**” means interest that may not have voting rights attached to it but which gives the person or entity a financial interest directly through shares or indirectly through an agreement giving it— 35
- (a) the power to control the licensee; or
 - (b) an effective say over the affairs of the licensee;
- “**free-to-air service**” means a service which is broadcast and capable of being received without payment of subscription fees; 40
- “**harmful interference**” means interference which—
- (a) seriously degrades, obstructs, or repeatedly interrupts a communication service operating in accordance with International Telecommunications Union Radio Regulations; or
 - (b) is not within CISPR interference level limits as agreed to or adopted by the Republic; 45
- “**TBA Act**” means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);
- “**ICASA Act**” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000); 50
- “**individual licence**” means a licence that is granted by the Authority to a person in terms of section 5;
- “**interconnection**” means the physical or logical linking of communications networks of two communications network service licensees;
- “**interference**” means the effect of unwanted energy due to one or a combination of emissions, radiations or inductions upon reception in a radio communication system, manifested by any— 55
- (a) performance degradation;
 - (b) misinterpretation; or
 - (c) loss of information, which could be extracted in the absence of such unwanted energy; 60
- “**investigation unit**” means the unit established by the Authority in terms of section 17G of the ICASA Act;

- “**licence area**” means the geographical target area of a broadcasting service as specified in the relevant broadcasting service licence;
- “**licence exemption**” means an exemption granted by the Authority in terms of section 6 of this Act or in terms of the related legislation;
- “**Minister**” means the Minister responsible for Communications; 5
- “**multi-channel distribution service**” means a broadcasting signal distribution service that provides broadcasting signal distribution for more than one channel at the same time on the same signal, and “multi-channel distributor” is construed accordingly;
- “**number portability**” means a capability whereby a subscriber to a communications service who so requests can retain— 10
- (a) his or her telephone number; or
- (b) any other number allocated to that subscriber,
- when changing service from one communications service licensee to another communications service licensee; 15
- “**party election broadcast**” means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party;
- “**person**” means a natural or a juristic person;
- “**political advertisement**” means an advertisement broadcast on a broadcasting 20 service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting service licensee has received or is to receive, directly or indirectly, any money or other consideration;
- “**prescribed**” means prescribed by regulation made in terms of this Act or the 25 related legislation;
- “**public broadcasting**” means—
- (a) any broadcasting service provided by the South African Broadcasting Corporation;
- (b) a broadcasting service provided by any other statutory body; or 30
- (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to television sets, or from the State; and
- (d) a commercially operated broadcasting service provided by a person referred 35 to in paragraph (a), (b), or (c);
- “**radio**” means an electromagnetic wave which is propagated in space without artificial guide;
- “**radio frequency band**” means a specified range of frequencies for use by one or more holders of a radio frequency spectrum licence;
- “**radio frequency band for security services**” means one or more specified ranges 40 of frequencies for use by one or more agencies classified as a security service;
- “**radio frequency plan**” means a national plan for—
- (a) the use of the radio frequency spectrum; and
- (b) the migration, as applicable, of existing users within specific radio frequency 45 bands, including radio frequency bands for security services,
- to allow for the introduction of new technologies and service consistent with this Act and the related legislation and for avoidance of harmful interference;
- “**radio frequency spectrum**” means the portion of the radio spectrum used as a transmission medium for—
- (a) wireless communications; 50
- (b) the radio frequency band;
- (c) the radio frequency band for security services; and
- (d) the broadcasting service frequency bands, as may be modified from time to time;
- “**radio frequency spectrum licence**” means an individual licence authorising the 55 holder to use the radio frequency spectrum;
- “**radio station**” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying a communications service;
- “**registered party**”, for the purposes of Chapter 9, means— 60
- (a) any registered party defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998); or
- (b) any alliance of such registered parties, as the case may be,

- which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution;
- “related legislation”** means the Broadcasting Act, the ICASA Act, and any regulations, determinations and guidelines made in terms of such legislation and not specifically repealed by this Act; 5
- “Republic”** means the Republic of South Africa, its possessions, air space and territorial waters;
- “reseller”** means a person who—
- (a) acquires, through lease or other similar arrangement, any communications network service or communications service; and
 - (b) makes such communications network service or communications service available to its subscribers or end users for a fee, whether or not such communications network services or communications services made available by the reseller are— 10
- (i) identical to the communications network service or communications service acquired;
 - (ii) packaged, bundled or otherwise re-grouped to form new or varied service offerings; or
 - (iii) combined, linked or used in connection with communications networks or communications facilities owned by the reseller, 20
- and whether or not the reseller adds value to such communications network services or communications services, and “resale” is construed accordingly;
- “retail”** means the sale, lease or otherwise making available of a communications service by a communications service licensee to end users; 25
- “security services”** means the security services of the Republic established in terms of Chapter 11 of the Constitution;
- “Sentech Act”** means the Sentech Act, 1996 (Act No. 63 of 1996);
- “service charter”** means a document, developed in consultation with staff and customers, which sets out the standards of service customers can expect and is a performance measurement and accountability tool that focuses on customer service outcomes; 30
- “SMME”** means a small business defined in section 1 of the National Small Business Act, 1996 (Act No. 102 of 1996);
- “SMS”** means short messaging service whereby text is sent over a communications network; 35
- “sound broadcasting service”** means a broadcasting service destined to be received by a sound radio set;
- “subscriber”** means a person who receives a communications service under an agreement with, or according to terms and conditions determined by, the provider of a communications service or a content service; 40
- “subscription broadcasting service”** means a broadcasting service provided to an end user upon payment of a fee;
- “Telecommunications Act”** means the Telecommunications Act, 1996 (Act No. 103 of 1996); 45
- “television broadcasting service”** means a broadcasting service consisting of the transmission of visual images or other visible signals with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;
- “transition period”** means the period or periods referred to in Chapter 13 for converting the existing licences to the licensing structure set out in this Act; 50
- “this Act”** includes the Schedule, regulations, orders, determinations and guidelines;
- “wholesale”** means the sale, lease or otherwise making available of a communications network service or communications services by a communications network service licensee or a communications service licensee, to another communications network service licensee or communications service licensee. 55

Object of Act

2. The primary object of this Act is to provide for the regulation of communications in the Republic in the public interest and for that purpose to— 60

- (a) promote and facilitate the convergence of telecommunications and broadcasting signal distribution;
- (b) promote the universal provision of communications networks and communication services and connectivity for all;
- (c) encourage investment and innovation in the communications sector; 5
- (d) ensure efficient use of the radio frequency spectrum;
- (e) promote competition within the communications sector;
- (f) promote an environment of open, fair and non-discriminatory access to communications networks;
- (g) promote the empowerment of historically disadvantaged persons; 10
- (h) encourage research and development within the communications sector;
- (i) encourage the interoperability of communications networks and communications network services;
- (j) provide a clear allocation of roles and assignment of tasks between policy formulation and regulation within the communications sector; 15
- (k) ensure that communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in the Republic;
- (l) provide assistance and support towards human resource development within the communications sector; 20
- (m) ensure the provision of a variety of quality communications services at reasonable prices;
- (n) promote the interests of consumers with regard to the price, quality and variety of communications services;
- (o) subject to the provisions of this Act, promote and facilitate the achievement of the objects of the related legislation; 25
- (p) develop and promote SMMEs;
- (q) ensure information security and network reliability;
- (r) promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public; 30
- (s) ensure that broadcasting services, viewed collectively—
 - (i) promote the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all language and cultural groups and provide entertainment, education and information; 35
 - (ii) provide for regular—
 - (aa) news services;
 - (bb) actuality programmes on matters of public interest;
 - (cc) programmes on political issues of public interest; and
 - (dd) programmes on matters of international, national, regional and local significance; 40
- (t) protect the integrity and viability of public broadcasting services;
- (u) ensure that, in the provision of public broadcasting services—
 - (i) the needs of language, cultural and religious groups;
 - (ii) the needs of the constituent regions of the Republic and local communities; and 45
 - (iii) the need for educational programmes, are duly taken into account;
- (v) ensure that commercial and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic; 50
- (w) ensure that broadcasting services are effectively controlled by South Africans;
- (x) provide access to signal distribution for content providers;
- (y) provide access to signal distribution services for broadcast content receivers; and 55
- (z) encourage the development of multi-channel distribution systems into the broadcasting framework.

CHAPTER 2

POLICY AND REGULATIONS

Ministerial policies and policy directions

3. (1) The Minister may make policies on matters of national policy applicable to the communications sector, consistent with the objects of this Act and of the related legislation in relation to— 5

- (a) the radio frequency spectrum, for the purposes of planning communications services;
- (b) universal service policy and access;
- (c) the Republic's obligations and undertakings under bilateral, multilateral or international treaties and conventions, including technical standards and frequency matters; 10
- (d) the application of new technologies pertaining to communications services and communications network services;
- (e) guidelines for the determination by the Authority of licence fees associated with the award of the licences contemplated in Chapter 3, including incentives that may apply to individual licences where the applicant makes binding commitments to construct communications networks and provide communications services in rural and under-serviced areas of the Republic; 15
- (f) the promotion of universal service and communication services in under-serviced areas; 20
- (g) mechanisms to promote the participation of SMMEs in the communications sector; and
- (h) any other policy which may be necessary for the application of this Act or the related legislation. 25

(2) The Minister must, subject to subsections (4) and (5) issue to the Authority policy directions consistent with the objects of this Act and of the related legislation in relation to—

- (a) the undertaking of an inquiry in terms of section 17F of the ICASA Act on any matter within the jurisdiction of the Authority and the submission of reports to the Minister in respect of such matter; 30
- (b) the determination of priorities for the development of communications networks and communications services or any other service contemplated in Chapter 3;
- (c) the consideration of any matter within the jurisdiction of the Authority reasonably placed before it by the Minister for urgent consideration; and 35
- (d) the implementation of any policy made by the Minister in terms of subsection (1). 40

(3) The Authority, in exercising its powers and performing its duties in terms of this Act and the related legislation, must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2).

(4) When issuing a policy direction under subsection (2) the Minister—

- (a) may consult the Authority; and
- (b) must, in order to obtain the views of interested persons, publish the text of such policy direction by notice in the *Gazette*— 45
 - (i) declaring his or her intention to issue the policy direction; and
 - (ii) inviting interested persons to submit written submissions in relation to the policy direction in the manner specified in such notice.

(5) The provisions of subsection (4) do not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (2) as a result of representations received and reviewed by him or her after consultation or publication in terms of subsection (4). 50

(6) Subject to subsection (7), a policy direction issued under subsection (2) may be amended, withdrawn or substituted by the Minister.

(7) Except in the case of amendments contemplated in subsection (5), the provisions of subsections (3) and (4) apply, with the necessary changes, in relation to any such amendment or substitution of a policy direction under subsection (6). 55

Regulations by Authority

4. (1) The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation. Without derogating from the generality of this subsection, the Authority may make regulations with regard to— 5
- (a) any technical matter necessary or expedient for the regulation of the licensed services identified in Chapter 3;
 - (b) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation;
 - (c) the payment to the Authority of charges and fees in respect of— 10
 - (i) the supply by the Authority of facilities for the inspection, examination or copying of material under the control of the Authority;
 - (ii) the transcription of material from one medium to another;
 - (iii) the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies; 15
 - (iv) the granting of licences in terms of this Act or the related legislation;
 - (v) applications for and the grant, amendment, renewal, transfer or disposal of licences or any interest in a licence in terms of this Act or the related legislation; and
 - (d) generally, the control of the radio frequency spectrum, radio activities and the use of radio apparatus. 20
- (2) Different regulations may be made in respect of different—
- (a) classes or categories of licences granted in terms of this Act or the related legislation, and
 - (b) categories of radio users, radio frequencies, radio frequency bands and licences. 25
- (3) Any regulation made by the Authority in terms of subsection (1) may declare any contravention of that regulation to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention.
- (4) The Authority must, not less than 30 days before any regulation is made, publish such regulation in the *Gazette*, together with a notice— 30
- (a) declaring the Authority's intention to make that regulation; and
 - (b) inviting interested parties to make written representations on the regulation.
- (5) The Authority may conduct public hearings in respect of a draft regulation.
- (6) The provisions of subsection (4) do not apply with regard to— 35
- (a) any regulation made by the Authority which, after the provisions of that subsection have been complied with, has been amended after receipt of comments or representations received in terms of a notice issued under that subsection; or
 - (b) any regulation which the public interest requires should be made without delay. 40

CHAPTER 3

LICENSING FRAMEWORK

Licensing

5. (1) The Authority may, in accordance with this Chapter and the regulations prescribed hereunder, grant individual and class licences. 45
- (2) The Authority may, upon application in the prescribed manner, grant individual licences for the following:
- (a) Subject to subsections (4) and (5), communications network services;
 - (b) radio frequency spectrum licences; 50
 - (c) subject to subsection (6), broadcasting services licenses; and
 - (d) such other services as may be prescribed.
- (3) The Authority may, upon application in the prescribed manner, grant class licences for the following:
- (a) Communications services, which must include resellers; 55
 - (b) applications services; and
 - (c) such other services as may be prescribed.

- (4) The Authority may only accept and consider applications for communications network services licences as from a date to be fixed by the Minister by notice in the *Gazette*.
- (5) The Minister may determine the date when and the geographical area within which communications network services licences may be granted. 5
- (6) The Authority must prescribe regulations—
- (a) setting out—
 - (i) the process and procedures for applying for one or more of the licences specified in subsections (2) and (3), including identifying which radio frequency spectrum licences may be exempt from the requirements contained in sections 9 and 11; 10
 - (ii) the documentation that applicants must include with their applications;
 - (iii) the licence fees applicable to the licences specified in subsections (2) and (3), taking into account any policy directions issued by the Minister in terms of section 3(2); and 15
 - (iv) the terms and conditions for granting special temporary authorisations for testing purposes and research and development; and
 - (b) on any matter relating to the licensing process.
- (7) When applying for a licence an applicant must demonstrate that the applicant or the person to be awarded the licence, in the case of— 20
- (a) a natural person, is a citizen of the Republic; or
 - (b) a company, is, or will be, registered under the laws of the Republic and has, or will have, its principal place of business located within the Republic.
- (8) The Authority must, in granting a licence—
- (a) ensure that communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in the Republic; and 25
 - (b) promote the empowerment of historically disadvantaged groups including women and the youth.
- (9) Individual licences and class licenses for applications services and communications services— 30
- (a) are issued for a period of 25 years unless a shorter period is requested by the applicant at the time such applicant applies for the licence; and
 - (b) may be renewed in accordance with the terms set out in this Act.
- (10) During the transition period, existing licences are considered to be individual licences for the provision of communications network services or communications services, as applicable, granted by the Authority in terms of this Act and, despite section 8, remain subject to all terms and conditions associated with such licences until such licences are converted and re-issued in terms of section 85. 35
- (11) Licences granted by the Authority in terms of this section are effective and valid on the date specified in the licence unless an order of a court of competent jurisdiction is granted. 40
- (12) A licence confers on the holder the privileges and subjects the holder to the obligations provided for in this Act or specified in the licence.

Licence exemption 45

6. The Authority may prescribe the type of communications service that may be provided without a licence.

Prohibition of provision of service without licence

7. Subject to the provisions of this Act and of the related legislation, and such exemptions as may be prescribed by the Authority, no person may provide any service referred to in section 5(2) and (3) except under and in accordance with the terms and conditions of an individual or class licence. 50

Terms and conditions for licences

8. (1) The Authority must prescribe standard terms and conditions applicable to each category of individual and class licence. 55

- (2) Such standard terms and conditions may take into account—
- (a) whether the service is intended for the public generally or a limited group such as the provision of—
 - (i) application services; 5
 - (ii) communications services; or
 - (iii) communications network services, to broadcasting service licensees or providers of content services;
 - (b) subject to section 5(8), the geographic reach of the authorised service;
 - (c) the duration of the licence; 10
 - (d) the nature of the service; 10
 - (e) the protection of the interests of the end users, including, without limitation—
 - (i) the handling of complaints and disputes;
 - (ii) the resolution of disputes;
 - (iii) the provision of appropriate remedies and redress in respect of such complaints and disputes; 15
 - (iv) making information about services, tariffs and the rights of end users available; and
 - (v) any other matter the Authority determines to be beneficial for securing effective protection for end users of the licensed services identified in Chapter 3; 20
 - (f) the public interest in ensuring service interoperability and ensuring interconnection and facilities leasing;
 - (g) the public interest in securing efficient functioning of communications networks and communications facilities, including but not limited to preventing or restricting harmful interference within the radio frequency spectrum; 25
 - (h) any universal access and universal service obligations;
 - (i) the public interest in the provision, availability and use, in the event of a disaster, of communications networks, communications facilities and communications services; 30
 - (j) the public interest in securing the protection of public health for the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of communications networks and the provision of communications services;
 - (k) the international obligations of the Republic, including compliance with relevant international standards; 35
 - (l) the public interest in ensuring the distribution of broadcasting services;
 - (m) the public interest in facilitating an environment of sustainable competition;
 - (n) the efficient use of the radio frequency spectrum and migration to digital use of such spectrum; and 40
 - (o) rollout targets in respect of radio frequency licences to ensure that the allocated radio frequency spectrum is utilised and to ensure the withdrawal of the licence when such rollout targets are not met.
- (3) The Authority may prescribe additional terms and conditions that may be applied to one or more licensees within a category of individual or class licences or across individual or class categories, where the Authority finds that a particular licensee within such categories, in the market or market segments applicable to the particular category of licence— 45
- (a) has significant market power;
 - (b) has control of essential facilities; 50
 - (c) should have a universal access and service obligation imposed; or
 - (d) is vertically integrated and the Authority determines such vertical integration could harm competition in the market or market segments applicable to the particular category of licence.
- (4) A licensee is considered to have significant market power in relation to a market or submarket if the licensee enjoys a position within such market or market segments which amounts to or is equivalent to dominance of the market or market segments. 55
- (5) A licensee is considered to be dominant in a market or submarket if that licensee—
- (a) has a market share equal to or in excess of 35 per cent; or

- (b) individually or in combination with other licensees, by reason of its or their position in a closely related market, allows the market power held in the closely related market to be used in a way that adversely affects or influences the first market or market segments.
- (6) The additional terms and conditions contemplated in subsection (3) may include— 5
- (a) an obligation to act fairly and reasonably in the way in which the licensee responds to requests for interconnection and facilities leasing;
 - (b) a requirement that the obligations contained in the licence terms and conditions must be complied with within the periods and at the times required by or under such terms and conditions, failing which a penalty may be imposed; 10
 - (c) a prohibition against discriminating in relation to matters connected with interconnection and facilities leasing or with the provision of communications network services and communications services; 15
 - (d) an obligation requiring the licensee to publish, in such manner as the Authority may direct, all information for the purpose of ensuring transparency in relation to—
 - (i) interconnection and facilities leasing; or
 - (ii) the provision of communications network services and communications services; 20
 - (e) an obligation to publish, in such manner as the Authority may direct, the terms and conditions for—
 - (i) interconnection and facilities leasing; or
 - (ii) the provision of communications network services and communications services which may take the form of a reference offer; 25
 - (f) an obligation to maintain a separation for accounting purposes between different matters relating to—
 - (i) interconnection;
 - (ii) facilities leasing; and 30
 - (iii) the provision of communications network services and communications services;
 - (g) a requirement relating to the accounting methods to be used in maintaining the separation of accounts referred to in paragraph (f);
 - (h) price controls, including requirements relating to the provision of wholesale and retail prices in relation to matters connected with the provision of— 35
 - (i) interconnection and facilities leasing; or
 - (ii) communications network services or communications services;
 - (i) matters relating to the recovery of costs and cost orientation; and
 - (j) with regard to broadcasting services, the appropriate amount of South African programming, including— 40
 - (i) music content;
 - (ii) news and information programmes; and
 - (iii) where appropriate, programming of local or regional significance. 45
- (7) In prescribing the terms and conditions for each type of individual or class licence, the Authority must have regard to the need to create and maintain a competitive environment in the communications sector.

Application for and granting of individual licences

- 9.** (1) Any person may, subject to the provisions of this Act and of the related legislation, where applicable, apply for an individual licence in the prescribed manner. 50
- (2) In the case of an application for an individual licence the Authority must—
- (a) give notice of the application in the *Gazette* and invite interested persons to submit written representations in relation to the application within the period mentioned in the notice;
 - (b) publish the percentage of equity ownership held by persons from historically disadvantaged groups; 55
 - (c) publish the proposed licence conditions that will apply to the licence;
 - (d) give applicants an opportunity to submit written responses to any representations submitted in terms of paragraph (a);
 - (e) submit to the Minister the proposed licence conditions for approval. 60

(3) The Authority may require an applicant or an interested party who has submitted written representations in terms of subsection (2)(a) 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.

(4) (a) Applications, representations, responses and other documents relating to an application which are submitted to the Authority are, subject to this subsection, open to public inspection during normal office hours of the Authority.

(b) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with copies of documents requested by such person.

(c) (i) The Authority may, at the request of an applicant or person who has submitted representations or responses, decide that—

(aa) any document or information that is commercially sensitive; or

(bb) any other matter reasonably justifying confidentiality,

is not open to public inspection, if such document or information can be separated from the application, representations or other documents in question.

(ii) For the purposes of this subsection, commercially sensitive document, information or other matter reasonably justifying confidentiality excludes documents, information or other matter that should, as a matter of law, be generally available to the public.

(d) If the Authority refuses a request contemplated in paragraph (c)(i), the applicant or person concerned may withdraw the document or information in question.

(5) The Authority must, after considering—

(a) any application for an individual licence made in terms of this Act; and

(b) any written submissions referred to in subsection (2)(a) in relation to the application,

notify the applicant of its decision, the reasons for that decision and any licence conditions applicable thereto.

(6) Whenever the Authority grants an individual licence, the Authority—

(a) must do so on the standard terms and conditions applicable to the relevant category of licence, as prescribed in terms of section 8(1); and

(b) may impose such additional terms and conditions as may be prescribed in terms of section 8(3) that the Authority considers—

(i) appropriate to such licence, taking into account other licences held by the licensee, relevant legislation and market conditions;

(ii) consistent with the objects of the Act and of the related legislation; and

(iii) similar to any additional terms and conditions of other licences of the same category.

(7) Despite subsection (6), the Authority may impose on the applicant any other specific terms and conditions resulting from undertakings made by the applicant.

Amendment of individual licence 40

10. The Authority may amend an individual licence in consultation with the licensee—

(a) to make the conditions of the individual licence consistent with conditions being imposed generally in respect of all individual licences granted in the same category, for the purpose of ensuring fair competition between those licensees;

(b) to the extent requested by the licensee;

(c) to the extent necessitated by technological change;

(d) in accordance with an order under section 17M of the ICASA Act following a finding and recommendation by the Complaints and Compliance Committee;

(e) where the Authority is satisfied that the amendment is necessary to ensure the achievement of the objectives of the Act and of the related legislation following an adverse finding by the Competition Tribunal under the Competition Act, 1998 (Act No. 89 of 1998);

(f) if the amendment relates to universal access or universal service and is necessary, in the opinion of the Authority, as a result of—

(i) changed circumstances in the market; or

(ii) lack of communications network services or communications services in specifically identified areas of the Republic.

Renewal of individual licence

- 11.** (1) A licensee may, subject to the conditions of his or her licence, apply for the renewal of his or her licence in the manner prescribed by the Authority.
- (2) The regulations prescribed by the Authority in terms of this subsection must specify, among other things, the form and content of applications for renewal and the time period for applying for renewal. 5
- (3) Except as provided in this section, the provisions of section 9(2) to (5) apply, with the necessary changes, to the renewal of an individual licence.
- (4) Except for applications contemplated in subsection (9), the Authority must, subject to subsection (8), make its decision on the application for renewal prior to the expiration of the date specified in the licence. 10
- (5) The Authority may prescribe any fees applicable to renewal of an individual licence.
- (6) Subject to subsection (7), the Authority must renew the licence on no less favourable terms and conditions as were applicable during its preceding period of validity except where the amendments meet the requirements set out in section 10. 15
- (7) The Authority may refuse to renew a licence or may renew a license on less favourable terms and conditions than those that were applicable during the preceding period of validity or with terms and conditions not otherwise applied to similar licences as contemplated in section 8, if the Authority determines that the licensee has materially and repeatedly failed to comply with— 20
- (a) the terms and conditions of the licence;
 - (b) the provisions of this Act or of the related legislation; or
 - (c) any regulation made by the Authority.
- (8) If the Authority refuses an application for renewal of the licence, the Authority— 25
- (a) must, as soon as practicable, inform the licensee by written notice of its decision and the reasons for the decision;
 - (b) must provide the licensee with a reasonable opportunity to make written submissions to the Authority within a time period specified in the notice referred to in paragraph (a); 30
 - (c) may, upon receipt of the written submission from the licensee, review its decision to refuse the application for renewal;
 - (d) must notify the licensee of its decision after reviewing the application.
- (9) The Authority may on good cause shown by the applicant accept, for filing, an application for renewal that is not submitted within the time period prescribed by the Authority in terms of subsection (2). 35
- (10) A licence remains valid until such time as the Authority has made a decision on an application for renewal of the licence.
- (11) Where the Authority grants renewal of the licence, such licence becomes effective on the date specified by the Authority unless a court of competent jurisdiction grants an order against the renewal. 40
- (12) Where the Authority refuses the renewal of a licence, such refusal becomes effective on the date specified in the notice given by the Authority to the licensee in terms of subsection (8)(d), unless a court of competent jurisdiction grants an order against the refusal of the renewal. 45

Surrender of individual licence

12. A licensee may, at any time, by written notice, surrender a licence to the Authority in accordance with the requirements set out in the licence or in the manner prescribed by the Authority.

Transfer of individual licence or change of ownership 50

- 13.** (1) An individual licence may not be assigned, ceded or transferred to any other person without the prior written permission of the Authority.
- (2) An application for permission to assign, cede or transfer an individual licence may be made in the prescribed manner to the Authority.
- (3) The Authority may by regulation set a limit on, or restrict, the ownership or control of a licence or communications service in order to— 55

- (a) promote a diversity of views and opinions;
 - (b) promote the ownership and control of communications services by historically disadvantaged groups;
 - (c) promote competition in the communications sector.
- (4) Regulations contemplated in subsection (3) must be made— 5
- (a) with due regard to the objectives of this Act, the related legislation and, where applicable, any other relevant legislation; and
 - (b) after the Authority has conducted an inquiry in terms of section 17F of the ICASA Act, which may include a market study.

Suspension or cancellation of individual licence 10

14. (1) The Authority may suspend or cancel a licence granted in terms of this Act—
- (a) where the licensee agrees in writing to such suspension or cancellation;
 - (b) in accordance with an order issued by the Authority in terms of section 17M of the ICASA Act;
 - (c) where the licensee is placed in liquidation, whether voluntary or compulsory 15 or is placed under judicial management, either provisionally or finally.
- (2) The suspension or cancellation of a licence takes effect on the expiration of 14 days from the date on which a written notice of suspension or cancellation is served on the licensee by the Authority.
- (3) Once the suspension or cancellation of a licence has taken effect, the Authority 20 must, as soon as practicable, publish the suspension or cancellation in the *Gazette*.
- (4) A delay or failure to publish the notice of suspension or cancellation in the *Gazette* does not in any manner affect the validity of the suspension or cancellation.

Effect of suspension, cancellation, surrender or expiry of individual licence

15. (1) Once— 25
- (a) the suspension or cancellation of an individual licence under section 14 has taken effect;
 - (b) the surrender of an individual licence under section 12 has taken effect; or
 - (c) an individual licence has expired,
- the licensee must immediately cease to provide any communications service in respect 30 of which the licence was granted, unless such suspension or cancellation is stayed in accordance with an order of a court of competent jurisdiction.
- (2) Despite subsection (1), the Authority may authorise the licensee, in writing, to continue providing any communications network service or communications service or any part thereof, for such duration as the Authority may specify in the authorisation, for 35 the purpose of winding up the licensee's affairs.
- (3) Despite subsection (1) and subject to section 11, a licensee whose individual licence has expired is entitled to continue providing a service as if the licence has not expired upon proof being submitted to the Authority that—
- (a) the licensee has applied for the renewal of the licence in accordance with 40 section 11; and
 - (b) such application is pending determination by the Authority.

Class licence

16. (1) The Authority may, on receipt of an application, grant a class licence.
- (2) An application for a class licence may be submitted at any time in the manner 45 prescribed by the Authority.
- (3) The Authority must maintain a register of all class licensees by category.
- (4) The register must be available to the public.
- (5) The Authority must at least once annually update and publish the list of class licensees in the *Gazette*. 50

Application for class licence

17. (1) A person who intends to operate under a class licence must, in the manner prescribed under subsection (3), submit an application in writing to the Authority.
- (2) The applicant must pay to the Authority an application fee prescribed by the 55 Authority.

- (3) The application must—
- (a) be submitted to the Authority in such a manner as the Authority may prescribe; and
 - (b) contain all such information as the Authority may prescribe.
- (4) The Authority must, not less than 60 days after receipt of an application for a class licence, publish—
- (a) the names of all approved class licensees in the *Gazette*;
 - (b) the nature of the service provided by the licensee; and
 - (c) the general licence conditions applicable to the class.
- (5) In any case where—
- (a) the Authority fails to publish the name of an applicant for a class licence within the 60 days required in terms of subsection (4); and
 - (b) the Authority has not declined to grant the class licence in terms of section 18, the class licence must be considered to have been granted on the sixty first day after receipt of the application for the licence.
- (6) During the term of a class licence the licensee must ensure that the information contained in the register referred to in section 16(3) remains accurate by filing and updating such information within 60 days of any material change in the information taking place.

Refusal of application for class licence 20

- 18.** (1) The Authority may refuse to grant a class licence if—
- (a) the application does not contain the appropriate information prescribed by the Authority;
 - (b) the Authority discovers that the person is in contravention of this Act or the related legislation; or
 - (c) the application contains false or misleading information or misrepresentations of fact.
- (2) Where an application is refused, the Authority must, within 60 days of receipt of the application, send to the applicant, a written notice—
- (a) stating the reasons for the refusal; and
 - (b) providing the applicant with an opportunity to correct and resubmit the application.

Advance notice to Authority

- 19.** (1) A person who has submitted an application in terms of section 17 must, before—
- (a) providing or making any material change to the communications service to be provided; or
 - (b) ceasing to provide the communications service,
- notify the Authority, in writing, of the reasons for the modification or of the person's intention to cease provision of the communications service.
- (2) A notice must, for the purposes of this section, be sent to the Authority in such a manner and contain such information as the Authority may prescribe.

CHAPTER 4

COMMUNICATIONS NETWORKS AND COMMUNICATIONS FACILITIES

Application 45

- 20.** (1) This chapter applies only to communications network service licensees.
- (2) A communications network service licensee must perform its obligations in terms of this Chapter and in accordance with the regulations prescribed by the Authority.

Guidelines for rapid deployment of communications facilities

- 21.** (1) The Minister must, in consultation with the Minister of Provincial and Local Government and the Minister of Environmental Affairs, develop guidelines for the rapid deployment and provisioning of communications facilities. 50

- (2) The guidelines must provide procedures and processes for—
- (a) obtaining any necessary permit, authorisation, approval or other governmental authority; and
 - (b) resolving disputes that may arise between a communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of communications networks and communications facilities.

Entry upon and construction of lines across land and waterways

- 22.** (1) A communications network service licensee may—
- (a) enter upon any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway, including the territorial waters and adjacent shores of the Republic;
 - (b) construct and maintain a communications network or communications facilities upon, under, over, along or across any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway, including the territorial waters and adjacent shores of the Republic; and
 - (c) alter or remove a communications network or communications facilities, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.
- (2) In taking any action in terms of subsection (1), due regard must be had to applicable law and the environmental policy of the Republic.

Underground pipes for purposes of communications network service

- 23.** (1) If any local authority and a communications network service licensee agree that the provision of the electricity supply and communications network services to a particular area must be provided by means of an underground cable, that local authority may on any premises within the said area, when installing such cable for an underground electricity supply line on the said premises, provide a conduit pipe or other facility for the installation of an underground communications facility from a point of connection on the street boundary to a building on those premises, in accordance with the requirements of the communications network services licensee.
- (2) The cost of the provision of the said conduit pipe or other facility—
- (a) is payable to the local authority in question; and
 - (b) is, for the purpose of any law, considered to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

Pipes under streets

- 24.** (1) A communications network service licensee may, after reasonable notice in writing to the local authority or person owning or responsible for the care and maintenance of any street, road or footpath—
- (a) construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for communications network facilities under any such street, road or footpath;
 - (b) alter or remove any pipes, tunnels or tubes required for communications network facilities under any such street, road or footpath and may for such purposes break or open up any street, road or footpath; and
 - (c) alter the position of any pipe, not being a sewer drain or main, for the supply of water, gas or electricity.
- (2) The local authority or person to whom any such pipe belongs or by whom it is used is entitled, at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work.
- (3) The licensee must pay all reasonable expenses incurred by any such local authority or person in connection with any alteration or removal under this section or any supervision of work relating to such alteration.

Removal of communications network facilities

25. (1) If a communications network service licensee finds it necessary to move any communications facility, pipe, tunnel or tube constructed upon, in, over, along, across or under any land, railway, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the cost of the alteration or removal must be borne by that local authority or person. 5

(2) (a) Where any communications network facility passes over any private property or interferes with any building about to be erected on that property, the licensee must, on receiving satisfactory proof that a building is actually to be erected, deviate or alter the positioning of the communications facility in such manner as to remove all obstacles to building operations. 10

(b) The owner of the property must, in writing, give notice that any such deviation or alteration is required to the communications network service licensee, not less than 28 days before the alteration or deviation is to be effected.

(3) If any deviation or alteration of a communications network facility, pipe, tunnel or tube constructed and passing over any private property is desired on any ground other than those contemplated in subsection (2), the owner of the property must give the communications network service licensee written notice of 28 days, of such deviation or alteration. 15

(4) The communications network service licensee must decide whether or not the deviation or alteration is possible, necessary or expedient. 20

(5) If the communications network service licensee agrees to make the deviation or alteration as provided for in subsection (3), the cost of such deviation or alteration must be borne by the person at whose request the deviation or alteration is effected.

(6) If, in the opinion of the communications network service licensee the deviation or alteration is justified, the licensee may bear the whole or any part of the said cost. 25

Fences

26. (1) If any fence erected or to be erected on land over which a communications network facility, pipe, tunnel or tube is constructed or is to be constructed by a communications network service licensee renders or would render entry to that land impossible or inconvenient, the communications network service licensee may at its own expense— 30

(a) erect and maintain gates in that fence; and

(b) provide duplicate keys for such gates, one set of which duplicate keys for such gates must be handed to the owner or occupier of the land. 35

(2) Any person intending to erect any such fence must give the communications network service licensee notice in writing of not less than six weeks of his or her intention to erect such fence.

Trees obstructing communications network facilities

27. (1) Any tree or vegetation which in the opinion of a communications network service licensee— 40

(a) obstructs or interferes; or

(b) is likely to obstruct or interfere,

with the working or maintenance of any of the communications network services licensees' communications network or communications facilities, pipes, tunnels or tubes, whether growing upon— 45

(i) State-owned land;

(ii) any road; or

(iii) private land,

must, after reasonable notice to the owner or occupier of the land, be cut down or trimmed by the authority responsible for the care and the management of such State-owned land, road or private land, in accordance with its requirements or by the owner or occupier of such private land, as the case may be, at the expense of the communications network service licensee. 50

(2) In the event of failure to comply with a notice referred to in subsection (1), the communications network service licensee may cause the said tree or vegetation to be cut down or trimmed as the communications network service licensee may consider necessary. 55

(3) Where the communications network or communications facility is actually interfered with or endangered by any such tree or vegetation, the licensee may remove such tree or vegetation without any such notice.

(4) In taking any action in terms of subsections (1), (2) or (3), due regard must be had to the environmental law of the Republic.

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Height or depth of communications network facilities

28. (1) (a) Aerial communications networks or communications facilities along any railway or public or private street, road, footpath or land must be at the prescribed height above the surface of the ground.

(b) The communications network service licensee must place communications networks and communications facilities, pipes, tunnels and tubes at the prescribed depth below the surface of the ground.

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(2) If the owner of any private land proves to the satisfaction of a communications network service licensee that he or she is obstructed in the free use of his or her land because of the insufficient height or depth of any communications network or communications facility, pipe, tunnel or tube constructed by the communications network service licensee, the communications network service licensee may, subject to the provisions of sections 22 and 25, take such steps as he or she may consider necessary for giving relief to that owner.

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(3) In taking any action in terms of this section, due regard must be had to the environmental laws of the Republic.

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Electrical works

29. (1) Any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity, must—

(a) conform to the requirements of a communications network service licensee for the prevention of damage to any of its communications network and communications facilities or works by such construction;

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(b) before commencing the construction of any such railway or works, give notice of 30 days in writing to the communications network service licensee of his or her intention to commence the construction; and

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(c) furnish the communications network service licensee with—

(i) a plan of the proposed railway or works;

(ii) particulars showing the manner and position in which the railway or works are intended to be constructed, executed and carried on; and

(iii) such further information related to the proposed railway or works as the communications network service licensee may require.

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(2) If—

(a) it appears to the communications network service licensee that the construction, equipment or operation of any such railway or works is likely to damage any of its communications facilities or works; or

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(b) any of such communications facilities or works are damaged by the construction, equipment or operation of any such railway or works,

the communications network service licensee must give reasonable notice of its requirements to the person concerned.

(3) Any person who, after receiving the notice referred to in subsection (2), proceeds with or causes to be proceeded with any such construction, equipment or operation in contravention of the said requirements, is liable to the communications network service licensee for damages sustained by the communications network service licensee.

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CHAPTER 5

RADIO FREQUENCY SPECTRUM

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Control of radio frequency spectrum

30. (1) In carrying out its functions under this Act and the related legislation, the Authority controls, plans, administers and manages the use and licensing of the radio frequency spectrum.

- (2) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority must—
- (a) comply with the applicable standards and requirements of the International Telecommunications Union and its Radio Regulations, as agreed to or adopted by the Republic; 5
 - (b) take into account modes of transmission and efficient utilisation of the radio frequency spectrum, including allowing shared use of radio frequency spectrum when harmful interference can be minimised;
 - (c) give high priority to applications for radio frequency spectrum where the applicant proposes to utilise digital communications facilities for the provision of communications services and other services licensed in terms of this Act and the related legislation; 10
 - (d) plan for the conversion of analogue uses of the radio frequency spectrum to digital, including the migration to digital broadcasting in the Authority's preparation and modification of the radio frequency spectrum plan; and 15
 - (e) give due regard to the radio frequency spectrum allocated to security services in the radio frequency band for security services.
- (3) The Authority must, in performing its functions in terms of subsection (1), ensure that in the use of the radio frequency spectrum harmful interference to authorised or licensed users of the radio frequency spectrum is minimised to the extent reasonably possible. 20
- (4) The Authority must investigate and, to the extent reasonably possible, resolve all instances of harmful interference that are reported to it.
- (5) The Authority may decline to investigate in-band interference in radio frequency bands that do not require frequency spectrum licensing. 25

Radio frequency spectrum licence

- 31.** (1) Subject to subsections (4), (5) and (9), no person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence granted by the Authority to such person in terms of this Act. 30
- (2) A radio frequency spectrum licence is required in addition to any service licence contemplated in Chapter 3, where the provision of such service or the use thereof entails the use of radio frequency spectrum.
- (3) The Authority may amend a radio frequency spectrum licence— 35
- (a) to implement a change in the radio frequency plan;
 - (b) in the interest of orderly radio frequency spectrum management;
 - (c) to effect the migration of licensees in accordance with such radio frequency plan and the transition from analogue to digital broadcasting, if the amendment will not cause substantial prejudice to the licensee;
 - (d) if requested by the licensee concerned; or 40
 - (e) with the agreement of the licensee.
- (4) Subsection (1) does not apply to a person who utilises radio frequency spectrum—
- (a) in the course of making due and proper use, as an end user, of a communications service or communications network service, the provision of which is licensed in terms of Chapter 3; 45
 - (b) in the course of making due and proper use of a communications service, the provision of which is licensed in terms of Chapter 3, as part of his or her duties in the service of the State or a local authority, including any military force, police service or traffic authority, in instances of *force majeure*; or
 - (c) in accordance with the regulations contemplated in subsection (5). 50
- (5) The Authority may prescribe—
- (a) categories of radio apparatus the use or possession of which; or
 - (b) the circumstances in which the use or possession of radio apparatus, does not require a radio frequency spectrum licence.
- (6) The Authority may, on its own initiative, take appropriate action to ensure compliance with the provisions of this Chapter. 55
- (7) Subject to subsection (8), the Authority may withdraw any radio frequency spectrum licence when the licensee fails to utilise the allocated radio frequency spectrum in accordance with the licence conditions applicable to such licence.

(8) Before the Authority withdraws a radio frequency spectrum licence in terms of subsection (7), it must give the licensee prior written notice of at least 30 days and the licensee must have seven business days in which to respond in writing to the notice (unless otherwise extended by the Authority) demonstrating that it is utilising the radio frequency spectrum in compliance with this Act and the licence conditions. 5

(9) The Authority, based on the written response of the licensee, must notify the licensee of its decision to withdraw or not to withdraw the licence.

Control of possession of radio apparatus

32. (1) Subject to section 31(5), no person may possess any radio apparatus unless he or she is in possession of a permit granted by the Authority in terms of this section or a radio frequency spectrum licence. 10

(2) The Authority must prescribe the procedure for obtaining a permit referred to in subsection (1).

(3) The Authority may, subject to this Act, the related legislation and other applicable law, enter onto property for purposes of inspecting radio apparatus in accordance with subsection (4). 15

(4) Where a person is found in possession of any radio apparatus in contravention of the provisions of this section, the Authority may—

- (a) seal or alter such apparatus or any part thereof in order to—
 - (i) prevent the use of that radio apparatus for the purpose of transmission or reception; and 20
 - (ii) grant to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not, during such period, used for such purpose; or

- (b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of subsection (5). 25

(5) Radio apparatus seized under subsection (4)(b) must be held by the Authority until—

- (a) its possession is authorised in terms of subsection (1) or (4)(a); or
- (b) it is dealt with by a court. 30

Frequency co-ordination

33. (1) Holders of a radio frequency spectrum licence must, in good faith, co-ordinate their respective frequency usage with other such licensees to—

- (a) avoid harmful interference among radio frequency spectrum licensees;
- (b) ensure efficient use of any applicable frequency band; and 35
- (c) allow for the provision of cost-efficient services.

(2) The Authority must prescribe regulations governing the co-ordination contemplated in subsection (1), which may include a process for the resolution of disputes among radio frequency spectrum licensees on an expedited basis.

Radio frequency plan 40

34. (1) The Authority must, within 12 months of the coming into force of this Act, prepare a radio frequency plan for the allocation of the radio frequency spectrum among users and potential users.

(2) The radio frequency plan must be updated and amended, as necessary, at least once every 12 months to keep the radio frequency plan current and when updating and amending this plan due regard must be had to the future usage of the radio frequency spectrum within the Republic. 45

(3) The radio frequency plan must—

- (a) define the radio frequency bands and the use of such radio frequency bands;
- (b) ensure that the radio frequency spectrum is utilised and managed in an orderly, efficient and effective manner; 50
- (c) aim at reducing congestion in the use of the radio frequency spectrum;
- (d) aim at protecting radio frequency spectrum licensees from harmful interference or other inability to make use of the radio frequency spectrum assigned to them; 55

- (e) provide for the rapid and efficient introduction of new digital technologies;
 - (f) aim at providing opportunities for the introduction of the widest range of services and the maximum number of users thereof as is practically feasible.
- (4) In preparing the radio frequency plan, the Authority must—
- (a) have due regard to the reports of experts in the field of spectrum or radio frequency planning and to internationally accepted methods for preparing such plans; 5
 - (b) take into account existing uses of the radio frequency spectrum and any radio frequency band plans in existence or in the course of preparation; and
 - (c) consult with the Minister to— 10
 - (i) incorporate the radio frequency spectrum allocated by the Minister for the exclusive use of the security services into the radio frequency plan;
 - (ii) take account of government's current and planned uses of the radio frequency spectrum, including the needs of security services and the allocation of radio frequency spectrum to one or more bands that collectively comprise the radio frequency band for security services; and 15
 - (iii) co-ordinate a plan for migration of existing users, as applicable, to make available radio frequency spectrum to satisfy the requirements of subsection (2) and the objects of this Act and of the related legislation. 20
- (5) The Authority must give notice in the *Gazette* of its intention to prepare a radio frequency plan and in such notice invite interested parties to submit their written representations to the Authority within such period as may be specified in such notice.
- (6) The Authority may, after the period referred to in subsection (5) has passed, hold a hearing in respect of the proposed radio frequency plan.
- (7) After the hearing, if any, and after due consideration of any written representations received in response to the notice mentioned in subsection (5) or tendered at the hearing, the Authority must forward the radio frequency plan to the Minister for approval and implementation of any migration plan identified therein. 25
- (8) The Minister must, within 30 days of receipt of the radio frequency plan, either approve the radio frequency plan, at which time the plan must become effective, or notify the Authority that further consultation is required and specify a schedule for undertaking such consultation with the Authority leading to approval of the radio frequency plan. 30
- (9) Upon approval of the radio frequency plan by the Minister, the Authority must publish the plan in the *Gazette*. 35
- (10) Any radio frequency plan approved in terms of this section and all the comments, representations and other documents received in response to the notice contemplated in subsection (5) or tendered at the hearing must be—
- (a) kept at the offices of the Authority; and
 - (b) open for public inspection by interested persons during the normal office hours of the Authority. 40
- (11) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of the radio frequency plan.
- (12) The provisions of subsections (3) to (11) apply, with the necessary changes, in relation to any amendment made by the Authority to the radio frequency plan contemplated in subsection (1). 45
- (13) The Authority may, where the radio frequency plan identifies radio frequency spectrum that is occupied and requires the migration of the users of such radio frequency spectrum to other radio frequencies, migrate the users to other radio frequency spectrum in accordance with the radio frequency plan, except where such migration involves governmental entities or organisations, in which case the Authority must refer the matter to the Minister for resolution. 50
- (14) (a) The Minister may allocate radio frequency spectrum for the exclusive use of the security services.
- (b) The Minister must, where the Minister allocates radio frequency spectrum in terms of paragraph (a), retain control over such radio frequency spectrum for security services. 55

CHAPTER 6

TECHNICAL EQUIPMENT AND STANDARDS

Approval of type

35. (1) No person may use, supply, sell, offer for sale or lease or hire any type of communications equipment or communications facility, including radio apparatus, in connection with communications, unless that type of communications equipment, communications facility or radio apparatus has, subject to subsection (2), been approved by the Authority. 5

(2) The Authority may prescribe—

- (a) the types of communications equipment or types of communications facilities the use of which does not require approval, which may include, among others— 10
 - (i) communications equipment;
 - (ii) communications facilities; and
 - (iii) radio apparatus that has been approved for use within the European Union or other jurisdictions; and 15
- (b) circumstances under which the use of communications equipment or a communications facility or radio apparatus does not require approval, which may include, among others—
 - (i) end user equipment; 20
 - (ii) communications equipment;
 - (iii) communications facilities; or
 - (iv) radio apparatus used for research and development, demonstrations of prototypes and testing. 20

Technical standards for equipment and communication facilities 25

36. (1) The Authority may, subject to the provisions of the Standards Act, 1993 (Act No. 29 of 1993), prescribe standards for the performance and operation of any equipment or communication facility, including radio apparatus.

(2) Any such standard must be aimed at—

- (a) protecting the integrity of the communications network; 30
- (b) ensuring the proper functioning of connected equipment or communications facilities;
- (c) avoiding harmful interference with the communications network.

(3) (a) The regulations made in terms of subsection (1) may, for the purposes of this section and without publishing the text of the technical standard, incorporate any technical standard by reference to— 35

- (i) the number, title and year of issue of the technical standard; or
- (ii) other particulars by which the particular standard can be identified.

(b) Any technical standard incorporated as contemplated in paragraph (a) is considered to be a regulation to the extent that the technical standard is not contrary to the regulations. 40

(c) Whenever any technical standard is, at any time after its incorporation in terms of paragraph (a), amended or substituted, the regulation in terms of which such technical standard was incorporated in the regulations must, unless otherwise stated therein, be considered to refer to such technical standard as so amended or substituted, as the case may be. 45

(d) The Authority must keep the text of each—

- (i) technical standard incorporated in the regulations in terms of paragraph (a); and
- (ii) amendment or substitution of the text. 50

(e) The text of each incorporated technical standard must be open to inspection by the public during the normal office hours of the Authority.

(f) The Authority may, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of the text.

CHAPTER 7

INTERCONNECTION

Obligation to interconnect

37. (1) A communications network service licensee must, on request, interconnect to any other communications network service licensee in accordance with the terms and conditions of an interconnection agreement entered into between the parties for the purposes of delivery of any service authorised in terms of this Act or the related legislation, unless the Authority considers such request to be unreasonable. 5

(2) The Authority must, within 14 days of receiving the request, or such longer period as is reasonably necessary in the circumstances, determine the reasonableness of the request. 10

(3) For the purposes of determining whether a request is reasonable the Authority must take into account whether the requested interconnection—

- (a) is technically and financially feasible; and
- (b) will promote the efficient use of communications networks. 15

(4) In the case of unwillingness or inability of a communications network service licensee to negotiate or agree on the terms and conditions of interconnection, either party may notify the Authority in writing and the Authority may—

- (a) impose terms and conditions for interconnection consistent with this Chapter;
- (b) propose terms and conditions consistent with this Chapter which, subject to negotiations among the parties, must be agreed to by the parties within such period as the Authority may specify; or 20
- (c) refer the dispute to the Complaints and Compliance Committee for resolution on an expedited basis in accordance with the procedures prescribed in terms of section 38. 25

(5) For purposes of subsection (4), a party is considered unwilling to negotiate or unable to agree if an interconnection agreement is not concluded within the time frames prescribed.

(6) Subject to section 38(3), where a communications network service licensee has an interconnection agreement on file with the Authority in terms of section 39 and another communications network service licensee agrees to interconnect with such communications network service licensee on the same terms and conditions as contained in the agreement on file with the Authority, the agreement must be considered technically and financially feasible and promoting the efficient use of communications networks. 30

Interconnection regulations 35

38. (1) The Authority must prescribe regulations to facilitate the conclusion of interconnection agreements by stipulating interconnection agreement principles and those regulations may include the regulations referred to in section 41.

(2) The interconnection regulations and interconnection agreement principles may include matters relating to— 40

- (a) the time frame and procedure for—
 - (i) the negotiation of an interconnection agreement, including time frames contemplated in section 37(4)(b);
 - (ii) the conclusion of an interconnection agreement; and
 - (iii) the technical implementation of the interconnection agreement; 45
- (b) the quality and level of service to be provided;
- (c) subject to and in accordance with section 41, interconnection pricing principles;
- (d) the provision of facilities to establish points of interconnection;
- (e) the sharing of technical information, including obligations imposed in respect of the disclosure of current and future communications network planning activities; 50
- (f) contractual dispute-resolution procedures;
- (g) billing and settlement procedures;
- (h) interconnection services such as calling line identification, signalling services, supervision, functionality, unbundling of interconnection services, fault reporting, co-operation in the event of faults and co-location; 55

- (i) the framework for determining technical and financial feasibility and promotion of efficient use of the communications network contemplated in section 37(3); and
 - (j) the requirement that a communications network service licensee negotiate and enter into an interconnection agreement with an applicant for a communications network service licence. 5
- (3) Where the regulations require negotiations as contemplated in subsection (2)(j), references in this Chapter to a communications network service licensee must be considered to include a reference to an applicant. 10
- (4) The interconnection regulations may—
- (a) provide for different terms and conditions for different communications networks and associated services; and
 - (b) exempt (in whole or in part) communications network service licensees from the obligation to interconnect under section 37(1) where the Authority finds such communications network service licensees lack— 15
 - (i) significant market power; or
 - (ii) control of essential facilities in the relevant market or market segment as determined by the Authority.

Filing of interconnection agreements

- 39.** (1) An interconnection agreement must be in writing and must be submitted to the Authority. 20
- (2) An interconnection agreement becomes effective and enforceable upon filing with the Authority in the prescribed manner, unless—
- (a) an order of a court of competent jurisdiction is granted against such agreement; or 25
 - (b) the Authority notifies the parties to the interconnection agreement in terms of subsection (6).
- (3) The Authority must publish interconnection agreements submitted in terms of subsection (1).
- (4) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish that person with a copy of any interconnection agreement. 30
- (5) The Authority may review an interconnection agreement submitted in terms of subsection (1) to determine whether the agreement is consistent with the regulations prescribed.
- (6) Where the Authority determines that any term or condition of an interconnection agreement is not consistent with the regulations, the Authority may in writing— 35
- (a) notify the parties of the non-complying terms and conditions; and
 - (b) direct the parties to agree on new terms and conditions consistent with the regulations.
- (7) The parties must, upon reaching agreement and amending the non-complying terms and conditions of the interconnection agreement, submit the amended agreement to the Authority for consideration and review. 40
- (8) The provisions of subsections (5) and (6) apply, with the necessary changes, to such consideration and review by the Authority.

Notification of interconnection disputes 45

- 40.** (1) A party to a dispute arising under an interconnection agreement may notify the Complaints and Compliance Committee in writing of the dispute and such dispute must be resolved, on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by the Authority.
- (2) A party who is seeking to exercise his or her rights under subsection (1) may, at any time, withdraw the notice in writing. 50
- (3) A decision by the Complaints and Compliance Committee resolving any dispute or a decision resolving a dispute contemplated in section 37(4) is, in all respects, effective and binding on the parties to the interconnection agreement unless an order of a court of competent jurisdiction is granted against the decision. 55

Interconnection pricing principles

41. (1) Where—

- (a) the Authority determines that there is insufficient competition in a relevant market or market segment as defined by the Authority; or
- (b) the interconnection requested in terms of section 37(1) involves a party found by the Authority to have significant market power in the relevant market or market segment or involves essential facilities,

the Authority may prescribe regulations establishing a framework of interconnection rates to be charged for specified categories of interconnection and associated interconnection services.

(2) Interconnection rates must be determined on the basis of the following principles, namely that—

- (a) rates must be related to costs; and
 - (b) rates must be structured and levels set to ensure reasonable rates of return.
- (3) The regulations made under subsection (1) may include regulations on—
- (a) the rates and changes in rates for specific interconnection services within the relevant market or market segment as determined by the Authority;
 - (b) the publication or disclosure of interconnection rates and rates for specific interconnection services within the relevant market or market segment which may include a reference interconnection offer; and
 - (c) rate control mechanisms applied to specified communications network service licensees for specific interconnection services within the relevant market or market segment.

CHAPTER 8**COMMUNICATIONS FACILITIES LEASING****Obligation to lease communications facilities**

42. (1) A communications network service licensee must, on request, lease communications facilities to any—

- (a) other communications network service licensee;
- (b) application service licensee,
- (c) communications service licensee; or
- (d) other person authorised to provide services in terms of this Act or the related legislation,

in accordance with the terms and conditions of a communications facilities leasing agreement entered into between the parties for the purposes of delivery of any communications service or any other service authorised by this Act or the related legislation, unless the Authority considers such request to be unreasonable.

(2) The provision of communications facilities by a communications network service licensee in terms of subsection (1) must, unless otherwise requested by the leasing party, not be of a lower technical standard and quality than the technical standard and quality provided by such communications network service licensee to itself or to an affiliate.

(3) The Authority must prescribe the list of—

- (a) communications facilities; and
- (b) communications facilities connected to international communications facilities such as submarine cables and satellite earth stations,

to be leased by a communications network service licensee in terms of subsection (1).

(4) The Authority must, subject to subsection (1), review the list of communications facilities at least once every 36 months and, where the Authority finds market conditions warrant it, make modifications to such list after undertaking an inquiry in accordance with the provisions of the ICASA Act.

(5) The Authority must, for the purposes of determining whether a request is reasonable, take into account whether the requested lease of communications facilities is technically and financially feasible.

(6) In the case of unwillingness or inability of a communications network service licensee to negotiate or agree on the terms and conditions of a communications facilities leasing agreement, either party may notify the Authority in writing and the Authority may—

- (a) impose terms and conditions consistent with this Chapter;
 - (b) propose terms and conditions consistent with this Chapter which, subject to negotiations among the parties, must be agreed to by the parties within such period as the Authority may specify; or
 - (c) refer the dispute to the Complaints and Compliance Committee for resolution on an expedited basis in accordance with the procedures prescribed. 5
- (7) For purposes of subsection (6), a party is considered unwilling to negotiate or unable to agree if a facilities leasing agreement is not concluded within the time frames prescribed.
- (8) A communications network service licensee may not enter into any agreement or other arrangement with any person for access to, or use of, any international communications facilities, including submarine cables and satellites, that— 10
 - (a) contains an exclusivity provision;
 - (b) contains provisions that create undue barriers to access to and use of such international communication facilities; or 15
 - (c) otherwise restricts a party to such agreement or other arrangement from—
 - (i) leasing;
 - (ii) selling; or
 - (iii) otherwise entering into an agreement with any licensee under this Act for access to, and use of, such international communications facilities. 20
 - (9) Any exclusivity provision contained in any agreement or other arrangement that is prohibited under subsection (8) is, by operation of law, considered null and void. 20

Communications facilities leasing regulations

- 43.** (1) The Authority must prescribe regulations to facilitate the conclusion of communications facilities leasing agreements by stipulating communications facilities leasing agreement principles and those regulations may include the regulations referred to in section 47. 25
- (2) Communications facilities leasing regulations and communications facilities leasing agreement principles must provide for a framework which may include a reference communications facilities leasing offer containing model terms and conditions for communications facilities listed in section 42(3). 30
- (3) Matters which the communications facilities leasing regulations may address include but are not limited to—
- (a) the time frame and procedures for— 35
 - (i) the negotiation of communications facilities leasing agreements;
 - (ii) the conclusion of communications facilities leasing agreements; and
 - (iii) the technical implementation of the communications facilities leasing agreements;
 - (b) the quality, performance and level of service to be provided, including meantime to repair or restore, error performance, latency and availability; 40
 - (c) subject to and in accordance with sections 46 and 47, wholesale communications facilities leasing rates and the manner in which the structure of fees and charges for such communications facilities leasing must be determined;
 - (d) the sharing of technical information including obligations imposed in respect of the disclosure of current and future communications network planning activities; 45
 - (e) contractual dispute resolution procedures;
 - (f) billing and settlement procedures;
 - (g) services associated with leasing communications facilities such as collocation, fault reporting, supervision, functionality, unbundling, and co-operation in the event of fault; 50
 - (h) access and security arrangements;
 - (i) the framework in accordance with which a communications network service licensee may refuse a request to lease communications facilities due to such communications network service licensees' planned expansion of its communications network; 55
 - (j) the framework for determining technical and financial feasibility contemplated in section 42(5); and
 - (k) the requirement that a communications network service licensee negotiate and enter into a communications facilities leasing agreement with an applicant for a licence contemplated in Chapter 3. 60

(4) Where the regulations require negotiations in terms of subsection (3)(k), a reference in this Chapter to a communications network service licensee must be considered to include such an applicant.

(5) The communications facilities leasing regulations may—

- (a) provide for different terms and conditions for different communications networks and associated services; and 5
- (b) exempt (in whole or part) communications network service licensees from the obligations imposed under section 42(1) where the Authority finds such communications network service licensees lack— 10
 - (i) significant market power; or
 - (ii) control of essential facilities in the relevant market or market segment as defined by the Authority.

Filing of communications facilities leasing agreements

44. (1) A communications facilities leasing agreement for the provision of communications network facilities listed in terms of section 42(3) must be in writing and must be submitted to the Authority. 15

(2) Communications facilities leasing agreements are effective and enforceable upon being filed with the Authority in the prescribed manner unless an order of a court of competent jurisdiction is granted against such agreement or the Authority provides the parties with written notice of non-compliance in terms of subsection (6). 20

(3) The Authority must publish communications facilities leasing agreements submitted in terms of subsection (1).

(4) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish that person with a copy of any communications facilities leasing agreement. 25

(5) The Authority may review communications facilities leasing agreements submitted in terms of subsection (1) to determine whether such agreements are consistent with the regulations prescribed.

(6) Where the Authority determines that any term or condition of a communications facilities leasing agreement is not consistent with the regulations, the Authority may in writing— 30

- (a) notify the parties of the non-complying terms and conditions; and
- (b) direct the parties to agree on new terms and conditions consistent with the regulations.

(7) The parties must, upon reaching agreement and amending the non-complying terms and conditions of the communications facilities leasing agreement, submit the amended agreement to the Authority for consideration and review. 35

(8) The provisions of subsections (5) and (6) apply, with the necessary changes, to such consideration and review by the Authority.

Notification of communications facilities leasing agreement disputes 40

45. (1) A party to a dispute arising in terms of a communications facilities leasing agreement may notify the Complaints and Compliance Committee in writing of the dispute and such dispute must be resolved, on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by the Authority.

(2) A party who is seeking to exercise his or her rights under subsection (1) may, at any time, withdraw the notice in writing. 45

(3) A decision by the Complaints and Compliance Committee resolving any dispute or a decision resolving a dispute as contemplated in section 42(6) is, in all respects, effective and binding on the parties to the communications facilities leasing agreement unless an order of a court of competent jurisdiction is granted against the decision. 50

Communications facilities leasing rates

46. (1) Where the Authority determines communications facilities leasing rates in terms of a regulation made under this Chapter, the Authority must determine such communication facilities leasing rates on the basis of the following principles, namely that— 55

- (a) rates must be related to costs; and
- (b) rates must be structured and levels set to ensure reasonable rates of return.

Rules regarding wholesale rates

- 47.** (1) The Authority must prescribe a framework for the establishment and implementation of wholesale rates to be charged for specified categories of communications facilities and associated services.
- (2) The regulations made under subsection (1) may include regulations with regard to—
- (a) the wholesale rates and changes in wholesale rates for specific communications facilities;
 - (b) the publication or disclosure of wholesale rates for specific communications facilities;
 - (c) the wholesale rate control mechanisms which will be applicable to specified communications network service licensees for specific communications facilities; and
 - (d) associated services within the relevant market or market segment defined by the Authority.
- (3) The provisions of this section are applicable only in respect of communications network service licensees determined by the Authority to have significant market power in the relevant market or market segment or control of essential facilities.

CHAPTER 9**BROADCASTING SERVICES****Application**

- 48.** This chapter applies only to broadcasting service licensees.

Prohibition on granting of broadcasting service licences to party-political entities

- 49.** No broadcasting service licence may be granted to any party, movement, organisation, body or alliance which is of a party-political nature.

Record of programmes broadcast by broadcasting service licensees

- 50.** (1) A broadcasting service licensee must—
- (a) retain, for a period of not less than 30 days, a recording of every programme broadcast in the course of his or her broadcasting service;
 - (b) on demand of the Complaints and Compliance Committee, produce to it any such recording for examination or reproduction;
 - (c) on demand of the Complaints and Compliance Committee, produce to it any script or transcript of a programme after the broadcast thereof.
- (2) Nothing in this Act may be construed as requiring or authorising the Authority or the Complaints and Compliance Committee in the performance of its functions to view programmes prior to their being broadcast.

Code of conduct for broadcasting service licensees

- 51.** (1) The Authority must, as soon as reasonably possible after the coming into effect of this Act, prescribe regulations setting out a code of conduct for broadcasting service licensees subject to this Act.
- (2) Subject to the provisions of subsection (3), all broadcasting service licensees must adhere to the code of conduct for broadcasting service licensees as prescribed.
- (3) The provisions of subsection (2) do not apply to a broadcasting service licensee who is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

Control over advertisements

52. (1) All broadcasting service licensees must adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa.

(2) The Complaints and Compliance Committee must adjudicate complaints concerning alleged breaches of the Code by broadcasting service licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with sections 17H to 17N of the ICASA Act. 5

(3) Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority, is found to have breached the Code, such broadcasting licensee must be dealt with in accordance with sections 17H to 17N of the ICASA Act. 10

Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

53. A party election broadcast and a political advertisement must not be broadcast on any broadcasting service except during an election period and then only if, and to the extent, authorised by the provisions of sections 54 and 55. 15

Broadcasting of party election broadcasts on public broadcasting services

54. (1) Subject to the provisions of this section, a public broadcasting service licensee must permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative. 20

(2) The Authority must determine the time to be made available to political parties for the purposes of subsection (1), including the duration and scheduling of party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question. 25

(3) The Authority must consult with the relevant public broadcasting service licensee and all the political parties prior to making any determination in terms of subsection (2).

(4) In making any determination in terms of subsection (2), the Authority may impose such conditions on a public broadcasting service licensee with respect to party election broadcasts as it considers necessary, having due regard to the fundamental principle that all political parties are to be treated equitably. 30

(5) A party election broadcast may not contain any material which may reasonably be anticipated to expose the broadcasting service licensee to legal liability if such material were to be broadcast. 35

(6) A party election broadcast must conform to a technical quality acceptable to the Authority.

(7) No party election broadcast may be broadcast later than 48 hours prior to the commencement of the polling period.

(8) A commercial or community broadcasting service licensee is not required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provision of this section applies, with the necessary changes. 40

Political advertising on broadcasting services

55. (1) A broadcasting service licensee is not required to broadcast a political advertisement, but if he or she elects to do so, he or she must afford all other political parties, should they so request, a like opportunity. 45

(2) A broadcasting service licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorised representative.

(3) In making advertising time available to political parties, no broadcasting service licensee may discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice. 50

(4) A political advertisement may not contain any material which may reasonably be anticipated to expose the broadcasting service licensee to legal liability if such material were to be broadcast. 55

(5) A political advertisement must conform to a technical quality acceptable to the Authority.

(6) No political advertisement may be broadcast later than 48 hours prior to the commencement of the polling period.

(7) This section is subject to the provisions of any law relating to the expenditure of political parties during an election period. 5

Equitable treatment of political parties by broadcasting service licensees during election period

56. (1) If, during an election period, the coverage of any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting services licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably. 10

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service—

(a) without such party having been afforded an opportunity to respond thereto in such programme; or 15

(b) without the view of such political party having been reflected therein, the broadcasting services licensee concerned must afford such party a reasonable opportunity to respond to the criticism.

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting services licensee intends broadcasting a programme in which a particular political party is criticised, the licensee must ensure that the political party in question is given a reasonable opportunity to— 20

(a) respond thereto in the same programme, or

(b) respond thereto as soon as is reasonably practicable thereafter. 25

(4) Subsection (3) does not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 54 and any political advertisement in the circumstances contemplated in section 55.

Restriction on subscription broadcasting services

57. (1) Subscription broadcasting services may not acquire exclusive rights for the broadcasting of national sporting events as identified in the public interest from time to time by the Authority in consultation with the Minister of Sport and in accordance with the regulations prescribed by the Authority. 30

(2) A subscription broadcasting service must contribute to South African television and music content in terms of regulations prescribed by the Authority. 35

Broadcasting service objectives

58. Where a communications service licensee provides broadcasting signal distribution or multi-channel distribution services, such provider must, subject to the general terms and conditions of its licence as determined by the Authority—

(a) give priority to the carriage of South African broadcasting channels, including local programming where the Authority considers it appropriate; 40

(b) provide universal access for all South Africans to broadcasting services;

(c) provide a diversity of type of broadcasting services and content;

(d) deliver public services, including educational, commercial and community services; 45

(e) be open, interoperable and harmonised with the Southern African region, and be able to meet international distribution standards.

Application of Act

59. This Act binds the State.

CHAPTER 10

CONSUMER ISSUES

Code of conduct and customer service charter

60. (1) The Authority must, as soon as reasonably possible after the coming into effect of this Act, prescribe regulations setting out a consumer code of conduct for licensees subject to this Act and the related legislation as applicable. 5

(2) The Authority may develop different codes of conduct for different categories of licences.

(3) The Authority must, as soon as reasonably possible after the coming into effect of this Act, prescribe regulations setting out the minimum standards for customer service charters. 10

(4) The Authority may develop different minimum standards for customer service charters for different categories of licences.

(5) The matters which a customer service charter may address include, but are not limited to— 15

- (a) the provision of information to customers regarding services, rates, performance and consumer complaint procedures;
- (b) provisioning and fault repair services;
- (c) the protection of private consumer information;
- (d) customer charging, billing, collection and credit practices; 20
- (e) consumer complaint procedures; and
- (f) any other matter of concern to consumers or customers.

(6) Where a customer or consumer is not satisfied after utilising the consumer complaint procedures set out in the regulations, his or her complaint may be submitted to the Investigation Unit in accordance with the provisions of section 17G of the ICASA Act. 25

Retail and wholesale tariffs

61. (1) The Authority may—

- (a) only in respect of those markets or market segments where the Authority determines that no or ineffective competition exists; or 30
- (b) in order to protect consumer interests,

prescribe the manner of determining retail and wholesale tariffs which may be levied by a licensee in respect of the provision of—

- (i) communications network services; 35
- (ii) communications services; or
- (iii) any other service contemplated by this Act or the related legislation.

(2) Ineffective competition exists where a licensee in any market or market segment has significant market power or control of essential facilities.

CHAPTER 11

GENERAL 40

Establishment of Communications and ICT Museum, information communication technology for government and other related services

62. (1) The Director-General must establish and manage a museum that depicts the evolution and the history of the communications and information communication technology sectors in South Africa. 45

(2) The museum and its contents are part of the national estate as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

(3) The contents of the museum housed in the Telkom Museum on Telecommunication History must be transferred to the museum established in terms of subsection (1).

(4) The Minister must, after consultation with the cabinet member responsible for government communications, establish a centre for government departments and entities to communicate with the public to ensure efficiency in administrative services. 50

(5) The centre must also serve as the directory of contact using SMS and other related services.

(6) The Authority must allocate a four-digit number through which the public can access government directory information services free of charge.

(7) The cost of providing the government directory information service must be borne by the licensee.

Competition matters

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63. (1) Subject to the provisions of this Act and of the related legislation, the Competition Act, 1998 (Act No. 89 of 1998), applies to competition matters in the communications industry.

(2) The Authority is, for the purposes of the Competition Act, 1998, a regulatory authority defined in section 1 of that Act.

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(3) If it appears to the Authority that the holder of a licence under this Act or the related legislation is taking or intends taking any action which has or is likely to—

(a) have the effect of giving an undue preference to; or

(b) cause undue discrimination against,

any person or category of persons, the Authority may direct the licensee by written notice to cease or refrain from taking such action, as the case may be.

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(4) The Authority may, with regard to the matters referred to in subsection (3), prescribe regulations to ensure efficient and effective monitoring and investigation of anti-competitive actions, ensuring protection of consumer interests and the speedy resolution of complaints with regard thereto.

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(5) It is considered an anti-competitive practice for any licensee to prohibit, lock, block or otherwise prevent any end user equipment from being used with any licensed communications service.

Offences and penalties

64. (1) Any natural person who contravenes or fails to comply with a provision of this Act or of the related legislation is guilty of an offence and is liable on conviction to a fine not exceeding R500 000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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(2) Any juristic person or licensee who contravenes or fails to comply with a provision of this Act or of the related legislation is guilty of an offence and is liable on conviction to a fine not exceeding the greater of R1 000 000 or 10 per cent of the juristic person's or licensee's annual turnover for every day or part thereof during which the offence is continued.

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Numbering plans and number portability

65. (1) The Authority must prescribe—

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(a) a numbering plan which must be amended and updated as the Authority considers necessary—

(i) for efficient use and allocation of numbers; and

(ii) to accommodate the varied protocols used and services provided by licensees under this Act; and

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

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

(ii) cost allocation and cost recovery among licensees.

(2) A numbering plan must consist of a scheme of identification so as to ensure that communication is correctly and efficiently directed to the point of reception for which it was intended.

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(3) Subject to subsection (7), the Authority must, in preparing a numbering plan, take account of existing numbering plans or schemes.

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

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

(6) Every communications service licensee and communications network service licensee, as applicable, must submit information on all numbers, including numbers of pre-paid subscribers, allocated to subscribers in terms of its licence to the Authority.

(7) The regulations prescribed in terms of subsection (1) must include matters relating to—

55

- (a) the fees licensees must pay for the allocation of numbers to recover administration costs;
- (b) the conditions under which a licensee may be required to surrender unused numbers to the Authority for reallocation;
- (c) the allocation of responsibility between communications service licensees and communications network service licensees for the implementation of the numbering plan and number portability to— 5
 - (i) ensure effective functionality;
 - (ii) ensure access within communications networks; and
 - (iii) allow communications service licensees to assign numbers to subscribers and transfer numbers when subscribers change services through number portability in an efficient manner without unreasonable delay or disruption of service; 10
- (d) protection for consumers including disclosure of consumer rights relating to— 15
 - (i) numbers and number portability; and
 - (ii) the process and procedures to be followed for resolving subscriber complaints and affording subscribers remedies in the form of discounts and credits when the service provider fails to meet its obligations under this section; and 20
- (e) a framework, including a schedule for transforming the numbering plan to a non-geographic numbering system taking into account similar non-geographic numbering plans adopted in other jurisdictions.

Directory services

- 66.** The Authority may prescribe or impose through licence conditions, as the case may be, measures in respect of directories and directory enquiry services, regarding— 25
- (a) the protection of personal data;
 - (b) the protection of privacy;
 - (c) language preferences;
 - (d) the prevention of fraud; 30
 - (e) the prohibition of marketing and unfair trading practices;
 - (f) the provision of assistance to security services or other public safety officials;
 - (g) related charges;
 - (h) the establishment of a national directory information database;
 - (i) such other related matters as the Authority may determine; and 35
 - (j) the availability of a directory.

Carrier pre-selection

- 67.** (1) The Authority must make regulations—
- (a) defining the relevant market or market segment and the communications services subject to carrier pre-selection which may include market segments relating to national long distance and international communications services; and 40
 - (b) establishing a framework in terms of which—
 - (i) subscribers to a communications service can access the communications services of another communications service licensee in relation to the market or market segment and the communications services referred to in paragraph (a); and 45
 - (ii) communications network service licensees must make the necessary communications facilities available for the implementation and proper functioning of carrier pre-selection. 50
- (2) The framework contemplated in subsection (1)(b) must ensure that—
- (a) communications network service licensees implement, operate and maintain the necessary communications facilities to successfully implement carrier pre-selection—
 - (i) in an efficient manner; 55
 - (ii) without undue delay; and
 - (iii) without discrimination; and

- (b) communications service licensees honour subscriber requests to access the communications services of another communications service licensee on non-discriminatory terms and without delay.

Establishment of public emergency communications centres

68. (1) The Minister may by notice in the *Gazette* establish public emergency communications centres to be known as “112 Emergency Centres”. 5

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

(3) 112 Emergency Centres must be accountable to the Minister. 10

(4) Communications network service licensees and communications service licensees must—

(a) carry communications to 112 Emergency Centres and from 112 Emergency Centres to emergency organisations; and

(b) make automatic number identity, such as caller line identity, and automatic location identity available to 112 Emergency Centres. 15

(5) The obligation imposed on licensees in terms of subsection (4)(b) supersedes any request by a user, including an end user, to withhold their identity or location, which may be permitted under any applicable law or licence condition.

(6) Licensees are exempted from liability for all claims arising out of acts done in meeting their obligation under subsection (4)(b). 20

(7) The Authority may make regulations to—

(a) ensure the implementation of sections 69, 70 and 71; and

(b) extend the obligations under subsection (4) to other holders of class and individual licences. 25

(8) Where the Authority extends the obligations under subsection (4) to other licensees the provisions of sections 69, 70 and 71 apply to such licensees.

Duties of 112 Emergency Centres and licensees

69. (1) 112 Emergency Centres must transmit a request for an emergency service to an emergency organisation. 30

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

(3) The cost of transporting any communications, including automatic number identity and automatic location identity, to and from 112 Emergency Centres to any emergency organisation must be borne by the licensee. 35

Public emergency number

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

(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. 40

(3) No person may call the national emergency telecommunication number 112 for any purpose other than to request an emergency service.

Standards, capabilities and operating procedures of 112 Emergency Centres

71. (1) As far as practicably possible, 112 Emergency Centres must have voice, SMS, data and global positioning systems capability. 45

(2) The Minister may, from time to time, by notice in the *Gazette* direct 112 Emergency Centres to develop and apply common technical standards and standard operating procedures.

(3) 112 Emergency Centres may, subject to the provisions of Chapter 3, establish their own radio networks, if such networks are used exclusively to communicate calls and SMS to 112 Emergency Centres or emergency organisations. 50

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

Licences granted in terms of IBA Act and Broadcasting Act

72. (1) A licence holder licensed in terms of the IBA Act or the Broadcasting Act may not, before converting his or her licence in terms of section 85, use—
- (a) the broadcasting service frequency bands; or
 - (b) any other radio frequency spectrum,
- for the provision of communications services, without first obtaining a communications service licence in terms of this Act. 5
- (2) A licence holder licensed in terms of the IBA Act or the Broadcasting Act may not, before converting his or her licence in terms of section 85, use—
- (a) any facility; or
 - (b) any portion of such facility,
- authorised in terms of the IBA Act or the Broadcasting Act to provide communications network services, without first obtaining a communications network service licence in terms of this Act. 10

CHAPTER 12 15

UNIVERSAL SERVICE AGENCY

Continued existence of Universal Service Agency

73. (1) Despite the repeal of the Telecommunications Act by this Act, the Universal Service Agency established in terms of section 58(1) of the Telecommunications Act continues to exist as a juristic person in terms of this Act. 20
- (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.
- (3) A board appointed by the Minister in terms of section 58(2) of the Telecommunications Act is considered to have been appointed in terms of this Act.

Functions of Agency 25

74. (1) The Agency must—
- (a) strive to promote the goal of universal access and universal service;
 - (b) encourage, facilitate and offer guidance in respect of any scheme to provide—
 - (i) universal access or universal service; or
 - (ii) telecommunication services as part of reconstruction and development projects and programmes contemplated in section 3(a) of the Reconstruction and Development Programme Fund Act, 1994 (Act No. 7 of 1994), where such provision will contribute to the attainment of the object of the project or programme in question; and
 - (c) foster the adoption and use of new methods of attaining universal access and universal service. 30
- (2) For purposes of subsection (1)(b)(ii), reference to telecommunication services in relation to development projects and programmes contemplated in section 3(a) of the Reconstruction and Development Programme Fund Act, 1994, must be regarded as reference to communications network services under this Act. 40
- (3) (a) The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what constitutes—
- (i) universal access by all areas and communities in the Republic to communications services and communications network services; and
 - (ii) the universal provision for all persons in the Republic of communications services and access to communications networks,
- including any elements or attributes thereof. 45
- (b) Such a determination— 50
- (i) must be published in the *Gazette*; and
 - (ii) may be amended or substituted by the Minister on the recommendation of the Agency as provided for in this subsection.
- (4) The Agency—
- (a) may undertake such investigations into matters relating to its functions as it may consider necessary; 55

- (b) must conduct research into and keep abreast of developments in the Republic and elsewhere on information communication technology, communications services and communications facilities;
 - (c) must continually survey and evaluate the extent to which universal access and service have been achieved; 5
 - (d) may issue information from time to time on the provision of communications services and communications networks in the Republic and access thereto;
 - (e) may, and must when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to universal access and universal service; 10
 - (f) may, and must when so requested by the Authority, advise the Authority on any matter relating to universal access and universal service;
 - (g) must continually evaluate the effectiveness of this Act and things done in terms thereof towards the achievement of the goal of universal access and universal service; 15
 - (h) may liaise, consult and co-operate with any person or authority;
 - (i) may appoint experts and other consultants on such conditions as the Agency may determine.
- (5) The Agency must manage the Universal Service Fund in accordance with the provisions of this Chapter. 20

Head and staff of Agency

- 75.** (1) The Agency is under the direction and control of the Head of the Agency appointed by the Minister.
- (2) The Head must employ such other persons as are necessary to assist him or her with the performance of the functions of the Agency. 25
- (3) The Head must, in the selection of the staff of the Agency—
- (a) promote the empowerment of historically disadvantaged groups, including women and youth;
 - (b) subject to paragraph (a), apply equal opportunity employment practices.
- (4) The Head and other staff of the Agency must be appointed on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively, of development planning, community development, social sciences, economics, communications and publicity. 30
- (5) A person may not be appointed or continue in office as Head or other member of the staff of the Agency if he or she becomes unfit to hold the office or becomes incapacitated. 35
- (6) (a) The Head and other staff of the Agency must be appointed for such period not exceeding five years as may be determined when he or she is appointed.
- (b) The Head and other employees of the Agency hold office on such conditions as to remuneration and otherwise— 40
- (i) in the case of the Head, as the Minister may determine with the concurrence of the Minister of Finance;
 - (ii) in the case of other employees, as the Head may determine with the concurrence of the Minister and the Minister of Finance.
- (c) Different periods and conditions may be determined under paragraph (a) or (b) in respect of different employees. 45

Financing of Agency

- 76.** (1) The operating and capital costs of the Agency must be financed from money appropriated by Parliament from time to time for that purpose.
- (2) The Agency must utilise any money contemplated in subsection (1) in accordance with the statement of estimated income and expenditure referred to in subsection (3). 50
- (3) The Agency—
- (a) must in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and 55
 - (b) may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted with the concurrence of the Minister of Finance.

Banking account

77. The Agency must, with the approval of the Director-General, open and maintain with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), an account in which there must be deposited the money received by the Agency and from which payments for it or on its behalf may be made. 5

Annual and other reports

78. (1) The Agency must submit to the Minister—

- (a) such information and particulars as he or she may from time to time, in writing, require in connection with the activities of the Agency; and
- (b) a report in regard to the functions, affairs and activities of the Agency, annually and as soon as is reasonably practicable after the end of each period of 12 months ending on 31 March, in respect of such period. 10

(2) Without derogating from the generality of the provisions of subsection (1), the annual report must, among others, include—

- (a) information regarding progress towards achieving the goal of universal service; and 15
- (b) such other information as the Minister may determine.

(3) The Minister must table a copy of the annual report in Parliament within 30 days after it is received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session. 20

Continued existence and control of Universal Service Fund

79. (1) Despite the repeal of the Telecommunications Act by this Act, the Universal Service Fund established in terms of section 65(1) of the Telecommunications Act continues to exist in terms of this Act, and the Agency must keep account of the Fund in its books and credit the Fund with— 25

- (a) universal service contributions referred to in section 81(1); and
- (b) money accruing to the Universal Service Fund from any other source.

(2) All money received, the amounts of which in terms of subsection (1) must be credited to the Universal Service Fund in the books of the Agency, must be paid into the National Revenue Fund established by section 185 of the Constitution. 30

(3) Subsidies paid from the Universal Service Fund under section 80 must be financed from money appropriated by Parliament for that purpose.

(4) The Universal Service Fund must be administered by the Agency subject to the control and in accordance with the instructions of the Minister. 35

Application of money in Universal Service Fund

80. (1) The money in the Universal Service Fund must be utilised exclusively for the payment of subsidies—

- (a) for the assistance of needy persons towards the cost of the provision to, or the use by, them of communications services; 40
- (b) subject to subsection (2), to any communications network service licensee for the purpose of financing the construction or extension of communications networks in under-serviced areas as prescribed;
- (c) to public schools and public further education and training institutions as defined in the South African Schools Acts, 1996 (Act No. 84 of 1996), and the Further Education and Training Act, 1998 (Act No. 98 of 1998), respectively, for the procurement of communications services and access to communications networks; 45
- (d) for the establishment and operation of centres where access can be obtained to communications networks. 50

(2) The Authority must, for purposes of subsection (1)(b), define under-serviced areas by regulation.

(3) The Authority must review and update, at least bi-annually, the definition of under-serviced area prescribed and the list of designated under-serviced areas eligible for construction payments from the Universal Service Fund. 55

- (4) The Minister may, for the purposes of payments referred to in subsection (1)(a) by notice in the *Gazette* determine—
- (a) categories of needy persons to whom assistance may be given;
 - (b) the persons who must apply for assistance and the manner in which such applications must be made; 5
 - (c) the manner in which and persons to whom subsidies may be paid.

Contributions to Universal Service Fund

- 81.** (1) Every holder of a licence granted or considered to have been granted in terms of Chapter 3 must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions to the Universal Service Fund. 10
- (2) The Authority must prescribe—
- (a) the basis and manner of determination of such contributions, which must not exceed 1 per cent of the licensee’s annual turnover or such other percentage of the licensee’s annual turnover as may be determined by the Minister by notice in the *Gazette*; and 15
 - (b) the dates when such contributions become payable and the manner in which they may be paid.

Competitive tender for universal service projects

- 82.** (1) The Agency must provide incentives to communications network service licensees to construct, operate and maintain communications networks in under-serviced areas through the award of project grants. 20
- (2) The Agency must, in consultation with the Authority—
- (a) publish a notice in the *Gazette* stating its intention to award one or more project grants and invite interested communications network service licensees to submit proposals; 25
 - (b) identify the targeted under-serviced area or under-serviced areas where project grants will be awarded;
 - (c) the time and place for submitting proposals;
 - (d) the scope of the projects which may vary according to the needs of the targeted under-serviced area or under-serviced areas; 30
 - (e) the criteria for evaluating proposals;
 - (f) the projected cost of the proposed project; and
 - (g) such other matters as may be helpful in securing qualified proposals.
- (3) The criteria for evaluating proposals may take into consideration—
- (a) the objects of this Act set out in section 2; 35
 - (b) the scope of the communications network service licensee’s proposal, including the communications network proposed for construction in the under-serviced area and the technologies proposed;
 - (c) any communications services the communications network service licensee proposes to offer in terms of its communications network service licence and, as applicable, any communications service licence or other licence held by the communications network service licensee; 40
 - (d) the terms and conditions relating to any proposed services, including wholesale and retail pricing, taking into account the lack of competitive communications networks and services in the targeted under-serviced area; 45 and
 - (e) such other matters as the Agency, in consultation with the Authority, finds appropriate for the targeted under-serviced area and consistent with section 74(3).
- (4) The subsidy for project grants must be paid out of the Universal Service Fund. 50
- (5) The Agency must supervise the execution of projects awarded under subsection (1).

Accounts of Universal Service Fund

- 83.** (1) The Agency must—
- (a) cause full records to be kept of the transactions of the Universal Service Fund; 55
 - (b) as soon as possible, but not later than three months after 31 March in each year, cause the books and accounts relating to such transactions to be balanced

as at that date and thereafter prepare a statement showing in all necessary detail—

- (i) the income and expenditure of the Fund during the preceding financial year; and
- (ii) a balance sheet showing the assets and liabilities of the Fund as at the end of that year. 5

(2) The accounts and balance sheet of the Fund must be audited by the Auditor-General.

(3) As soon as possible after the accounts and balance sheet for any year have been audited, the Agency must submit a copy of the accounts and balance sheet to the Minister. 10

(4) The Minister must table a copy of the audited accounts and balance sheet in Parliament—

- (a) within 30 days after they have been received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session; or 15
- (b) if so determined by the Minister, together with the annual report of the Agency in regard to the period concerned.

(5) For the purposes of this section, “financial year” means the period extending from 1 April in any year to 31 March in the next succeeding year. 20

CHAPTER 13

TRANSITIONAL PROVISIONS

Existing licences

84. (1) Subject to Chapter 3—

- (a) all licences granted, issued or considered to be granted or issued in terms of the Telecommunications Act; 25
- (b) radio spectrum licences and signal distribution licences granted or issued or considered to be granted or issued in terms of the Broadcasting Act and the IBA Act;
- (c) all licences granted or issued or considered to be granted or issued in terms of the Sentech Act; and 30
- (d) all public, commercial and community broadcasting licenses considered to be granted or issued in terms of the Broadcasting Act and the IBA Act,

(in this chapter collectively referred to as “existing licences”) remain valid under this Act until converted by the Authority in terms of section 85. 35

(2) Despite section 7 and subject to subsection (3), any person who, immediately before the commencement of this Act, lawfully provided a communications service without a licence is considered to have permission to continue to provide such service, if—

- (a) such person applies to the Authority for the necessary licence within 90 days of the commencement of this Act; or 40
- (b) the Authority exempts such service in terms of section 6.

(3) The permission granted in terms of subsection (2) is considered to continue until the Authority either—

- (a) exempts such service in terms of section 6; 45
- (b) refuses the application; or
- (c) grants the licence.

(4) Existing licences referred to in subsection (1) must be converted by the Authority in terms of section 85 within 12 months from the commencement date of this Act.

(5) The holder of an existing licence must, within 90 days of the commencement date of this Act, submit a written notice to the Authority offering to surrender its licence upon conversion and to be granted one or more new licences in terms of section 85. 50

(6) Where the holder of an existing licence does not submit the notice within the time frame provided in subsection (5), such existing licence expires upon the 180th day from the expiration of the period of 90 days. 55

(7) Any current applications pending before the Authority upon the coming into force of this Act must be considered to have been submitted in accordance with the provisions of this Act.

(8) The Authority may require applicants to amend their applications where the Authority determines that such applications do not conform to the requirements of this Act.

Licence conversion

85. (1) In any case where a holder of an existing licence notifies the Authority within the period of 90 days in accordance with section 84(5), the Authority must convert the existing licence of such licensee by granting one or more new licences that comply with Chapter 3. 5

(2) The Authority must, subject to section 84(5), publish by notice in the *Gazette* a schedule in terms of which the Authority plans to undertake the existing licence conversion process. Such notice must— 10

- (a) identify the existing licences that must be converted through the process of granting new licences and those services that are exempted as provided for in section 6;
- (b) set out a time frame for such conversion, including but not limited to the expected time frame for granting new licences under this Act; 15
- (c) set out the form and content, including information that must be provided to the Authority by the holders of existing licences to assist the Authority in the conversion process;
- (d) set out the process the Authority plans to undertake in converting such existing licences; and 20
- (e) confirm the rights of the applicants to participate in such process.

(3) To the extent that existing licensees comply with section 84(5), the following framework must be used by the Authority for converting existing licences and re-issuing new licences: 25

- (a) Where an existing licence authorises the holder of such licence to both provide services and operate facilities or networks, the Authority must re-issue to that licence holder—
 - (i) one or more licences relating to the communications services or application services; and 30
 - (ii) separate licences relating to the radio frequency spectrum and communications network services, consistent with the licence categories set out in Chapter 3.
- (b) Where a licence holder licensed in terms of the IBA Act or the Broadcasting Act at the time this Act comes into force provides any services identified in Chapter 3 (whether authorised by separate licence or in connection with, or part of, a broadcasting licence or any other licence) such licence holder must comply with section 84 regarding—
 - (i) surrendering such licence or licences; and 35
 - (ii) receiving re-issued licences from the Authority in accordance with this section. 40
- (c) When a frequency assignment forms part of a broadcasting licence the licence holder must be re-issued its broadcasting licence and a corresponding radio frequency spectrum licence in accordance with this Act.
- (d) Guidelines relating to— 45
 - (i) categories;
 - (ii) classifications of services; or
 - (iii) functions and facilities, identified in the related legislation or any regulation or licence must be used by the Authority in converting and re-issuing licences in compliance with this Act. 50
- (e) The following are communications services:
 - (i) Value-added network services;
 - (ii) a multi-channel distribution;
 - (iii) a carrier of carriers; 55
 - (iv) common carrier services;
 - (v) international telecommunication services;
 - (vi) local access telecommunication services;
 - (vii) mobile cellular telecommunication services;
 - (viii) multimedia services; 60
 - (ix) national long distance telecommunication services;

- (x) public switched telecommunication services; and
 - (xi) any other services designated in the related legislation, any regulation or licence as a telecommunication service.
- (f) The following are communications network services or communications facilities, regardless of whether the authority to provide such facility, system, network, apparatus, station or other similar service was authorised in connection with any service or whether such authorisation was contained in one or more licences:
- (i) Broadcasting signal distribution;
 - (ii) a telecommunication facility;
 - (iii) a local exchange facility;
 - (iv) a telecommunication system;
 - (v) a mobile cellular telecommunication network;
 - (vi) a public switched telecommunication network;
 - (vii) a radio apparatus;
 - (viii) a radio station;
 - (ix) any other similar facility identified in the related legislation, any regulation or licence as a telecommunication facility.
- (g) Public, commercial, and community sound and television broadcasting services identified in the related legislation whether provided—
- (i) free-to-air;
 - (ii) via terrestrial subscription, satellite subscription, cable subscription or any other class of broadcasting service prescribed by the Authority from time to time,
- are broadcasting services under this Act.
- (h) Short-term radio frequency spectrum licences are special temporary authorisations contemplated in section 5(6)(a)(iv).
- (i) Spectrum licences are radio spectrum licences.
- (4) As part of the conversion process, the Authority may grant additional rights to the licensees with commensurate licence obligations in order to convert the existing licences in accordance with the provisions of this Act.
- (5) Upon conversion of any existing licence through the process of granting a new licence or exemption of any service in terms of section 6—
- (a) such new licence or exempted service, as applicable, is governed by the provisions of this Act; and
 - (b) the existing licence is considered to have been surrendered and has no further force or effect.
- (6) Subject to subsection (1), existing licences remain in full force and effect until converted by the Authority in terms of this section.
- (7) The Authority may not grant or include in any licence converted in terms of this section any monopoly or exclusionary rights in any service contemplated by this Act or the related legislation.
- (8) No existing licensee may have any claim against the Authority or any other person asserting such monopoly or exclusionary rights.

Conflicts 45

86. In the event of any conflict between the provisions of this Act, the related legislation or any other law relating to the regulation of broadcasting or communications, the provisions of this Act prevail.

Existing regulations

- 87.** (1) Within twelve months of the coming into force of this Act, the Authority may repeal or amend the regulations made under—
- (a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);
 - (b) the Telecommunications Act;
 - (c) the Broadcasting Act;
 - (d) the IBA Act;
 - (e) the Radio Act; and
 - (f) the Sentech Act,

which were in force immediately prior to the commencement of the this Act, in accordance with the provisions of this Act.

(2) The regulations referred to in subsection (1) remain in force until they are amended or repealed in terms of this Act.

Repeal and amendment of laws

88. The laws referred to in the first column of the Schedule are repealed or amended to the extent indicated in the third column.

5

Short title and commencement

89. This Act is called the Convergence Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE

No. and year of Act	Short Title	Extent of repeal or amendment	
Act No. 153 of 1993	Independent Broadcasting Authority Act, 1993	The whole	5
Act No. 103 of 1996	Telecommunications Act, 1996	The whole	
Act No. 4 of 1999	Broadcasting Act, 1999	<p>1. Repeal of sections 4, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 40.</p> <p>2. Amendment of section 1—</p> <p>(a) by the substitution for the words “telecommunications” and “telecommunication” respectively, of the word “communications”;</p> <p>(b) by the substitution for the word “radio” in the definition of “broadcasting” of the words: “radio frequency spectrum”;</p> <p>(c) by the substitution for the words “means of telecommunication” for the word “communications network”;</p> <p>(d) by the substitution for the definition of “broadcasting service” of the following definition: “broadcasting service” means any service which consists of the broadcasting of television or sound broadcasting material to— (a) the public, (b) sections of the public; or (c) subscribers to such a service, but does not include— (i) a service (including text service) that provides no more than data, or no more than text (with or without associated still images); or (ii) a service or components of a service that makes programmes available on demand on a point-to-point basis, including a dial-up service;</p> <p>(e) by the substitution for the word “telecommunication” in the definition of “broadcasting signal distribution” of the word “communications”;</p> <p>(f) by the deletion of the following definitions: “broadcasting signal distribution licensee”; “common carrier”; “IBA Act”; “telecommunications”;</p> <p>(g) by the insertion of the following definitions:</p>	<p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>“Convergence Act” means the Convergence Act, 2005;</p> <p>“communications” means the—</p> <p>(a) emission; 5</p> <p>(b) transmission; or</p> <p>(c) reception (circuit- and packet-switched or other means) of— 10</p> <p>(i) voice;</p> <p>(ii) sound;</p> <p>(iii) data;</p> <p>(iv) text;</p> <p>(v) video; 15</p> <p>(vi) visual images;</p> <p>(vii) signals; or</p> <p>(viii) a combination thereof, including applications, by means of electricity, magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conductors but does not include content services; 20</p> <p>“communications facility” means any—</p> <p>(a) wire; 25</p> <p>(b) cable (including undersea and land-based fibre optic cables); 30</p> <p>(c) optics;</p> <p>(d) antenna;</p> <p>(e) mast; 35</p> <p>(f) switch;</p> <p>(g) router;</p> <p>(h) satellite transponder;</p> <p>(i) circuits; 40</p> <p>(j) cable landing stations;</p> <p>(k) international gateways;</p> <p>(l) earth stations or other thing, allowing for carrier pre-selection and number portability; or 45</p> <p>(m) an apparatus, which is, or may be, used for, or in connection with, communications, including where applicable— 50</p> <p>(i) collocation space;</p> <p>(ii) monitoring equipment;</p> <p>(iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and 55</p> <p>(iv) certain associated services, which are ancillary to such communications facilities or otherwise necessary for proper functionality and utilisation of such communications facilities; 60</p>

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>“communications network” means—</p> <p>(a) any transmission system and associated communications facilities; and</p> <p>(b) other equipment, interfaces, protocols and software (excluding end user equipment), used in connection with such transmission system, which permits conveyance of signals, whether switched or unswitched, by—</p> <p>(i) wire;</p> <p>(ii) radio;</p> <p>(iii) optical; or</p> <p>(iv) other electromagnetic means or similar technical systems, including—</p> <p>(aa) satellite systems;</p> <p>(bb) fixed systems (circuit- and packet-switched);</p> <p>(cc) mobile systems;</p> <p>(dd) fibre optic cables (undersea and land-based);</p> <p>(ee) electricity cable systems (to the extent used for communications services); and</p> <p>(ff) transmission systems used for content services, including radio and television broadcasting, and cable television, irrespective of the type of information conveyed (to the extent such transmissions systems used for content services are also used for communications services);</p> <p>“communications network service” means a communications service whereby a communications network service licensee makes available—</p> <p>(a) a communications network; or</p> <p>(b) communications facilities, whether by sale, lease or otherwise—</p> <p>(i) for its own use for the provision of communications services or any other services contemplated by this Act or the related legislation;</p> <p>(ii) to another communications network service licensee for that licensee’s use in providing communications services or any other service contemplated by this Act or the related legislation; or</p>

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>(iii) for resale to a communications service licensee, or to any person providing content services or any other licensed service contemplated by this Act or the related legislation;</p> <p>“communications network service licensee” means a person licensed to provide communications network services;</p> <p>“communications service” means any service provided in terms of this Act or the related legislation which is normally provided for remuneration to—</p> <p>(a) the public;</p> <p>(b) sections of the public; or</p> <p>(c) the subscribers to such service,</p> <p>and consists wholly or mainly in the conveyance of communications over communications networks, including transmissions over communications networks used for broadcasting, but excluding content services;</p> <p>“communications service licensee” means a person or persons authorised to provide communications services in terms of a class license issued under this Act;</p> <p>“Complaints and Compliance Committee” means the committee established by the Authority in terms of section 17H of the ICASA Act;</p> <p>“ICASA Act” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);</p> <p>“investigation unit” means the unit established by the Authority in terms of section 17H of the ICASA Act;</p> <p>“radio frequency spectrum” means the portion of the radio spectrum used as a transmission medium for—</p> <p>(a) wireless communications;</p> <p>(b) the radio frequency band;</p> <p>(c) the radio frequency band for security services; and</p> <p>(d) the broadcasting service frequency bands,</p> <p>as may be modified from time to time;</p> <p>“radio frequency spectrum licence” means an individual licence authorising the holder to use the radio frequency spectrum;</p>

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>(h) by the substitution for the definition of “broadcasting signal distribution licence” of the following definition: 5 “broadcasting signal distribution licence” means a communications service licence where the holder of the communications service licence provides a broadcasting signal distribution service;”;</p> <p>(i) by the substitution for the definition of “radio” of the following definition: 10 “radio” means an electromagnetic wave which is propagated in space without artificial guide; 15</p> <p>3. Amendment of the Act by substitution for the word “telecommunications” wherever it appears in this Act of the word “communications”. 20</p> <p>4. Amendment of section 3 by the substitution in subsection (5)(f) for the word “IBA Act” of the word “Convergence Act”. 25</p> <p>5. Amendment of section 21— 30 (a) by the substitution in subsection (1) for the words “IBA Act or the Telecommunications Act, 1996 (Act No. 103 of 1996)” of the words “Convergence Act”; 35 (b) by the substitution in subsection (2) for the words “IBA Act” of the word “Convergence Act”.</p> <p>6. Substitution for section 42 of the following section: 40</p> <p>“Application of Act</p> <p>42. (1) The Convergence Act shall apply in relation to this Act, the ICASA Act, the Sentech Act and any other law applicable to broadcasting or communications. 45 (2) In the event of a conflict between the provisions of this Act and any other law relating to broadcasting or communications, the provisions of the Convergence Act shall prevail.”. 50 55</p>

No. and year of Act	Short Title	Extent of repeal or amendment
Act 63 of 1996	Sentech Act, 1996	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for definition of “broadcasting signal distribution” of the following definition:</p> <p>5 10 15 20 25 30 35 40 45 50 55 60 65</p> <p>“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 broadcast target area, by means of a communications process and multi-channel distribution;</p> <p>(b) by the deletion of the definition of “common carrier”;</p> <p>(c) by the insertion of the following definitions:</p> <p>(i) “Broadcasting Act” means the Broadcasting Act, 1999 (Act No. 4 of 1999);</p> <p>(ii) “Convergence Act” means the Convergence Act, 2005;</p> <p>(iii) “ICASA Act” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);</p> <p>(iv) “related legislation” means the Broadcasting Act, Convergence Act and the ICASA Act;</p> <p>2. Substitution for section 5 of the following section:</p> <p>“Main object and business of Company”</p> <p>5. The main object and business of the Company shall be to provide communication services in accordance with the Convergence Act.</p> <p>3. Insertion of the following section after section 8:</p> <p>“Application of Convergence Act”</p> <p>8A. (1) The Convergence Act shall apply in relation to this Act, the Broadcasting Act and the ICASA Act and any other law applicable to broadcasting or communications.</p> <p>(2) In the event of any conflict between the provisions of the Convergence Act or any other law relating to the regulation of broadcasting or communications the provisions of the Convergence Act shall prevail.</p> <p>4. The repeal of section 9.</p>

MEMORANDUM ON THE OBJECTS OF THE CONVERGENCE BILL, 2005

1. OBJECTS OF BILL

The objects of the Convergence Bill, 2005 are to—

- (a) promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors;
- (b) provide the legal framework for convergence of these sectors;
- (c) make new provision for the regulation of communications and network services;
- (d) provide for the granting of new licences and for new social obligations;
- (e) provide for the control of the radio frequency spectrum;
- (f) provide for the continued existence of the Universal Service Agency; and
- (g) provide for matters incidental thereto.

Chapter 1 sets forth the primary objectives of the Bill, including the promotion of convergence, the encouragement of innovation in the communications sector and the promotion of competition.

Chapter 2 sets forth the delineation of powers between the Minister and ICASA whereby the Minister formulates policy and represents the Republic in international communications fora and ICASA implements policy, issues licenses and oversees the communications sector through regulation.

Chapter 3 creates the legal framework for issuing licenses and the attendant rights and obligations of license holders thereunder.

Chapter 4 defines the rights and obligations of communications network services licensees when entering upon public and private property for purposes of constructing, repairing or removing communications facilities.

Chapter 5 vests the Minister with authority to manage the radio frequency spectrum used by the security services and ICASA with authority to manage all other radio frequency spectrum in accordance with national policy and applicable international regulations.

Chapter 6 governs the approval and use of communications equipment and facilities and radio apparatus in the Republic.

Chapter 7 requires communications network service licensees to interconnect their networks and defines certain guiding principles that will govern the licensees' interconnection agreements.

Chapter 8 requires communications network service licensees to lease their network facilities to other licensees and defines certain guiding principles that will govern the licensees' leasing agreements.

Chapter 9 establishes the legal framework allowing broadcasting services to participate in the convergence of communications and broadcasting services while retaining certain critical policies formerly contained in the Independent Broadcasting Authority Act, 1993 and the Broadcasting Act, 1999 including—

- (a) priority carriage for South African programming;
- (b) the delivery of public services;
- (c) the broadcasting of party elections and treatment of political parties; and,
- (d) adherence to codes of conduct.

Chapter 10 directs ICASA to prescribe regulations to protect consumers, including adopting a consumer code of conduct.

Chapter 11:

- (a) provides for the establishment of an ICT for government initiative;
- (b) designates ICASA as the "regulatory authority" in respect of the communications sector under the Competition Act, 1998;
- (c) empowers ICASA to take certain actions to ensure fair competition in the sector;
- (d) sets maximum penalties and fines; and,
- (e) carries forward from the Telecommunications Act the application of number portability, carrier pre-selection, directory services and 112 Emergency Centres to the new converged services.

Chapter 12 provides for the continued existence, financing, administration and management of the Universal Service Agency, which is charged with promoting universal access and universal service.

Chapter 13 provides for the transition and conversion of existing regulations and licenses under the Telecommunications Act, the IBA Act and the Broadcasting Act to ensure that they conform to the provisions of the Bill.

The Schedule provides for the repeal of the IBA Act, 1993, and the Telecommunications Act, 1996, and amends the Broadcasting Act, 1999, and the Sentech Act, 1996.

2. INSTITUTIONS CONSULTED

Competition Commission;
Department of Justice and Constitutional Development;
Department of Public Enterprises;
Department of Public Service and Administration;
Department of Science and Technology;
Department of Trade and Industry;
Independent Communications Authority of South Africa;
National Treasury;
The Presidency; and
State Law Advisers.

3. FINANCIAL IMPLICATIONS FOR STATE

Normal communication associated with legislative processes.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Communications are of the opinion that the 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.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.