

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
TELECOMMUNICATIONS
AMENDMENT BILL**

[B 65—2001]

*(As agreed to by the Portfolio Committee on Communications
(National Assembly))*

[B 65A—2001]

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AMENDMENTS AGREED TO

TELECOMMUNICATIONS AMENDMENT BILL
[B 65—2001]

CLAUSE 1

1. On page 2, in line 14, after “licensee” to insert “or an under-serviced area licensee”.
2. On page 2, in line 15, after “country” to insert “or *vice versa*”.
3. On page 3, in line 2, after “directly” to insert “in the Republic”.
4. On page 3, in line 5, to omit “service” and to substitute “operator”.
5. On page 3, from line 16, to omit the definitions of “end-office” and “ESI-TEL”.
6. On page 3, after line 18, to insert the following paragraph:

(c) by the substitution for the definition of “Eskom” of the following definition:
 “Eskom” means Eskom referred to in section 2(1) of the Eskom Act, 1987 (Act No. 40 of 1987), and includes its subsidiaries.
7. On page 3, from line 30, to omit the definition of “fixed-mobile service” and to substitute:

“fixed-mobile service” means a service provided by the holder of a public switched telecommunication service licence or an under-serviced area licence that permits a customer of the licensee to access the public switched telecommunication network of the licensee and obtain telecommunication services from such licensee from either a fixed point or whilst in motion within the local exchange area, but shall not permit call handover.
8. On page 3, in line 46, to omit “definition” and to substitute “definitions”.
9. On page 3, after line 55, to insert the following definitions:

“local access telecommunication service” means a telecommunication service provided within a defined geographic area, comprising the conveyance of signals—

 - (a) between any customers of the licensee within that area; and
 - (b) to and from a customer of the licensee and the network of any public service telecommunication licensee with whom the licensee is interconnected at a point in that area,

and include the installation, bringing into service, the maintenance and repair of the telecommunication network which is provided, maintained and operated by the licensee for the purposes of providing the local access telecommunication service as contemplated in section 39; “local exchange” means a facility in the public switched telecommunication network to which user lines are connected within a local exchange;

“local exchange area” means a geographically defined and limited area, as defined by the exchange area code allocated by the Authority for that area, to which all exchange lines are connected and which are served by the same local exchange;

10. On page 3, after line 59, to insert the following definition:

“mobile cellular telecommunication network” means a telecommunication network designed to use limited radio frequency spectrum between cellular terminal equipment and network transceivers to provide a mobile service across a cellular network according to technical standards that are applicable to the assigned frequencies by—

- (a) allocating a limited number of frequencies within each of a number of defined geographical areas or cells;
- (b) allowing the re-use of the same frequencies in different non-adjacent cells; and
- (c) enabling users to maintain connections while moving through different geographical areas by making use of call handover between adjacent cells;

11. On page 3, from line 60, to omit the definition of “mobile cellular telecommunication service” and to substitute:

“mobile cellular telecommunication service” means a telecommunication service provided by a licensed mobile cellular telecommunication operator as referred to in section 37;

12. On page 4, in line 1, after “mobile” to insert “cellular”.

13. On page 4, in line 3, to omit “digital broadcasting service that combines” and to substitute “telecommunication service that integrates and synchronises”.

14. On page 4, from line 18, to omit the definition of “national long distance telecommunication service” and to substitute:

“national long distance telecommunication service” means a telecommunication service comprising the conveyance of signals between the network of any licensee providing local access telecommunication services in an area, and the network of the same or of another licensee providing such service in another area, and includes the installation, bringing into service, maintenance and repair of the telecommunication network that is provided, maintained and operated by the licensee for the purposes of providing the national long distance telecommunication service as contemplated in section 38;

15. On page 4, from line 22, to omit “on” up to and including “service” in line 23, and to substitute:

when changing service from one public switched telecommunication service licensee to another public switched telecommunication service licensee or one mobile cellular telecommunication service licensee to another mobile cellular telecommunication service licensee;

16. On page 4, from line 26, to omit the definition of “private telecommunication network” and to substitute:

“private telecommunication network” means a telecommunication system provided by a person for purposes principally or integrally related to the operations of that person and which is installed onto two or more separate, non-contiguous premises and where the switching systems (nodes) of at least two of these premises are interconnected to the public switched telecommunication network as contemplated in section 41;

17. On page 4, in line 31, to omit “and fixed-mobile services”.
18. On page 4, in line 34, to omit “to the general public on a subscription basis” and to substitute:

to an end-user on a subscription basis or for a fee.
19. On page 4, from line 45, to omit “not” up to and including “selling” in line 47 and to substitute:

obtained by the public switched telecommunication service licensee or under-serviced area licensee in order to sell.
20. On page 4, from line 57, to omit paragraph (n).
21. On page 4, after line 62, to insert the following paragraph:

(n) by the insertion after the definition of “telecommunication system” of the following definition:
 “teledensity” means the number of telephone lines per 100 persons;
22. On page 5, from line 3, to omit paragraph (p).
23. On page 5, from line 7, to omit the definition of “value-added network service” and to substitute:

“value-added network service” means a telecommunication service provided by a person over a telecommunication facility, which facility has been obtained by that person in accordance with the provisions of section 40(2) of the Act, to one or more customers of that person concurrently, during which value is added for the benefit of the customers, which may consist of—

 - (a) any kind of technological intervention that would act on the content, format or protocol or similar aspects of the signals transmitted or received by the customer in order to provide those customers with additional, different or restructured information;
 - (b) the provision of authorised access to, and interaction with, processes for storing and retrieval of text and data;
 - (c) managed data network services;
24. On page 5, from line 9, to omit the definition of “virtual private network”.

CLAUSE 2

1. On page 5, after line 19, to insert the following paragraph:

(s) develop the Information and Communication Technology (ICT) strategy for the Republic, in order to bridge the digital divide.

CLAUSE 4

1. On page 5, in line 28, to omit paragraph (a).
2. On page 5, in line 29, to omit “(6) and (7)” and to substitute “(5) and (6)”.
3. On page 5, after line 30, to insert the following subsection:

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

4. On page 5, from line 31, to omit subsection (6) and to substitute:

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

5. On page 5, from line 36, to omit subsection (7).

CLAUSE 5

1. On page 5, in line 51, after “mobile” to insert “cellular”.
2. On page 6, in line 1, after “mobile” to insert “cellular”.
3. On page 6, in line 4, after “mobile” to insert “cellular”.
4. On page 6, in line 6, to omit “such once-off fee” and to substitute “such fees, to be payable over a period,”.
5. On page 6, in line 10, to omit “single or”.
6. On page 6, in line 11, after “mobile” to insert “cellular”.
7. On page 6, in line 13, after “mobile” to insert “cellular”.
8. On page 6, in line 18, after “mobile” to insert “cellular”.
9. On page 6, in line 22, to omit “fixed-mobile services”.
10. On page 6, in line 29, to omit “fixed-mobile services”.
11. On page 6, in line 34, to omit “such once-off fee” and to substitute “such fees, to be payable over a period,”.
12. On page 6, in line 38, to omit “single or”.
13. On page 6, in line 60, after “mobile” to insert “cellular”.
14. On page 7, in line 1, after “mobile” to insert “cellular”.
15. On page 7, in line 3, after “mobile” to insert “cellular”.
16. On page 7, in line 6, to omit “such once-off fee” and to substitute “such fees, to be payable over a period,”.
17. On page 7, in line 10, to omit “single or”.
18. On page 7, in line 11, after “mobile” to insert “cellular”.
19. On page 7, in line 17, after “mobile” to insert “cellular”.
20. On page 7, in line 21, to omit “fixed-mobile services”.
21. On page 7, in line 28, to omit “fixed-mobile services”.
22. On page 7, in line 33, to omit “such once-off fee” and to substitute “such fees, to be payable over a period,”.
23. On page 7, in line 37, to omit “single or”.

CLAUSE 6

1. On page 8, in line 4, to omit “only”.
2. On page 8, from line 6, to omit paragraphs (b) and (c).
3. On page 8, in line 32, to omit “2004” and to substitute “2003”.
4. On page 8, in line 33, after “granting”, to insert “one or more”.
5. On page 8, in line 35, to omit “(1)(a)” and to substitute “(1)”.
6. On page 8, from line 43, to omit subsection (6)(a) and to substitute:
 - (6) (a) If the Minister determines that any additional public switched telecommunication service licence may be granted—
 - (i) such licence may only come into effect by 8 May 2005; and
 - (ii) at least one of the additional operators shall be licensed to provide service-based competition.
7. On page 9, from line 8, to omit “Esi-Tel or Transtel, or Esi-Tel and Transtel,” and to substitute “Eskom and Transnet”.
8. On page 9, from line 11, to omit subsection (3) and to substitute:
 - (3) The final determination of the equity interest of Eskom and Transnet in the second national operator shall be determined by the value of the contribution of Eskom and Transnet, as the case may be, in the second national operator.
9. On page 9, after line 22, to add the following subsection:
 - (5) (a) For the purposes of this subsection, “servitude” means any servitude, lease, right of use or other real right (whether registered or not) in or over land in favour of Eskom, Transnet and the South African Rail Commuter Corporation Limited established in terms of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), which existed immediately prior to the commencement of this Act, for the conveyance or provision of electricity, telecommunications, pipelines, railways, transport or electrical substations.
 - (b) Every servitude is hereby extended so as to include the additional right to use the land to which such servitude relates for purposes of providing a public switched telecommunication service or network by means of telecommunication facilities.
 - (c) Eskom may allow any of its subsidiaries in respect of Eskom servitudes to—
 - (i) utilise a servitude in respect of the additional right referred to in paragraph (b) on such terms and conditions as may be agreed upon between Eskom and the subsidiary;
 - (ii) allow any third party in which Eskom has an equity interest to utilise the servitude in respect of that additional right on such terms and conditions as may be agreed upon between the parties; or
 - (iii) utilise a servitude in respect of that additional right in order to provide public switched telecommunication services to any third party on such terms and conditions as may be agreed upon between the parties.
 - (d) Compensation as contemplated in section 25(3) of the Constitution shall be payable by the party exercising the additional right as contemplated in paragraph (b) to the registered land-owner concerned, to the extent that the servitude becomes more onerous than the original servitude.

(e) Notice of the exercise or use of the right in terms of paragraph (c) shall be given in writing to the registered owner of the land concerned, either by personal service or by pre-paid registered post, and the compensation contemplated in paragraph (d) shall be payable and shall be assessed as at the date of such notice.

(f) Sections 9, 10, 11, 12(3), 12(5), 14 and 15 of the Expropriation Act, 1975 (Act No. 63 of 1975), shall with the necessary changes be applicable in respect of any compensation claim, compensation offer and the payment and determination of such compensation.

(g) The Registrar of Deeds shall make such entries or endorsements in or on any relevant title deed or other documents in the office of the Registrar or submitted to the Registrar, as may be necessary for the purposes of paragraph (c).

(h) No fees or other levies shall be payable in respect of entries or endorsements contemplated in paragraph (g).

(i) Paragraphs (c), (d), (e), (f), (g) and (h) apply with the necessary changes to Transnet and its subsidiaries licensed in terms of this Act and the South African Rail Commuter Corporation Limited.

10. On page 9, in line 29, to omit paragraph (b) and to substitute:

(b) multimedia services to any person who requests such service.

11. On page 9, after line 29, to insert the following subsection:

(2) Sentech shall provide the multimedia service as a common carrier on a reasonable, equitable and non-discriminatory basis.

(3) In respect of the granting of other multimedia services licences—

(a) the Minister shall invite applications on a date to be fixed by the Minister by notice in the Gazette; and

(b) section 34(2)(b) and (c) apply with the necessary changes.

12. On page 9, after line 38, to add the following subsections:

(5) The holder of a telecommunication service licence shall not be precluded from providing services which are the same as, or similar to multimedia services, provided that such services fall within the ambit of the telecommunication service licence so held.

(6) No person who provides the service contemplated in subsection (1)(b) shall permit such service to be used for the carrying of voice only until a date to be fixed by the Minister by notice in the Gazette.

CLAUSE 7

1. On page 9, in line 42, to omit “(iv)” and to substitute “(v)”.

CLAUSE 8

1. On page 9, after line 44, to insert the following paragraph:

(a) by the deletion in subsection (2)(a)(iv) of the word “or” and by the insertion in that subsection of the following subparagraph, the existing paragraph (v) becoming paragraph (vi):

“(v) a multimedia service; or”.

2. On page 9, in line 49, to omit “[of service] or kinds of services” and to substitute “of service”.

3. On page 10, in line 5, to omit “to be used by the Authority” and to substitute “the Authority intends to use”.
4. On page 10, in line 7, after “criterion” to insert “, and the application of section 35(4) and (5)”.
5. On page 10, in line 14, to omit paragraph (c).
6. On page 10, after line 14, to insert the following paragraph:

(c) by the addition to subsection (3) of the following subsection:
 “(d) A hearing contemplated in paragraph (c) may be open to the public.”.
7. On page 10, in line 36, to omit paragraph (f).

CLAUSE 9

1. On page 10, from line 40, to omit subsections (1) and (2) and to substitute:

(1) The Authority shall, after having duly considered any application for a licence made in terms of this Act and any written submissions in relation to the applications that may be called for by the Authority and submitted to the Authority within the period determined by the Authority—

 - (a) in the case of an application for a licence referred to in section 34(2)(a), make its recommendation to the Minister, and propose licence conditions; and
 - (b) in the case of any other licence application, notify the applicant of its decision, the reasons therefor and the licence conditions.
2. On page 10, in line 58, to omit “(2)” and to substitute “(1)”.
3. On page 11, in line 10, after “or” to insert “held by”.

CLAUSE 10

1. On page 11, in line 30, after “made”, to insert:

“, such as by way of auction or tender, or both, and the licensing process”.

CLAUSE 11

1. On page 11, in line 43, to omit “marine” and to substitute “maritime”.
2. On page 11, in line 45, to omit paragraph (g) and to substitute:

(g) fixed-mobile services;
3. On page 11, in line 47, before “the” to insert “the supply of telecommunications equipment,”.
4. On page 12, in line 2, to omit “, including virtual private networks”.
5. On page 12, from line 14, to omit “mobile basis or a combination thereof)” and to substitute “fixed-mobile basis)”.
6. On page 12, in line 18, to omit subsection (2).

CLAUSE 12

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

“Substitution of section 37 of Act 103 of 1996

12. The following section is hereby substituted for section 37 of the principal Act:

“Mobile cellular telecommunication services

37. (1) *(a)* 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.]

(b) Cell C (Pty.) Ltd., a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), shall be the holder of a licence in terms of this Act to provide a mobile cellular telecommunication service in accordance with the terms and conditions as specified in its licence issued to it by the Authority on 25 June 2001.

[(d)] (2) A licence contemplated in [paragraph (a)] subsection (1) 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 a licence contemplated in section 34(2)(a)(i), (iii) or (iv) or section 39 or 40 to enable him or her to provide the mobile cellular telecommunication service in question.

- (4) (a) Before 31 December 2003 the Minister shall—
- (i) determine, by way of a market study, the feasibility of granting a mobile cellular telecommunication licence in addition to the licences referred to in subsection (1); and
 - (ii) by notice in the Gazette, publish the determination.
- (b) In conducting the market study contemplated in paragraph (a), the Minister shall consider the Republic's international obligations;
- (5) If the Minister determines that any additional licence may be granted, such licence may be issued after 31 December 2003 in terms of section 34."

CLAUSE 14

1. On page 13, after line 15, to insert:
 - (c) by the addition to subsection (2) of the following paragraph:
 - (c) nothing in this section shall be construed as limiting applications for a licence contemplated in paragraph (a) to public switched telecommunication services licensees only.

CLAUSE 15

1. On page 13, from line 19, to omit "[**value-added network**] electronic transactions service" and to substitute "value-added network services".
2. On page 13, in line 25, before "provided" to insert "until 7 May 2002,".
3. On page 13, in line 28, to omit "or" and to substitute "and".
4. On page 13, in line 30, after "them" to insert "until a date fixed by the Minister by notice in the Gazette".

CLAUSE 16

1. On page 13, from line 43, to omit "less" up to and including "facilities" in line 44 and to substitute "there is teledensity of less than 5%".
2. On page 13, in line 47, to omit "grant" and to substitute "issue".
3. On page 13, after line 48, to insert the following paragraph, the existing subsection (2) becoming subsection (2)(a):
 - (b) In the consideration of applications in this section, due regard shall be given to applications—
 - (i) by persons from historically disadvantaged groups; and
 - (ii) from applicants which are managed and controlled or owned by women.
4. On page 13, in line 49, after "provide" to insert "any".
5. On page 13, in line 50, after "services," to insert "fixed-mobile services and public pay telephones".

6. On page 14, in line 3, after “licensees” to insert:

and mobile cellular operators, and through the national long-distance telecommunication service of a public switched telecommunication service licensee to the international telecommunication gateway of a carrier of carrier’s licensee,

CLAUSE 17

1. On page 14, from line 25, to omit subparagraph (ii).

CLAUSE 18

1. On page 15, in line 15, to omit “implemental” and to substitute “implemented”.
2. On page 15, from line 44, to omit paragraph (c).
3. On page 16, in line 1, to omit “subsection” and to substitute “subsections”.
4. On page 16, after line 9, to add the following subsection:

(11) Interconnection rates and any agreement with regard thereto shall be made public.

CLAUSE 19

1. On page 16, in line 21, after “43(1)(b)” to insert “(i) and (ii)”.

CLAUSE 21

1. On page 17, in line 22, to omit “protection of consumer interests” and to substitute:

and effective monitoring and investigation of uncompetitive actions, ensuring protection of consumer interests and for the speedy resolutions of complaints in regard thereto.

CLAUSE 22

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 21:

Amendment of section 54 of Act 103 of 1996

22. Section 54 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“No person shall use, supply, sell, offer for sale or lease or hire, 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.”.

CLAUSE 26

1. On page 18, in line 40, to omit paragraph (f) and to substitute:
 - (f) to assist small businesses and cooperatives to acquire and construct infrastructure to provide telecommunication services to areas which are not served or not adequately served by telecommunication services; and
 - (g) to facilitate the provision of multimedia services.

CLAUSE 29

1. On page 19, after line 34, to add the following subsection:
 - (4) 112 Emergency Centres shall be exempted from holding a licence to provide telecommunication services in terms of any section of this Act.

CLAUSE 30

Clause rejected.

CLAUSE 31

1. On page 20, from line 40, to omit section 89A.
2. On page 21, in line 2, to omit “**89B**” and to substitute “**89A**”.
3. On page 21, after line 14, to insert the following section:

Government directory information service

89B. The Authority shall allocate a four digit number through which the public can access government directory information services free of charge.

CLAUSE 32

1. On page 21, after line 16, to insert the following paragraph:
 - (a) by the substitution for subsection (1) of the following subsection:
 - (1) The Authority may make regulations in relation to—
 - (a) any matter which in terms of this Act shall or may be prescribed by regulation;
 - (b) any matter necessary or expedient for the regulation of telecommunication activities;
 - (c) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act.
2. On page 21, after line 23, to insert the following paragraph:
 - (c) By the substitution in subsection (5), for the words preceding paragraph (a), of the following words:
The provisions of subsection **[(1)] (4)** shall not apply in respect of—

CLAUSE 33

1. On page 21, after line 37, to insert the following section:

Information, Communication and Technology strategy

96B. (1) (a) The Minister shall, as soon as possible after the commencement of this section, develop an Information, Communication and Technology (ICT) strategy.

(b) The strategy shall be reviewed every two years.

(c) The strategy shall be published in the *Gazette* when it has been developed or reviewed.

(2) When developing or reviewing the strategy, the Minister shall give due regard to—

(a) the Republic's national objectives;

(b) section 2(r) and (s);

(c) the Republic's international obligations; and

(d) any other relevant factor.

CLAUSE 34

1. On page 21, after line 40, to insert the following paragraph:

(c) contravenes sections 54 and 56;

2. On page 21, in line 41, to omit “80(2)” and to substitute “81(2)”.

SCHEDULE

1. On page 22, from the 27th line, to omit all the words up to and including the 38th line on page 24.

LONG TITLE

1. On page 2, from the 11th line of the long title, to omit “to” up to and including “Committee;” in the 12th line.
2. On page 2, in the 14th line of the long title, to omit “to further regulate numbering plans;”.
3. On page 2, in the 18th line of the long title, to omit “two others” and to substitute “another”.

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