

## PRESIDENT'S OFFICE

No. 1869. 15 November 1996

## NO. 103 OF 1996: TELECOMMUNICATIONS ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

**General Explanatory Note:**

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

**ACT**

To make new provision for the regulation of telecommunication activities other than broadcasting, and for the control of the radio frequency spectrum; and for that purpose to establish an independent South African Telecommunications Regulatory Authority and a Universal Service Agency; to repeal the Radio Act, 1952, and the Radio Amendment Acts of 1957, 1962, 1963, 1969 and 1974 and to amend the General Law Amendment Acts of 1957 and 1975, the Post Office Act, 1958, the Post Office Service Act, 1974, the Broadcasting Act, 1976, the Legal Succession to the South African Transport Services Act, 1989, and the Independent Broadcasting Authority Act, 1993; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 12 November 1996.)

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

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## **CHAPTER I**

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#### **Definitions**

1. In this Act, unless the context indicates otherwise-

(i) "Agency" means the Universal Service Agency established by section 58; (i)

(ii) "Authority" means the South African Telecommunications Regulatory Authority established by section 5; (xii)

(iii) "broadcasting" means broadcasting as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxix)

- (iv) "broadcasting services frequency bands" means broadcasting services frequency bands as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxvii)
- (v) "broadcasting signal distribution" means broadcasting signal distribution as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxviii)
- (vi) "Council" means the Council of the Authority; (xiii)
- (vii) "councillor" means any member of the Council; (xiv)
- (viii) "Department" means the Department of Communications; (ii)
- (ix) "Director-General" means the Director-General: Communications; (iii)
- (x) "Eskom" means Eskom referred to in section 2(1) of the Eskom Act, 1987 (Act No. 40 of 1987); (iv)
- (xi) "family member" or "member of the family", in relation to any person, means his or her parent, child or spouse, including a person living with that person as if they were married to each other; (vi)
- (xii) "fixed line operator" means Telkom and any other person who provides a licensed telecommunication service by means of a telecommunication system consisting mainly of fixed lines, and "operator" shall be construed accordingly; (xxxiii)
- (xiii) "frequency band" means a specified range of frequencies for use by one or more radio communication services; "frequency band plan" means a table setting out the allocations of various frequency bands for use by one or more radio communication services under specified conditions; (v)
- (xiv) "Human Resources Fund" means the Human Resources Fund established by section 78; (x)
- (xv) "interconnect" means to link two telecommunications systems so that users of either system may communicate with users of, or utilise services provided by means of, the other system or any other telecommunication system, and "interconnection" has a corresponding meaning; (viii)
- (xvi) "licence" means a licence referred to in section 32; (ix)
- (xvii) "Minister" means the Minister for Posts, Telecommunications and Broadcasting;
- (xi) (xviii) "prescribed"-
- (a) means, subject to paragraph (b), prescribed by regulation;



(b) in relation to radio activities, radio apparatus and other radio matters, means prescribed by radio regulation; (xxxiv)

(xix) "radio" means electromagnetic waves which are propagated in space without artificial guide and having frequencies of lower than 3000 Ghz; (xv)

(xx) "radio apparatus" means a telecommunication facility which is capable of transmitting or receiving any signal by radio, other than-

(a) a sound radio set or other device capable of receiving broadcasting by radio in the form of sound but not also in the form of images or any other visible signal, if such set or device is used only for the reception of broadcasting;

(b) except in sections 54 and 55, a television set as contemplated in the Broadcasting Act, 1976 (Act No. 73 of 1976); (xvi)

(xxi) "radio regulation" means a regulation made under section 95; (xvii)

(xxii) "regulation" means a regulation made under section 96; (xviii)

(xxiii) "signal" includes signs, sounds, writing or information of any kind; (xix)

(xxiv) "station" means any separate radio apparatus or a combination thereof; (xx)

(xxv) "telecommunication" means the emission, transmission or reception of a signal from one point to another by means of electricity, magnetism, radio or other electromagnetic waves, or any agency of a like nature, whether with or without the aid of tangible conductors; (xxi)

(xxvi) "telecommunication facility" includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with telecommunication; (xxiii)

(xxvii) "telecommunication service" means any service provided by means of a telecommunication system; (xxii)

(xxviii) "telecommunication system" means any system or series of telecommunication facilities or radio, optical or other electromagnetic apparatus or any similar technical system used for the purpose of telecommunication, whether or not such telecommunication is subject to rearrangement, composition or other processes by any means in the course of their transmission or emission or reception; (xxiv)

(xxix) "Telkom" means Telkom S.A. Limited, a company contemplated in section 3(1) of the Post Office Act, 1958 (Act No. 44 of 1958); (xxv)

(xxx) "this Act" includes the regulations and the radio regulations; (vii)

(xxxi) "Transnet" means Transnet Limited, a company contemplated in section 2(1) of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989); (xxvi)

(xxxii) "universal access" means universal access to telecommunication services as determined from time to time in terms of section 59(2)(a)(i); (xxxii)

(xxxiii) "universal service" means the universal provision of telecommunication services as determined from time to time in terms of section 59(2)(a)(ii); (xxx)

(xxxiv) "Universal Service Fund" means the Universal Service Fund established by section 65(1). (xxxi)

(2) In interpreting any provision of this Act regard must be had to the International Telecommunication Conventions concluded at Malaga and Torremolinos in 1973 and Nairobi in 1982 and the Radio Regulations of the International Telecommunication Union.

## **Objects of Act**

2. The primary object of this Act is to provide for the regulation and control of telecommunication matters in the public interest, and for that purpose to-

- (a) promote the universal and affordable provision of telecommunication services;
- (b) promote the provision of a wide range of telecommunication services in the interest of the economic growth and development of the Republic;
- (c) make progress towards the universal provision of telecommunication services;
- (d) encourage investment and innovation in the telecommunications industry;
- (e) encourage the development of a competitive and effective telecommunications manufacturing and supply sector;
- (f) promote the development of telecommunication services which are responsive to the needs of users and consumers;
- (g) ensure that, in relation to the provision of telecommunication services, the needs of the local communities and areas are duly taken into account;
- (h) ensure that the needs of disabled persons are taken into account in the provision of telecommunication services;
- (i) ensure compliance with accepted technical standards in the provision and development of telecommunication services;

- (j) ensure fair competition within the telecommunications industry;
- (k) promote the stability of the telecommunications industry;
- (l) encourage ownership and control of telecommunication services by persons from historically disadvantaged groups;
- (m) protect the interests of telecommunications users and consumers;
- (n) encourage the development of human resources in the telecommunications industry;
- (o) promote small, medium and micro-enterprises within the telecommunications industry;
- (p) ensure efficient use of the radio frequency spectrum;
- (q) promote the empowerment and advancement of women in the telecommunications industry.

### **Application of Act**

3. This Act shall not apply in relation to broadcasting, broadcasting signal distribution or broadcasting services frequency bands, except as provided in sections 28(3) and 127 to 129.

### **State bound by Act**

4. The provisions of this Act bind the State, except-

- (a) Chapter VI in relation to the South African National Defence Force; and
- (b) sections 101 and 102.

## **CHAPTER II**

### **South African Telecommunications Regulatory Authority**

#### **Establishment of South African Telecommunications Regulatory Authority**

5. (1) There is hereby established a juristic person to be known as the South African Telecommunications Regulatory Authority.

(2) (a) The Authority shall be capable in law of instituting, defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring, holding and alienating or otherwise disposing of movable or immovable property or any other real

right or other right or interest, of entering into contracts and concluding agreements and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act.

(b) The Authority may perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental, or supplementary to the performance of any of its functions including any matter contemplated in paragraph (a).

(3) The Authority shall be independent and impartial in the performance of its functions.

(4) (a) The Minister may from time to time by notice in the Gazette issue to the Authority policy directions consistent with the objects mentioned in section 2.

(b) The Minister shall, before a policy direction contemplated in paragraph (a) is issued-

(i) consult the Authority;

(ii) in order to obtain the view of interested persons, cause the text of such direction to be published in the Gazette together with a notice declaring his or her intention to issue that direction and inviting interested persons to lodge written representations in relation to the direction in the manner specified in such notice within 30 days from the date of the notice; and

(iii) refer the proposed direction for comment to the committees of Parliament appointed for the purpose of considering matters relating to telecommunications.

(c) The provisions of paragraph (b) shall not apply in respect of any alteration by the Minister of a policy direction in consequence of comments or representations received by him or her pursuant to consultation, publication or reference in terms of that paragraph.

(d) The Authority shall perform its functions in terms of this Act in accordance with a policy direction issued under this section.

(e) A policy direction issued under this section may be amended, withdrawn or substituted by the Minister, and the provisions of this section shall apply, with the necessary changes, in relation to any such amendment, withdrawal or substitution.

### **Representation by Council**

6. (1) The Authority shall be governed and represented by its Council.

(2) The Council shall consist of-

(a) a chairperson; and

(b) no fewer than three and no more than five other councillors, appointed by the President in terms of section 9.

(3) All acts of the Council shall in law be regarded as the acts of the Authority.

### **Personal requirements in respect of councillors**

7. (1) Councillors shall be persons who-

(a) are committed to-

(i) fairness, openness and accountability on the part of those entrusted with the governance of a public service;

(ii) the objects and principles of this Act;

(b) when viewed collectively-

(i) represent a broad cross-section of the population of the Republic;

(ii) possess qualifications, expertise and experience in the fields of, amongst others, telecommunications policy and technology, frequency band planning, law, economics, business practice and finance.

### **Disqualification of councillors**

8. (1) A person shall not be appointed or continue as a councillor if such person-

(a) is not a citizen of the Republic;

(b) is not permanently resident in the Republic;

(c) is a public servant or the holder of any other office of profit under the State;

(d) is a member of Parliament, any provincial legislature or local authority, or any council;

(e) is an office-bearer or employee of any party, movement, organisation or body of a party-political nature;

(f) or a member of the family of such person has a controlling interest or any substantial financial interest in the telecommunications or broadcasting industry;

(g) or his or her business partner holds an office in or with or is employed by any person, company, organisation or other body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f);

(h) is an unrehabilitated insolvent;

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

(j) has at any time been convicted, whether in the Republic or elsewhere, of-

(i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), or any other offence involving dishonesty;

(ii) an offence under this Act; or

(iii) any offence corresponding materially to any offence referred to in sub paragraph (i) or (ii); or

(k) has at any time been removed from an office of trust on account of misconduct.

(2) A person who is subject to a disqualification contemplated in subsection (1)(b) to (g) may be nominated for appointment and may be appointed as a councillor if at the time of such appointment he or she is no longer subject to that disqualification.

### **Appointment of councillors**

9. (1) The chairperson and other members of the Council shall be appointed by the President on the advice of the Parliamentary committees on communications.

(2) (a) The Parliamentary committees shall cause a notice to be published in the Gazette inviting interested persons to submit, within a period which shall not be shorter than 10 days after such publication, nominations for appointment as councillors.

(b) The Parliamentary committees shall-

(i) after the expiry of the period for nomination contemplated in paragraph (a), compile a shortlist from the nominations received and publish it in the Gazette, stating the date and time when and the place where a public hearing in respect of each candidate mentioned in the shortlist, will take place; and

(ii) hold such public hearing on such date and at such time and place.

(c) The Parliamentary committees shall thereafter recommend candidates for appointment as councillors, with due regard to the provisions of sections 5(3), 7 and 8.

(d) The number of candidates so recommended, shall not exceed the number of councillors to be appointed by more than 50 per cent.

(e) If the President determines that circumstances exist which render any or some of such candidates unacceptable, he or she shall inform the Parliamentary committees of those circumstances.

(f) After having been informed as contemplated in paragraph (e), the Parliamentary committees may-

(i) invite further nominations in accordance with paragraphs (a), (b) and (c);

(ii) recommend further candidates in accordance with paragraph (c);

(iii) advise the President that the recommendation of further candidates is not warranted.

(g) The President shall thereafter make appointments from the candidates, or the candidates as supplemented in terms of paragraph (j)(ii), as the case may be.

(3) The administrative work necessary for compliance with subsection (2) shall be performed by officers of the Department designated for that purpose by the Director-General.

(4) Where a vacancy in the office of a councillor has arisen as contemplated in section 13(1), the procedure contemplated in subsection (2)(a), (b) and (c) shall apply.

### **Terms of office of councillors**

10. (1) The chairperson shall hold office for five years.

(2) (a) Subject to paragraphs (c) and (d), the additional councillors referred to in section 6(2)(b) shall hold office for four years.

(b) One half or, if their number is not a multiple of two, a number nearest to one half of the total number of additional councillors shall vacate their offices every two years.

(c) For the purposes of paragraph (b)-

(i) half or a number nearest to half, as the case may be, of the additional councillors appointed to the first Council after the date of commencement of this Act, as determined by the Council by lot shall vacate office two years as from the date of their appointment; and

(ii) the councillors remaining at that stage shall vacate office on a date two years later.

(d) If the President at any time appoints further councillors except in order to fill a vacancy and the number of additional councillors is thereby increased, the provisions of paragraphs (a) to (c) shall apply, with the necessary changes, to any councillor so

appointed: Provided that any such councillor appointed more than one year after the appointment of the incumbent councillors shall vacate office at the same time as the councillors referred to in paragraph (c)(ii).

(3) A councillor may at any time, upon at least three months' written notice tendered to the President, resign from office.

(4) Notwithstanding subsections (1) and (2)(a), the chairperson and additional councillors may remain in office after expiry of their term of office until the commencement of the term of office of their successors: Provided that such increased term of office shall not exceed 45 days.

(5) A councillor shall upon the expiration of his or her term of office be eligible for reappointment in terms of section 9.

(6) Every councillor shall serve in a full-time capacity to the exclusion of any other remunerative employment, occupation or office.

### **Remuneration and allowances of councillors**

11. The chairperson and other councillors shall be paid such remuneration and allowances and be entitled to such benefits as the Minister may determine with the concurrence of the Minister of Finance.

### **Removal from office**

12. Notwithstanding section 10, a councillor may be removed from office by the President on account of-

(a) misconduct;

(b) inability to perform the duties of his or her office effectively;

(c) absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown;

(d) his or her having performed other remunerative work in contravention of section 10(6); or

(e) failure to disclose an interest in terms of section 15(2)(a) or attendance at or participation in proceedings of the Council while having an interest contemplated in section 15(1).

### **Vacancies in Council**

13. (1) There shall be a vacancy in the Council if a councillor-



- (a) becomes subject to a disqualification referred to in section 8;
- (b) tenders his or her resignation as contemplated in section 10(3) and such resignation takes effect;
- (c) is removed from office in terms of section 12; or
- (d) dies or becomes incapacitated.

(2) A vacancy in the council shall be filled by the appointment of another councillor by the President in terms of section 9 as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

### **Meetings of Council**

14. (1) Meetings of the Council shall be held whenever necessary for the expeditious conduct of its business, at such times and places as may be determined by the Council: Provided that the first meeting shall be held at such time and place as the chairperson may determine.

(2) In the absence of the chairperson, the remaining councillors shall from their number elect an acting chairperson who, while he or she so acts, may perform all the functions of the chairperson.

(3) The chairperson may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairperson may determine: Provided that the chairperson shall, upon being presented with a requisition for that purpose signed by at least two councillors, convene a special meeting, and if the chairperson fails to convene a special meeting within seven days after such presentation, such councillors may convene a special meeting.

(4) The quorum for any meeting of the Council shall be a majority of the councillors.

(5) Subject to subsection (4), a decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council and, in the event of an equality of votes regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(6) The Council may allow members of the public to attend any of its meetings.

(7) The seat of the Council shall be determined by the Minister.

### **Disclosure of conflicting interests**

15. (1) A councillor shall not vote at, attend or in any other manner participate in the proceedings at any meeting or hearing of the Council if-

(a) in relation to an application relating to a licence, he or she or his or her family member or partner is a director, member or business partner of or has an interest in the business of the applicant or of any person who made representations in relation to the application; or

(b) in relation to any matter before the Council, he or she has any interest which may preclude him or her from performing his or her functions as a councillor in a fair, unbiased and proper manner.

(2) If at any stage during the course of any proceedings before the Council there is reason to believe that a councillor has any interest contemplated in subsection (1)-

(a) that councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing in question so as to enable the remaining councillors to discuss the matter and determine whether that councillor is to be precluded from participating in such proceedings by reason of a conflict of interests; and

(b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the proceedings in question.

### **Proceedings of Council not invalid in certain circumstances**

16. A decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of-

(a) any irregularity in the appointment of a councillor;

(b) a vacancy in the Council;

(c) the fact that a councillor is guilty of an act or omission justifying his or her removal from office; or

(d) the fact that any person who is disqualified from being a councillor or who was removed from that office sat as such in the Council at the time when such decision was taken,

if such decision was taken by a majority of the councillors lawfully entitled to vote and present at the time, and the said councillors at the time constituted a quorum.

### **Staff of Authority**

17. (1) The Council shall, in consultation with the Public Service Commission and subject to the approval of the Minister with regard to staff and resources, establish its own administration to assist the Authority in the performance of its functions and to this end the Council shall appoint-

(a) a chief executive officer; and

(b) such other staff as the Council may deem necessary.

(2) The Authority shall, in the appointment of its staff-

(a) provide for the advancement of persons disadvantaged by past unfair discrimination, with the aim that its staff, when viewed collectively, shall represent a broad cross-section of the population of the Republic;

(b) subject to paragraph (a), apply equal opportunity employment practices.

(3) The Authority may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other benefits as the Authority may determine with the approval of the Minister with the concurrence of the Minister of Finance and after consultation with the Public Service Commission.

### **Financing of Authority**

18. (1) The operating and capital costs of the Authority shall be financed from money appropriated by Parliament from time to time for that purpose.

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

(3) The Authority-

(a) shall 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 in consultation with the Minister of Finance; and

(b) may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted in consultation with the Minister of Finance.

### **Banking account**

19. The Council shall, with the approval of the Director-General, open and maintain in the name of the Authority 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 shall be deposited the money received by the Authority and from which payments to the Authority or on its behalf shall be made.

### **Annual and other reports**

20. (1) The Council shall furnish to the Minister such information and particulars as he

or she may from time to time in writing require in connection with the activities of the Authority, and shall annually, as soon as may be reasonably practicable after the end of each financial year, furnish to the Minister a report in regard to the functions, affairs, activities and financial position of the Authority in respect of such financial year.

(2) Without derogating from the generality of the provisions of subsection (1), the annual report referred to in that subsection shall include-

(a) information regarding licences granted, renewed, amended, transferred, suspended or revoked;

(b) such other information as the Minister may determine.

(3) The Minister shall table a copy of the annual report in Parliament within 30 days after it has 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.

## **CHAPTER III**

### **Committees, appointment of experts and enquiries**

#### **Establishment of committees of Council**

21. The Council may establish such standing or special committees for such purposes as it may deem necessary in order to assist in the effective performance of its functions and may at any time extend, limit or dissolve any such committee.

#### **Composition of committees**

22. (1) Each committee shall consist of-

(a) one or more councillors designated by the Council; and

(b) such additional members as the Council may determine from time to time.

(2) The additional members referred to in subsection (1)(b) shall be persons-

(a) who are not subject to any disqualification contemplated in section 8(1)(h), (i), (j) or (k); and

(b) who, on account of their expertise, qualifications and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.

(3) The chairperson of a committee shall be one of the councillors concerned.

#### **Functions of committees**

23. A committee shall, with due regard to the objects mentioned in section 2, perform such functions-

(a) in the case of the Human Resources Development Committee, as may be conferred or imposed upon that committee by or under this Act; and

(b) in the case of any other committee, as may be delegated to the committee in question by the Council.

### **Meetings of committees**

24. (1) The meetings of a committee (including any special meeting) shall be convened by the chairperson, who shall determine the procedure at any such meeting.

(2) The provisions of section 14(2), (4) and (5) shall apply with the necessary changes as regards the meetings of any committee.

### **Remuneration and allowances of committee members**

25. (1) The members of any committee who are not councillors or members of the staff of the Authority shall be paid such remuneration and allowances as the Council may from time to time determine with the approval of the Minister with the concurrence of the Minister of Finance.

(2) For the purposes of subsection (1), the Council may differentiate between different committees and different members thereof.

### **Appointment of experts**

26. (1) The Authority may appoint as many experts as may be necessary, including experts from other countries, with a view to assisting the Authority in the performance of its functions.

(2) The terms, conditions, remuneration and allowances applicable in respect of any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be determined in a written agreement entered into for that purpose between the Authority and the expert concerned.

### **Enquiries by Authority**

27. (1) The Authority may from time to time conduct an enquiry into any matter relevant to-

(a) the achievement of the objects mentioned in section 2;

(b) the performance of its functions in terms of this Act.

(2) The Authority shall make known its intention to conduct such an enquiry by the publication in the Gazette of a notice to that effect.

(3) The notice referred to in subsection (2) shall indicate the subject matter of the enquiry and invite interested persons, within the period specified in the notice-

(a) to submit written representations; and

(b) to indicate whether they require an opportunity to make oral representations to the Authority.

(4) Written representations made pursuant to a notice contemplated in subsection (2) shall, subject to subsection (7), be open to inspection by interested parties during the normal office hours of the Authority.

(5) The Authority shall, at the request of any interested person and on payment of such fees as may be prescribed, furnish him or her with a certified copy of or extract from representations open to inspection as contemplated in subsection (4).

(6) (a) The Authority shall advise persons referred to in subsection (3)(b) of the place where and time when oral representations may be made.

(b) Such oral representations shall, subject to subsection (7), be made in public.

(7) The provisions of section 34(4) and (5) shall apply, with the necessary changes, in relation to representations contemplated in subsections (4) and (6).

(8) The Authority shall, after it has conducted an enquiry, by notice in the Gazette-

(a) make known its findings and any recommendations or conclusions pursuant to such enquiry; or

(b) state that such findings and any such recommendations or conclusions are open to inspection, and the provisions of subsections (4) and (5) shall apply, with the necessary changes, in relation thereto.

(9) The Authority shall, within two years after the commencement of this Act, conduct an enquiry in terms of this section into matters relating to mobile cellular telecommunication services referred to in section 37(2).

## **CHAPTER IV**

### **Radio frequency spectrum**

#### **Control of radio frequency spectrum**

28. (1) The Authority shall be vested with the control, planning, administration, management and licensing of the radio frequency spectrum.

(2) (a) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority shall comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Republic.

(b) The Authority shall honour present and future commitments of the Republic in terms of international agreements and standards in respect of radio communication and telecommunication matters.

(3) (a) The Authority and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993), shall establish a Joint Liaison Committee consisting of an equal number, determined by the Minister after consultation with the two authorities, of members of the council of each authority.

(b) The Joint Liaison Committee shall-

(i) coordinate the management of the radio frequency spectrum, including the broadcasting services frequency bands;

(ii) determine which additional parts of the radio frequency spectrum shall form part of the broadcasting services frequency bands from time to time;

(iii) with due regard to the requirements of the International Telecommunication Union and its Radio Regulations, determine any dispute between the two authorities, or decide whether a particular telecommunications matter pertains or does not pertain to broadcasting.

(c) In the event of any failure by the members of the Committee to agree on any matter contemplated in paragraph (a) or (b), the issue shall be referred to the Minister for his or her decision.

(d) Any decision by the Committee or the Minister in terms of paragraph (b) or (c), respectively, may be made known by notice in the Gazette.

### **Frequency band plans**

29. (1) The Authority may from time to time prepare a frequency band plan in respect of any part of the radio frequency spectrum.

(2) A frequency band plan shall-

(a) define how the radio spectrum shall be used;

(b) aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient and effective manner;

(c) aim at reducing congestion in the use of frequencies and at protecting frequency users from any interference or other inability to make use of the frequencies assigned to them;

(d) avoid obstacles to the introduction of new technologies and telecommunication services;

(e) aim at providing opportunities for the introduction of the widest range of telecommunication services and the maximum number of users thereof as is practically feasible.

(3) In preparing a frequency band plan in terms of this section, the Authority-

(a) shall have due regard to the reports of experts in the field of spectrum or frequency band planning and to internationally accepted methods for preparing such plans;

(b) shall take into account existing uses of the radio frequency spectrum and any frequency band plans in existence or in the course of preparation.

(4) The Authority shall give notice in the Gazette of its intention to prepare a 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.

(5) The Authority shall, after the period referred to in subsection (4) has passed, hold a hearing in respect of the proposed plan.

(6) After the hearing and after due consideration of any representations received pursuant to the notice mentioned in subsection (4) or tendered at the hearing, the Authority shall adopt the frequency band plan in question, with or without amendment, and cause such plan to be published in the Gazette.

(7) (a) Any frequency band plan adopted in terms of this section and all such comments, representations and other documents as have been received in response to the notice contemplated in subsection (4) or tendered at the hearing, shall be kept at the offices of the Authority and shall, subject to paragraph (b), be open to public inspection by interested persons during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof.

(b) The provisions of section 34(4) and (5) shall apply, with the necessary changes, in relation to any comments or representations contemplated in paragraph (a).

(8) (a) The Authority may review a frequency band plan adopted in terms of this section.



(b) The provisions of subsections (2) to (7) shall apply, with the necessary changes, in relation to any amendment contemplated in paragraph (a).

### **Frequency and station licences, certificates and authorities**

30. (1) No person shall transmit any signal by radio or use radio apparatus to receive any signal by radio, or do or permit to be done anything for which a licence, certificate or authority is required in terms of this section, except under and in accordance with-

(a) a licence conferring on the licensee the right to use, or to cause any person in his or her employ or under his or her control to use, a station for any prescribed purpose or to use any radio frequency or group of radio frequencies for any purpose and in the manner prescribed;

(b) a certificate of proficiency, issued to any person who passes the examinations referred to in subsection (4) or who qualifies therefor under the radio regulations, to use a station for any prescribed purpose or to maintain a station in a category which may in terms of the radio regulations only be maintained by the holder of such a certificate;

(c) an authority issued to the holder of a certificate referred to in paragraph (b) and conferring on such holder the right to use any station which under the conditions of any licence issued under paragraph (a) or under the radio regulations or any other law may only be used by the holder of such an authority;

(d) a licence deemed to be issued or issued by the Minister as provided in subsection (3)(a).

(2) (a) Licences, certificates and authorities referred to in subsection (1)(a) to (c) shall be issued by the Authority.

(b) The procedures in relation to applications for such licences, certificates and authorities and the information to be supplied for the consideration of such applications shall, subject to subsection (3)(b) and (c), be as prescribed.

(3) (a) Telkom shall be deemed to be the holder of a licence to provide local exchange telecommunications services by way of radio local-loop and fixed radio facilities, as was provided immediately before the date of commencement of this Act: Provided that as at the date of commencement of this Act Telkom shall be deemed to have applied to the Minister for a frequency spectrum or a station licence in terms of this Act and, after the provisions of section 36(6), (7), (8) and (9) have been complied with in relation to the terms and conditions of the licence, and if a licence has been issued to Telkom in accordance with section 36(1), the Minister shall grant the application and the Minister shall issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act.

(b) A frequency spectrum or station licence shall be required as provided in subsection (1)(a) in addition to any telecommunication service licence contemplated in Chapter V, where the provision of the service or the use thereof entails the use of radio as contemplated in that subsection: Provided that this paragraph shall not apply to the licences referred to in paragraph (a).

(c) Upon application and payment of a licence fee, Telkom shall be entitled to a licence issued by the Minister to provide local exchange telecommunication services by means of radio local-loop and fixed radio facilities.

(d) Where the applicant intends to provide a telecommunication service he or she shall make application for a frequency spectrum or station licence contemplated in subsection (1)(a), with the necessary changes in accordance with section 34, except in so far as the regulations or radio regulations provide otherwise: Provided that this paragraph shall not apply to the licences referred to in paragraph (a).

(e) Section 35(2), (3) and (4) shall apply, with the necessary changes, in relation to a decision on an application referred to in paragraph (c).

(4) The Authority may conduct examinations, or cause examinations to be conducted, to determine the proficiency of any person to use or maintain a station as contemplated in subsection (2)(b).

(5) (a) A licence, certificate or authority issued in terms of section 7(1)(a), (c) or (d) of the Radio Act, 1952 (Act No. 3 of 1952), and which was still valid immediately before the date of commencement of this Act, shall be deemed to have been issued in terms of this section.

(b) The South African National Defence Force shall be deemed to be the holder of licence under subsection (1)(a) authorising it to use the radio frequencies and groups of radio frequencies which had been assigned to it for defence purposes immediately before the date of commencement of this Act: Provided that the said Force shall apply to the Authority within six months after the date of commencement of this Act or such extended period as the Authority may allow, for such a licence, and that the Authority shall grant such a licence in terms of this section to the Force.

(6) The Authority may amend a frequency spectrum licence or station licence issued under subsection (1)(a) or (d) or (5)(b)-

(a) to implement any frequency band plan or in the interest of orderly frequency management, if the amendment will not cause substantial prejudice to the licensee;

(b) if requested thereto by the licensee concerned.

(7) The procedures in relation to the amendment, renewal or transfer of a frequency

spectrum licence, certificate or authority contemplated in this section shall be as prescribed.

(8) Subsection (1) shall not apply to a person who utilises radio-

(a) in the course of making due and proper use of a telecommunication service, the provision of which is duly licensed in terms of this section and Chapter V, as a customer or end user thereof;

(b) in the course of making due and proper use of a telecommunication service, the provision of which is duly licensed in terms of this section and Chapter V, as part of his or her duties in the service of the State or a local authority, including any military, police or traffic force; or

(c) in accordance with the regulations contemplated in subsection (9).

(9) (a) The authority may prescribe-

(i) categories of radio apparatus, the use or possession of which; or

(ii) the circumstances in which the use or possession of radio apparatus, shall not require a licence, certificate or authority in terms of this section or a permit in terms of section 31.

(b) An article mentioned in a notice published in the Gazette immediately before the date of commencement of this Act declaring any article not to be radio apparatus for the purposes of the laws governing radio, shall be deemed to have been prescribed in terms of this subsection.

### **Control of possession of radio apparatus**

31. (1) Subject to section 30(9), no person shall have in his or her possession any radio apparatus unless he or she is in possession of a permit issued by the Authority in terms of this section or a frequency spectrum or station licence issued in terms of section 30 authorising such possession, or unless he or she is a supplier registered in terms of section 56.

(2) The procedure for obtaining a permit in terms of subsection (1), shall be as prescribed.

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

(a) seal or alter such apparatus or any part thereof in order to prevent the use of that radio apparatus for the purpose of transmission or reception, and issue 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;

(b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of subsection (4).

(4) Radio apparatus seized under subsection (3)(b) shall be held by the Authority until-

(a) its possession is authorised in terms of subsection (1) or (3)(a); or

(b) it is dealt with by a court in terms of section 102(2).

## **CHAPTER V**

### **Telecommunication services**

#### **Prohibition on provision of telecommunication service without licence**

32. (1) Subject to the provisions of this Act, no person shall provide a telecommunication service except under and in accordance with a telecommunication service licence issued to that person in terms of this Chapter.

(2) A licence shall confer on the holder the privileges and subject him or her to the obligations provided in this Act or specified in the licence.

#### **Kinds of licences**

33. (1) The categories of licences which may be granted, and the telecommunication services authorised by such licences, are-

(a) as contemplated in sections 34(2)(a)(i) to (iv) and 39 to 41; and

(b) subject to subsection (2), as prescribed.

(2) The Authority may prescribe the telecommunication services and activities, other than those referred to in subsection (1)(a), which may be provided or conducted without a licence.

#### **Applications and consideration thereof**

34. (1) Any person may, subject to the provisions of this Act, make application for a licence in the manner prescribed.

(2) (a) No application shall be lodged or entertained in respect of a licence to provide-

(i) a public switched telecommunication service;

(ii) a mobile cellular telecommunication service;

- (iii) a national long-distance telecommunication service;
- (iv) an international telecommunication service; or
- (v) any other telecommunication service prescribed for the purposes of this subsection,

unless such application is lodged pursuant to and in accordance with an invitation issued by the Minister by notice in the Gazette: Provided that this subsection and subsections (3), (4) and (5) shall not apply to an application which is deemed to have been made in terms of section 30(3)(a), 36(1)(a) or 40(1)(a).

(b) The Minister shall, in an invitation contemplated in paragraph (a), specify-

- (i) the kind of service in respect of which applications are invited;
- (ii) the form in which applications shall be submitted and the manner in which it is contemplated that the service shall be provided, or the place where and times when a document in that regard may be obtained;
- (iii) the period within and manner in which such applications shall be lodged.

(c) For the purpose of paragraph (a)(i), a public switched telecommunication network service shall not include-

- (i) a service referred to in paragraph (a)(ii) to (iv) or sections 39 and 40;
- (ii) the provision of any service relating to telegrams; or
- (iii) the supply of telecommunication equipment installed or intended for installation in customer premises.

(3) In the case of an application for a licence to provide a telecommunication service referred to in subsection (2) or any other telecommunication service prescribed for the purposes of this subsection the Authority shall-

- (a) give notice of the application in the Gazette and invite interested persons to lodge representations in relation to the application within the period mentioned in the notice;
- (b) in the same or a subsequent such notice, make known the conditions contemplated in section 35(4) on which it is proposed the licence shall be granted;
- (c) after the period for lodging representations in terms of paragraphs (a) and (b) has passed, hold a hearing in respect of the application and such terms and conditions.

(4) (a) All applications, representations and other documents relating to an application which are lodged with the Authority shall, subject to this subsection, be open to public

inspection during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof.

(b) The Authority may, at the request of an applicant or person who lodged representations, determine that any document or information relating to the financial capacity or business plans of any person or to any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question.

(c) If the Authority refuses a request contemplated in paragraph (b), the applicant or person concerned shall be allowed to withdraw the document or information in question.

(5) (a) A hearing contemplated in subsection (3)(c) shall, subject to paragraph (b), be open to the public.

(b) Before considering any document or information which the Authority has determined shall not be open for public inspection, the Authority may direct that the public or any member or category thereof shall not be present at the hearing: Provided that before making such direction the Authority shall notify those present of its intention to do so, allow persons to object to such direction and give due consideration to any objection made.

(6) When issuing invitations for applications in respect of licences to be lodged in terms of this section, the Minister shall have regard to any relevant provision made in terms of section 36(3) in the licence issued to Telkom.

### **Decision on applications**

35. (1) (a) The Authority shall, after having duly considered any application for a licence made in terms of this Act and any representations and further information and evidence tendered, other than in respect of an application which is deemed to have been made pursuant to section 30(3)(a), 36(1)(a) or 40(1)(a)-

(i) notify the applicant of its intended decision or recommendation, including conditions contemplated in subsections (2)(b) and (4);

(ii) on request made by the applicant within the prescribed period, furnish him or her with its reasons for such decision or recommendation.

(b) The applicant may within the prescribed period make representations to the Authority in relation to the intended decision or recommendation, and the Authority may adjust or alter such decision or recommendation in any manner in the light of such representations.

(2) The Authority shall, after the provisions of subsection (1) have been complied with-

(a) refuse the application; or

(b) in the case of-

(i) an application for a licence to provide a telecommunication service referred to in section 34(2), recommend that the Minister grant the application conditionally and suggest conditions contemplated in sub- section (4) for the Minister to impose; or

(ii) any other application, grant the application.

(3) In the consideration of applications to provide a telecommunication service referred to in section 34(2), due regard shall be given to applications by persons from historically disadvantaged groups.

(4) Subject to section 36(6), a licence shall be granted on such conditions appropriate to the licence and consistent with the objects referred to in section 2 and the other provisions of this Act and stated in the licence, as the Minister or the Authority, as the case may be, may determine.

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

(6) The Authority or the Minister, as the case may be, shall on request furnish written reasons for the decision-

(a) to the applicant, where the application has been refused or has been granted subject to conditions;

(b) to any person who lodged representations, where the application was granted.

### **Public switched telecommunication services**

36. (1) (a) Telkom shall be deemed to be the holder of a licence to provide public switched telecommunication services as contemplated in section 78(1) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before its repeal by this Act: Provided that as at the date of commencement of this Act, Telkom shall be deemed to have applied for a licence in terms of this Act, and after the provisions of subsections (6), (7), (8) and (9) have been complied with in relation to the terms and conditions of the licence, the Minister shall grant the application and the Minister shall issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act.

(b) For the purposes of this subsection, the telecommunication services to be licensed as provided in paragraph (a) shall include-

(i) national long-distance and international telecommunication services,

(ii) local access telecommunication services and public pay-telephone services.

(c) Any service of Telkom contemplated in this subsection may be provided by a wholly-owned subsidiary of Telkom, without such subsidiary being required to hold a licence in terms of this Act.

(d) Where it appears to the Authority that Telkom, in the provision of its telecommunication services, is taking or proposing to take any step which confers or may confer on it an undue advantage over any person who may in future be granted a licence in competition with Telkom, the Authority may direct Telkom to cease or refrain from taking such step, as the case may be.

(2) Telkom and any other holder of a licence to provide a public switched telecommunication service shall, until a date to be fixed by the Minister by notice in the Gazette, after consultation with the Authority and the Agency, comply with conditions specified in the licence in question relating to the extension of its public switched telecommunication service to areas and communities which are not served or not adequately served by telecommunication services, with a view to the achievement of universal service.

(3) In the licence to be issued to Telkom in terms of subsection (1) there shall be specified, in respect of any service rendered by Telkom immediately prior to the commencement of this section and specified in the licence after consultation with Telkom, a fixed period during which no person other than Telkom shall be licensed-

(a) to provide a similar service; or

(b) in the case of any service in respect of which an alternative is provided for in the licence issued to Telkom, to provide a similar service otherwise than in accordance with the special limitations stipulated in respect of it.

(4) All the fixed periods specified in terms of subsection (3) shall commence on the date of commencement of the licence issued to Telkom, and the length of each such period shall before such commencement be planned in such a way as to result in the phasing-in and completion over a number of years, determined by the Minister, of the process of licensing or, as the case may be, discontinuing the application of special limitations imposed in the licensing of persons other than Telkom to provide services similar to those specified in the licence issued to Telkom.

(5) The fixed period or, as the case may be, the fixed period and special limitations, in respect of any particular service specified in the licence issued to Telkom as contemplated in subsection (3), shall be subject to the approval of the Minister, and notwithstanding any provision to the contrary contained in this Act or any other law, the fixed periods and limitations specified and stipulated in the licence issued to Telkom shall be binding on the Authority and the Minister, and shall not be subject to alteration without the concurrence of Telkom.



(6) The licence to be granted under subsection (1), shall be granted on conditions appropriate to the licence and consistent with the objects referred to in section 2 and the other provisions of this Act and stated in the licence that the Minister may determine.

(7) In respect of Telkom's application for a licence under subsection (1), the Minister shall-

(a) issue a notice in the Gazette, making known the conditions contemplated in subsection (6) on which it is proposed the licence shall be granted and inviting interested persons to lodge representations in relation to the application within the period mentioned in the notice;

(b) consult with and obtain the views of the Authority on the representations received pursuant to paragraph (a);

(c) after the period for lodging representations in terms of paragraph (a) has passed, hold a hearing in respect of the application and such terms and conditions.

(8) (a) All representations and other documents relating to Telkom's application for a licence in terms of subsection (1) which are lodged with the Minister shall, subject to this subsection, be open to public inspection during the normal office hours of the Minister, and the Minister shall at the request of any person and on the payment of such fee as the Minister may prescribe, furnish him or her with a copy thereof.

(b) The Minister may, at the request of Telkom or a person who has lodged representations, determine that any document or information relating to the financial capacity or business plans of any person, or to any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from Telkom's application or the representations or documents in question.

(c) If the Minister refuses a request contemplated in paragraph (b), Telkom or the person concerned shall be allowed to withdraw the document or information in question.

(9) (a) A hearing contemplated in subsection (7)(c) shall, subject to paragraph (b), be open to the public.

(b) Before considering any document or information which the Minister has determined shall not be open for public inspection, the Minister may direct that the public or any member or category thereof shall not be present at the hearing: Provided that before making such direction, the Minister shall notify those present of his or her intention to do so, allow persons to object to such direction and give due consideration to any objection made.

## **Mobile cellular telecommunication services**

37. (1) Vodacom (Pty.) Ltd. and Mobile Telephone Networks (Pty.) Ltd., companies incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), shall each be deemed to be the holder of a licence in terms of this Act to provide a mobile cellular telecommunication service in accordance with the terms and conditions of the telecommunications licences and multiparty implementation agreement published under General Notice No. 1078 of 29 October 1993: Provided that each such company shall apply to the Minister through the Authority within six months after the date of commencement of this Act, or such extended period as the Authority may allow, for such a licence and the Minister shall grant the application and the Authority shall issue to that company a licence which shall, subject to section 42(3)(a), incorporate those terms and conditions.

(2) (a) An invitation contemplated in section 34(2) shall be issued in accordance with the provisions of paragraph (b).

(b) The Authority shall, within two years after the commencement of this Act, conduct an enquiry in terms of section 27 into the economic feasibility of the provision of more than two mobile cellular telecommunication services and make known its finding by notice in the Gazette, and, if it finds that the provision of more than two such services is feasible, recommend that the Minister invite applications for the grant of a licence to provide such service.

(c) If the Minister follows that recommendation the provisions of sections 34 and 35 shall apply.

(d) A licence contemplated in paragraph (a) shall contain a condition prohibiting the mobile cellular telecommunication service in question, until a date to be fixed by the Minister by notice in the Gazette, from utilising any fixed lines which may be required for the provision of the service other than fixed lines made available by Telkom or any other person providing a public switched telecommunication service.

(3) The holder of a licence in terms of this section shall not be required to hold licence contemplated in section 34(2)(a)(i), (iii) or (iv) or section 39 or 40 to enable hi or her to provide the mobile cellular telecommunication service in question.

## **National long-distance telecommunication services**

38. (1) No person other than Telkom shall be granted a licence to provide national long distance telecommunications services until after a date to be fixed by the Minister by notice in the Gazette.

(2) A licence issued to a person other than Telkom authorising the provision of a national long-distance telecommunication service shall contain a condition requiring the telecommunication system in question to be interconnected, in terms of section 43, to

the telecommunication system of Telkom or any other person providing a public switched telecommunication service.

(3) No licence to provide a national long-distance telecommunication service shall be granted to Transnet or to Eskom, but such a licence may, with the concurrence of the Minister and the Minister for Public Enterprises, be granted to a subsidiary company of Transnet or Eskom.

### **Local access telecommunication services and public pay–telephone services**

39. (1) (a) No person other than Telkom shall be granted a licence to provide a local access telecommunication service until after a date to be fixed by the Minister by notice in the Gazette.

(b) Every licence contemplated in paragraph (a) shall contain a condition requiring the telecommunication system by means of which the service concerned is provided, to be interconnected, in terms of section 43, to the telecommunication system of Telkom or any other person providing a public switched telecommunication service.

(2) (a) No person other than Telkom shall be granted a licence to provide a public pay-telephone service until after a date to be fixed by the Minister by notice in the Gazette.

(b) Every licence contemplated in paragraph (a) shall contain a condition requiring the telephones in question to be connected to the exchanges or local network of the telecommunication system of Telkom or any other person providing a public switched telecommunication service, and Telkom or such person shall permit such connection.

(3) Different dates may be fixed under subsections (1)(a) and (2)(a) in respect of different areas.

(4) In fixing dates in terms of this section, the Minister shall have regard to any relevant provision made in terms of section 36(3) in the licence issued to Telkom.

### **Value-added network services**

40. (1) (a) Telkom shall be deemed to be the holder of a licence to provide, subject to subsection (3), the value-added network services provided by it immediately before the date of commencement of this Act: Provided that as at the date of commencement of this Act Telkom shall be deemed to have applied to the Minister for a licence in terms of this Act in respect of each such service, and the Minister shall, after the provisions of section 36(6), (7), (8) and (9) have been complied with, in relation to the terms and conditions of the licence, grant the application and issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act.

(b) Any person who, immediately prior to 20 May 1996, provided a value-added

network service in terms of a lease contemplated in section 78(2)(a) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before such commencement, or in terms of any other agreement with Telkom, shall be deemed to be the holder of a licence to provide the service in question: Provided that such person shall apply to the Authority within six months after the date of such commencement or such extended period as the Authority may allow, for a licence in terms of this Act in respect of such service, and the Authority shall, notwithstanding the provisions of sections 34 and 35, grant the application and issue to that person such a licence, which shall, subject to section 42(3)(a), incorporate the terms and conditions of such lease or other agreement.

(2) A licence to provide any value-added network service, including, but not limited to, electronic data interchange, E-mail, protocol conversion, access to a database or a managed data network service, shall contain a condition that the service in question shall be provided by means of telecommunication facilities provided by Telkom or made available to Telkom as contemplated in section 44 until a date to be fixed by the Minister by notice in the Gazette, and a different date may be so fixed in respect of national long-distance facilities.

(3) No person who provides a value-added network service shall permit that service to be used for the carrying of voice until a date to be fixed by the Minister by notice in the Gazette.

(4) (a) A person who provides a value-added network service-

(i) shall, until a date to be fixed by the Minister by notice in the Gazette, not be entitled to cede or assign his or her rights to use such facilities or to sublet or part with control or otherwise dispose of the telecommunication facilities in question; and

(ii) shall, after such date, be so entitled.

(b) The provisions of paragraph (a)(i) shall not prevent the due and proper use of such facilities by the customers of such person, in the course of utilising the service in question.

(c) Any agreement which is inconsistent with the provisions of paragraph (a)(ii), shall be unenforceable to the extent of such inconsistency.

(5) The holder of a licence in terms of this section shall not be required to hold a licence contemplated in section 34(2)(a)(iii) or (iv) to enable him or her to provide the value-added network service in question.

(6) The provisions of section 39(4) shall apply, with the necessary changes, to the fixing of dates by the Minister in terms of this section.

### **Private telecommunication networks**

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

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

(c) Any person who, immediately before the commencement of this Act, provided a private telecommunication network, other than a network contemplated in paragraph (a), in terms of a lease contemplated in section 78(2)(a) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before such commencement, or in terms of any other agreement with Telkom, shall be deemed to be the holder of a licence to provide the service in question: Provided that such person shall apply to the Authority within six months after the date of such commencement or such extended period as the Authority may allow, for a licence in terms of this Act in respect of such service, and the Authority shall, notwithstanding the provisions of sections 34 and 35, grant the application and issue to that person such a licence, which shall, subject to section 42(3), incorporate the terms and conditions of such lease or other agreement.

(2) (a) A private telecommunication network shall not be provided by means of telecommunication facilities other than facilities made available by Telkom or any other person providing a public switched telecommunication network service as contemplated in section 46(1), except as provided in paragraph (b).

(b) The provisions of paragraph (a) shall not apply in respect of-

(i) a private telecommunication network provided by means of a telecommunication system situated on a single piece of land or contiguous pieces of land owned by the same person; or

(ii) any private telecommunication network maintained by Transnet or Eskom.

(3) (a) Until a date to be fixed by the Minister by notice in the Gazette, or in any other circumstances which may be prescribed, Transnet and Eskom shall, subject to paragraph (d), not install or extend their telecommunication facilities so as to cause unnecessary duplication of such facilities with the telecommunication facilities of Telkom, or embark on any major installation or extension of their telecommunication facilities, without the proposed installation or extension in question having been referred to a liaison committee contemplated in paragraph (b) for consideration, and

unless Telkom consents or the Authority authorises such installation or extension in terms of paragraph (c).

(b) A liaison committee shall consist of representatives of Transnet, Eskom, Telkom, the Agency and the Department, and be chaired by a member or employee of the Authority designated by the Council.

(c) Where Telkom does not agree to any installation or extension contemplated in paragraph (a), Transnet or Eskom, as the case may be, may refer the matter to the Authority, which may authorise the installation or extension in question.

(d) The provisions of this section shall not apply, in relation to any installation or extension of the telecommunication facilities of Transnet or Eskom which are necessary for their operations, where human life may be at risk or for their internal operational requirements.

(4) A private telecommunication network shall not be restricted to the carrying of voice only or data only or to any other such limited use.

(5) (a) A person who provides a private telecommunication network with telecommunication facilities-

(i) shall, until a date to be fixed by the Minister by notice in the Gazette, not be entitled to resell spare capacity on such facilities or to cede or assign his or her rights to use such facilities or to sublet or otherwise part with control thereof;

(ii) shall, after such date, be so entitled.

(b) The provisions of paragraph (a)(i) shall not prevent the due and proper use of any such facilities by any person for any purpose principally or integrally related to the operations of the person providing the network.

(6) Any agreement which is inconsistent with the provisions of subsection (3) or (5)(a)(ii) shall be unenforceable to the extent of such inconsistency.

(7) Where a private telecommunication network is interconnected to Telkom's telecommunication system, the person providing that private telecommunication network shall not permit any telecommunication which originates in Telkom's system and which is intended to be received in that system to bypass that system by being transmitted via the private telecommunication network.

(8) Transnet or Eskom shall not be required to hold a licence contemplated in section 34(2)(a)(iv) to enable it to utilise any private telecommunication network maintained by it for purposes related to its operations outside the Republic.

(9) The provisions of section 39(4) shall apply with the necessary changes to the fixing of dates by the Minister in terms of this section.

## **Existing licences and authorities**

42. (1) Any licence which was issued or authority which was granted under section 78(2)(b) or (5) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before its repeal by this Act, and which was valid immediately before the date of commencement of this Act shall be deemed to be a licence issued in terms of this Act.

(2) Any condition which was prescribed generally under section 78(2) of the Post Office Act, 1958, and to which a licence issued under paragraph (b) of that section was subject immediately before the commencement of this Act, shall be deemed to be a condition of the licence in terms of this Act referred to in subsection (1) in so far as such condition is not inconsistent with anything prescribed by or under this Act.

(3) (a) A licence issued in terms of section 37(1), 40(1)(b) or 41(1)(c) shall not incorporate a term or condition of the applicable agreement referred to in those sections which is inconsistent with a provision of this Act or which relates to interconnection or making available the telecommunication facilities of Telkom.

(b) A term or condition of an agreement referred to in section 37(1), 40(1)(b) or 41(1)(c) requiring any consent or approval by Telkom, the Director-General or any other authority shall, subject to paragraph (a), be incorporated in the licence in question as a condition requiring consent or approval by the Authority.

(c) Any term or condition of an agreement which is incorporated in a licence referred to in paragraph (a) shall be unenforceable in contract to the extent to which it is so incorporated.

(d) The Authority shall furnish to the holder of such licence or to Telkom, on request, a statement in writing of the terms and conditions of such agreement which are unenforceable as contemplated in paragraph (c).

## **Interconnection**

43. (1) (a) Telkom shall, when requested by any other person providing a telecommunication service, interconnect its telecommunication system to the telecommunication system of that person unless such request is unreasonable.

(b) With effect from a date to be fixed by the Minister by notice in the Gazette, every person who provides a telecommunication service shall, when requested by any other such person, interconnect its telecommunication system to the telecommunication system of such other person unless such request is unreasonable.

(c) For the purposes of paragraphs (a) and (b), a request contemplated in those paragraphs is not unreasonable where the Authority determines that the requested

interconnection is technically feasible and will promote increased public use of telecommunication services or more efficient use of telecommunication facilities.

(d) An agreement between the parties contemplated in paragraph (a) or (b) relating to interconnection shall be entered into within the prescribed period or such extended period as the Authority may allow in any particular case.

(e) The parties concerned shall, unless exempted by the regulations-

(i) notify the Authority if any request contemplated in paragraph (a) or (b), as the case may be, is made;

(ii) where the reasonableness of any such request is disputed, refer the dispute to the Authority for its decision;

(iii) where the parties are unwilling or unable to negotiate or agree on any terms and conditions within the period or extended period contemplated in paragraph (d), submit the issue to the Authority.

(2) Every agreement for the interconnection of telecommunication systems, including any agreement contemplated in subsection (1), shall, unless exempted by the regulations, be lodged by the parties with the Authority to enable it to determine whether the agreement is consistent with the guidelines contemplated in subsection (3).

(3) The Authority shall prescribe guidelines relating to the form and content of interconnection agreements, and such guidelines shall determine, among others-

(a) the time by or period within which interconnection pursuant to the agreement shall be carried out;

(b) the quality or level of service to be provided by means of the one telecommunication system for the other telecommunication service;

(c) the fees and charges payable for such interconnection:

Provided that within 12 months after the date of commencement of this Act the Minister shall determine by notice in the Gazette such guidelines in respect of Telkom, and such guidelines shall be in force until the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 36(1)(a).

(4) The Authority shall, after considering any written representations and after hearing the parties-

(a) in the case of a dispute relating to reasonableness as contemplated in subsection (1)(e)(ii), make a determination as contemplated in subsection (1)(c);



(b) in the case of unwillingness or inability by the parties to negotiate or agree, propose terms and conditions in accordance with the guidelines contemplated in subsection (3) which, subject to renegotiation, shall be agreed by the parties within such period as the Authority may specify, failing which the Authority shall declare the terms and conditions so proposed, subject to any variation which the Authority deems fit, to be applicable between the parties;

(c) in the case of an agreement lodged as contemplated in subsection (2), inform the parties that it is satisfied that the agreement is consistent with the guidelines contemplated in subsection (3) or, where it determines that any terms and conditions of the agreement are not consistent with those guidelines, furnish the parties in writing with particulars of those terms and conditions and the reasons for its determination.

(5) (a) The Authority may, on the request of either party, determine that a particular portion of that party's written or oral representations discloses confidential commercial information and should on that account not be disclosed to the other party, and the requesting party shall be entitled, where the Authority refuses such request, to exclude such information from his or her representations.

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

(6) (a) Terms and conditions declared to be applicable under subsection (4)(b) shall be enforceable between the parties.

(b) Terms and conditions determined under subsection (4)(c) to be inconsistent with the guidelines contemplated in subsection (3) shall not be enforceable between the parties.

(7) (a) The provisions of subsections (1) to (6) shall apply, with the necessary changes, in relation to an amendment or proposed amendment of any term or condition contemplated in this section.

(b) For the purposes of paragraph (a), any interconnection agreement entered into before the commencement of this Act, including terms or conditions relating to interconnection referred to in section 42(3)(a), shall be deemed to be terms and conditions contemplated in this section.

(8) This section shall not be construed as preventing negotiations for interconnection before the issue of a licence authorising the provision of any telecommunication service.

(9) The provisions of section 39(4) shall apply, with the necessary changes, to the fixing of dates by the Minister in terms of this section.

### **Making telecommunication facilities available**

44. (1) (a) Until a date to be fixed by the Minister by notice in the Gazette, Transnet and Eskom shall, when requested by Telkom, lease or otherwise make available to Telkom any of their telecommunication facilities so requested, on terms and conditions to be negotiated and agreed between the parties without undue delay and approved by the Authority, unless such request is unreasonable having regard, among others, to the provisions of this subsection.

(b) Transnet and Eskom shall make available their facilities as contemplated in paragraph (a) unless there is no spare capacity on those facilities.

(c) Telkom shall make a request contemplated in paragraph (a) if its own facilities are inadequate and it cannot itself obtain the necessary additional facilities economically, technically and timeously, or if the use of Transnet's or Eskom's facilities will in any manner facilitate the provision by Telkom of services.

(d) The provisions of paragraphs (a), (b) and (c) shall also apply in relation to the leasing or otherwise making available by Telkom of its telecommunication facilities to Transnet and Eskom.

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

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

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

(5) The Authority shall prescribe guidelines relating to the form and content of agreements for the leasing or other manner in which telecommunication facilities are made available as contemplated in section 43(3), with the necessary changes.

(6) The provisions of section 43(4) to (8) shall apply, with the necessary changes, in relation to the leasing or other manner in which telecommunication facilities are made

available.

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

(8) The provisions of section 39(4) shall apply, with the necessary changes, to the fixing of dates by the Minister in terms of this section.

### **Fees and charges for telecommunication services**

45. (1) The fees and charges which may be levied by a licensee in respect of the provision of a telecommunication service shall be determined in such manner as may, subject to subsection (2), be prescribed.

(2) The manner of determining fees and charges shall be prescribed only in respect of fields where no or insufficient competition exists: Provided that within 12 months after the date of commencement of this Act, the Minister shall determine such fees and charges in respect of Telkom, and such fees and charges shall be in force until the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 361 a).

### **Accounts and records to be kept by licensees**

46. (1) A telecommunication service licensee shall keep such accounts and records relating to the provision of his or her telecommunication service as may be prescribed.

(2) Telkom shall keep such accounts as may be prescribed, in respect of-

(a) each telecommunication service provided by it, where another person also provides such a telecommunication service in competition with Telkom;

(b) each interconnection to its telecommunication system or instance where its telecommunication facilities are made available;

(c) any other prescribed part of its operations.

### **Duration of telecommunication service licences**

47. (1) The period of validity of a telecommunication service licence shall be stipulated in the licence.

(2) The validity of a licence shall terminate with the consent of the licensee if he or she is granted another licence in replacement of the licence in question.

### **Amendment of telecommunication service licences**

48. (1) A telecommunication service licence may be amended, only-

(a) in the case of a licence to provide a public switched telecommunication network service, if the amendment relates to universal access or universal service obligations contemplated in section 36(2) and is necessary, in the opinion of the Authority after consultation with the Agency, as a result of changed circumstances or an amendment of the definition of universal access or universal service;

(b) in the case of Telkom's licence issued in terms of section 36(1), if the amendment is necessitated by the introduction of competition to Telkom in any field as contemplated in section 34(2)(a)(iii) or (iv) or 39;

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

(d) to the extent necessitated by technological change;

(e) to the extent requested by the licensee.

(2) The Authority shall give the licensee concerned written notice of a proposed amendment contemplated in subsection (1)(a), (b), (c) or (d) and an opportunity to be heard.

(3) The provisions of-

(a) section 34(3), (4) and (5) shall apply, with the necessary changes, in relation to an amendment contemplated in subsection (1)(e);

(b) section 35 shall apply, with the necessary changes, in relation to any amendment of a licence in terms of this section.

### **Renewal of telecommunication service licences**

49. (1) A licensee may, during the prescribed period, apply for the renewal of his or her licence.

(2) The provisions of sections 34 and 35 shall apply, with the necessary changes, in relation to the renewal of a licence: Provided that, where a licence contemplated in section 37(1) or 42(1) makes provision for its renewal on substantially the same conditions as applied during its previous period of validity, no other conditions

contemplated in section 35(4) shall be imposed on renewal of the licence in question which are not acceptable to the holder of the licence.

(3) An application for the renewal of a licence shall be refused only if-

(a) the licensee has failed to comply materially with the licence conditions or the provisions of this Act during the term of the licence; and

(b) the Authority or the Minister, as the case maybe, is satisfied that the applicant would not so comply if the licence were to be renewed.

(4) A licence shall continue to be valid until such time as a decision has been made regarding the application for its renewal.

### **Transfer of telecommunication service licences**

50. (1) Application may be made in the prescribed manner for the transfer of a telecommunication service licence from one person to another.

(2) The provisions of sections 34 and 35 shall apply, with the necessary changes, in relation to the transfer of a licence.

### **International telecommunication facilities**

51. The right of any provider or user of a telecommunication service to utilise a telecommunication facility made available in terms of any international treaty, agreement or arrangement shall be as prescribed.

### **Limitations on control of telecommunication services**

52. (1) The Authority may by regulation restrict or prohibit the ownership or control of or the holding of any financial or voting interest in-

(a) a telecommunication service of any category or kind;

(b) two or more telecommunication services of the same category or kind;

(c) a telecommunication service of one category or kind and another telecommunication service of a different category or kind.

(2) No regulations referred to in subsection (1) shall be made until the Authority has conducted an enquiry in terms of section 27 into the regulations proposed.

(3) The provisions of this section and section 53 shall not derogate from the provisions of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979).

## **Uncompetitive actions**

53. If it appears to the Authority that the holder of a telecommunication licence is taking or intends taking any action which has or is likely to have the effect of giving an undue preference to or causing undue discrimination against any person or category of persons, the Authority may, after giving the licensee concerned an opportunity to be heard, direct the licensee by written notice to cease or refrain from taking such action, as the case may be.

## **CHAPTER VI**

### **Telecommunication equipment, suppliers and technicians**

#### **Telecommunication equipment to be of approved type**

54. (1) No person shall use any type of telecommunication equipment or facility, including radio apparatus, in connection with telecommunication unless that type has, subject to subsection (2), been approved by the Authority.

(2) The Authority may prescribe-

- (a) types of equipment or facility the use of which shall not require such approval;
- (b) circumstances in which the use of telecommunication equipment or facilities shall not require such approval.

#### **Technical standards for telecommunication facilities and equipment**

55. (1) The Authority, taking into account the provisions of the Standards Act, 1993 (Act No. 29 of 1993), may prescribe standards for the performance and operation of any telecommunication facility or equipment, including radio apparatus.

(2) Any such standard shall be aimed at-

- (a) protecting the integrity of the telecommunication services network;
- (b) ensuring the proper functioning of connected facilities or equipment;
- (c) avoiding radio or other interference with telecommunication.

(3) (a) The regulations may for the purposes of this section, incorporate any technical standard, without publishing the text thereof, merely by reference to the number, title and year of issue thereof or to other particulars by which it may be identified sufficiently.

(b) Any technical standard incorporated in the regulations as contemplated in paragraph (a) shall, in so far as it is not contrary to the regulations, be deemed to be a regulation.

(c) Whenever any technical standard is, at any time after the incorporation thereof under paragraph (a), amended or substituted by a competent authority, the regulation whereby such technical standard was incorporated in the regulations shall, unless otherwise stated therein, be deemed to refer to such technical standard as so amended or substituted, as the case may be.

(d) The Authority shall keep the text of each technical standard incorporated in the regulations under paragraph (a) and of each amendment or substitution thereof, and such text shall be open to inspection during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof.

(e) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a technical standard or to any amendment or substitution of a technical standard under this subsection.

### **Registration of suppliers of telecommunication facilities and equipment**

56. (1) No person shall supply telecommunication facilities or equipment unless, subject to subsection (2), he or she has been registered by the Authority.

(2) The Authority may prescribe types or categories of telecommunication facilities or equipment for the supply of which registration in terms of this section shall not be required.

(3) The procedure for obtaining registration in terms of this section shall be as prescribed.

### **Certification of technicians**

57. (1) No person shall install or maintain any telecommunication facilities or equipment unless he or she has, subject to subsection (2), been certified by the Authority as being proficient to do so.

(2) The Authority may prescribe types or categories of telecommunication facilities or equipment, the installation or maintenance of which, or certain categories of installation or maintenance of which, shall not require certification in terms of this section.

(3) The procedure to obtain certification in terms of this section, and the examinations to be passed or other qualifications to be held before a certificate of proficiency may be issued, shall be as prescribed.

## **CHAPTER VII**

### **Universal Service Agency**

#### **Establishment of Universal Service Agency**

58. There is hereby established a juristic person to be known as the Universal Service Agency.

#### **Functions of Agency**

59. (1) The Agency shall-

- (a) strive to promote the goal of 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;
- (c) foster the adoption and use of new methods of attaining universal access and universal service;
- (d) stimulate public awareness of the benefits of telecommunication services.

(2) (a) The Agency shall 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 shall constitute-

- (i) universal access by all areas and communities in the Republic to telecommunication services; and
  - (ii) the universal provision for all persons in the Republic of telecommunication services, including any elements or attributes thereof.
- (b) Such a determination-
- (i) shall be made known in the Gazette; and



(ii) may be amended or substituted by the Minister on the recommendation of the Agency as provided in this subsection, with the necessary changes.

(3) The Agency-

(a) may make such investigations as it may consider necessary;

(b) shall conduct research into and keep abreast of developments in the Republic and elsewhere on telecommunication services and information technology;

(c) shall continually survey and evaluate the extent to which universal service has been achieved;

(d) may issue information from time to time on the provision of telecommunication services in the Republic and access thereto;

(e) may, and shall when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to universal access or universal service;

(f) may, and shall when so requested by the Authority, advise the Authority on any matter relating to the universal access, universal service or community service obligations of applicants for and holders of licences;

(g) shall continually evaluate the effectiveness of this Act and things done in terms thereof towards the achievement of the goal of universal service;

(h) may liaise, consult and cooperate with any person or authority;

(i) may appoint experts and other consultants on such conditions as the Agency may determine.

(4) The Agency shall manage the Universal Service Fund in accordance with the provisions of Chapter VIII.

**Head and staff of Agency**

60. (1) The Agency shall be under the direction and control of the Head of the Agency appointed by the Minister.

(2) The Head shall-

(a) employ such other persons;

(b) accept the secondment, as contemplated in section 16(4) of the Communications Service Act, 1974 (Act No. 66 of 1974), of such persons in the service of the Department,

as are necessary to assist him or her with the performance of the functions of the Agency.

(3) The Head shall, in the selection of the staff of the Agency-

(a) provide for the advancement of persons disadvantaged by past unfair discrimination, with the aim that the staff, when viewed collectively, shall represent a broad cross-section of the population of the Republic;

(b) subject to paragraph (a), apply equal opportunity employment practices.

(4) The Head and other staff of the Agency shall 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, telecommunications and publicity.

(5) A person shall not be appointed or continue in office as Head or other member of the staff of the Agency if he or she is a person contemplated in section 8.

(6) (a) The Head and other staff of the Agency shall 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 shall hold office on such conditions as to remuneration and otherwise-

(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.

### **Financing of Agency**

61. (1) The operating and capital costs of the Agency shall be financed from money appropriated by Parliament from time to time for that purpose.

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

(3) The Authority-

(a) shall 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

(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**

62. The Agency shall, 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 shall be deposited the money received by the Agency and from which payments for it or on its behalf shall be made.

### **Annual and other reports**

63. (1) The Agency shall furnish to the Minister 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 shall annually, as soon as is reasonably practicable after the end of each period of 12 months ending on 31 March, furnish to the Minister a report in regard to the functions, affairs and activities of the Agency in respect of such period.

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

(a) information regarding progress towards achieving the goal of universal service; and

(b) such other information as the Minister may determine.

(3) The Minister shall 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.

### **Lapsing of certain sections**

64. With effect from a date determined by the President by proclamation in the Gazette, but which shall not be earlier than five years after the commencement of this Act-

(a) the provisions of sections 58, 60, 61, and 62 shall lapse; and

(b) any reference in this Act to the Agency or the Head of the Agency shall be deemed to be a reference to the Authority.

## **CHAPTER VIII**

### **Universal Service Fund**

#### **Establishment and control of Universal Service Fund**

65. (1) There shall be a Universal Service Fund, of which the Agency shall keep account in its books and which shall be credited with-

- (a) universal service contributions referred to in section 67(1); and
- (b) money accruing to the fund from any other source.

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

(3) Subsidies paid from the Universal Service Fund under section 66 shall be financed from money appropriated by Parliament for that purpose.

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

#### **Application of money in Universal Service Fund**

66. (1) The money in the Universal Service Fund shall 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 telecommunication services;
- (b) subject to subsection (3), to Telkom and to any other holder of a licence in terms of Chapter V which imposes obligations on the holder relating to the extension of its public switched telecommunication service to areas and communities which are not served or not adequately served by telecommunication services, for the purpose of financing such extension.

(2) The money in the fund shall be apportioned for the separate purposes of paragraph (a) and paragraph (b) of subsection (1) in accordance with the prescribed formula.

(3) After the date to be fixed in terms of section 36(2), all moneys in the Universal Service Fund shall be utilised for payments contemplated in subsection (1)(a), if Telkom's rates have been rebalanced to recover all its costs associated with universal service obligations for all areas of the Republic: Provided that if Telkom's rates have not been so rebalanced, requiring a subsidy from the Universal Service Fund, the Authority shall, in consultation with Telkom, determine the costs to be recovered.

(4) The Authority may, for the purposes of payments referred to in subsection (1)(a) and (3), prescribe-

(a) categories of needy persons to whom assistance may be given;

(b) the persons who shall make application for assistance and the manner in which such applications shall be made;

(c) the manner in which and persons to whom subsidies shall be paid.

### **Contributions to Universal Service Fund**

67. (1) Every holder of a licence granted or deemed to have been granted in terms of Chapter V shall pay, in addition to licence fees contemplated in section 88(2), the prescribed annual contributions to the Universal Service Fund with effect from a date fixed by the Minister by notice in the Gazette.

(2) The Authority shall prescribe-

(a) the basis and manner of determination of such contributions; and

(b) the dates when such contributions shall become payable and the manner in which they shall be paid.

### **Accounts of Universal Service Fund**

68. (1) The Agency shall- Universal Service Fund;

(a) cause full records to be kept of the transactions of the

(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 the income and expenditure of the Fund during the preceding financial year, and a balance sheet showing the assets and liabilities of the Fund as at the end of that year.

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

(3) As soon as may be after the accounts and balance sheet for any year have been audited, the Agency shall submit a copy to the Minister.

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

(a) within 30 days after it has 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

(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" shall mean the period extending from 1 April in any year to 31 March in the next succeeding year.

## **CHAPTER IX**

### **Functions of fixed line operators in relation to telecommunication facilities and works**

#### **Operators to perform functions in prescribed manner**

69. (1) A fixed line operator shall perform its functions in terms of this Chapter in accordance with the regulations contemplated in subsection (2).

(2) The Authority shall prescribe-

(a) the manner, form and period of notice to be given by an operator to any person or authority in connection with the performance by the operator of functions contemplated in this Chapter;

(b) the procedure to be followed and consultations to be held between an operator and any affected person or authority.

#### **Entry upon and construction of lines across any lands**

70. (1) A fixed line operator may, for the purposes of provision of its telecommunications services, enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a telecommunications facility upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, 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 the environmental policy of the Republic.

#### **Underground pipes for telecommunication service purposes**

71. (1) If any local authority and fixed line operator agree that in a particular area electricity supply and the telecommunication services of that operator shall be

provided by means of 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, in accordance with the requirements of the operator provide a conduit-pipe or other facilities for the installation of an underground telecommunication service line from a point of connection on the street boundary to a building on those premises.

(2) The costs of the provision of the said conduit-pipe or other facilities shall be payable to the local authority in question and shall for the purpose of any law be deemed 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**

72. A fixed line operator may, after reasonable notice in writing to the local authority or person owning or having the care and maintenance of any street, road or footpath, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for telecommunication facilities under any such street, road or footpath, and may alter or remove the same, and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity: Provided that the local authority or person to whom any such pipe belongs or by whom it is used shall be 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, and the operator shall 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 pipes and facilities**

73. (1) If a fixed line operator finds it necessary to move any telecommunication facility, pipes, tunnels or tubes 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 shall be borne by that local authority or person.

(2) (a) Where any telecommunication facility, pipe, tunnel or tube constructed by an operator passes over any private property and interferes with any building about to be erected on that property, the operator shall, on receiving satisfactory proof that a building is actually to be erected, cause the line to be deviated or altered in such manner as will remove all obstacles to building operations.

(b) Notice that any such deviation or alteration is required shall be given to the operator in writing not less than 28 days before the alteration or deviation is to be effected.

(3) If any deviation or alteration of a telecommunication facility, pipe, tunnel or tube constructed by an operator and passing over any private property is desired on any ground other than those contemplated in subsection (2), 28 days' notice thereof in writing shall be served on the operator, who shall decide whether or not the deviation or alteration is possible, necessary or expedient, and if the operator agrees to make the deviation or alteration, the cost thereof shall be borne by the person at whose request the deviation or alteration is effected: Provided that in any case where in the opinion of the operator it is justified, the operator may bear the whole or any part of the said cost.

## **Fences**

74. (1) If any fence erected or to be erected on land over which a telecommunication facility, pipe, tunnel or tube is constructed or is to be constructed by a fixed line operator, renders or would render it impossible or inconvenient for the operator to obtain access to that land the operator may at its own expense erect and maintain gates in that fence and shall provide duplicate keys therefor, one of which shall be handed to the owner or occupier of the land.

(2) Any person intending to erect any such fence shall give not less than six weeks' notice in writing to the operator of his or her intention.

## **Trees obstructing telecommunication facilities**

75. (1) Any tree or vegetation which in the opinion of a fixed line operator obstructs or interferes or is likely to obstruct or interfere with the working or maintenance of any of its telecommunication facilities, pipes, tunnels or tubes, whether growing upon State-owned land or upon any road or street or upon private land, shall, after reasonable notice to the owner or occupier of the land, be cut down or trimmed in accordance with its requirements by the authority having the care and the management of such State-owned land, road or street or by the owner or occupier of such private land, as the case may be, at the expense of the operator, and, in the event of failure to comply with any such notice, the operator may itself cause the said tree or vegetation to be cut down or trimmed as it may deem necessary: Provided that where telecommunication is actually interfered with or endangered by any such tree or vegetation, the operator may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice.

(2) In taking any action in terms of subsection (1), due regard must be had to the environmental policy of the Republic.

## **Height or depth of cables and facilities**

76. (1) (a) Aerial telecommunication wires or cables along any railway or public or private street, road, footpath or land shall be at the prescribed height above the surface of the ground.



(b) Underground telecommunication facilities, pipes, tunnels and tubes shall be placed by an operator at the prescribed depth below the surface of the ground.

(2) If the owner of any private land proves to the satisfaction of an operator that he or she is obstructed in the free use of his or her land by reason of the insufficient height or depth of any telecommunication wire, cable or other facility, pipe, tunnel or tube constructed by that operator, the operator shall, subject to the provisions of sections 73 and 75, take such steps as it may deem necessary for giving relief to that owner.

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

## **Electrical works**

77. (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, shall conform to the requirements of a fixed line operator for the prevention of any of its telecommunication facilities or works being injuriously affected thereby, and shall, before commencing the construction of any such railway or works, give one month's notice in writing to the operator of his or her intention to commence the construction, and shall furnish the operator with a plan of the proposed railway or works, together with particulars showing the manner and position in which the same are intended to be constructed, executed and carried on and such further information relative to the proposed railway or works as the operator may require.

(2) If it appears to the operator that the construction, equipment or operation of any such railway or works is likely to affect injuriously any of its telecommunication facilities or works, or if any of such facilities or works are injuriously affected by the construction, equipment or operation of any such railway or works, the operator shall give reasonable notice of its requirements to the person concerned, and any person who, after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or operation in contravention of the said requirements, shall be liable to the operator in damages, recoverable by action in a competent court, of R50 for every day on which the construction, equipment or operation is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense suffered by the operator by reason of the failure to comply with the operator's requirements.

## **CHAPTER X**

### **Human resource development**

#### **Establishment and control of Human Resources Fund**

78. (1) There shall be a Human Resources Fund, of which the Department shall keep account in its books and which shall be credited with-

(a) the annual contributions to the Fund contemplated in section 86(1); and

(b) money accruing to the Fund from any other source.

(2) All money contemplated in subsection (1) shall be paid into the National Revenue Fund established by section 185 of the Constitution.

(3) Grants and subsidies paid from the Human Resources Fund in terms of section 79 shall be financed from money appropriated by Parliament for that purpose.

(4) The Human Resources Fund shall be administered by the Director-General in consultation with the Authority.

### **Application of money in Human Resources Fund**

79. The money in the Human Resources Fund shall be utilised exclusively to promote the provision of adequately skilled human resources at all levels of the telecommunications sector in numbers sufficient for the telecommunication needs of the Republic, by means of the payment from the Fund of grants and subsidies in accordance with the provisions of this Chapter.

### **Funding of human resource development**

80. (1) Grants and subsidies referred to in section 79 shall be applied for the purposes of telecommunications education, research and training as contemplated in sections 81 to 85, in addition to any funds applied for those purposes from any other source, including the State.

(2) The Director-General-

(a) shall monitor and keep abreast of the human resource needs of the telecommunication sector;

(b) shall evaluate the effectiveness of education, research and training in the Republic in meeting those needs;

(c) shall identify courses, programmes and schemes which will best serve those needs;

(d) may entertain applications for grants and subsidies from educational institutions, employers, voluntary associations and community development organisations in the field of education, research or training;

(e) shall monitor and control the use of such grants and subsidies by recipients and beneficiaries thereof;

(f) shall promote closer cooperation between educational institutions and the telecommunication industry;

(g) may delegate any of his or her functions in terms of this Chapter to any person or body subject to such conditions as the Director-General may impose.

(3) The Director-General shall, in consultation with the Authority, perform his or her functions in such a manner as to redress past unfair discrimination in education, training and employment opportunities.

(4) In order to achieve the objects of this Chapter the Director-General may make donations and contributions to the funds of the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), as contemplated in section 10(1)(d) of that Act.

(5) The Director-General shall pursue the objects of this Chapter within the framework of the education, science and technology, and labour policies of the Republic.

(6) Nothing in this Chapter obliges the Director-General-

(a) to pay a grant or subsidy to any particular applicant therefor; or

(b) to provide any education, research or training.

Training and retraining of unskilled and underskilled persons

81. The Director-General may pay grants and subsidies for the purposes of-

(a) equipping workseekers and other unemployed persons with skills to facilitate their employment in the telecommunication sector;

(b) training or retraining unskilled or underskilled employees in the telecommunication sector to upgrade their skills or facilitate their employment mobility within the sector.

### **Training of artisans and technicians**

82. The Director-General may pay grants or subsidies for the purpose of extending, enhancing or improving the training of artisans and technicians for the telecommunication sector.

### **Undergraduate tertiary education**

83. (1) The Director-General may pay grants or subsidies for the purposes of-

(a) the extension or improvement of courses of study and instruction in telecommunications, technology and engineering at universities and technikons;

(b) the awarding to students of bursaries, scholarships, prizes and other financial assistance for the purposes of undertaking any such course;

(c) the facilitation of the mobility of teaching staff and students of universities or technikons, between those institutions and the telecommunication industry;

(d) the provision of assistance in the field of telecommunications, technology or engineering by one university or technikon to another.

(2) Telecommunications shall, for the purposes of this section, include the social, economic, policy and legal aspects of telecommunications.

(3) The payments in terms of subsection (1) and section 84 shall be subject to the approval of the Minister of Education as contemplated in section 14 of the Universities Act, 1955 (Act No. 61 of 1955), and section 31 of the Technikons Act, 1993 (Act No. 125 of 1993), in respect of any matter contemplated in those sections.

### **Postgraduate study and research**

84. The Director-General may pay grants or subsidies for the purposes of-

(a) the extension or improvement of postgraduate and research courses and instructional programmes in the field of telecommunications, technology and engineering at universities and technikons;

(b) the provision, by universities and technikons, of research and other services to the telecommunications industry.

### **Support for science and technology at schools**

85. The Director-General may pay grants or subsidies to secondary or primary schools for the purposes of projects, schemes and programmes to stimulate interest among pupils in telecommunications and technology.

### **Contributions to Human Resources Fund**

86. (1) Every holder of a licence granted or deemed to have been granted in terms of Chapter V shall pay, in addition to licence fees contemplated in section 88(2), the prescribed annual contributions to the Human Resources Fund.

(2) The Authority shall prescribe-

(a) the basis and manner of determination of such contributions; and

(b) the dates when such contributions shall become payable and the manner in which they shall be paid.

## **Accounts of Human Resources Fund**

87. (1) The Director-General shall-

- (a) cause full records to be kept of the transactions of the Human Resources Fund;
  - (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 the income and expenditure of the Fund during the preceding financial year, and a balance sheet showing the assets and liabilities of the Fund as at the end of that year.
- (2) The accounts and balance sheet of the Fund shall be audited by the Auditor-General.
- (3) The Minister shall table a copy of the audited accounts and balance sheet 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.
- (4) For the purposes of this section, "financial year" means the period extending from 1 April in any year to 31 March in the next year.

## **CHAPTER XI**

### **General provisions**

#### **Application fees and annual fees**

88. (1) An application for a licence, approval, certification or registration in terms of this Act shall be accompanied by the prescribed application fee.

(2) Every holder of a frequency spectrum licence or telecommunication service licence shall, at the prescribed time, pay to the Authority the licence fee specified in the licence or, where no such fee is so specified, the prescribed licence fee.

(3) A licence holder who fails to pay the licence fee contemplated in subsection (2) on the due date shall be liable to pay a penalty of a prescribed amount, in addition to such fee.

(4) (a) All fees and penalties received in terms of this section shall be paid into the National Revenue Fund referred to in section 185 of the Constitution.

(b) Notwithstanding paragraph (a), such fees and penalties shall be paid into the Post Office Fund referred to in section 12D of the Post Office Act, 1958 (Act No. 44 of

1958), until the date on which in terms of any law the Department forms part of the public service as contemplated in the Public Service Act, 1994 (Proclamation No. 103 of 1994).

### **Numbering plans**

89. (1) The Authority shall prescribe a numbering plan for use in respect of telecommunication services.

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

(3) In preparing a numbering plan the Authority shall take account of existing numbering plans or schemes.

### **Financial assistance to telecommunication forums**

90. The Director-General may, out of funds appropriated by Parliament from time to time for that purpose, pay grants or subsidies to consultative or advisory forums in the telecommunications sector, including those in the provinces, which have been recognized by the Minister for those purposes.

### **Delegation of functions**

91. (1) The Council may in writing delegate any power or duty of the Authority in terms of this Act to any councillor or any committee of the Council or to the chief executive officer referred to in section 17(1).

(2) The power to make regulations shall not be delegated in terms of subsection (1).

(3) A power or duty delegated to the chief executive officer may be exercised or performed by any other staff member of the Authority authorised thereto by the chief executive officer, except where precluded by the terms of such delegation.

(4) Any delegation or authorisation in terms of subsection (1) or (3)-

(a) shall be subject to such conditions and restrictions as may be determined by the Council or chief executive officer, as the case may be; and

(b) may at any time be amended or revoked.

(5) The Council shall not be divested of any power or function or relieved of any duty which it may have delegated in terms of subsection (1), and may amend or rescind any decision made in terms of such a delegation, except where any licence, approval, certification or registration will be affected thereby.

(6) The Minister may, subject to such conditions as he or she may determine, delegate any power conferred on him or her by this Act, other than a power to be exercised by notice in the Gazette, to the Director-General or any other person in the service of the Department, but shall not be divested of any power so delegated and may set aside or amend any decision of the delegate made in the exercise of such a power, except where any licence will be affected thereby.

(7) The Director-General may, subject to such conditions as he or she may determine, delegate any power conferred on him or her by Chapter X to any other person in the service of the Department.

### **Register of licences and approvals**

92. (1) The Authority shall keep a register of every licence, approval, certification or registration issued or renewed in terms of this Act and, subject to the powers of the Minister in terms of this Act, the administration, amendment, renewal or transfer of every licence, approval, certification or registration shall be under the control of the Authority.

(2) Such register shall be open to inspection by interested persons during the normal office hours of the Authority.

(3) The Authority shall, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of or extract from any part of that register.

### **Confidentiality**

93. No councillor, member of a committee of the Council, expert appointed in terms of section 28, member of the staff of the Authority and inspector appointed in terms of section 99, director or member of staff of the Agency, shall disclose any information in regard to any matter which may come to his or her knowledge in the performance of any function in terms of this Act or any work arising therefrom or by virtue of the office held by him or her, except-

(a) in so far as the provisions of the Constitution or this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter;

(b) in so far as may be necessary for the purpose of the due and proper performance of any function in terms of this Act; or

(c) on the order of a competent court of law.

### **Financial year and auditing of accounts of Authority and Agency**

94. (1) The financial year of the Authority and Agency shall commence on 1 April in any year and end on 31 March in the next year: Provided that the first financial year of the Authority and Agency shall commence on the date of commencement of sections 5 and 60, respectively.

(2) The accounts of the Authority and Agency shall be audited by the Auditor-General.

(3) Subject to the Exchequer Act, 1975 (Act No. 66 of 1975), the Director-General is responsible, in respect of the Authority and the Agency, for-

(a) accounting for money received or paid out; and

(b) causing the necessary accounting and other records to be kept.

### **Radio regulations**

95. (1) The Authority may make radio regulations in relation to-

(a) any matter which shall or may be prescribed by regulation in terms of Chapter IV, or in terms of Chapter VI in relation to radio apparatus; and

(b) generally, the control of radio activities and the use of radio apparatus.

(2) Different radio regulations may be made in respect of different categories of radio users, radio frequencies, frequency bands, licences, authorities or certificates, and areas.

(3) No radio regulation or any amendment or withdrawal thereof shall be valid until it has been approved and published in the Gazette by the Minister.

(4) The regulations made under section 18 of the Radio Act, 1952 (Act No. 3 of 1952), and which were in force immediately prior to the commencement of this Act shall remain in force until amended or repealed under this section.

### **Regulations**

96. (1) The Authority may make regulations in relation to any matter which in terms of this Act shall or may be prescribed by regulation.

(2) Different regulations may be made in respect of different categories of telecommunication services, equipment and facilities and periods.

(3) A regulation may declare any contravention thereof or failure to comply therewith to be an offence, and may in respect thereof provide for the imposition of a fine, or imprisonment for a period not exceeding six months.



(4) The Authority shall, not less than three months before any regulation is made, cause the text of such regulation to be published in the Gazette, together with a notice declaring its intention to make that regulation and inviting interested persons to furnish the Authority with comments thereon or representations in regard thereto.

(5) The provisions of subsection (1) shall not apply in respect of-

(a) any regulation made by the Authority which, after the provisions of that subsection have been complied with, has been amended in consequence of comments or representations received pursuant to a notice issued thereunder; or

(b) any regulation which the public interest requires to be made without delay.

(6) The provisions of section 95(3) shall apply, with the necessary changes, in relation to a regulation made under this section or any amendment or withdrawal thereof.

(7) The regulations made under section 119A of the Post Office Act, 1958 (Act No. 44 of 1958), and which were in force immediately prior to the commencement of this Act shall remain in force until amended or repealed under this section.

## **CHAPTER XII**

### **Enforcement**

#### **Production of licensees' books and records**

97. The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at the time and place specified in the notice, such accounts, records and other documents or information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee in terms of this Act, his or her licence or any agreement for the interconnection of telecommunication systems or the making available of telecommunication facilities as contemplated in sections 43 and 44, respectively, as the Authority may reasonably require.

#### **Appointment of inspectors**

98. (1) The Council may appoint any person in the service of the Authority or any other suitable person as an inspector.

(2) A person who is not in the full-time service of the Authority and who is appointed as an inspector shall be paid such remuneration as the Minister may determine with the concurrence of the Minister of Finance.

(3) An inspector shall be provided with a certificate of appointment signed by or on behalf of the chairperson of the Council in which it is stated that he or she has been appointed an inspector in terms of this Act.

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

### **Powers of inspectors**

99. (1) An inspector appointed in terms of section 98 may, in order to determine whether the provisions of this Act or of any licence, permit, certificate or other authority in terms of this Act or of any agreement for the interconnection of telecommunication systems or the making available of telecommunication facilities as contemplated in sections 43 and 44, respectively, are being complied with, at any reasonable time and without prior notice, on the authority of a warrant, enter the premises in question and-

- (a) inspect and make copies of or extracts from books, records or other documents;
- (b) demand the production of and inspect the relevant licence, permit, certificate or authority;
- (c) inspect any radio apparatus or other telecommunication facilities on the premises.

(2) A warrant contemplated in subsection (1) shall be issued by a judge or a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears from information on oath that there are reasonable grounds for believing that the provisions contemplated in subsection (1) are being contravened on those premises.

(3) No person shall-

- (a) fail to comply with a demand contemplated in subsection (1)(b);
- (b) hinder or obstruct an inspector in the exercise of his or her powers in terms of this section;
- (c) falsely hold himself or herself out as an inspector.

### **Offences by licensees**

100. (1) The Authority shall investigate and adjudicate-

- (a) any alleged contravention of or failure by a licensee to comply with a provision of this Act, the relevant licence, any relevant agreement for the interconnection or provision of telecommunication facilities as contemplated in sections 43 and 44, respectively, or any direction in terms of section 36(1)(d), 53 or 98;

(b) any failure by a provider of a telecommunication service to provide that service to or for any customer or end-user thereof, where such customer or end-user has, after complaint to the provider concerned, not obtained satisfaction.

(2) The procedure for such investigation and adjudication shall be as prescribed, and the Authority shall, for the purpose of such investigation and adjudication, have the prescribed powers with regard to the summoning and examination of witnesses and the production of books and objects.

(3) Where the Authority, after investigation, finds that the licensee concerned has been responsible for a failure or contravention contemplated in subsection (1), the Authority may-

(a) direct the licensee to desist from any further failure or contravention;

(b) direct the licensee to pay the prescribed fine;

(c) direct the licensee to take such remedial and other steps as may be determined by the Authority;

(d) where the licensee has repeatedly been guilty of such failure or contraventions, in terms of this section, revoke his or her licence.

(4) Any person affected by an order contemplated in subsection (3) may apply to a competent court to have the order set aside.

(5) Where the Authority is satisfied that the failure or contravention in question constitutes an offence, it shall refer the record of the investigation to the Attorney-General concerned.

### **Offences by other persons**

101. A person shall be guilty of an offence if he or she-

(a) in making application for a licence, approval, certification or registration in terms of this Act, furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or wilfully fails to disclose any information or particulars material to his or her application;

(b) contravenes the provisions of section 30(1), 31(1) or 32(1); or

(c) contravenes any provision of section 99(3); or

(d) fails, subject to section 100(4), to comply with any order made by the Authority in terms of section 100(3).

### **Penalties**

102. (1) Any person found guilty of an offence contemplated in section 101 shall on conviction be liable to a fine not exceeding R500 000, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

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

## CHAPTER XIII

### Repeal and amendment of laws

#### Repeal of Act 3 of 1952

103. The Radio Act, 1952, is hereby repealed.

#### Repeal of section 42 of Act 68 of 1957

104. Section 42 of the General Law Amendment Act, 1957, is hereby repealed.

**Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 1 of 1978, section 1 of Act 37 of 1984, section 1 of Act 85 of 1991, section 3 of Act 101 of 1992 and section 1 of Act 35 of 1995**

105. Section 1 of the Post Office Act, 1958, is hereby amended-

(a) by the substitution for the definition of "department" of the following definition:

" 'department' means the Department of **Posts and Telecommunications Communications**";

(b) by the insertion after the definition of department of the following definition:

" '*Director-General*' means the officer occupying the post with that designation on the fixed establishment of the department";

(c) by the deletion of the definition of "Postmaster-General".

**Repeal of section 78 of Act 44 of 1958, as substituted by section 34 of Act 85 of 1991**

106. Section 78 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 79 of Act 44 of 1958, as substituted by section 35 of Act 85 of 1991**

107. Section 79 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 80 of Act 44 of 1958, as substituted by section 36 of Act 85 of 1991**

108. Section 80 of the Post Office Act, 1958, is hereby repealed.

**Repeal of sections 80A and 80B of Act 44 of 1958, as inserted by section 14 of Act 56 of 1973 and amended by section 75 of Act 85 of 1991**

109. Sections 80A and 80B of the Post Office Act, 1958, are hereby repealed.

**Repeal of section 81 of Act 44 of 1958, as substituted by section 37 of Act 85 of 1991**

110. Section 81 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 82 of Act 44 of 1958, as amended by section 33 of Act 55 of 1965, section 44 of Act 63 of 1975 and section 75 of Act 85 of 1991**

111. Section 82 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 83 of Act 44 of 1958, as amended by section 1 of Act 50 of 1962, section 5 of Act 80 of 1965, section 21 of Act 80 of 1971, section 15 of Act 56 of 1973 and section 75 of Act 85 of 1991**

112. Section 83 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 84 of Act 44 of 1958, as substituted by section 38 of Act 85 of 1991**

113. Section 84 of the Post Office Act, 1958, is hereby repealed.

**Repeal of sections 86 and 87 of Act 44 of 1958, as amended by section 75 of Act 85 of 1991**

114. Sections 86 and 87 of the Post Office Act, 1958, are hereby repealed.

**Repeal of section 88 of Act 44 of 1958, as substituted by section 40 of Act 85 of 1991**

115. Section 88 of the Post Office Act, 1958, is hereby repealed.

**Repeal of section 90A of Act 44 of 1958, as inserted by section 43 of Act 85 of**

## **1991 and amended by section 14 of Act 129 of 1993**

116. (1) Section 90A of the Post Office Act, 1958, is hereby repealed.

(2) Notwithstanding the repeal of the said section 90A by subsection (1), the section shall continue to apply in respect of matters relating to the postal service.

(3) Any authorization or provision made, notice given or conditions prescribed in terms of the said section 90A before its repeal by this section shall, in respect of the telecommunications service or telecommunications company, be deemed to have been made, given or prescribed in terms of this Act.

## **Repeal of section 106 of Act 44 of 1958, as substituted by section 59 of Act 85 of 1991**

117. Section 106 of the Post Office Act, 1958, is hereby repealed.

## **Substitution of certain expressions in Act 44 of 1958**

118. (1) The Post Office Act, 1958, is hereby amended by the substitution for the expression "Postmaster-General", wherever it occurs, of the expression "Director-General".

(2) Any reference in any law to the Postmaster-General shall be deemed to be a reference to the Director-General, Department of Communications.

## **Repeal of Act 68 of 1957, Act 51 of 1962, Act 90 of 1963, Act 93 of 1969 and Act 50 of 1974**

119. The Radio Amendment Act, 1957, the Radio Amendment Act, 1962, the Radio Amendment Act, 1963, the Radio Amendment Act, 1969, and the Radio Amendment Act, 1974, are hereby repealed.

## **Amendment of section 1 of Act 66 of 1974, as amended by section 1 of Act 27 of 1985, section 78 of Act 85 of 1991 and section 12 of Act 101 of 1992**

120. Section 1 of the Post Office Service Act, 1974, is hereby amended-

(a) by the substitution for the definition of "department" of the following definition:

" 'department' means the Department of **Posts and Telecommunications Communications**";

(b) by the insertion after the definition of "department" of the following definition:

" '*Director-General*' means the officer who holds that designation on the fixed establishment";

(c) by the deletion of the definition of "Postmaster General".

#### **Substitution of certain expression In Act 66 of 1974**

121. The Post Office Service Act, 1974, is hereby amended by the substitution for the expression "Postmaster General", wherever it occurs, of the expression "Director-General".

#### **Substitution of long title of Act 66 of 1974**

122. The following long title is hereby substituted for the long title of the Post Office Service Act, 1974:

"To consolidate and amend the laws relating the organization of, and the appointment, conditions of service, discipline, retirement and discharge of officers and employees in, the Department of ***Posts and Telecommunications Communications*** of the Republic."

#### **Substitution of section 58 of Act 66 of 1974**

123. The following section is hereby substituted for section 58 of the Post Office Service Act, 1974:

"Short title and commencement

58. This Act shall be called the ***Post Office Communications*** Service Act, 1974, and the provisions thereof shall come into operation on 1 November 1974."

#### **Repeal of sections 14 to 21 of Act 57 of 1975**

124. Sections 14 to 21 of the General Law Amendment Act, 1975, are hereby repealed.

#### **Insertion of sections 21A and 21B in Act 73 of 1976**

125. The following sections are hereby inserted in the Broadcasting Act, 1976, after section 21:

"Unauthorised use of television set for reception by radio prohibited

*21A. (1) (a) No person shall use any television set for the reception of anything broadcast in a broadcasting service unless he or she—*

*(i) is in possession of a television licence; or*

*(ii) is entitled to do so by virtue of an exemption in terms of regulations made under section 23(1)(c); or*

*(iii) is entitled to do so by virtue of any permission granted under a television licence issued in terms of section 17(2); or*

*(iv) is a person to whom that television set has been rented or otherwise made available in accordance with a television licence issued in terms of section 17(3)(b) or (c).*

*(b) No owner or manager of any business or institution shall in connection with that business or institution use, or permit any other person to use, any television set for the reception of anything broadcast in a broadcasting service unless–*

*(i) he or she is in possession of a television licence issued in terms of section 17(2); and*

*(ii) such television set is used in accordance with such licence; and*

*(iii) such person is able to produce such licence on demand.*

*(c) Subject to the provisions of regulations made under section 23(1)(d), no person shall use a television set for the reception of anything broadcast in a broadcasting service or permit any other person so to use a television set, otherwise than in accordance with the provisions of a licence or the conditions and requirements subject to which that television set was hired out or made available to him as contemplated in paragraph (b).*

*(2) The provisions of subsection (1) shall not apply to a person who manufactures television sets as a business or who acts in the execution of his duties in the service of such a person, in so far as he uses any television set manufactured by him, in or on the premises where it was manufactured or on any other premises approved by the Corporation, for the purposes of testing such set, for the reception of anything broadcast in a broadcasting service.*

*(3) The provisions of section 1(2) shall apply, with the necessary changes, for the purposes of subsection (1).*

### **Possession of television set without licence or permit prohibited**

*21B. (1) No person shall have in his possession any television set unless–*

*(a) he has such television set in his possession at a place where and in circumstances in which he, by virtue of any exemption in terms of regulations made under section 23(1)(c), is entitled to use it for the reception of broadcasts in a broadcasting service; or*

*(b) he is a person to whom that television set is hired out or otherwise made available by a radio dealer under a television licence issued to that radio dealer in terms of section 17(3)(b) or (c).*

*(2) Any person, other than a radio dealer, who sells, gives or in any other manner supplies any television set to any person other than a radio dealer, shall within*



*fourteen days after such television set has been delivered to such other person, notify the Corporation in writing of–*

*(a) the name and address of such person;*

*(b) the date on which such television set was so delivered; and*

*(c) the number of the licence or permit under which such first-mentioned person was in possession of that television set.*

*(3) If an inspector is satisfied that any television set found in any person's possession is in the possession of such person in contravention of the provisions of this Act, he or she may–*

*(a) seize and detain such television set until possession thereof is authorized in terms of this Act; or*

*(b) seal such television set or any part thereof in order to prevent the use of that television set for the purpose of reception, and issue to such person a permit for a limited or an indefinite period for the possession of that television set on condition that it is not during such period used for the purpose of reception.*

*(4) Any person who is aggrieved as a result of such seizure or sealing shall, in addition to any other right, have the right to appeal to the Minister against such seizure or sealing, and the Minister may either confirm the seizure or sealing or–*

*(a) in the case of such seizure, order that the television set that has been seized, be returned to the person concerned; or*

*(b) in the case of such sealing, order that the seal be broken and the permit in question be cancelled."*

**Amendment of Schedule 1 to Act 9 of 1989, as amended by section 27 of Act 52 of 1991 and section 29 of Act 45 of 1992**

126. (1) Schedule 1 to the Legal Succession to the South African Transport Services Act, 1989, is hereby amended by the substitution for paragraph (1) of item 9 of the following paragraph:

*"(1) Subject to the provisions of paragraph (2) and the Telecommunications Act, 1996, the Company shall be entitled, for the purpose of any activity in which it may legally engage, to construct and maintain telecommunication and electricity supply networks on any premises or at any place that it occupies for the purpose of any such activity or between such premises or place and any other premises or place that it likewise occupies."*

**Amendment of section 1 of Act 153 of 1993, as amended by section 1 of Act 36 of 1995**

127. Section 1 of the Independent Broadcasting Authority Act, 1993, is hereby amended by the substitution for the definition of "broadcasting services frequency bands" of the following definition:

" 'broadcasting services frequency bands' means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such assignment has been agreed to or adopted by the Republic, as well as any other additional part of the electromagnetic radio frequency spectrum determined ***nationally*** in terms of section 29(3A) for the use of broadcasting services, but excluding any of the broadcasting services frequency bands which have been made available for use by telecommunications users as contemplated in section 29 (4);".

### **Amendment of section 29 of Act 153 of 1993, as amended by section 5 of Act 36 of 1995**

128. Section 29 of the Independent Broadcasting Authority Act, 1993, is hereby amended-

(a) by the substitution in subsection (1) for the expression "Postmaster-General" of the expression "Director-General: Communications";

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

"(4) (a) The Authority may, if requested thereto in writing by the **Postmaster General**, *South African Telecommunications Regulatory Authority established by section 5 of the Telecommunications Act, 1996*, make any of the broadcasting services frequency bands available to **the Postmaster General** that Authority for use by telecommunications users in terms of **the Radio Act, 1952, that Act**, which request shall not be unreasonably refused.

(b) Where, pursuant to any request contemplated in paragraph (a), the Authority has made any broadcasting services frequency bands available for use by telecommunications users, the administration, management, planning and control over the use of those broadcasting services frequency bands shall cease to vest in the Authority.

(c) Frequencies within the broadcasting services frequency bands which, on 1 September 1993, are used by telecommunications users under valid licences issued for that purpose by the Postmaster General in terms of any law, shall be deemed to have been made available **to the Postmaster General** in terms of paragraph (b)."

### **Insertion of section 66A in Act 153 of 1993**

129. The following section is hereby inserted in the Independent Broadcasting Authority Act, 1993, after section 66:

"Powers of Authority in relation to broadcasting signal distribution apparatus and use of television sets for certain purposes

*66A. (1) No person shall have in his or her possession any apparatus used or intended for use for the purpose of broadcasting signal distribution unless he or she is in possession of a permit issued by the Authority in terms of this section or a broadcasting signal distribution licence or unless he or she is a supplier registered in terms of section 56 of the Telecommunications Act, 1996.*

*(2) The procedure for obtaining a permit in terms of subsection (1), shall be as prescribed.*

*(3) No person shall use any television set for the reception of anything broadcast by a pay-television service which has been licensed in terms of section 46, unless such person has been authorized by such licensee to do so.*

*(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable on conviction to a maximum fine of R250 000.*

*(5) The provisions of section 67(3)(b) shall apply, with the necessary changes, in respect of any apparatus or television set by means of which an offence in terms of subsection (4) was committed."*

## **CHAPTER XIV**

### **Approved transactions and commencement of Act**

#### **Approved transactions**

130. (1) Notwithstanding any provision of law to the contrary the Minister may transfer so much of the Government's equity interest in Telkom as the Cabinet shall approve for the purpose of achieving the objects of the Act as contemplated in section 2, to such transferees, in such manner and on such terms and conditions as the Cabinet shall approve.

(2) The proceeds of such transfers shall be applied wholly or partially for the purposes mentioned in subsection (1) in such manner and amounts as the Cabinet shall approve: Provided that all proceeds not applied for the purposes mentioned in subsection (1) shall be remitted to the National Revenue Fund.

#### **Short title and commencement**

131. This Act shall be called the *Telecommunications Act, 1996*, and shall come into operation on the date fixed by the President by proclamation in the Gazette.