

FORMER STATES POSTS AND TELECOMMUNICATIONS REORGANISATION ACT

PRESIDENT'S OFFICE

No. 488. 22 March 1996

**NO. 5 OF 1996: FORMER STATES POSTS AND TELECOMMUNICATIONS
REORGANISATION 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 italics indicate insertions in existing enactments.

To provide for the integration of the departments of posts and telecommunications of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei with Telkom SA Limited and the South African Post Office Limited; and to provide for the transfer of the postal and the telecommunications enterprises conducted by those departments as well as certain land used by them for that purpose to the said companies; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)

(Assented to 12 March 1996.)

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

Definitions

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

(i) "companies" means the postal company and the telecommunications company; (iii)

(ii) "department" means the department of posts and telecommunications of a former state; (ii)

(iii) "fixed establishment" means the posts created for the normal and regular requirements of a department which are filled on a fixed basis on the date immediately before the transfer date; (xvi)

(iv) "former state" means the former Republic of Transkei, Bophuthatswana, Venda or Ciskei; (xvii)

(v) "interrupted membership" means current membership of a pension fund where benefits were paid to the member concerned before the transfer date; (v)

- (vi) "Minister" means the Minister responsible for the administration of posts and telecommunications; (iv)
- (vii) "operating loss" means excess of operating expenditure over operating income and for that purpose capital gain shall be left out of account; (i)
- (viii) "pension fund" means any pension fund, retirement fund, superannuation fund or provident fund of a department; (vii)
- (ix) "postal company" means the South African Post Office Limited; (viii)
- (x) "postal enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions, of a former state which relate to or are used in connection with the conduct of the postal service of such former state, as determined by the Minister; (ix)
- (xi) "Postbank" means the Post Office Savings Bank established by section 52 of the Post Office Act; (x)
- (xii) "Post Office Act" means the Post Office Act, 1958 (Act No. 44 of 1958); (xii)
- (xiii) "post office savings banks" means the post office savings banks of the former states; (xi)
- (xiv) "State" means the department of State concerned; (xiii)
- (xv) "telecommunications company" means Telkom SA Limited; (xiv)
- (xvi) "telecommunications enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions, of a former state which relate to or are used in connection with the conduct of the telecommunications service of such former state, as determined by the Minister; (xv)
- (xvii) "transfer date" means the date determined by the Minister in terms of section 2. (vi)

Transfer date

2. The Minister shall by notice in the Gazette determine the date on which the departments shall be integrated with the companies, as the case may be.

Transfer of postal and telecommunications enterprises of former states

3. (1) On the transfer date-

(a) the postal enterprises shall be transferred to the postal company, from which date the postal company shall, subject to any other Act of Parliament, have the exclusive power to conduct the postal service in the territories of the former states;

(b) the telecommunications enterprises shall be transferred to the telecommunications company, from which date the telecommunications company shall, subject to any other Act of Parliament, have the exclusive power to conduct the telecommunications service in the territories of the former states.

(2) (a) The values of the postal enterprises and the telecommunications enterprises to be transferred to the companies in terms of subsection (1) shall be determined by the Minister after consultation with the company concerned and with the concurrence of the Minister of Finance.

(b) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or

any other law in terms of which a tax or levy may be imposed, it shall be deemed that valuable consideration was actually paid by the company concerned in acquiring the enterprises transferred to it in terms of subsection (1) and that, notwithstanding any other law, such consideration equals the corresponding values determined in terms of paragraph (a).

(3) (a) State land of which a department had the exclusive use immediately before the transfer date shall, as the companies elect with the concurrence of the Minister, on the transfer date pass to the postal company or the telecommunications company, as the case may be, and shall be deemed to have been sold on that date in terms of the State Land Disposal Act, 1961 (Act No. 48 of 1961), to the company concerned at an agreed value.

(b) Notwithstanding section 5 of the State Land Disposal Act, 1961, and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him or her of a certificate by the Minister of Public Works that State land has passed in terms of paragraph (a), make such entries and endorsements as he or she may deem necessary free of charge in or on any relevant register, title deed or other document in his or her office or laid before him or her, in order to register the transfer in the name of the company concerned.

(c) If a particular portion of State land was used jointly by the postal and the telecommunications divisions of a department immediately before the transfer date and the companies agree to divide the piece of land between them after that date without the payment of compensation by one party to the other or without giving anything in exchange therefor, the subdivision of the land concerned shall be exempt from the payment of transfer duty, stamp duty, taxes, levies or other fees if, upon the registration of the subdivision, a certificate signed by the secretaries of both

companies is submitted in which it is certified that an agreement as contemplated in this paragraph has been concluded.

(4) (a) Any servitude, other real right or lease existing immediately before the transfer date in favour of the State or a department and which was exercised in favour of a department shall on the transfer date pass to the postal company or the telecommunications company, as the case may be.

(b) The registrar referred to in subsection (3)(b) shall, on submission to him or her of a certificate by the Minister of Public Works that a servitude, other real right or lease has passed in terms of paragraph (a) or that a servitude exists over State land which has passed in terms of subsection (3)(a), free of charge make such entries and endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office or laid before him or her, in order to-

(i) register the passing of the servitude, other real right or lease to the company concerned in terms of paragraph (a); or

(ii) confirm the existence of the servitude in favour of any other person, over the State land which has so passed.

(5) (a) Subject to paragraph (b), either company shall have the right to use immovable property passing to it in terms of this Act for the purposes for which the department used the property concerned immediately before the transfer date or for which it was intended to be used before that date.

(b) If land referred to in paragraph (a) of a company has not been zoned, or has in terms of an applicable township or development scheme, guide plan or statutory provision been zoned or intended for purposes other than those for which it is to be used on or after the transfer date, the company concerned shall as soon as practicable conclude an agreement with the local authority responsible for the zoning or rezoning of land in the area concerned in relation to the zoning or rezoning of the land concerned for a purpose which is in accordance with the intended use thereof on or after the transfer date: Provided that if such agreement-

(i) is concluded, it shall be reduced to writing and the local authority concerned shall, if necessary, amend its township or development scheme or guide plan accordingly, free of charge; or

(ii) cannot be concluded, the matter shall be referred to the Premier of the province concerned, who may grant permission for or approval of the zoning or rezoning of the land concerned on such conditions as he or she may deem necessary.

(c) The local authority-

(i) with which an agreement has been concluded in terms of paragraph (b); or

(ii) within whose area of jurisdiction the land concerned is situated, in the case where the Premier of the province concerned has granted permission for or approval of the zoning or rezoning thereof, shall record, free of charge in respect of the land concerned, the appropriate zoning, after which such zoning shall for all purposes be deemed to be the zoning of such land.

(6) In any pending litigation, including arbitration, to which a department is a party immediately before the transfer date, the Minister shall be substituted as a party in the place of the department concerned.

(7) Either company may apply for the registration of any registrable right relating to intellectual property or inventions, including the registration as patents of patentable inventions, transferred from a department to it in terms of this section.

(8) The Registrar of Trade Marks shall make such entries, notes and endorsements as he or she may deem necessary in or on any relevant register, certificate or other document in his or her office or submitted to him or her so as to effect the transfer of trade marks to the postal company or the telecommunications company, as the case may be, in terms of this section, and may request the company concerned to submit or produce to him or her such information or document as he or she may deem necessary for such purpose.

(9) If, for the purposes of this Act, the question arises whether anything pertains to or is connected with the postal enterprise or the telecommunications enterprise, it shall be determined by the Minister.

(10) No stamp duty, transfer duty or any other tax or levy shall be payable in respect of the transfer of a postal enterprise or a telecommunications enterprise in terms of this section.

Transfer of staff

4. (1) (a) Any person on the fixed establishment of a department shall, without interruption in service, on the transfer date become an employee of the company concerned in a post determined by the Minister.

(b) The conditions of employment prevailing in either company in relation to the post concerned shall be applicable to any such employee as from the transfer date: Provided that such employee shall not receive a less favourable salary than the salary he or she received immediately before the transfer date.

(2) If, for the purposes of subsection (1)-

(a) the question arises whether any person performs functions pertaining to the postal service or the telecommunications service; or

(b) any question arises in connection with the determination of a post, it shall be determined by the Minister.

(3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), it shall be deemed that no change of employer took place in respect of an employee referred to in subsection (1).

(4) When any person becomes an employee of either company in terms of subsection (1)-

(a) he or she shall retain all vacation leave which accrued to his or her credit with the department concerned up to the date immediately before the transfer date, adjusted in accordance with the conditions of employment of the company concerned;

(b) any pending enquiry or any other action instituted or intended to be instituted in respect of alleged misconduct committed by such a person before the transfer date, shall be disposed of or instituted by the company concerned, and that company shall take the appropriate steps against the person concerned in accordance with the laws, policy and conditions of service applicable to him or her immediately before the transfer date;

(c) he or she shall cease to be a member of any pension fund of which he or she was a member on the date immediately before the transfer date, and shall have no claim against the fund concerned after payment by that fund of the amount referred to in paragraph (f);

(d) and if he or she was a member of a pension fund immediately before the transfer date, the appropriate dispensation referred to in paragraph (e) shall apply to him or her, as the case may be, as from the transfer date;

(e) and if he or she-

(i) has interrupted membership, it shall be deemed that pensionable service has begun accruing to him or her as from the date of resumed contribution to a pension fund;

(ii) has been a member of a pension fund without interrupted membership since before 1 October 1991, he or she shall be a member of the pension or retirement fund of the company of which he or she becomes an employee in a category of membership for which he or she would have qualified on that date according to the rules of the fund concerned;

(iii) becomes an employee of the telecommunications company, he or she may elect to become a member of the Telkom Retirement Fund;

(iv) became a member of a pension fund on or after 1 October 1991, but before 1 July 1995, and he or she becomes an employee of the telecommunications company, he or

she may elect to become a member of the Telkom Pension Fund, as defined in the rules of that fund, or a member of the Telkom Retirement Fund;

(v) became a member of a pension fund on or after 1 July 1995 and he or she-

(aa) becomes an employee of the telecommunications company; or

(bb) being a person referred to in subparagraph (iii) or (iv) fails to exercise the option referred to therein before the transfer date, he or she shall be a member of the Telkom Retirement Fund;

(vi) has been a member of a pension fund without interrupted membership since 1 October 1991 or after that date and he or she becomes an employee of the postal company, he or she shall be a member of the Post Office Pension Fund as defined in the rules of that fund-,

(f) (i) the pension fund referred to in paragraph (c) shall pay to the fund concerned referred to in paragraph (e) an amount equal to the actuarial liability of the former fund in respect of the member as determined by the actuary of that fund, multiplied by the funding level;

(ii) the actuarial basis on which the liability of the pension fund referred to in paragraph (c) is calculated, shall be agreed upon by the fund's actuary and the actuary of the fund referred to in paragraph (e), as the case may be;

(iii) the funding level of the pension fund referred to in paragraph (c) shall be the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund as determined by the most recent actuarial valuation of the fund and agreed to by the funds referred to in paragraph (e);

(iv) the total amount involved referred to in subparagraph (i) shall be guaranteed by the State;

(g) the State shall pay to the funds referred to in paragraph (e) an amount equal to the actuarial liability of the pension fund referred to in paragraph (c), calculated as set out in paragraph (f), less any amounts paid by the pension fund in terms of paragraph (f);

(h) the amounts referred to in paragraphs (f) and (g) shall be payable as at the transfer date, and interest thereon calculated at the bank rate as determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), shall be added to those amounts for the period from the transfer date to the date of actual payment thereof.

Regulation of finances before transfer date

5. (1) All income generated from the provision of postal and telecommunications

services and all expenditure incurred for the provision of such services in the former states before the transfer date shall accrue to the State or be borne by the State, as the case may be.

(2) All current assets and liabilities, deposits in savings and current accounts, as well as debit cash or bank balances generated by the departments before the transfer date shall accrue to the State or be borne by the State, as the case may be.

(3) (a) All investments and all credits, including accrued interest reflected in the accounts of the post office savings banks shall be transferred to Postbank.

(b) The State guarantees that upon such transfer the value of the assets so transferred will be equal to or more than the value of any liabilities in respect of those investments or accounts, and any shortfall shall form a debit against the National Revenue Fund.

(c) All savings and other accounts transferred to Postbank in terms of paragraph (a) shall be subject to the rules and regulations that apply to the existing accounts in Postbank.

(4) (a) The departments shall render final statements of telecommunications accounts using the current billing systems to its customers before the transfer date.

(b) All income derived from those accounts shall accrue to the State.

(c) Any loss incurred as a result of non-payment of those accounts, shall be borne by the State.

(d) The telecommunications company shall, for a period of 12 months, continue to render such final statements of accounts on behalf of the State, using the billing systems referred to in paragraph (a) after which period the unpaid accounts shall be handed over to the State Attorney.

(5) (a) On the transfer date all identifiable deposits shall be paid over by the departments to the respective companies.

(b) The companies shall administer those deposits in accordance with their own procedures.

(6) (a) All financing liabilities, including long and short term loans, incurred by the departments shall be borne by the State.

(b) Goods bought and services requested in terms of agreements identified to and ratified by the companies before the transfer date, but delivered or rendered after the transfer date, shall be for the accounts of the companies.

Regulation of finances after transfer date

6. (1) Any operating loss incurred by either company due to the integration of the departments contemplated in this Act shall be reimbursed by the State for a period of 48 months as from the transfer date.

(2) (a) The books of account of the companies shall on the transfer date be balanced, audited and balances left open for adjustments that may occur.

(b) Any extraordinary costs so incurred shall be borne by the State.

(3) All irregularities that occurred in a department before the transfer date in respect of parity adjustments, level placings, promotions, over statements, corruption and theft shall be corrected by the company concerned at the expense of the State.

(4) The State shall reimburse the postal company for all transactions in respect of which money was received by a department before the transfer date and which has to be paid out by the postal company or in terms of which the postal company must render a service after the transfer date and in respect of which no or insufficient money was paid over to the postal company by the department.

(5) (a) For a period of 12 months after the transfer date the companies shall render financial services in respect of all unreconciled balances as on the transfer date.

(b) At the termination of the 12 months' period all unpaid accounts shall be referred to the State Attorney.

Repeal and amendment of laws

7. (1) The laws referred to in Part I of the Schedule are hereby repealed to the extent indicated in column 3 of that Part.

(2) The laws referred to in Part 11 of the Schedule are hereby amended to the extent indicated in column 3 of that Part.

Act binding on State

8. This Act shall bind the State.

Transitional provision

9. All current licences issued in terms of a law on radio or postal matters by any department shall, as from the transfer date, for the remainder of the licence period be deemed to have been issued in terms of the Radio Act, 1952 (Act No. 3 of 1952), or the Post Office Act, as the case may be.

Short title

10. This Act shall be called the Former States Posts and Telecommunications Reorganisation Act, 1996.

SCHEDULE

(Section 7)

Part I

| No. and year of law | Short title | Extent of amendment |
|----------------------------|-----------------------|--|
| Act No. 3 of 1952 | Radio Act, 1952 | The whole, in so far as it (Transkei) applies in the former Republic of Transkei |
| Act No. 3 of 1952 | Radio Act, 1952 | The whole, in so far as it applies (Bophuthatswana) in the former Republic of Bophuthatswana |
| Act No. 3 of 1952 | Radio Act, 1952 | The whole, in so far as it (Ciskei) applies in the former Republic of Ciskei |
| Act No. 44 of 1958 | Post Office Act, 1958 | The whole, in so far as it applies (Bophuthatswana) in the former Republic of Bophuthatswana |
| Act No. 44 of 1958 | Post Office Act, 1958 | The whole, in so far as it (Ciskei) applies in the former Republic of Ciskei |
| Act No. 6 of 1980 | Post Office Act, 1980 | The whole (Transkei) |
| Act No. 15 of 1984 | Radio Act, 1984 | The whole (Venda) |
| Act No. 19 of 1986 | Post Office Act, 1986 | The whole (Venda) |

Part II

| No. and year of law | Short title | Extent of amendment |
|----------------------------|--------------------|----------------------------|
|----------------------------|--------------------|----------------------------|

Act No. 3 of
1952

Radio Act,
1952

The following section
is hereby substituted
for section 19A of
the Radio Act, 1952:

"Application of Act

*19A. This Act shall
apply throughout the
Republic."*

Act No. 44 of
1958

Post Office Act,
1958

The following section
is hereby inserted in
the Post Office Act
after section 115bis:

"Application of Act

*116. This Act shall
apply throughout the
Republic."*