



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 437 Cape Town, 30 November 2001 No. 2289

THE PRESIDENCY

No. 1264

30 November 2001

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

No. 64 of 2001: Telecommunications Amendment Act, 2001.

DIE PRESIDENSIE

No. 1264

30 November 2001

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 64 van 2001: Wysigingswet op Telekommunikasie, 2001.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
-
- Words underlined with a solid line indicate insertions in existing enactments.
-
-

*(English text signed by the President.)
(Assented to 29 November 2001.)*

ACT

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

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

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

1. Section 1 of the Telecommunications Act, 1996 (hereinafter referred to as “the principal Act”), is hereby amended— 5
- (a) by the insertion after the definition of “broadcasting signal distribution” of the following definitions:
- “‘carrier of carriers’ means a telecommunication service (including any signal conveyed by means of the telecommunication system of that service) which— 10
- (a) originates on the telecommunication system of a public switched telecommunication service licensee or mobile cellular telecommunication service licensee or an under-serviced area licensee in the Republic and terminates in a telecommunication system in another country or *vice versa*; or 15
- (b) originates and terminates in a telecommunication system of an operator licensed in another country to provide international services, but is conveyed via a telecommunication system in the Republic on a wholesale basis, 20

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

- (b) by the insertion after the definition of ‘Director-General’ of the following definitions:

“‘directories’ means a list (which may be made available in separate parts and through different media) of customers of a designated licensee or multiple licensees and their telephone numbers which are generally arranged in alphabetical order and not by reference to a description of the trades, professions or businesses carried on by those customers;
 ‘directory enquiry service’ means the provision of information contained in directories;

- (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.”;

- (d) by the substitution for the definition of “fixed line operator” of the following definition:

“‘fixed-line operator’ means [Telkom and] a holder of a licence to provide a public switched telecommunication service or any other person who provides a licensed telecommunication service by means of a telecommunication system consisting mainly of fixed lines, and ‘operator’ shall be construed accordingly;”;

- (e) by the insertion after the definition of “fixed-line operator” of the following definition:

“‘fixed-mobile service’ means a 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 between cells.”;

- (f) by the substitution for the definition of “interconnect” of the following definition:

“‘interconnect’ means [to link two] the physical or logical linking of telecommunications systems [so that users of either] in order to enable any user of a system [may] so linked to communicate with [users] any user of, or utilise services provided by means of, [the] another system [or any other telecommunication system] so linked, and ‘interconnection’ has a corresponding meaning;”;

- (g) by the insertion after the definition of “interconnect” of the following definitions:

“‘international telecommunication service’ means a telecommunication service (including any signal conveyed by means of the telecommunication system of such service) which—

(a) originates in a telecommunication system in the Republic and terminates in a telecommunication system in another country or vice versa; or

(b) originates and terminates in a telecommunication system in another country but is conveyed via a telecommunication system in the Republic;”;

‘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

5

10

15

20

25

30

35

40

50

55

60

<p>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 <u>the same local exchange;</u>;”;</p> <p>(h) by the substitution for the definition of “Minister” of the following definition:</p> <p>“‘Minister’ means the Minister [for Posts, Telecommunications and Broadcasting] of Communications;”;</p> <p>(i) by the insertion after the definition of “Minister” of the following definitions:</p> <p>“‘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—</p> <p>(a) allocating a limited number of frequencies within each of a number of defined geographical areas or cells;</p> <p>(b) allowing the re-use of the same frequencies in different non-adjacent cells; and</p> <p>(c) enabling users to maintain connections while moving through different geographical areas by making use of call handover between adjacent cells;</p> <p>‘mobile cellular telecommunication service’ means a telecommunication service provided by a licensed mobile cellular telecommunication operator as referred to in section 37;</p> <p>‘mobile cellular operators’ means Vodacom (Pty.) Ltd., Mobile Telephone Networks (Pty.) Ltd. and Cell C (Pty.) Ltd.;</p> <p>‘multimedia service’ means a telecommunication service that integrates and synchronises various forms of media to communicate information or content in an interactive format, including services such as—</p> <p>(a) internet through television;</p> <p>(b) pay-per-view;</p> <p>(c) video on demand;</p> <p>(d) electronic transactions (including e-commerce);</p> <p>(e) text;</p> <p>(f) data;</p> <p>(g) graphics;</p> <p>(h) animation;</p> <p>(i) audio;</p> <p>(j) visual content,</p> <p>but shall not include mobile cellular telecommunication services and public switched telecommunication services;</p> <p>‘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;</p> <p>‘number portability’ means a capability whereby a subscriber to a telecommunication service who so requests can retain his or her telephone number 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;”;</p>	<p style="margin-right: 10px;">5</p> <p style="margin-right: 10px;">10</p> <p style="margin-right: 10px;">15</p> <p style="margin-right: 10px;">20</p> <p style="margin-right: 10px;">25</p> <p style="margin-right: 10px;">30</p> <p style="margin-right: 10px;">35</p> <p style="margin-right: 10px;">40</p> <p style="margin-right: 10px;">45</p> <p style="margin-right: 10px;">50</p> <p style="margin-right: 10px;">55</p> <p style="margin-right: 10px;">60</p>
--	--

- (j) by the insertion after the definition of "prescribed" of the following definitions:

"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; "public switched telecommunication networks" means the telecommunication systems installed or otherwise provided, maintained and operated by a public switched telecommunication licensee for the purpose of providing public switched telecommunication services; "public switched telecommunication services" means the provision of telecommunication services to an end-user on a subscription basis or for a fee referred to in section 36; "public switched telecommunication service licence" means a licence referred to in section 34(2)(a)(i);";

- (k) by the insertion after the definition of "radio apparatus" of the following definition:

"radio frequency spectrum licence" means a licence referred to in section 30;";

- (l) by the insertion after the definition of "regulation" of the following definitions:

"resale" means the provision of any public switched telecommunication service by means of telecommunication facilities which are obtained by the public switched telecommunication service licensee or underserviced area licensee in order to sell such services to its customer, and "reseller" shall be construed accordingly;

"second national operator" means the second holder of a public switched telecommunication service licence;

"Sentech" means Sentech (Pty) Ltd, a company established pursuant to the Sentech Act, 1996 (Act No. 63 of 1996);";

- (m) by the insertion after the definition of "signal" of the following definition:

"small business" (commonly referred to as an 'SMME') means a 'small business' as defined in section 1 of the National Small Business Act, 1996 (Act No. 102 of 1996);";

- (n) by the insertion after the definition of "telecommunication system" of the following definition:

"teledensity" means the number of telephone lines per 100 persons;

- (o) by the insertion after the definition of "Telkom" of the following definition:

"third generation telecommunication frequency licence" means the radio frequency spectrum licence referred to in section 30B;"; and

- (p) by the insertion after the definition of "Universal Service Fund" of the following definitions:

"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;

"voice over internet protocol" means a series of techniques permitting transmission of a voice over the internet or through one or more telecommunication facilities using internet protocol.".

Amendment of section 2 of Act 103 of 1996

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

- “(r) promote and facilitate convergence of telecommunication, broadcasting and information technology; 5
 (s) develop the Information, Communication and Technology (ICT) strategy for the Republic, in order to bridge the digital divide.”.

Amendment of section 3 of Act 103 of 1996

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

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

Amendment of section 29 in Act 103 of 1996

4. Section 29 of the principal Act is hereby amended by the substitution for subsections (5) and (6) of the following subsections, respectively:

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

(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*.”. 20

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

5. The following sections are hereby inserted in the principal Act after section 30: 25

“Radio frequency spectrum access in 1800 MHz frequency band

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

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

(i) against the payment of such fees, to be payable over a period, as the Minister shall determine by notice in the *Gazette*; and
 (ii) subject to such conditions as the Authority may prescribe.

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

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

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

<p>(b) Within six months after the date the second national operator is granted a public switched telecommunication service licence, or such longer period as the Minister may determine, Telkom may apply to the Authority for a radio frequency spectrum licence in the 1800 MHz frequency band to provide public switched telecommunication services, and such other services as Telkom, from time-to-time, is licensed to provide.</p> <p>(c) The Authority shall issue to the second national operator and Telkom a radio frequency spectrum licence contemplated in paragraph (a) or (b), as the case may be—</p> <ul style="list-style-type: none"> (i) against the payment of such fees, to be payable over a period, as the Minister shall determine by notice in the <i>Gazette</i>; and (ii) subject to such conditions as the Authority may specify in that licence. <p>(d) For purposes of paragraph (c)(i), the Minister may specify by notice in the <i>Gazette</i> a multiple payment schedule pursuant to which the second national operator and Telkom, respectively, shall make payment, and the terms and conditions of such payment.</p> <p>(3) (a) Holders of a radio frequency spectrum licence in the 1800 MHz frequency band shall co-ordinate, in good faith, their respective frequency usage with other such licensees to—</p> <ul style="list-style-type: none"> (i) avoid harmful interference among licensees; (ii) ensure efficient use of the 1800 MHz frequency band; and (iii) allow for the provision of cost-efficient services. <p>(b) The Authority may prescribe regulations governing the co-ordination contemplated in paragraph (a), which may include a process for the speedy resolution of disputes among licensees.</p> <p>(4) In determining the fees contemplated in subsections (1)(b)(i) and (2)(c)(i) the Minister shall take into account—</p> <ul style="list-style-type: none"> (i) MHz pair per population per licence year; (ii) provision of paired or unpaired spectrum; (iii) technical and administrative cost of spectrum management, including projected costs for Authority involvement in frequency co-ordination contemplated in subsection (3); and (iv) any other matter that is consistent with section 2. 	5 10 15 20 25 30 35 40 45 50 55 60
Third generation telecommunication radio frequency spectrum licence	35
<p>30B. (1) (a) Within six months after the date of commencement of this paragraph or such longer period as the Minister may determine, the mobile cellular operators may apply to the Authority for a third generation telecommunication radio frequency spectrum licence to provide mobile cellular telecommunication services and such other services as the mobile cellular operators, from time-to-time, are licensed to provide.</p> <p>(b) The Authority shall issue to each mobile cellular operator a third generation telecommunication radio frequency spectrum licence contemplated in paragraph (a)—</p> <ul style="list-style-type: none"> (i) against the payment of such fees, to be payable over a period, as the Minister shall determine by notice in the <i>Gazette</i>; and (ii) subject to such conditions as the Authority may specify in that licence. <p>(c) For purposes of paragraph (b)(i), the Minister may specify by notice in the <i>Gazette</i> a multiple payment schedule pursuant to which the mobile cellular operators shall make payment, and the terms and conditions of such payment.</p> <p>(d) Prior to the date a third generation radio frequency spectrum licence takes effect, the holder of a licence which exists at the commencement of the Telecommunications Amendment Act, 2001, shall, in accordance with radio regulations governing migration and clearing of radio spectrum bands, clear the spectrum to be occupied by such mobile cellular operator.</p> <p>(2) (a) The second national operator and Telkom shall each be deemed to be a holder of a third generation telecommunication radio frequency spectrum licence to provide public switched telecommunications services, and such other services as the second national operator and Telkom, from time-to-time, are licensed to provide.</p>	40 45 50 55 60

<p>(b) Within six months after the date the second national operator is granted a public switched telecommunications service licence, or such longer period as the Minister may determine, Telkom may apply to the Authority for a third generation telecommunication radio frequency spectrum licence to provide public switched telecommunication services, and such other services as Telkom, from time-to-time, is licensed to provide.</p> <p>(c) The Authority shall issue to the second national operator and Telkom a third generation telecommunication radio frequency spectrum licence contemplated in paragraph (a) or (b), as the case may be—</p> <ul style="list-style-type: none"> (i) against the payment of such fees, to be payable over a period, as the Minister shall determine by notice in the <i>Gazette</i>; and (ii) subject to such conditions as the Authority may specify in that licence. <p>(d) For purposes of paragraph (c)(i), the Minister may specify by notice in the <i>Gazette</i> a multiple payment schedule pursuant to which the second national operator and Telkom, respectively, shall make payment and the terms and conditions of such payment.</p> <p>(3) (a) Holders of a third generation telecommunication radio frequency spectrum licence shall co-ordinate, in good faith, their respective frequency usage with other such licensees to—</p> <ul style="list-style-type: none"> (i) avoid harmful interference among licensees; (ii) ensure efficient use of any applicable frequency band; and (iii) allow for the provision of cost-efficient services. <p>(b) The Authority may prescribe regulations governing the co-ordination contemplated in paragraph (a), which may include a process for the speedy resolution of disputes among licensees.</p> <p>(4) In determining the fees contemplated in subsections (1)(b)(i) and (2)(c)(i), the Minister shall take into account—</p> <ul style="list-style-type: none"> (i) MHz pair per population per licence year; (ii) provision of paired or unpaired spectrum; (iii) technical and administrative cost of spectrum management, including projected costs for Authority involvement in frequency co-ordination contemplated in subsection (3); and (iv) any other matter that is consistent with section 2.”. 	5 10 15 20 25 30 35
Insertion of sections 32A, 32B and 32C in Act 103 of 1996	35
6. The following sections are hereby inserted in the principal Act after section 32:	
“Holders of public switched telecommunication services licences and granting of further licences	40
32A. (1) From 7 May 2002 until 7 May 2005 Telkom and the second national operator shall be the holders of public switched telecommunication service licences.	40
(2) (a) For a period of two years after the date of commencement of the public switched telecommunication service licence the second national operator may use Telkom’s facilities on a resale basis in accordance with agreements concluded between the parties for the purposes of providing public switched telecommunication services.	45
(b) The agreements contemplated in paragraph (a) become effective within 60 days of the issuing of the public switched telecommunication service licence to the second national operator.	50
(3) Where Telkom and the second national operator fail to conclude agreements contemplated in subsection (2), or after the parties have negotiated in good faith and used their reasonable endeavours to resolve disputes relating to such agreements, either party may request the Authority in writing to resolve all outstanding issues.	50
(4) (a) Where the Authority receives a request contemplated in subsection (3), it shall, within 30 days of that request, determine the terms and conditions of the agreement in a manner consistent with this Act.	55

<p>(b) Where the Authority makes a determination in terms of paragraph (a), the determination shall be binding on the parties and shall form part of the agreement between the parties.</p> <p>(c) The agreement contemplated in paragraph (b) shall lapse two years after the date of its conclusion.</p> <p>(5) (a) Before 31 December 2003 the Minister shall—</p> <ul style="list-style-type: none"> (i) determine, by way of a market study, the feasibility of granting one or more public switched telecommunication service licences in addition to the licences referred to in subsection (1); and (ii) by notice in the <i>Gazette</i>, publish the determination. <p>(b) In conducting the market study contemplated in paragraph (a), the Minister shall consider—</p> <ul style="list-style-type: none"> (i) the Republic's international obligations; (ii) national and international market conditions prevailing at the time; (iii) the Republic's policy objectives; and (iv) any other relevant factor. <p>(6) (a) If the Minister determines that any additional public switched telecommunication service licence may be granted—</p> <ul style="list-style-type: none"> (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. <p>(b) A holder of a licence contemplated in paragraph (a) may—</p> <ul style="list-style-type: none"> (i) compete as a service-based licensee and may not provide its own facilities until the Minister so determines; and (ii) utilise the facilities of Telkom and the second national operator on a resale basis for a period of two years from the date of commencement of its public switched telecommunication service licence, in accordance with agreements concluded between the parties for the purposes of providing public switched telecommunication services. <p>(7) Where the Minister makes the determination contemplated in subsection (5), the Authority may prescribe regulations to ensure equal and non-discriminatory access to facilities among all licensed operators.</p> <p>(8) In any case where telecommunication facilities are made available pursuant to section 44 or the regulations promulgated thereunder to the holder of a licence to provide public switched telecommunication services, such licence holder shall have the right of resale.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>
<h3>Second national operator application and qualification</h3> <p>32B. (1) The second national operator shall be granted a public switched telecommunication service licence on no less favourable terms and conditions than those of the licence held by Telkom.</p> <p>(2) Subject to subsection (3), such percentage of the equity interest of the second national operator shall be set aside for Eskom and Transnet, as the Minister, with concurrence of the Minister of Public Enterprises, may determine.</p> <p>(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.</p> <p>(4) The contribution referred to in subsection (3) may include, among other things—</p> <ul style="list-style-type: none"> (a) cash; (b) rights of way; (c) immovable property; (d) personal rights; and (e) other assets, including existing infrastructure, facilities and equipment. <p>(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),</p>	<p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>

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. 5

(c) Eskom may allow any of its subsidiaries in respect of Eskom servitudes to— 10

- (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. 15

(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. 20

(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. 25

(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. 30

(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). 35

(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. 40

Sentech

32C. (1) With effect from 7 May 2002, Sentech Limited referred to in section 4 of the Sentech Act, 1996 (Act No. 63 of 1996), shall be granted a licence to provide— 45

(a) an international telecommunication gateway service enabling it to operate as a carrier of carriers; and

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

(2) Sentech shall provide the multimedia service as a common carrier on a reasonable, equitable and non-discriminatory basis. 50

(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.

(4) On or before 31 December 2001, the Authority shall publish in the *Gazette* draft licences, which shall include proposed conditions on which Sentech Limited must provide the services contemplated in subsection (1). 55

(5) Within 30 days of the publication referred to in subsection (4), Sentech Limited and any interested party may submit written comments to the Authority in connection with the proposed conditions to the licence.

(6) After due consideration of the comments contemplated in subsection (5), if any, the Authority shall finalise the licences and issue them to Sentech with effect from 7 May 2002. 60

(7) 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.

(8) 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*.⁵

Amendment to section 33 of Act 103 of 1996

7. Section 33 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) as contemplated in sections 32C(1)(b), 34(2)(a)(i) to [iv] (v) and 39 to 41; and”.

Amendment of section 34 of Act 103 of 1996

8. Section 34 of the principal Act is hereby amended—

(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 subparagraph (v) becoming subparagraph (vi):

“(v) a multimedia service; or”.

(b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:

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

(i) the kind of service 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] and the place where and times when [a] any document in that regard may be obtained from the Authority;

(iii) the period within and manner in which such applications shall be lodged.

(c) Prior to publishing any invitation contemplated in paragraph (a), the Minister shall consult with the Authority to determine the evaluation criteria the Authority intends to use in making its recommendation to the Minister pursuant to section 35(1)(a)(i) and the weighing factor applicable to each evaluation criterion and the application of section 35(4) and (5).³⁰”;³⁵

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

“(3) In the case of an application for a licence to provide a telecommunication service referred to in subsection (2) or any other telecommunication service prescribed for the purposes of this subsection the Authority [shall] may—”;

(d) by the addition to subsection (3) of the following paragraph:

“(d) A hearing contemplated in paragraph (c) may be open to the public.”

(e) by the insertion after subsection (3) of the following subsections:

“(3A) The Authority may require an applicant or an interested party who has lodged written representations in terms of subsection (3) to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary in order to consider the application.”⁴⁵

“(3B) No application may be amended or varied after the period contemplated in subsection (2)(b)(iii).”;

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

“(b) (i) The Authority may, at the request of an applicant or person who lodged representations, determine that any document or information [relating to the financial capacity or business plans of any person or to] that is commercially sensitive or any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question.⁵⁵ 60”

(ii) For purposes of this paragraph commercially sensitive documents or information or other matter reasonably justifying confidentiality shall exclude documents or information that was or becomes, or as a matter of law should be, generally available to the public.”.

Substitution of section 35 of Act 103 of 1996

5

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

“Decision on applications

- 35.** (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) The Minister may in respect of a recommendation by the Authority contemplated in subsection (1)—
- (a) accept it;
 - (b) request further information from the Authority;
 - (c) refer it back to the Authority for further consideration; or
 - (d) reject it.
- (3) In the consideration of applications in terms of this Act, due regard shall be given to applications—
- (a) by persons from historically disadvantaged groups; and
 - (b) which promote the empowerment and advancement of women in the telecommunication industry.
- (4) Without derogating from subsection (3), in the evaluation of equity ownership held by persons from historically disadvantaged groups or held by women in an application for a licence in terms of this Act, the Authority shall give due preference for up to 30% of such equity ownership or such higher equity ownership percentage as may be prescribed.
- (5) Subject to section 36(6), a licence shall be granted on conditions appropriate to the licence and consistent with the objects referred to in section 2 and the other provisions of this Act.
- (6) The Authority shall, where the application has been granted, issue the licence in question to the applicant.
- (7) Any licence granted in terms of this section, shall become effective on the date specified therein.
- (8) Nothing in this section derogates from the rights of an applicant to be furnished with reasons for a decision under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

Insertion of section 35A in Act 103 of 1996

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

“Alternative licensing methods

45

- 35A.** (1) Notwithstanding sections 34 and 35—
- (a) in the case of a licence referred to section 34(2), the Minister may in specific instances determine the manner in which applications may be made, such as by way of auction or tender, or both, and the licensing process and the licensing conditions that will apply; and
 - (b) for all other licences, the Authority may in specific instances prescribe the licensing conditions that will apply.”.

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

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

"Contents of expression 'public switched telecommunication service'"

- 36A.** (1) A 'public switched telecommunication service' shall be a telecommunication service to the general public on a subscription basis, which shall include services such as—
- (a) national long-distance telecommunication service;
 - (b) international telecommunication service;
 - (c) local access telecommunication service contemplated in section 39;
 - (d) public pay-telephone service;
 - (e) maritime telecommunication service;
 - (f) service comprising the provision of telegrams;
 - (g) fixed-mobile services;
 - (h) the supply of telecommunications equipment, the installation, bringing into service, maintenance and repair of that part of the public switched telecommunication network that is provided, maintained and operated by the public switched telecommunication services licensee for the purposes of providing any telecommunication service, such as the provision of telecommunication circuits for—
 - (i) private circuits;
 - (ii) links between sites of the same operator or multiple operators;
 - (iii) telecommunication facilities used for the provision of private telecommunication networks;
 - (iv) telecommunication facilities used for the provision of value-added network services;
 - (v) telecommunication facilities used for the provision of telecommunication services in under-serviced areas contemplated in section 40A;
 - (vi) telecommunication facilities used to provide voice over internet protocol;
 - (vii) third generation telecommunication facilities;
 - (viii) telecommunication facilities to provide fixed-mobile services in the 1800 MHz frequency band; and - (i) any other service reasonably complementary to the provision of those services (whether provided on a fixed or fixed mobile basis) such as the provision, repair and maintenance of equipment located on a customer's premises and any other telecommunications apparatus of any kind.

Contents of expression 'public switched telecommunication networks'

- 36B.** (1) A 'public switched telecommunication networks' shall be the telecommunication systems which are installed or otherwise provided, maintained and operated by a public switched telecommunication service licensee for the purpose of providing public switched telecommunication services and fixed-mobile services such as—
- (a) a local access network;
 - (b) a national long-distance network; and
 - (c) an international network;
- by whatever means such as copper cables, wireless loops, microwave links, optic fibre cables, satellite earth stations, space segments and satellite systems, by means of which signals can be conveyed between all or any of—
- (i) two or more terminal connection points;
 - (ii) two or more network connection points;
 - (iii) a terminal connection point and a network connection point;
 - (iv) a terminal connection point or a network connection point, as the case may be, and a corresponding point in another country;
 - (v) a public pay-telephone and the terminal connection point, a network connection point or a corresponding point in another country.

(2) The systems contemplated in subsection (1) shall not include telecommunication equipment located on the premises of a customer, unless it is meant for public pay-telephones or mobile telecommunications on the premises of a customer.”.

Substitution of section 37 of Act 103 of 1996

5

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.

10

15

20

[(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.

25

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

30

(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.

35

[(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.

40

(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.

45

(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

50

(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;

55

(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.”.

Amendment of section 38 of Act 103 of 1996

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

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

Amendment of section 39 of Act 103 of 1996

14. Section 39 of the principal Act is hereby amended—

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

“(a) No [person] persons other than Telkom shall be granted a licence to provide a local access telecommunication service until after [a date to be fixed by the Minister by notice in the *Gazette*] 7 May 2002.”; and

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

“(a) No [person] persons other than Telkom shall be granted a licence to provide a public pay-telephone service until after [a date to be fixed by the Minister by notice in the *Gazette*] 7 May 2002.”;

(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.”.

Amendment of section 40 of Act 103 of 1996

15. Section 40 of the principal Act is hereby amended—

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

“(2) A licence to provide any value-added network services, including, but not limited to, electronic data interchange, [E-mail] electronic mail, protocol conversion, access to a database or a managed data network service, shall contain a condition that the service in question [shall] be provided by means of telecommunication facilities—

(a) until 7 May 2002, 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]; and

(b) after 7 May 2002, provided by Telkom and the second national operator or any of them until a date fixed by the Minister by notice in the *Gazette*; and

(b) by the addition to subsection (3) of the following paragraph, the existing subsection becoming paragraph (a):

“(b) Without prejudice to any rights of Telkom under its public switched telecommunication service licence which exist at the commencement of the Telecommunications Amendment Act, 2001, the second national operator and the licensees contemplated in section 40A may provide voice over internet protocol after 7 May 2002.”.

Insertion of section 40A in Act 103 of 1996

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

“Under-serviced area licence

40A. (1) The Minister shall by notice in the *Gazette* determine those geographic areas where there is teledensity of less than 5% and in respect of which small businesses may apply to the Authority for under-serviced area licences to provide such services or facilities.

(2) (a) The Authority may issue an under-serviced area licence to a small business on application in the prescribed manner.

- (b) In the consideration of applications in terms of 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.
- (3) An under-serviced area licensee shall provide any telecommunication services, including voice over internet protocol services, fixed-mobile services and public pay telephones, in respect of the area to which the licence applies.
- (4) Under-serviced area licences granted by the Minister shall become effective after 7 May 2002.
- (5) All under-serviced area licences granted under this section shall be issued on materially the same terms and conditions.
- (6) Under-serviced area licensees may by agreement obtain interconnection to the networks of public switched telecommunication service licensees 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, if such agreement complies with—
- (a) section 43 and any regulations prescribed to give effect to that section; and
 - (b) the prescribed terms and conditions, including price, in terms of which under-serviced area licensees may obtain such interconnection.”.

Amendment of section 41 of Act 103 of 1996

- 17. Section 41 of the principal Act is hereby amended—**
- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
- “(a) A person providing a telecommunication network for purposes principally or integrally related to the operations of such person (hereinafter referred to as a private telecommunication network), shall, notwithstanding the provisions of sections 32(1) and 33(1) and regardless of whether or not such network is utilised by means of telecommunication facilities made available by Telkom, or the second national operator, not require a licence except as contemplated in paragraph (b). ”
- (b) A private telecommunication network licence shall, subject to the regulations, be required for the provision of a private telecommunication network, where such network is interconnected to the telecommunication system of Telkom or any other person providing a public switched telecommunication [network] service.”;
- (b) by the deletion of subsection (3); and
- (c) by the addition of the following subsections:
- “(10) (a) The Minister shall, with the concurrence of the Minister of Education, establish an entity to construct and operate an educational network.
- (b) The entity contemplated in paragraph (a) shall be deemed to have been granted a private telecommunications network licence to link all public schools and public further education and training institutions defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and the Further Education and Training Act, 1998 (Act No. 98 of 1998), respectively, as well as such other education and training institutions as may be determined by the Minister of Education.
- (11) (a) The Minister shall, with the concurrence of the Minister of Transport, establish an entity to construct and operate a private telecommunication network to fulfil South Africa's obligations in terms of—
- (i) the International Convention for the Safety of Life at Sea (SOLAS) 1974/78;
 - (ii) Annexure 12 to the Convention on International Civil Aviation, signed by South Africa on 7 December 1944 in Chicago; and
 - (iii) the International Convention on Maritime Search and Rescue, 1979.

- (b) The entity contemplated in paragraph (a) shall—
 (i) be referred to as “Maritime and Aeronautical Radio Services”; and
 (ii) be deemed to have been granted a private telecommunications network licence.”.

Amendment of section 43 of Act 103 of 1996

5

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

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

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

(b) For the purposes of paragraph (a), a request is reasonable where the Authority determines that the requested interconnection—
 (i) is technically feasible;
 (ii) will promote the efficient use of the public switched telecommunication network;
 (iii) can be implemented on a reciprocal basis between the parties.

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

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

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

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

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

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

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

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

(d) by the addition of the following subsections:

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

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

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

5

10

Amendment of section 44 of Act 103 of 1996

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

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

(b) by the substitution for subsections (2), (3) and (4) of the following 15 subsections, respectively:

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

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

(4) Every agreement for the leasing [or otherwise making available] of telecommunication facilities or resale, including any agreement contemplated in [subsection (1) and] subsection (2), shall, unless exempted by the regulations, be lodged by the parties with the Authority 30 to enable it to determine whether the agreement is consistent with the guidelines contemplated in subsection (5).”;

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

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

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

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

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

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

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

20

25

35

40

45

50

55

Amendment of section 45 of Act 103 of 1996

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

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

TELECOMMUNICATIONS AMENDMENT ACT, 2001

Act No. 64, 2001

- “(2) The manner of determining fees and charges shall be prescribed only in respect of fields where no or insufficient competition exists: Provided that within 12 months after the date of commencement of this Act, the Minister shall determine such fees and charges in respect of Telkom, and such fees and charges shall be in force until the later of—
- (a) the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 36(1)(a); and
 - (b) the date when the Authority prescribes a new determination of fees and charges in respect of Telkom.”; and
- (b) by the addition of the following subsection:
- “(3) From a date to be determined by the Minister, all public schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and all public further education and training institutions as defined in the Further Education and Training Act, 1998 (Act No. 98 of 1998), shall be entitled to a 50% discount on—
- (a) all telecommunication calls to an internet service provider; and
 - (b) any connection or similar fees or charges levied by an internet service provider for accessing the internet or transmitting and receiving any signals via the internet or for such access and transmission and reception.”.

Amendment of section 53 of Act 103 of 1996

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

“(2) (a) The Authority may, with regard to the matters referred to in subsection (1), make regulations to ensure efficient and effective monitoring and investigation of uncompetitive actions, ensuring protection of consumer interests and for the speedy resolutions of complaints in regard thereto.

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

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:

“(1) 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.”.

Amendment of section 58 of Act 103 of 1996

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

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

Amendment of section 61 of Act 103 of 1996

- 24.** Section 61 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The [Authority] Agency shall utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).”; and
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “The [Authority] Agency—”.

Amendment of section 65 of Act 103 of 1996

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

“(4) The Universal Service Fund shall be administered by the Agency subject to the control and in accordance with the instructions of the [Authority] Minister.”. 5

Amendment of section 66 of Act 103 of 1996

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

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

“(1) The money in the Universal Service Fund shall be utilised 10 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 15 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;

(c) to public schools and public further education and training 20 institutions referred to section 45(3) for the procurement of internet services and equipment necessary to access the internet;

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

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

(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. 30

(2) The money in the fund shall be apportioned for the separate purposes [of paragraph (a) and paragraph (b) of] referred to in subsection (1) in accordance with [the prescribed] a formula determined by the Minister by notice in the *Gazette*.”; 35

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

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

“The [Authority] Minister may, for the purposes of payments referred to in [subsections] subsection (1)(a) and [(3) prescribe] (b) by notice in the *Gazette* determine—”. 40

Amendment of section 67 of Act 103 of 1996

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

“(a) the basis and manner of determination of such contributions, which shall not exceed 0,5% of a licensee’s annual turnover; and”. 45

Insertion of section 67A in Act 103 of 1996

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

“Competitive tender for universal service projects

67A. (1) The Agency may award universal access projects by public 50 competitive bid to the qualified bidder that requests subsidy for such project.

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

- (3) The subsidy for universal access projects shall be paid out of the Universal Service Fund.
- (4) The Agency shall supervise the execution of projects awarded under subsection (1).".

Insertion of new Chapter X in Act 103 of 1996

5

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

"CHAPTER X

EMERGENCY CENTRES

Definition

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

Establishment of 112 Emergency Centres

15

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

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

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

(4) 112 Emergency Centres shall be exempted from holding a licence to provide telecommunication services in terms of any section of this Act.

20

25

Functions of 112 Emergency Centres

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

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

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

30

Public emergency number

35

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

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

(3) No person may call the national emergency telecommunication number, 112, for any purpose other than a request for an emergency service contemplated in section 79(2).

40

Standards, capabilities and operating procedures of 112 Emergency Centres

45

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

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

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

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

5

Amendment of section 89 of Act 103 of 1996

10

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

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

“(1) The Authority shall prescribe—

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

(b) measures to ensure that number portability shall be introduced in 2005, 15 including—

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

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

(b) by the addition of the following subsections:

“(4) The numbering plan contemplated in subsection (1)(a) shall be 20 non-discriminatory.

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

(6) Every operator shall submit information on all numbers, including 25 numbers of pre-paid subscribers, allocated to subscribers in terms of its licence to the Authority.”.

25

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

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

“Directory services

89A. The Authority may prescribe, or impose through licence 30 conditions, as the case may be, measures in respect of directories and directory enquiry services, regarding—

(a) the protection of personal data;

(b) the protection of privacy;

(c) language preferences;

(d) the prevention of fraud;

(e) the prohibition of marketing and unfair trading practices;

(f) the provision of assistance to law enforcement or other public safety officials;

(g) related charges;

(h) the establishment of a national directory information database; and

(i) such other related matters as the Authority shall determine.

35

40

Government directory information service

89B. The Authority shall allocate a four digit number through which the 45 public can access government directory information services free of charge.”.

45

Carrier pre-selection

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

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

50

- (b) requiring all holders of public switched telecommunication services licences to phase in the facilities referred to in paragraph (a) by not later than 31 December 2003.
- (2) The framework contemplated is subsection (1) shall ensure that the implementation and maintenance of the facilities referred to therein are non-discriminatory and give effect to section 2(j).".

5

Amendment of section 96 of Act 103 of 1996

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

10

15

20

25

25

30

Insertion of section 96A in Act 103 of 1996

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

“Telecommunications Museum

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

35

40

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.”.

45

50

Amendment of section 101 of Act 103 of 1996

34. Section 101 of the principal Act is hereby amended by the deletion in paragraph (b) of the word “or” and the insertion after that paragraph of the following paragraphs:

“(bA) contravenes the provisions of sections 54 and 56;
(bB) contravenes the provisions of section 81(2) or (3);”.

5

Repeal and amendment of laws

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

Withdrawal of regulations

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

Short title

37. This Act is called the Telecommunications Amendment Act, 2001.

SCHEDULE**Laws repealed or amended**

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 143 of 1993	National Emergency Telephone Service Act, 1993	1. The repeal of the whole.
Act No. 63 of 1996	Sentech Act, 1996	1. The substitution for section 5 of the following section: “5. The main object and the main business of the Company shall be to provide— <u>(a)</u> as a common carrier, broadcasting signal distribution for broadcasting licensees in accordance with the provisions of the Independent Broadcasting Authority Act; and <u>(b)</u> telecommunication services in accordance with the provisions of the Telecommunications Act, 1996 (Act No. 103 of 1996).”.

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invloegings in bestaande verordenings aan.
-
-

(Engelse teks deur die President geteken.)
(Goedgekeur op 29 November 2001.)

WET

Tot wysiging van die Telekommunikasiewet, 1996 (Wet No. 103 van 1996), ten einde nuwe woordomskrywings in te voeg en ander woordomskrywings te vervang; voorsiening te maak vir radiofrekwensiotoegang tot die 1800 MHz-frekvensieband; voorsiening te maak vir nuwe soorte lisensies; verdere voorsiening te maak vir aansoeke om lisensies en die oorweging daarvan; opnuut voorsiening te maak vir die neem van beslissings oor aansoeke om lisensies; voorsiening te maak vir publieke skakeltelekommunikasiedienste en publieke skakeltelekommunikasienetwerke; mobiele sellulêre telekommunikasiedienste verder te reguleer; voorsiening te maak vir die inwerkingstelling of duur van sekere lisensies; private telekommunikasienetwerke verder te reguleer; voorsiening te maak vir noodsentrums; verdere voorsiening te maak vir sekere werkzaamhede van die Onafhanklike Kommunikasié-owerheid van Suid-Afrika; voorsiening te maak vir die stigting van 'n telekommunikasiemuseum; en om voorsiening te maak vir die herroeping van 'n besondere Wet en die wysiging van ander; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 103 van 1996, soos gewysig deur artikel 23 van Wet 13 van 2000

1. Artikel 1 van die Telekommunikasiewet, 1996 (hieronder "die Hoofwet" genoem), word hierby gewysig 5
- (a) deur na die omskrywing van "Departement" die volgende omskrywing in te voeg: "derdegenerasie-telekommunikasiefrekvensielisensie" die radiofrekwensiesspektrumlisensie bedoel in artikel 30B;"; 10
- (b) deur na die omskrywing van "Direkteur-generaal" die volgende omskrywings in te voeg: "'draer van draers' 'n telekommunikasiediens (met inbegrip van enige sein wat deur middel van die telekommunikasiestelsel van daardie diens gelei is) wat"— 15
- (a) ontstaan in die telekommunikasiestelsel van 'n publieke skakeltelekommunikasiedienslisensiehouer of mobiele sellulêre telekommunikasiedienslisensiehouer of 'n onderbediende gebiedlisensiehouer in die Republiek en in die telekommunikasiestelsel van 'n ander land of omgekeerd eindig; of 20
- (b) ontstaan en eindig in 'n telekommunikasiestelsel van 'n operateur

- wat in 'n ander land gelisensieer is om 'n internasionale diens te verskaf, maar wat via 'n telekommunikasiestelsel in die Republiek op 'n groothandelbasis gelei is,
maar wat spesifiek die beëindiging van direkte internasionale telekommunikasiestelsel aan eindverbruikers in die Republiek uitsluit; 'draervooraafseleksie' enige fasilitet waardeur intekenaars van 'n telekommunikasiestelsel toegang tot die diens van 'n interverbinding nasionale langafstandtelekommunikasiestelsel en 'n internasionale telekommunikasiestelsel kan verkry;";
- (c) deur die omskrywing van "Eskom" deur die volgende omskrywing te vervang:
" 'Eskom' Eskom soos bedoel in artikel 2(1) van die Eskomwet, 1987 (Wet No. 40 van 1987), met inbegrip van sy filiale;";
- (d) deur na die omskrywing van "frekwensiebandplan" die volgende omskrywings in te voeg:
" gidse 'n lys (wat in aparte dele en deur verskillende media beskikbaar gestel kan word) van kliënte van 'n aangewese lisensiehouer of 'n veelvoud van lisensiehouers en hul telefoonnummers en wat in die algemeen in alfabetiese volgorde en nie met verwysing na 'n beskrywing van die bedrywe, beroep of besighede wat deur daardie kliënte beoefen word nie, gerangskik word;
'gidsnavraagdiens' die verskaffing van inligting in gidsse vervat; 'herverkoop' die verskaffing van enige publieke skakeltelekommunikasiestelsel deur middel van telekommunikasiestelsel wat verkry is deur die publieke skakeltelekommunikasiestelselhouer of onderbedienende gebied-lisensiehouer ten einde sodanige diens aan sy kliënt te verkoop, en word 'herverkoop' dienooreenkomsdig uitgelê";
- (e) deur na die omskrywing van "hierdie Wet" die volgende omskrywing in te voeg:
" 'internasionale telekommunikasiestelsel' 'n telekommunikasiestelsel (met inbegrip van enige sein wat deur middel van die telekommunikasiestelsel van so 'n diens gelei word) wat—
(a) ontstaan in 'n telekommunikasiestelsel in die Republiek en in 'n telekommunikasiestelsel van 'n ander land eindig of omgekeerd; of
(b) ontstaan en eindig in 'n telekommunikasiestelsel in 'n ander land, maar wat via 'n telekommunikasiestelsel in die Republiek gelei word";
- (f) deur die omskrywing van "interverbinding" deur die volgende omskrywing te vervang:
" 'interverbinding' [om twee] die fisiese of logiese verbinding van telekommunikasiestelsels [sodanig te verbind dat gebruikers van die een stelsel met gebruikers van die ander stelsel of enige ander] ten einde die gebruiker van 'n stelsel aldus verbind in staat te stel om te [telekommunikasiestelsel kan] kommunikeer met enige gebruikers van, of dienste [kan] te benut van, enige stelsel aldus verbind [wat deur middel van sodanige stelsels verskaf word], en het 'interverbinding' 'n ooreenstemmende betekenis";
- (g) deur na die omskrywing van "interverbinding" die volgende omskrywing in te voeg:
" 'kleinsaak' (in die algemeen 'n 'SMME' of 'KMMO' genoem) 'n 'kleinsaak' soos omskryf in artikel 1 van die Nasionale Kleinsakewet, 1996 (Wet No. 102 van 1996);";
- (h) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:
" 'Minister' die Minister [vir Pos-, Telekommunikasiestelsel- en Uitsaiwese] van Kommunikasiestelsel";
- (i) deur na die omskrywing van "Minister" die volgende omskrywings in te voeg:

“mobiele sellulêre operateurs” Vodacom (Edms.) Bpk, Mobile Telephone Networks (Edms.) Bpk en Cell C (Edms.) Bpk;

‘mobiele sellulêre telekommunikasiedienste’ ‘n telekommunikasiediens wat deur ‘n gelisensieerde mobiele sellulêre telekommunikasieoperator soos in artikel 37 bedoel, verskaf word;

‘mobiele sellulêre telekommunikasienetwerk’ ‘n telekommunikasienetwerk ontwerp om beperkte radiofrekwensiespektrum tussen sellulêre eindpunttoerusting en netwerkendontvangers te gebruik om ‘n mobiele diens oor ‘n sellulêre netwerk ooreenkomstig tegniese standarde wat van toepassing op die toegekende frekwensies is, te verskaf deur —

(a) ‘n beperkte aantal frekwensies binne elk van ‘n aantal omskrewe geografiese gebiede of selle, toe te staan;

(b) die hergebruik van dieselfde frekwensies in verskillende nie-aangrensende selle toe te laat; en

(c) gebruikers in staat te stel om verbinding te handhaaf terwyl deur verskillende geografiese gebiede beweeg word deur die gebruikmaking van oproepoorhandiging tussen aangrensende selle; ‘multimediadiens’ ‘n telekommunikasiediens wat verskeie vorms van die media integreer en sinchroniseer om inligting of inhoud in ‘n wisselwerkende formaat te kommunikeer, met inbegrip van dienste soos—

- (a) internet deur televisie;
- (b) betaal per besigtiging;
- (c) video op aanvraag;
- (d) elektroniese transaksies (met inbegrip van e-handel);
- (e) teks;
- (f) data;
- (g) grafiese ontwerp;
- (h) animasie;
- (i) klankreproduksie;
- (j) visuele inhoud,

maar sluit nie mobiele sellulêre telekommunikasiedienste en publieke skakeltelekommunikasiedienste in nie;

‘nasionale langafstandtelekommunikasiediens’ ‘n telekommunikasiediens bestaande uit die dra van seine tussen die netwerk van enige lisensiehouer wat plaaslike toegangstelekommunikasiedienste in ‘n gebied verskaf, en die netwerk van dieselfde of ‘n ander lisensiehouer wat sodanige diens in ‘n ander gebied verskaf, en sluit in die installering, indiensstelling, onderhoud en herstel van die telekommunikasienetwerk wat verskaf, onderhou en bedryf word deur die lisensiehouer vir die doeleindes om die nasionale langafstandtelekommunikasiediens bedoel in artikel 38, te verskaf;

‘nommeringsdraagbaarheid’ die vermoë waardeur ‘n intekenaar van ‘n telekommunikasiediens wat aldus versoek, sy of haar telefoonnummer wanneer diens van een publieke skakeltelekommunikasiedienslisensiehouer na ‘n ander publieke skakeltelekommunikasiedienslisensiehouer of een mobiele sellulêre telekommunikasiedienslisensiehouer na ‘n ander mobiele sellulêre telekommunikasiedienslisensiehouer verander, kan behou;

‘plaaslike sentrale’ ‘n faciliteit in die publieke skakeltelekommunikasienetwerk waaraan verbruikerslyne met ‘n plaaslike sentrale verbind is;

‘plaaslike sentrale gebied’ ‘n geografies omskrewe en beperkte gebied soos omskryf deur die sentrale gebiedskode deur die Owerheid vir die gebied toegeken, waaraan alle sentralelyne verbind is en wat deur dieselfde plaaslike sentrale bedien word;

‘plaaslike toegangstelekommunikasiediens’ ‘n telekommunikasiediens wat binne ‘n bepaalde geografiese gebied verskaf word en wat bestaan uit die dra van seine—

(a) tussen enige kliënte van die lisensiehouer binne daardie gebied; en

(b) na en van ‘n kliënt van die lisensiehouer en die netwerk van enige publieke skakeltelekommunikasiedienslisensiehouer met wie die lisensiehouer by ‘n spesifieke punt in die gebied interverbind is,

Wet No. 64, 2001 WYSIGINGSWET OP TELEKOMMUNIKASIE, 2001

- en sluit in die installering, indiensstelling, onderhou en herstel van die telekommunikasienetwerk wat verskaf, onderhou en bedryf word deur die lisensiehouer vir doekeindes om in die plaaslike toegangs-telekommunikasiediens bedoel in artikel 39 te voorsien;”;
- (j) deur na die omskrywing van “Owerheid” die volgende omskrywings in te voeg:
- “ ‘private telekommunikasienetwerk’ ’n telekommunikasiestelsel wat deur ’n persoon verskaf word vir doekeindes wat hoofsaaklik of integraal verbandhoudend tot die bedryf van daardie persoon is en wat op twee of meer aparte, nie-aangrensende persele geïnstalleer is en waar die skakelingstelsels (*nodes*) van ten minste twee van hierdie persele interverbond is met die publieke skakeltelekommunikasienetwerk soos bedoel in artikel 41;
 - ‘publieke skakeltelekommunikasiediens’ die verskaffing van telekommunikasiedienste aan ’n eindverbruiker op ’n intekenaarbasis of teen ’n fooi bedoel in artikel 36;
 - ‘publieke skakeltelekommunikasiedienslisensie’ ’n lisensie bedoel in artikel 34(2)(a)(i);
 - ‘publieke skakeltelekommunikasienetwerke’ die telekommunikasienetwerke wat geïnstalleer of andersins verskaf, onderhou en bedryf word deur ’n publieke skakeltelekommunikasiedienslisensiehouer met die doel om publieke skakeltelekommunikasiedienste te verskaf;”;
- (k) deur na die omskrywing van “radio-apparaat” die volgende omskrywing in te voeg:
- “ ‘radiofrekwensie-spektrumlisensie’ ’n lisensie bedoel in artikel 30;”;
- (l) deur na die omskrywing van “sein” die volgende omskrywing in te voeg:
- “ ‘Sentech’ Sentech (Edms.) Bpk, ’n maatskappy wat ingevolge die Wet op Sentech, 1996 (Wet No. 63 van 1996), opgerig is;”;
- (m) deur na die omskrywing van “stasie” die volgende omskrywing in te voeg:
- “ ‘stem oor internet-protokol’ ’n reeks van tegnieke wat die uitsaai van ’n stem oor die internet of deur een of meer telekommunikasiefasiliteite wat internet-protokol gebruik, toelaat;”;
- (n) deur na die omskrywing van “telekommunikasiefasiliteit” die volgende omskrywing in te voeg:
- “ ‘teledensiteit’ die aantal telefoonlyne per 100 persone;”;
- (o) deur die omskrywing van “telekommunikasiefasiliteit” deur die volgende omskrywing te vervang:
- “ ‘telekommunikasiefasiliteit’ ook enige draad, kabel, antenna, paal, mas, geleiding, reg van weg, ruimte, toerustingkabinet, rak of ander voorwerp of gebied wat in verband met telekommunikasie gebruik word of daarvoor gebruik kan word;”;
- (p) deur na die omskrywing van “Telkom” die volgende omskrywing in te voeg:
- “ ‘toegevoegde waarde-netwerkdien’ ’n telekommunikasiediens verskaf deur ’n persoon oor ’n telekommunikasiefasiliteit, welke fasilitet ooreenkomsdig die bepalings van artikel 40(2) van die Wet verkry is, aan een of meer kliënte van daardie persoon gesamentlik, waartydens waarde wat kan bestaan uit—
 - (a) enige tipe tegnologiese inmenging wat op die inhoud, formaat of protokol of soortgelyke aspekte van die seine versend of ontvang deur die kliënt inwerk om sodoende aan die kliënte addisionele, verskillende of herstruktureerde inligting te verskaf;
 - (b) die verskaffing van goedgekeurde toegang tot, en interaksie met, prosesse vir die stoor en herwinning van teks en data;
 - (c) bestuurde datanetwerkdien, tot die voordeel van die kliënt toegevoeg is;”;
- (q) deur na die omskrywing van “Transnet” die volgende omskrywing in te voeg:
- “ ‘tweede nasionale operateur’ die tweede houer van ’n publieke skakeltelekommunikasiedienslisensie;”;
- (r) deur die omskrywing van “vastelyn-operateur” deur die volgende omskrywing te vervang:

“‘vastelyn-operateur’ [Telkom] ’n houer van ’n lisensie om ’n publieke skakeltelekommunikasiediens te verskaf of enige ander persoon wat ’n gelisensieerde telekommunikasiediens verskaf deur middel van ’n telekommunikasiestelsel wat hoofsaaklik uit vaste lyne bestaan, en word “operateur” dienooreenkomsdig uitgelê;”;

- (s) deur na die omskrywing van “vastelyn-operateur” die volgende omskrywings in te voeg:

“vaste mobiele diens’ ’n diens verskaf deur ’n houer van ’n publieke skakeltelekommunikasiedienslisensie of ’n onderbediende gebied-lisensie wat ’n kliënt van die lisensiehouer toelaat om toegang te kry tot die publieke skakeltelekommunikasienetwerk van die lisensiehouer, en telekommunikasiedienste te verkry van so ’n lisensiehouer van ’n vaste punt of terwyl in beweging binne die plaaslike sentrale gebied, maar nie oproepoorhandiging tussen selle toelaat nie.”.

Wysiging van artikel 2 van Wet 103 van 1996

15

2. Artikel 2 van die Hoofwet word hierby gewysig deur die volgende paragrawe by te voeg:

- (r) die samelopeling van telekommunikasie-, uitsaai- en inligtingstegnologie te bevorder en fasiliteer;
 (s) die Inligting en Kommunikasie Tegnologie (IKT) strategie vir die Republiek te ontwikkel, ten einde die digitale skeiding te oorbrug.”.

Wysiging van artikel 3 van Wet 103 van 1996

3. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

“3. Hierdie Wet is nie van toepassing ten opsigte van die uitsaaiwese, uitsaaiseindistribusie of uitsaaidiensfrekwensiebande nie, behalwe soos in artikels [28(3)] (2)(r) en 127 tot 129 bepaal en ten opsigte van multimedidiens (indien van toepassing).”.

25

Wysiging van artikel 29 van Wet 103 van 1996

4. Artikel 29 van die Hoofwet word hierby gewysig deur subartikels (5) en (6) deur onderskeidelik die volgende subartikels te vervang:

30

“(5) Nadat die tydperk bedoel in subartikel (4) verstryk het [hou] kan die Owerheid ’n verhoor ten opsigte van die beoogde plan hou.

(6) Na die verhoor, indien enige, en na behoorlike oorweging van enige skriftelike vertoeë wat ontvang is na aanleiding van die kennisgewing wat in subartikel (4) genoem of wat by die verhoor aangebied is, aanvaar die Owerheid die betrokke frekwensiebandplan met of sonder wysiging en laat sodanige plan in die Staatskoerant publiseer.”.

35

Invoeging van artikels 30A en 30B in Wet 103 van 1996

5. Die volgende artikels word hierby in die Hoofwet na artikel 30 ingevoeg:

40

“Radiofrekwensiespektrum-toegang in 1800 MHz-frekvensieband

30A. (1) (a) Binne ses maande na die datum van inwerkingtreding van hierdie paragraaf of sodanige langer tydperk as wat die Minister bepaal, kan die mobiele sellulêre operateurs by die Owerheid aansoek doen om toegang tot die radiofrekwensiespektrum in die 1800 MHz-frekvensieband om mobiele sellulêre telekommunikasiedienste en sodanige ander dienste as wat die mobiele sellulêre operateurs van tyd tot tyd gelisensieer is om te verskaf, te verskaf.

45

(b) Binne 30 dae na ontvangs van die aansoek bedoel in paragraaf (a) moet die Owerheid aan elke mobiele sellulêre operateur ’n radiofrekwensiespektrum toeken—

50

(i) by betaling van sodanige gelde, betaalbaar oor ’n tydperk, wat die Minister by kennisgewing in die Staatskoerant bepaal;

(ii) behoudens die voorwaardes deur die Owerheid voorgeskryf.

(c) Vir die doeleindes van paragraaf (b)(i), kan die Minister by kennisgewing in die *Staatskoerant* 'n veelvoudige betalingskedispele spesifiseer ingevolge waarvan die mobiele sellulêre operateurs betalings moet doen, asook die bedinge en voorwaardes van sodanige betalings.

(d) Voor die datum waarop 'n radiofrekwensiespektrum aan 'n mobiele sellulêre operateur soos beoog in paragraaf (b) toegeken word, moet die houer van 'n lisensie wat bestaan het by die inwerkingtreding van die Wysigingswet op Telekommunikasie, 2001, ooreenkomsdig radioregulasies wat die migrasie en ontruiming van radiospektrumbande reguleer, die spektrum vir besetting deur daardie mobiele sellulêre operateur ontruim.

(2) (a) Die tweede nasionale operateur en Telkom word elkeen geag 'n houer te wees van 'n radiofrekwensiespektrumlisensie in die 1800 MHz-frekvensieband om publieke skakeltelekommunikasiedienste, en sodanige ander dienste as wat die tweede nasionale operateur van tyd tot tyd gelisensieer is om te verskaf, te verskaf.

(b) Binne ses maande na die datum waarop aan die tweede nasionale operateur 'n publieke skakeltelekommunikasiedienslisensie toegeken is, of sodanige langer tydperk as wat die Minister bepaal, kan Telkom by die Owerheid aansoek doen om 'n radiofrekwensiespektrumlisensie in die 1800 MHz-frekvensieband om publieke skakelkommunikasiedienste, en sodanige ander dienste as wat Telkom van tyd tot tyd gelisensieer is om te verskaf, te verskaf.

(c) Die Owerheid moet aan die tweede nasionale operateur en Telkom 'n radiofrekwensiespektrumlisensie beoog in paragraaf (a) of (b), na gelang van die geval, toeken—

- (i) by betaling van sodanige gelde, betaalbaar oor 'n tydperk, wat die Minister by kennisgewing in die *Staatskoerant* bepaal;
- (ii) behoudens die voorwaardes deur die Owerheid in dié lisensie gespesifieer.

(d) Vir die doeleindes van paragraaf (c)(i), kan die Minister by kennisgewing in die *Staatskoerant* 'n veelvoudige betalingskedispele spesifiseer ingevolge waarvan die tweede nasionale operateur en Telkom, onderskeidelik, betalings moet doen, asook die bedinge en voorwaardes van sodanige betalings.

(3) (a) Die houers van 'n radiofrekwensiespektrumlisensie in die 1800 MHz-frekvensieband moet in goeie trou hul onderskeie frekwensiegebruik met ander sodanige lisensiehouers koördineer, ten einde—

- (i) skadelike steurings tussen lisensiehouers te vermy;
- (ii) die doeltreffende gebruik van die 1800 MHz-frekvensieband te verseker; en
- (iii) die voorsiening van koste-effektiewe dienste toe te laat.

(b) Die Owerheid kan regulasies voorskryf om die koördinasie beoog in paragraaf (a) te reël, wat 'n proses vir die spoedige beslegting van geskille tussen lisensiehouers kan insluit.

(4) By die bepaling van die gelde beoog in subartikels (1)(b)(i) en (2)(c)(i) moet die Minister die volgende in ag neem:

- (i) MHz-paar per bevolking per lisensiejaar;
- (ii) voorsiening van gepaarde of ongepaarde spektrum;
- (iii) tegniese en administratiewe koste van spektrumbestuur, met inbegrip van geprojekteerde koste vir Owerheidsbetrokkenheid in frekwensiekoördinasie in subartikel (3) beoog; en

(iv) enige ander aangeleentheid wat met artikel 2 bestaanbaar is.

Derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie

30B. (1) (a) Binne ses maande na die datum van inwerkingtreding van hierdie paragraaf, of sodanige langer tydperk as wat die Minister bepaal, kan die mobiele sellulêre operateurs by die Owerheid aansoek doen om 'n derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie om mobiele sellulêre telekommunikasiedienste en sodanige ander dienste as wat die mobiele sellulêre operateurs van tyd tot tyd gelisensieer is om te verskaf, te verskaf.

<p>(b) Die Owerheid moet aan elke mobiele sellulêre operateur 'n derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie beoog in paragraaf (a) toeken—</p> <ul style="list-style-type: none"> (i) by betaling van sodanige gelde, betaalbaar oor 'n tydperk, wat die Minister by kennisgewing in die <i>Staatskoerant</i> bepaal; (ii) behoudens die voorwaardes deur die Owerheid in dié lisensie gespesifieer. <p>(c) Vir die doeleindes van paragraaf (b)(i), kan die Minister by kennisgewing in die <i>Staatskoerant</i> 'n veelvoudige betalingskedispeksieer ingevolge waarvan die mobiele sellulêre operateurs betalings moet doen, asook die bepalings en voorwaardes van sodanige betalings.</p> <p>(d) Voor die datum waarop 'n derdegenerasie-radiofrekwensiespektrumlisensie in werking tree, moet die houer van 'n lisensie wat bestaan het by die inwerkingtreding van die Wysigingswet op Telekommunikasie, 2001, ooreenkomsdig radioregulasies wat die migrasie en ontruiming van radio-spektrumbande reguleer, die spektrum vir besetting deur daardie mobiele sellulêre operateur ontruim.</p> <p>(2) (a) Die tweede nasionale operateur en Telkom word elkeen geag 'n houer te wees van 'n derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie om publieke skakeltelekommunikasiendienste, en sodanige ander dienste as wat die tweede nasionale operateur en Telkom van tyd tot tyd gelisensieer is om te verskaf, te verskaf.</p> <p>(b) Binne ses maande na die datum waarop aan die tweede nasionale operateur 'n publieke skakeltelekommunikasiendienstlisensie toegeken is, of sodanige langer tydperk as wat die Minister bepaal, kan Telkom by die Owerheid aansoek doen om 'n derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie om publieke skakeltelekommunikasiendienste, en sodanige ander dienste as wat Telkom van tyd tot tyd gelisensieer is om te verskaf, te verskaf.</p> <p>(c) Die Owerheid moet aan die tweede nasionale operateur en Telkom 'n derdegenerasie-telekommunikasie radiofrekwensiespektrumlisensie beoog in paragraaf (a) of (b), na gelang van die geval, toeken—</p> <ul style="list-style-type: none"> (i) by betaling van sodanige gelde, betaalbaar oor 'n tydperk, wat die Minister by kennisgewing in die <i>Staatskoerant</i> bepaal; en (ii) behoudens die voorwaardes deur die Owerheid in die lisensie gespesifieer. <p>(d) Vir die doeleindes van paragraaf (c)(i), kan die Minister by kennisgewing in die <i>Staatskoerant</i> 'n veelvoudige betalingskedispeksieer ingevolge waarvan die tweede nasionale operateur en Telkom, onderskeidelik, betalings moet doen, asook die bedinge en voorwaardes van sodanige betalings.</p> <p>(3) (a) Die houers van 'n derdegenerasie-telekommunikasie radiofrekwensiebandspektrumlisensie moet in goeie trou hul onderskeie frekwensiegebruik met ander sodanige lisensiehouers koördineer, ten einde—</p> <ul style="list-style-type: none"> (i) skadelike steurings tussen lisensiehouers te vermy; (ii) die doeltreffende gebruik van enige toepaslike frekwensieband te verseker; en (iii) die voorsiening van koste-effektiewe dienste toe te laat. <p>(b) Die Owerheid kan regulasies voorskryf om die koördinering beoog in paragraaf (a), te reël, wat 'n proses vir die spoedige beslegting van geskille tussen lisensiehouers kan insluit.</p> <p>(4) By die bepaling van die gelde beoog in subartikels (1)(b)(i) en (2)(c)(i) moet die Minister die volgende die volgende in ag neem:</p> <ul style="list-style-type: none"> (i) MHz-paar per bevolking per lisensiejaar; (ii) voorsiening van gepaarde of ongepaarde spektrum; (iii) tegniese en administratiewe koste van spektrumbestuur, met inbegrip van geprojekteerde koste vir Owerheidsbetrokkenheid in frekwensiekoördinasie in subartikel (3) beoog; en (iv) enige ander aangeleentheid wat met artikel 2 bestaanbaar is.”. 	<p>5 10 15 20 25 30 35 40 45 50 55 60</p>
--	---

Invoeging van artikels 32A, 32B en 32C in Wet 103 van 1996

6. Die volgende artikels word hierby in die Hoofwet na artikel 32 ingevoeg:

"Houers van publieke skakeltelekommunikasiedienslisensies en verlening van verdere lisensies

32A. (1) Vanaf 7 Mei 2002 tot 7 Mei 2005 is Telkom en die tweede nasionale operateur die houers van publieke skakeltelekommunikasiedienslisensies.

(2) (a) Vir 'n tydperk van twee jaar na die datum van inwerkingtreding van die publieke skakeltelekommunikasiedienslisensie kan die tweede nasionale operateur die fasilitete van Telkom op 'n herverkoopbasis ooreenkomstig ooreenkomste wat tussen die partye gesluit is, gebruik vir die doeleindes om publieke skakeltelekommunikasiedienste te verskaf.

(b) Die ooreenkomste beoog in paragraaf (a) word binne 60 dae na die uitreiking van die publieke telekommunikasiedienslisensie aan die tweede nasionale operateur van krag.

(3) Indien Telkom en die tweede nasionale operateur in gebreke bly om ooreenkomste beoog in subartikel (2) te sluit, of nadat die partye in goeie trou onderhandel het en hulle redelike pogings gebruik het om geskille in verband met sodanige ooreenkomste op te los, kan enige van die partye die Owerheid skriftelik versoek om alle uitstaande sake op te los.

(4) (a) Wanneer die Owerheid 'n versoek beoog in subartikel (3) ontvang het, moet hy binne 30 dae na die versoek die bedinge en voorwaardes van die ooreenkoms bepaal op 'n wyse wat met die Wet bestaanbaar is.

(b) Wanneer die Owerheid 'n bepaling ingevolge paragraaf (a) gemaak het, word die bepaling bindend vir die partye en maak dit deel uit van die ooreenkoms tussen die partye.

(c) Die ooreenkoms beoog in paragraaf (b) verval twee jaar na die datum waarop dit gesluit is.

(5) (a) Voor 31 Desember 2003 moet die Minister—

(i) deur middel van 'n markstudie die uitvoerbaarheid van die verlening van een of meer publieke skakeltelekommunikasiedienslisensies bo en behalwe die lisensies bedoel in subartikel (1), bepaal; en

(ii) die bepaling by kennisgewing in die *Staatskoerant* publiseer.

(b) By die uitvoering van die markstudie beoog in paragraaf (a), moet die Minister—

(i) die Republiek se internasjonale verpligtinge;

(ii) nasionale en internasjonale marktoestande wat in daardie stadium heers;

(iii) die Republiek se beleidsdoelwitte; en

(iv) enige ander relevante faktor,

in ag neem.

(6) (a) Indien die Minister bevind dat enige bykomende publieke skakeltelekommunikasiedienslisensie verleen mag word—

(i) kan sodanige lisensie slegs na 8 Mei 2005 van krag word; en

(ii) moet ten minste een van die addisionele operateurs gelisensieerd wees om 'n diens op 'n mededingende basis te verskaf.

(b) Die houer van 'n lisensie beoog in paragraaf (a)—

(i) kan as 'n diensgebaseerde lisensiehouer meeding en mag nie sy eie fasilitete verskaf voordat die Minister aldus bepaal het nie; en

(ii) kan die fasilitete van Telkom en die tweede nasionale operateur op 'n herverkoopbasis gebruik vir 'n tydperk van twee jaar vanaf die datum van inwerkingtreding van sy publieke skakeltelekommunikasiedienslisensie, ooreenkomstig ooreenkomste wat tussen die partye vir die doeleindes van die verskaffing van publieke skakeltelekommunikasiedienste gesluit is.

(7) Indien die Minister die bepaling beoog in subartikel (5) maak, kan die Owerheid regulasies voorskryf om gelyke en nie-diskriminerende toegang tot fasilitete deur alle gelisensieerde operateurs te verseker.

(8) In elke geval waar telekommunikasiefasilitete ingevolge artikel 44 of die regulasies daarkragtens uitgevaardig, beskikbaar gestel is aan die houer van 'n lisensie om publieke skakeltelekommunikasiedienste te verskaf, het so 'n lisensiehouer die reg op herverkoop.

5

10

15

20

25

30

35

40

45

50

55

60

Aansoek en kwalifikasie van tweede nasionale operateur

32B. (1) Aan die tweede nasionale operateur moet 'n publieke skakeltelekommunikasiedienslisensie verleen word op bedinge en voorwaardes wat nie minder gunstig is as dié van die lisensie wat deur Telkom gehou word nie.

(2) Behoudens die bepalings van subartikel (3), word die persentasie van die ekwiteitsbelang van die tweede nasionale operateur wat die Minister, met die instemming van die Minister van Openbare Ondernemings, bepaal, opsygesit vir Eskom en Transnet.

(3) Die finale bepaling van die ekwiteitsbelang van Eskom en Transnet in die tweede nasionale operateur word op die waarde van die bydrae van Eskom en Transnet, na gelang van die geval, in die tweede nasionale operateur, bereken.

(4) Die bydrae in subartikel (3) bedoel, kan onder meer die volgende insluit:

- (a) Kontant;
- (b) regte van weg;
- (c) onroerende eiendom;
- (d) persoonlike regte; en
- (e) ander bates, met inbegrip van bestaande infrastruktuur, fasiliteite en toerusting.

(5) (a) Vir doeleindeste van hierdie subartikel beteken "serwituit" enige serwituit, huur, gebruiksreg of enige reële reg (hetsoy geregistreer of nie) in of oor grond ten gunste van Eskom, Transnet en die Suid-Afrikaanse Spoornetkorporasie Beperk ingevolge die Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989 (Wet No. 9 van 1989), gestig, wat onmiddellik voor die inwerkingtreding van hierdie Wet vir die vervoer of verskaffing van elektrisiteit, telekommunikasie, pylyne, spoorweë, vervoer en elektriese substasies, bestaan het.

(b) Elke serwituit word hierby uitgebrei ten einde die bykomstige reg om die grond ten opsigte waarop daardie serwituit betrekking het, te gebruik vir doeleindeste van die verskaffing van 'n publieke skakeltelekommunikasiediens of netwerk by wyse van telekommunikasiefasiliteite daarby in te sluit.

(c) Eskom kan enige van sy filiale met betrekking tot die Eskom-serwitute toelaat om—

- (i) 'n serwituit met betrekking tot 'n bykomende reg bedoel in paragraaf (b) op die bedinge en voorwaardes tussen Eskom en die filiaal ooreengeskou, te gebruik;
- (ii) enige derde party waarby Eskom 'n ekwiteitsbelang het, toelaat om die serwituit met betrekking tot daardie addisionele reg op die bedinge en voorwaardes tussen die partye ooreengeskou, te gebruik;
- (iii) 'n serwituit met betrekking tot daardie addisionele reg te gebruik ten einde 'n publieke skakeltelekommunikasiediens aan enige derde party op die bedinge en voorwaardes tussen die partye ooreengeskou, te verskaf.

(d) Vergoeding soos in artikel 25(3) van die Grondwet beoog, is deur die party wat die bykomende reg soos in paragraaf (b) beoog, uitoefen, aan die betrokke geregistreerde grondeienaar tot die mate waarin daardie serwituit meer beswarend as die oorspronklike serwituit word, betaalbaar.

(e) Kennisgewing van die uitoefening of gebruik van die reg ingevolge paragraaf (c) moet skriftelik aan die betrokke geregistreerde grondeienaar gegee word, óf deur persoonlike betekening óf deur voorafbetaalde geregistreerde pos, en die vergoeding bedoel in paragraaf (d) is betaalbaar en word bereken vanaf die datum van sodanige kennisgewing.

(f) Artikels 9, 10, 11, 12(3), 12(5), 14 en 15 van die Onteieningswet, 1975 (Wet No. 63 van 1975), is met die nodige veranderings van toepassing op enige vergoedingseis, vergoedingsaanbod en die betaling en bepaling van sodanige vergoeding.

(g) Die Registrateur van Aktes maak die nodige inskrywings of endossemente wat nodig is vir die doeleindeste van paragraaf (c), in of op die

5

10

15

20

25

30

35

40

45

50

55

60

tersaaklike titelaktes of ander dokumente in die kantoor van die Registrateur of wat aan die Registrateur voorgelê is.

(h) Geen gelde of ander heffings is met betrekking tot die inskrywings of endossemente soos in paragraaf (g) beoog, betaalbaar nie.

(i) Paragrawe (c), (d), (e), (f), (g) en (h) is met die nodige veranderings van toepassing op Transnet en sy filiale wat ingevolge hierdie Wet gelisensieer is en die Suid-Afrikaanse Spoornetkorporasie Beperk.

5

Sentech

32C. (1) Met ingang van 7 Mei 2002, word aan Sentech Beperk bedoel in artikel 4 van die Wet op Sentech, 1996 (Wet No. 63 van 1996), 'n lisensie verleen om—

10

(a) 'n internasionale telekommunikasiepoortdiens wat hom in staat stel om as 'n draer van draers op te tree; en

15

(b) multimediadienste aan enige persoon wat sodanige diens versoek, te verskaf.

(2) Sentech moet die multimediadiens as 'n algemene draer op 'n redelike, billike en nie-diskriminerende basis verskaf.

20

(3) Met betrekking tot die toestaan van ander multimediadienslisensies—

(a) moet die Minister aansoeke op 'n datum deur die Minister bepaal, by kennisgewing in die Staatskoerant uitnooi; en

25

(b) is artikel 34(2)(b) en (c) met die nodige veranderings van toepassing.

(4) Op of voor 31 Desember 2001 moet die Owerheid in die Staatskoerant konseplisensies publiseer wat die voorgestelde voorwaardes waaronder Sentech Beperk die dienste beoog in subartikel (1) moet lewer, insluit.

30

(5) Binne 30 dae na die publikasie bedoel in subartikel (4), kan Sentech Beperk en enige ander belanghebbende party skriftelike kommentaar in verband met die voorgestelde voorwaardes van die lisensie aan die Owerheid voorlê.

35

(6) Na behoorlike oorweging van die kommentaar in subartikel (5) beoog, as daar is, moet die Owerheid die lisensies finaliseer en met ingang van 7 Mei 2002 aan Sentech uitreik.

(7) Die houer van 'n telekommunikasiedienslisensie word nie weerhou van die verskaffing van dienste wat dieselfde of soortgelyk is aan multimediadienste nie, met dien verstande dat sodanige dienste binne die omvang van die telekommunikasiedienslisensie wat aldus gehou word, val.

40

(8) Geen persoon wat die diens in subartikel (1)(b) beoog, verskaf, word toegelaat om sodanige diens vir die dra van slegs stemme tot 'n datum deur die Minister by kennisgewing in die Staatskoerant bepaal, te gebruik nie.”.

Wysiging van artikel 33 van Wet 103 van 1996

7. Artikel 33 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) soos beoog in artikels 32C(1)(b), 34(2)(a)(i) tot [(iv)] (v) en 39 tot 41; en”.

Wysiging van artikel 34 van Wet 103 van 1996

45

8. Artikel 34 van die Hoofwet word hierby gewysig—

(a) deur die skrapping in subartikel (2)(a)(iv) van die woord “of” en deur die invoeging in daardie subartikel van die volgende subparagraaf, terwyl die bestaande subparagraaf (v) subparagraaf (vi) word:

50

“(v) 'n multimediadiens; of”;

(b) deur in subartikel (2) paragrawe (b) en (c) deur onderskeidelik die volgende paragrawe te vervang:

“(b) Die Minister vermeld in 'n uitnodiging beoog in paragraaf (a)—

(i) die soort diens ten opsigte waarvan aansoeke ingewag word;

55

(ii) die vorm waarin aansoeke ingedien moet word en die wyse waarop daar beoog word dat die diens gelewer moet word, [of]

- en die plek waar en die tye waarop [**n**] enige dokument ten opsigte daarvan by die Owerheid verkry kan word;
- (iii) die tydperk waarbinne en die wyse waarop sodanige aansoek gerig moet word.
- (c) Voor die publisering van enige uitnodiging beoog in paragraaf (a), moet die Minister oorleg pleeg met die Owerheid om die evaluasiekriteria wat die Owerheid van plan is om te gebruik om sy aanbeveling aan die Minister ingevolge artikel 35(1)(a)(i) te doen, en die gewigsfaktor van toepassing op elke evaluasiekriterium en die aansoek in artikel 35(4) en (5), te bepaal.”;
- (c) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “(3) In geval van ’n aansoek om ’n licensie om ’n telekommunikasiendiens bedoel in subartikel (2) of enige telekommunikasiendiens wat vir die doeleindes van hierdie subartikel voorgeskryf is, [**moet**] kan die Owerheid—”;
- (d) deur die byvoeging tot subartikel (3) van die volgende subartikel:
- “(d) ’n Verhoor beoog in paragraaf (c) kan oop wees vir die publiek.”;
- (e) deur na subartikel (3) die volgende subartikels in te voeg:
- “(3A) Die Owerheid kan van ’n aansoeker of ’n belanghebbende party wat skriftelike vertoë ingevolge subartikel (3) ingedien het, vereis om binne die tydperk deur die Owerheid bepaal, sodanige verdere inligting as wat redelikerwys noodsaaklik is om die aansoek te oorweeg, aan die Owerheid te verstrek.
- “(3B) Geen aansoek mag na die tydperk in subartikel (2)(b)(iii) beoog, gewysig of verander word nie.”; en
- (f) deur in subartikel (4) paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) (i) Op versoek van ’n aansoeker of persoon wat vertoë gerig het, kan die Owerheid bepaal dat enige dokument of inligting [met betrekking tot die finansiële vermoë of besigheidsplanne van enige persoon of met betrekking tot] wat kommersieel sensitief is of enige ander aangeleentheid wat redelickerwys vertroulikheid regverdig, nie ter insae vir publieke inspeksie is nie indien sodanige dokument of inligting van die aansoek, vertoë of ander betrokke dokumente geskei kan word.
- (ii) Vir die doeleindes van hierdie paragraaf sluit kommersieel sensitiewe dokumente of inligting of enige ander aangeleentheid wat redelickerwys vertroulikheid regverdig, dokumente of inligting wat algemeen vir die publiek beskikbaar was of geword het of regtens beskikbaar moet wees, uit.”.

Vervanging van artikel 35 van Wet 103 van 1996

9. Artikel 35 van die Hoofwet word hierby deur die volgende artikel vervang:

“Beslissing oor aansoeke

- 35.** (1) Die Owerheid moet, na behoorlike oorweging van enige aansoek om ’n licensie wat ingevolge hierdie Wet gedoen is en enige skriftelike voorleggings betreffende die aansoek wat deur die Owerheid aangevra is en aan die Owerheid voorgelê is binne die tydperk wat deur die Owerheid bepaal is—
- (a) in die geval van ’n aansoek om ’n licensie bedoel in artikel 34(2)(a), sy aanbeveling aan die Minister doen en licensievoorwaardes voorstel; en
- (b) in die geval van enige ander aansoek om ’n licensie, die aansoeker van sy besluit, die redes daarvoor en die licensievoorwaardes verwittig.
- (2) Die Minister kan in die geval van ’n aanbeveling deur die Owerheid in subartikel (1) beoog—
- (a) dit aanvaar;
- (b) die Owerheid versoek om verdere inligting;
- (c) dit terugverwys na die Owerheid vir verdere oorweging; of
- (d) dit verwerp.

(3) By die oorweging van 'n aansoek ingevolge hierdie Wet, moet behoorlike oorweging gegee word aan aansoeke—

(a) deur persone van histories benadeelde groepe; en

(b) wat die bemagtiging en vooruitgang van vroue in die telekommunikasiebedryf bevorder.

(4) Sonder om afbreuk te doen aan subartikel (3), moet die Owerheid by die evaluasie van ekwiteitseienaarskap gehou deur persone van histories benadeelde groepe of gehou deur vroue in 'n aansoek om 'n lisensie ingevolge hierdie Wet, behoorlike voorkeur tot by 30% van daardie ekwiteitseienaarskap of sodanige hoër persentasie van ekwiteitseienaarskap as wat voorgeskryf is, gee.

(5) Behoudens artikel 36(6), moet 'n lisensie toegestaan word op voorwaardes wat toepaslik vir die lisensie en bestaanbaar met die oogmerke bedoel in artikel 2 en die ander bepalings van hierdie Wet is.

(6) Die Owerheid moet, indien die aansoek toegestaan is, die betrokke lisensie aan die aansoeker uitreik.

(7) Enige lisensie wat ingevolge hierdie artikel toegestaan is, word van krag op die datum wat daarin gespesifiseer is.

(8) Niks in hierdie artikel doen afbreuk nie aan die regte van 'n aansoeker om voorsien te word van die redes vir 'n beslissing ingevolge die "Promotion of Administrative Justice Act", 2000 (Wet No. 3 van 2000).".

Invoeging van artikel 35A in Wet 103 van 1996

10. Die volgende artikel word hierby in die Hoofwet na artikel 35 ingevoeg:

"Alternatiewe lisensiëringssmetodes

35A. (1) Ondanks artikels 34 en 35—

(a) in die geval van 'n lisensie bedoel in artikel 34(2), kan die Minister in spesifieke gevalle die wyse waarop aansoeke gedoen kan word en die lisensiëringssvoorwaardes wat van toepassing sal wees, bepaal, soos by wyse van veiling of tender, of beide, en die lisensiëringssproses wat van toepassing sal wees; en

(b) kan die Owerheid vir alle ander lisensies in spesifieke gevalle die lisensiëringssvoorwaardes wat van toepassing sal wees, voorskryf.”.

Invoeging van artikels 36A en 36B in Wet 103 van 1996

11. Die volgende artikels word hierby in die Hoofwet na artikel 36 ingevoeg:

"Inhoud van uitdrukking 'Publieke skakeltelekommunikasiediens'

36A. 'n 'Publieke skakeltelekommunikasiediens' is 'n telekom-
munikasiediens aan die algemene publiek op 'n intekenaarsbasis, wat
dienste soos die volgende insluit:

(a) Nasionale langafstand-telekommunikasiediens;

(b) internasionale telekommunikasiediens;

(c) plaaslike toegang-telekommunikasiediens beoog in artikel 39;

(d) publieke betaaltelefoonbediener;

(e) maritieme telekommunikasiediens;

(f) diens wat die verskaffing van telegramme behels;

(g) vaste mobiele dienste;

(h) die verskaffing van telekommunikasietoerusting, die installering, indiensstelling, onderhoud en herstel van daardie gedeelte van die publieke skakeltelekommunikasienetwerk wat verskaf, onderhou en bedryf word deur die publieke skakeltelekommunikasiedienslisensiehouer vir die doeleindes van verskaffing van enige telekommunikasiediens, soos die verskaffing van telekommunikasiestroombane vir—

(i) private stroombane;

- (ii) skakelings tussen persele van dieselfde operateur of veelvoudige operateurs;
- (iii) telekommunikasiefasiliteite wat vir die verskaffing van private telekommunikasiennetwerke gebruik word;
- (iv) telekommunikasiefasiliteite wat vir die voorsiening van toegevoegde waarde-netwerkdiens gebruik word;
- (v) telekommunikasiefasiliteite wat vir die verskaffing van telekommunikasiedienste in onderbediende gebiede beoog in artikel 40A, gebruik word;
- (vi) telekommunikasiefasiliteite wat gebruik word om stem oor internet-protokol te verskaf;
- (vii) derdegenerasie-telekommunikasiefasiliteite;
- (viii) telekommunikasiefasiliteite om vaste mobiele dienste in die 1 800 MHz-frekwensieband te verskaf; en
- (i) enige ander diens wat redelikerwys aanvullend is tot die verskaffing van daardie dienste (hetsy verskaf op 'n vaste of vaste mobiele basis) soos die verskaffing, herstel en onderhou van toerusting geplaas op 'n kliënt se perseel en enige ander telekommunikasieapparaat van enige aard.

Inhoud van uitdrukking 'publieke skakeltelekommunikasiennetwerke' 20

36B. (1) 'Publieke skakeltelekommunikasiennetwerke' is die telekommunikasiestelsels wat geïnstalleer of andersins verskaf, onderhou en bedryf word deur 'n publieke skakeltelekommunikasiedienslisensiehouer vir die doel om publieke skakeltelekommunikasiedienste en vaste mobiele dienste te verskaf, soos—

- (a) 'n plaaslike toegangsnetwork;
- (b) 'n nasionale langafstand-netwerk; en
- (c) 'n internasionale netwerk,

deur watter metodes ook al, soos koperkabels, draadlose lusse, mikrogolfverbindings, optiese veselkabels, satelliet-aardstasies, ruimtesegmente en satellietstelsels, deur middel waarvan seine tussen alle of enige van—

- (i) twee of meer terminaalverbindingspunte;
- (ii) twee of meer netwerkverbindingspunte;
- (iii) 'n terminaalverbindingspunt en 'n netwerkverbindingspunt;
- (iv) 'n terminaalverbindingspunt of 'n netwerkverbindingspunt, na gelang van die geval, en 'n ooreenstemmende punt in 'n ander land;
- (v) 'n publieke betaaltelefoon en die terminaalverbindingspunt, 'n netwerk-verbindingspunt of 'n ooreenstemmende punt in 'n ander land,

oorgebring kan word.

(2) Die stelsels beoog in subartikel (1) sluit nie telekommunikasieterusting op die perseel van 'n kliënt in nie, tensy dit bedoel is vir publieke betaaltelefone of mobiele telekommunikasies op die perseel van 'n kliënt."

Vervanging van artikel 37 van Wet 103 van 1996

12. Artikel 37 van die Hoofwet word hierby deur die volgende artikel vervang: 45

"Mobiele sellulêre telekommunikasiedienste

37.(1)(a) Vodacom (Edms.) Bpk en Mobile Telephone Networks (Edms.) Bpk, maatskappy wat ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), opgerig is, word onderskeidelik geag die houer te wees van 'n lisensie ingevolge hierdie Wet om 'n mobiele sellulêre telekommunikasiediens te verskaf ingevolge die bedinge en voorwaardes van die telekommunikasielisensies en die veelparty implementeringsooreenkoms afgekondig kragtens Algemene Kennisgewing No. 1078 van 29 Oktober 1993: Met dien verstande dat elke sodanige maatskappy deur bemiddeling van die Owerheid binne ses maande na die datum van inwerkingtreding van hierdie Wet, of sodanige verlengde tydperk as wat die Owerheid mag toestaan, by die Minister aansoek doen en dat die Minister

die aansoek toestaan en die Owerheid aan daardie maatskappy 'n licensie uitrek, wat behoudens artikel 42(3)(a) daardie bedinge en voorwaardes insluit.

[(2)(a) 'n Uitnodiging beoog in artikel 34(2) word ooreenkomstig paragraaf (b) gerig.]

(b) Binne twee jaar na die inwerkingtreding van hierdie Wet onderneem die Owerheid 'n ondersoek ingevolge artikel 27 na die ekonomiese uitvoerbaarheid van die verskaffing van meer as twee mobiele sellulêre telekommunikasiedienste en maak sy bevindinge bekend deur 'n kennisgewing in die *Staatskoerant*, en, indien hy sou vind dat die verskaffing van meer as twee sodanige dienste uitvoerbaar is, beveel hy aan dat die Minister uitnodigings rig vir die toestaan van 'n licensie om sodanige diens te verskaf.

(c) Indien die Minister daardie aanbeveling volg, is die bepalings van artikels 34 en 35 van toepassing.]

(b) Cell C (Edms.) Bpk, 'n maatskappy geïnkorporeer ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), is die houer van 'n licensie ingevolge hierdie Wet om 'n mobiele sellulêre telekommunikasiediens te verskaf ooreenkomstig die bedinge en voorwaardes soos in die licensie wat op 25 Junie 2001 deur die Owerheid aan hom uitgereik is, vermeld.

[(d)] (2) 'n Licensie beoog in [paragraaf (a)] subartikel (1) bevat 'n voorwaarde wat die betrokke mobiele sellulêre telekommunikasiediens verbied om, tot die datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word, van enige ander vaste lyne vir die verskaffing van die dienste gebruik te maak as vaste lyne wat beskikbaar gestel word deur Telkom of enige ander persoon wat 'n publieke skakeltelekommunikasiediens verskaf.

(3) Daar word nie van die houer van 'n licensie ingevolge hierdie artikel vereis om 'n licensie beoog in artikel 34(2)(a)(i), (iii) of (iv) of artikel 39 of 40 te hê om hom of haar in staat te stel om die betrokke mobiele sellulêre telekommunikasiediens te verskaf nie.

(4)(a) Voor 31 Desember 2003 moet die Minister—

- (i) by wyse van 'n bemarkingstudie, die uitvoerbaarheid van die toestaan van 'n mobiele sellulêre telekommunikasielicensie bykomend tot die licensie bedoel in subartikel (1), bepaal; en**
- (ii) by kennisgewing in die *Staatskoerant*, die bepalings bekend maak.**

(b) By die uitvoer van die bemarkingstudie beoog in paragraaf (a), moet die Minister die Republiek se internasionale verpligtinge in ag neem.

(5) Indien die Minister bepaal dat enige bykomende licensie toegestaan kan word, kan sodanige licensie na 31 Desember 2003 ingevolge artikel 34 uitgereik word.]

Wysiging van artikel 38 van Wet 103 van 1996

13. Artikel 38 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Geen licensie word aan ['n] ander [persoon] persone as Telkom toegestaan nie om 'n nasionale langafstand-telekommunikasiediens te verskaf tot na ['n datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word] 7 Mei 2002."

Wysiging van artikel 39 van Wet 103 van 1996

14. Artikel 39 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:

"(a) Geen licensie word aan ['n] ander [persoon] persone as Telkom toegestaan nie om 'n plaaslike toegang-telekommunikasiediens te verskaf tot na ['n datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word] 7 Mei 2002."

(b) deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang:

"(a) Geen licensie word aan ['n] ander [persoon] persone as Telkom toegestaan nie om 'n openbare betaaltelefoondiens te verskaf tot na

[’n datum wat by kennisgewing in die *Staatskoerant* deur die Minister bepaal word] 7 Mei 2002.”; en

- (c) deur die volgende paragraaf by subartikel (2) te voeg:

“(c) niks in hierdie artikel word uitgelê as om die aansoeke om ’n lisensie beoog in paragraaf (a) te beperk tot slegs publieke skakeltelekommunikasiedienste nie.”.

5

Wysiging van artikel 40 van Wet 103 van 1996

15. Artikel 40 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Licensie om enige toegevoegde [waarde-netwerkdiens] 10 waarde-netwerkdienste, met inbegrip van maar nie beperk nie tot elektroniese data-uîtriling, [E-mail] elektroniese pos, protokolomskakeling, toegang tot ’n databasis- of ’n bestuurde dataonetwerkdiens, bevat ’n voorwaarde dat die betrokke diens verskaf word deur middel van telekommunikasiefasiliteite—

(a) deur Telkom tot 7 Mei 2002 verskaf of wat aan Telkom beskikbaar gestel word soos beoog in artikel 44 [tot ’n datum wat by kennisgewing in die *Staatskoerant* deur die Minister bepaal word, en ’n ander datum kan aldus ten opsigte van nasionale langafstandfasiliteite bepaal word]; en

(b) na 7 Mei 2002, verskaf deur Telkom en die tweede nasionale operateur of enigeen van hulle tot ’n datum deur die Minister by kennisgewing in die *Staatskoerant* bepaal.”; en

- (b) deur die volgende paragraaf by subartikel (3) te voeg, terwyl die bestaande subartikel paragraaf (a) word:

“(b) Sonder benadeling van enige regte van Telkom kragtens sy publieke skakeltelekommunikasiedienslisensie wat bestaan by die inwerkingtreding van die Wysigingswet op Telekommunikasie, 2001, kan die tweede nasionale operateur en die lisensiehouers beoog in artikel 40A stem oor internet-protokol na 7 Mei 2002 verskaf.”.

15

20

25

30

35

Invoeging van artikel 40A in Wet 103 van 1996

16. Die Hoofwet word hierby gewysig deur die volgende artikel na artikel 40 in te voeg:

“Onderbediende gebied-lisensie

40A. (1) Die Minister moet by kennisgewing in die *Staatskoerant* daardie geografiese gebiede bepaal waar daar ’n teledensiteit van minder as 5% is en ten opsigte waarvan klein sake by die Owerheid aansoek om onderbediende gebied-lisensies kan doen om daardie dienste of fasiliteite te verskaf.

(2) (a) Die Owerheid kan op aansoek op die voorgeskrewe wyse ’n onderbediende gebied-lisensie aan ’n klein saak uitreik,

(b) By die oorweging van die aansoek in hierdie artikel, moet behoorlike aandag gegee word aan aansoek—

(i) deur persone van histories benadeelde groepe; en

(ii) van aansoekers wat bestuur en beheer of deur vroue besit word.

(3) ’n Onderbediende gebied-lisensiehouer moet enige telekommunikasiedienste, met inbegrip van stem oor internet-protokoldienste, vaste mobiele dienste en publieke betaaltelefone, ten opsigte van die gebied waarin die lisensie van toepassing is, verskaf.

(4) Onderbediende gebied-lisensies deur die Minister toegestaan, word na 7 Mei 2002 van krag.

(5) Alle onderbediende gebied-lisensies wat ingevolge hierdie artikel toegestaan is, moet uitgereik word met wesentlik dieselfde bedinge en voorwaardes.

(6) Onderbediende gebied-lisensiehouers en mobiele sellulêre operateurs, en deur die nasionale langafstand telekommunikasiediens en ’n

40

45

50

55

publieke skakeltelekommunikasiedienslisensiehouer tot die internasionale poort van 'n draer of draerslisensiehouer, kan by ooreenkoms interverbinding na die netwerke van publieke skakeltelekommunikasiedienslisensiehouers verkry indien daardie ooreenkoms voldoen aan—	
(a) artikel 43 en voorgeskrewe regulasies om aan daardie artikel uitvoering te gee; en	5
(b) die voorgeskrewe bedinge en voorwaarde, met inbegrip van prys, ingevolge waarvan onderbediende gebied-lisensiehouers sodanige interverbinding mag verkry.”.	
Wysiging van artikel 41 van Wet 103 van 1996	10
17. Artikel 41 van die Hoofwet word hierby gewysig—	
(a) deur in subartikel (1) paragrawe (a) en (b) deur die volgende paragrawe te vervang:	
“(a) 'n Persoon wat 'n telekommunikasienetwerk verskaf vir doeleindes wat hoofsaaklik of integrerend verband hou met die bedryf van daardie persoon (hierna 'n private telekommunikasienetwerk genoem), het nie 'n lisensie nodig nie ondanks die bepalings van artikels 32(1) en 33(1), behalwe soos wat in paragraaf (b) beoog word, hetsy sodanige netwerk benut word al dan nie deur middel van telekommunikasiefasilitete wat deur Telkom, <u>of die tweede nasionale operateur</u> , beskikbaar gestel is.	15
(b) 'n [Lisensie] Private telekommunikasienetwerkligensie word behoudens die regulasies vereis vir die verskaffing van 'n private telekommunikasienetwerk waar sodanige netwerk tussenverbind is aan die telekommunikasiestelsel van Telkom of enige ander persoon wat 'n publieke [skakeltelekommunikasienetwerkdiens] skakeltelekommunikasiediens verskaf.”;	20
(b) deur subartikel (3) te skrap; en	25
(c) deur die volgende subartikels by te voeg:	
“(10)(a) Die Minister moet, met die instemming van die Minister van Onderwys, 'n entiteit tot stand bring om 'n opvoedingsnetwerk aan te lê en te bedryf.	30
(b) Die entiteit beoog in paragraaf (a) word geag 'n private telekommunikasienetwerkligensie toegestaan te gewees het om alle openbare skole en openbare inrigtings vir verdere onderwys en opleiding omskryf in die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996), en die Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998), onderskeidelik, sowel as sodanige ander onderwys- en opleidingsinrigtings as wat deur die Minister van Onderwys bepaal word, te verbind.	35
(11) (a) Die Minister moet, met die instemming van die Minister van Vervoer, 'n entiteit tot stand bring om 'n private telekommunikasienetwerk aan te lê en te bedryf om Suid-Afrika se verpligte te vervul ingevolge—	40
(i) die Internasionale Konvensie vir die Veiligheid van Lewe op See (SOLAS) 1974/78;	45
(ii) Bylae 12 by die Konvensie oor Internasionale Burgerlike Lugvaart, geteken deur Suid-Afrika op 7 Desember 1944 te Chicago;	
(iii) die Internasionale Konvensie oor Maritieme Soek en Redding, 1979.	50
(b) Die entiteit beoog in paragraaf (a)—	
(i) word die 'Maritieme en Lugvaartkundige Radiodienste' genoem; en	
(ii) word geag 'n private telekommunikasienetwerkligensie toegestaan te gewees het.”.	
Wysiging van artikel 43 van Wet 103 van 1996	55
18. Artikel 43 van die Hoofwet word hierby gewysig—	
(a) deur subartikel (1) deur die volgende subartikel te vervang:	

“(1)(a) Enige publieke skakeltelekommunikasiedienslisensiehouer moet, op versoek van ’n ander persoon wat telekommunikasiedienste verskaf, sy telekommunikasiestelsels met die telekommunikasiestelsel van die ander persoon interverbond, ooreenkomstig die bedinge en voorwaardes van ’n interverbindingsooreenkoms wat tussen die partye gesluit is, tensy die versoek onredelik is.

(b) Vir die doeleindes van paragraaf (a), is ’n versoek redelik indien die Owerheid bepaal dat die aangevraagde interverbond—

- (i) tegnies uitvoerbaar is;
- (ii) die doeltreffende gebruik van die publieke skakeltelekommunikasienetwerk sal bevorder;
- (iii) op ’n wederkerige basis tussen die partye in werking gestel is.

(c) ’n Ooreenkoms beoog in paragraaf (a) moet binne die voorgeskrewe tydperk of sodanige verdere typerk as wat die Owerheid in enige besondere geval mag toelaat, gesluit word.

(d) Die betrokke partye moet, tensy by regulasie vrygestel—

- (i) die Owerheid verwittig wanneer enige versoek beoog in paragraaf (a) gedoen is;
- (ii) indien die redelikheid van enige sodanige versoek in geskil is, die geskil na die Owerheid vir sy beslissing verwys;
- (iii) indien die partye onwillig of nie in staat is nie om te onderhandel of om ooreen te kom oor bedinge en voorwaardes binne die tydperk of verlengde tydperk beoog in paragraaf (c), al die uitstaande sake na die Owerheid vir beslissing verwys.”;

(b) deur in subartikel (4) paragrawe (a) en (b) deur onderskeidelik die volgende paragrawe te vervang:

“(a) in die geval van ’n geskil in verband met redelikheid soos beoog in subartikel (1)(d)(ii), ’n bepaling met inagneming van die faktore bedoel in subartikel (1)(b), en enige ander tersaaklike faktor, maak;

(b) in die geval van onwilligheid of onvermoë deur die partye om oor die bedinge en voorwaardes van interverbondings te onderhandel of ooreen te kom, kan die Owerheid—

- (i) bedinge en voorwaardes ooreenkomstig die riglyne beoog in subartikel (3) oplê; of
- (ii) bedinge en voorwaardes ooreenkomstig die riglyne beoog in subartikel (3) voorstel waarop, behoudens heronderhandelings, binne sodanige tydperk as wat die Owerheid kan spesifiseer, deur die partye ooreengekom moet word.”;

(c) deur in subartikel (5) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) Waar die Owerheid bepaal dat enige bedinge en voorwaardes nie strook met die riglyne beoog in subartikel (3) nie, kan hy aan die partye opdrag gee om weer te onderhandel oor en ooreen te kom op nuwe bedinge en voorwaardes [ooreen te kom] binne die tydperk wat die Owerheid voorskryf, of self bedinge en voorwaardes voorstel wat met daardie riglyne strook en waarop, onderworpe aan heronderhandeling, deur die partye ooreengekom moet word binne die tydperk wat hy vermeld, en geld die [voorwaardes] bepalings van subartikels [(1)(e)(iii)], (1)(d)(iii) en (4)(b) met die nodige veranderings.”; en

(d) deur die volgende subartikels by te voeg:

“(10)(a) Vyf jaar na die datum waarop ’n interverbindingsooreenkoms gesluit is, kan ’n party tot daardie ooreenkoms die ander party of partye versoek om spoedig in goeie trou te onderhandel om sommige of al die bedinge van daardie ooreenkoms te wysig of verander.

(b) Subartikels (1) tot (6) en die regulasie wat kragtens hierdie artikel uitgevaardig is, is met die nodige veranderings met betrekking tot enige voorgestelde verandering of wysiging van enige beding of voorwaarde beoog in paragraaf (a), van toepassing.

(11) Interverbindingstariewe en enige ooreenkoms in verband daarmee moet bekend gemaak word.”.

Wysiging van artikel 44 van Wet 103 van 1996

19. Artikel 44 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) te skrap;
- (b) deur subartikels (2), (3) en (4), onderskeidelik, deur die volgende subartikels te vervang:

“(2) Indien Telkom en enige ander verskaffer van ’n publieke [vaste telekommunikasiediens] skakeltelekommunikasiediens deur enige ander persoon wat ’n telekommunikasiediens lewer, met inbegrip van ’n private telekommunikasiennetwerk, versoek word, verhuur hy of stel hy telekommunikasiefasilitete aan sodanige ander persoon beskikbaar na aanleiding van ’n ooreenkoms wat tussen die partye gesluit staan te word, tensy sodanige versoek onredelik is.”

(3) Die bepalings van artikel [43(1)(c), (d) en (e)] 43(1)(b)(i) en (ii), (c) en (e) geld met die nodige veranderings met betrekking tot enige versoek en ooreenkoms beoog in [subartikels (1) en] subartikel (2).

(4) Elke ooreenkoms vir die verhuring of [ander beskikbaarstelling] herverkoop van telekommunikasiefasilitete, met inbegrip van enige ooreenkoms beoog in [subartikels (1) en] subartikel (2) word, tensy dit deur die regulasies vrygestel is, deur die partye by die Owerheid ingedien ten einde hom in staat te stel om te bepaal of die ooreenkoms met die riglyne in subartikel (5) beoog, strook.”;

- (c) deur in subartikel (5) die volgende paragraaf by te voeg, terwyl die bestaande subartikel paragraaf (a) word:

“(b) Die riglyne in paragraaf (a) beoog, kan verband hou—
(i) met herverkoop, met inbegrip van die basis vir die bepaling van groot- en kleinhandeltariewe; en
(ii) die wyse waarop telekommunikasiefasilitete beskikbaar gestel word.”; en

- (d) deur subartikel (7) deur die volgende subartikel te vervang:

“(7)(a) By die toepassing van artikel [43(1)(e)(iii)] 43(1)(d)(iii) en (4)(b) met betrekking tot die beskikbaarstelling van die telekommunikasiefasilitete van [Telkom] ’n publieke skakeltelekommunikasiedienslisensiehouer aan ’n ander persoon en waar die Owerheid tevrede is dat [Telkom] die houer van ’n publieke skakeltelekommunikasiedienslisensie onwillig is of nie in staat is om geskikte fasilitete binne ’n redelike tyd aan daardie persoon beskikbaar te stel nie, kan die Owerheid, in plaas daarvan om bedinge en voorwaardes soos beoog in artikel 43(4)(b) voor te stel, daardie persoon magtig om die nodige telekommunikasiefasilitete anders as van [Telkom] daardie houer te verskaf of te bekom op voorwaardes deur die Owerheid bepaal, ondanks die bepalings van artikels [37(2)(c),] 38(2), 40(2) en 41(2)(a) en hierdie artikel.”

(b) Behoudens artikel 32A(2) en (4), en ondanks die riglyne in subartikel (5) beoog, word van geen publieke skakeltelekommunikasiedienslisensiehouer vereis om sy plaaslike lus vir die tydperk van twee jaar bedoel in artikel 32A(2)(a) en (4) te ontbondel nie.”.

Wysiging van artikel 45 van Wet 103 van 1996

20. Artikel 45 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die wyse om die gelde en heffings te bepaal, word slegs voorgeskryf ten opsigte van terreine waar daar geen of onvoldoende mededinging bestaan: Met dien verstande dat binne 12 maande na die datum van inwerkingtreding van hierdie Wet, die Minister sodanige gelde en heffings ten opsigte van Telkom bepaal, en sodanige gelde en heffings bly van toepassing tot die laatste van—

(a) die derde herdenking van die datum waarop die Minister ’n lisensie aan Telkom uitgereik het ooreenkomsdig artikel 36 (1) (a); en

(b) die datum waarop die Owerheid ’n nuwe bepaling van gelde en heffings ten opsigte van Telkom gemaak het.”; en

(b) deur die volgende subartikel by te voeg:

“(3) Vanaf ’n datum deur die Minister bepaal, word alle openbare skole soos omskryf in die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996), en alle openbare inrigtings vir verdere onderwys en opleiding soos omskryf in die Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998), geregtig op ’n afslag van 50% op—

(a) alle telekommunikasie-oproep na ’n internet-diensverskaffer; en

(b) enige verbindings- of soortgelyke gelde of heffings gehef deur ’n internetediensverskaffer vir toegang tot die internet of uitsaai en ontvangs van enige seine via die internet of vir sodanige toegang en uitsaai en ontvangs.”.

5

10

Wysiging van artikel 53 van Wet 103 van 1996

21. Artikel 53 van die Hoofwet word hierby gewysig deur die volgende subartikel daarby te voeg, terwyl die bestaande artikel subartikel (1) word:

“(2) (a) Die Owerheid kan, met betrekking tot die aangeleenthede in subartikel (1) bedoel, regulasies om die doeltreffende en effektiewe monitering en ondersoek van nie-mededingende optredes, om die beskerming van verbruikersbelange te verseker en vir die spoedige oplossing van klagtes in verband daarmee te verseker, uitvaardig.

(b) Die Owerheid moet jaarliks aan die Minister oor die algehele status en doeltreffendheid van die regulasies in paragraaf (a) beoog , rapporteer.”.

15

20

Wysiging van artikel 54 van Wet 103 van 1996

22. Artikel 54 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Geen persoon mag enige tipe telekommunikasietoerusting of -fasiliteit, met inbegrip van radio-apparaat, in verband met telekommunikasie gebruik, verskaf, verkoop, vir verkoop aanbied of verhuur of huur nie, tensy daardie tipe, behoudens subartikel (2), deur die Owerheid goedgekeur is [nie].”.

25

Wysiging van artikel 58 van Wet 103 van 1996

23. Artikel 58 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

“(2) Die Minister kan by kennisgewing in die Staatskoerant ’n raad van tot sewe lede aanstel om toesig oor en leiding aan die Universele Diens-agentskap te verskaf.”.

30

35

Wysiging van artikel 61 van Wet 103 van 1996

24. Artikel 61 van die Hoofwet word hierby gewysig—

(a) deur in die Engelse teks subartikel (2) deur die volgende subartikel te vervang:

“(2) The [Authority] Agency shall utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).”; en

40

(b) deur in die Engelse teks in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“The [Authority] Agency—”.

Wysiging van artikel 65 van Wet 103 van 1996

25. Artikel 65 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die Universele Diens-fonds word geadministreer deur die Agentskap onderworpe aan die beheer en ooreenkomsdig die opdragte van die [Owerheid Minister].”.

45

50

Wysiging van artikel 66 van Wet 103 van 1996

26. Artikel 66 van die Hoofwet word hierby gewysig—

- (a) deur subartikels (1) en (2) deur onderskeidelik die volgende subartikels te vervang:
- “(1) Die geld in die Universele Diens-fonds word uitsluitlik aangewend vir die betaling van subsidies—
 - (a) vir bystand aan behoeftige persone met die koste van die verskaffing van telekommunikasiedienste aan hulle of met die gebruik daarvan deur hulle;
 - (b) [behoudens subartikel (3)] aan Telkom en aan enige ander houer van 'n lisensie ingevolge Hoofstuk V wat verpligte aan die houer ople met betrekking tot die uitbreiding van sy [publieke skakel-telekommunikasiediens] telekommunikasiediens na gebiede en gemeenskappe wat nie deur telekommunikasiedienste bedien of voldoende bedien word nie, met die doel om sodanige uitbreiding te finansier;
 - (c) aan openbare skole en openbare inrigtings vir verdere onderwys en opleiding bedoel in artikel 45(3) vir die verkryging van internedienste en toerusting wat nodig is vir toegang tot die internet;
 - (d) vir die oprigting van sentrums waar toegang tot telekommunikasiesfasiliteite verkry kan word;
 - (e) vir die oprigting van openbare inligtingsterminal;
 - (f) om kleinsake en koöperatiewes by te staan met die verkryging en konstruksie van infrastruktuur om telekommunikasiedienste aan gebiede wat nie bedien word nie of wat nie voldoende deur telekommunikasiedienste bedien word nie; en
 - (g) om die verskaffing van multimedidiens te faciliteer.
- (2) Die geld in die fonds word toegesê vir die afsonderlike doeleindestes [van paragraaf (a) en paragraaf (b) van] bedoel in subartikel (1) ooreenkomsdig [die voorgeskrewe] 'n formule deur die Minister by kennisgewing in die Staatskoerant bepaal.”;
- (b) deur subartikel (3) te skrap; en
- (c) deur in die Afrikaanse teks subartikel (4) deur die volgende subartikel te vervang:
- “(4) Die [Owerheid] Minister kan vir die doeleindestes van betalings bedoel in [subartikels] subartikel (1)(a) en [(3)] (b) by kennisgewing in die Staatskoerant—
 - (a) kategorieë behoeftige persone aan wie bystand verleen mag word;
 - (b) die persone wat om bystand aansoek doen en die wyse waarop sodanige aansoek gedoen word;
 - (c) die wyse waarop en die persone aan wie subsidies betaal word, [voorskryf] bepaal.”.

Wysiging van artikel 67 van Wet 103 van 1996

27. Artikel 67 van die Hoofwet word hierby gewysig deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) die grondslag en wyse van bepaling van sodanige bydraes, wat nie 0,5% van 'n lisensiehouer se jaarlikse omset oorskry nie; en”.

Invoeging van artikel 67A in Wet 103 van 1996

28. Die Hoofwet word hierby gewysig deur na artikel 67 die volgende artikel in te voeg:

- “Mededingende tender vir universele diens-projekte
- 67A.** (1) Die Agentskap kan universele toegang-projekte deur openbare mededingende bod toeken aan die gekwalifiseerde bieér wat 'n subsidie vir sodanige projek versoek.
- (2) Die Agentskap moet by die toekenning van die subsidie, onder andere rekening hou met die bepalings van artikel 2.
- (3) Die subsidie vir universele toegangsprojekte word uit die Universele Diens-fonds betaal.

(4) Die Agentskap moet toesig hou oor die uitvoering van die projekte |
wat ingevolge subartikel (1) toegeken is.”.

Invoeging van nuwe Hoofstuk X in Wet 103 van 1996

29. Die volgende Hoofstuk word hierby in die Hoofwet na Hoofstuk IX ingevoeg:

“HOOFSTUK X

5

NOODSENTRUMS

Woordomskrywing

78. In hierdie Hoofstuk, tensy uit die samehang anders blyk, beteken ‘noodorganisasie’ ten opsigte van enige plek die betrokke polisie-, brandweer-, ambulans- of verkeersowerheid of kuswagdiens vir daardie plek en enige ander soortgelyke organisasie wat hulp aan die publiek tydens ’n noodtoestand bied. 10

Skepping van 112-noodsentrum

79. (1) Die Minister kan by kennisgewing in die *Staatskoerant* openbare nood-kommunikasiesentrum bekend as ‘112-noodsentrum’ skep. 15

(2) ’n 112-noodsentrum is ’n kommunikasiedienssentrum deur middel waarvan die gebruiker van ’n openbare telefoonstelsel die vermoë het om ’n noodcentrum deur die skakeling van die syfers 112 te bereik om ’n nooddien te versoek.

(3) 112-noodsentrum is aan die Minister verantwoordelik.

(4) 112-noodsentrum word van die hou van ’n lisensie om telekommunikasiedienste ingevolge enige gedeelte van die Wet te verskaf, vrygestel. 20

Funksies van 112-noodsentrum

80. (1) 112-noodsentrum moet enige telekommunikasieversoek om ’n nooddien aan enige noodorganisasie oorsend. 25

(2) Lisensiehouers van wie verlang word om oproepe na 112-noodsentrum te gelei, mag nie enige koste van die oproepmaker wat ’n oproep na 112-noodsentrum maak, hef nie.

(3) Lisensiehouers wat enige telekommunikasie van 112-noodsentrum na enige noodorganisasie gelei, is geregtig om op die betrokke noodorganisasie die redelike koste wat hy aangegaan het in die geleiding van sodanige telekommunikasie, te verhaal. 30

Openbare noodnommer

81. (1) Die nommer 112 word hierby as die eksklusiewe nasionale openbare noodnommer ingestel. 35

(2) Niemand mag aansoek vir die registrasie ingevolge toepaslike intellektuele goederegewing of enige ander wet, van enige merk of domeinnaam wat die syfers 1-1-2 in daardie volgorde bevat, doen nie.

(3) Niemand mag die nasionale noodtelekommunikasienommer 112 vir enige ander doel as om ’n nooddien in artikel 79(1) beoog, te versoek, skakel nie. 40

Standaarde, vermoëns en bedryfsprosedures van 112-noodsentrum

82. (1) So ver as wat prakties moontlik is, moet 112-noodsentrum oor stem, data en ruimtelike posisioneringstelselvermoëns beskik. 45

(2) 112-noodsentrum moet algemene tegniese standaarde en standaardbedryfsprosedures soos van tyd tot tyd deur die Minister by kennisgewing in die *Staatskoerant* bepaal, ontwikkel en toepas.

(3) Behoudens die verkryging van 'n toepaslike radiofrekwensielaiksensie ooreenkomsdig artikel 30, kan 112-noodsentrums hul eie radionetwerke vestig, met dien verstande dat sodanige netwerke uitshuitlik gebruik word om oproepe na 112-noodsentrums of noodorganisasies te kommunikeer.

(4) Noodsentrums kan die openbare noodnommer 112 op openbare paaie en ander openbare plekke sonder koste vertoon.”.

5

Wysiging van artikel 89 van Wet 103 van 1996

30. Artikel 89 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Owerheid skryf—

(a) die nommeringsplan vir gebruik ten opsigte van telekommunikasiedienste voor; en

(b) maatreëls voor om te verseker dat nommeringsdraagbaarheid in 2005 ingestel sal word, met inbegrip van—

(i) die skepping van 'n nasionale nommeringsdraagbaarheidsdatabasis; en

(ii) kostetoekenning en kosteverhaling tussen lisensiehouers.”; en

10

(b) deur die volgende subartikels by te voeg:

“(4) Die nommeringsplan beoog in subartikel (1)(a) moet nie-diskriminerend van aard wees.

(5) Die Owerheid moet 'n sentrale nommeringsdatabasesstelsel in stand hou en bestuur.

(6) Elke operateur moet inligting oor alle nommers wat aan intekenaars ingevalgelyk sy lisensie toegeken is, met inbegrip van nommers van voorafbetaalde intekenaars, aan die Owerheid voorlê.”.

15

20

25

Invoeging van artikels 89A en 89B in Wet 103 van 1996

31. Die volgende artikels word hierby in die Hoofwet na artikel 89 ingevoeg:

“Gidsdienste

89A. (1) Die Owerheid kan maatreëls in verband met gidsse en gidsnavraagdienste voorskryf, of deur middel van lisensievoorwaardes afdwing, na gelang van die geval, betreffende—

30

(a) die beskerming van persoonlike data;

35

(b) die beskerming van privaatheid;

(c) taalvoorkure;

(d) die voorkoming van bedrog;

(e) die verbod op bemarking en onbillike handelspraktyke;

(f) die verskaffing van hulp aan wetstoepassers of ander openbare veiligheidsbeamptes;

(g) verbandhoudende koste;

(h) die instelling van 'n nasionale gids-inligtingsdatabasis; en

(i) sodanige ander verbandhoudende aangeleenthede as wat die Owerheid bepaal.

40

Regerings-gidsinligtingsdiens

89B. Die Owerheid moet 'n vier-syfer-nommer waardeur die publiek toegang tot die regerings-gidsinligtingsdienst sonder enige koste kan verkry, toeken.

45

Draervooraafseleksie

89C. (1) Die Owerheid moet regulasies voorskryf—

(a) wat 'n raamwerk voorskryf vir fasiliteite ingevalgelyk waarvan intekenaars van 'n telekommunikasiediens toegang tot die dienste

50

- van 'n interverbinde nasionale langafstandtelekommunikasiediens en 'n internasionale telekommunikasieoperator kan verkry; en
 (b) wat van al die houers van 'n publieke skakeltelekommunikasiendienslensie vereis om die faciliteite bedoel in paragraaf (a) teen nie later nie as 31 Desember 2003 in te faseer.

(2) Die raamwerk in subartikel (1) beoog, moet verseker dat die inwerkingstelling en onderhoud van die faciliteite daarin bedoel nie-diskriminerend van aard is en aan artikel 2(j) gevvolg gee.”.

5

10

Wysiging van artikel 96 van Wet 103 van 1996

32. Artikel 96 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

“(1) Die Owerheid kan regulasies maak—

- (a) met betrekking tot enige aangeleenthed [maak] wat ingevolge hierdie Wet by regulasie voorgeskryf word of voorgeskryf kan word;
 (b) enige tegniese aangeleenthed wat noodsaaklik of dienstig is vir die regulering van telekommunikasie-aktiwiteit;
 (c) enige aangeleenthed of prosedure of vorm wat nodig of dienstig mag wees om voorgeskryf te word vir die doeleindes van hierdie Wet.”;

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die Owerheid laat die teks van sodanige regulasie minstens [drie maande] een maand voordat die regulasie [gemaak] uitgevaardig word, in die Staatskoerant afkondig tesame met 'n kennisgewing wat sy voorname verklar om sodanige regulasie uit te vaardig en belanghebbendes nooi om aan die Owerheid skriftelike kommentaar daaroor [of vertoe ten opsigte daarvan] te verstrek.”;

(c) deur die vervanging in subartikel (5) van die woorde wat paragraaf (a) voorafgaan deur die volgende woorde:

“Die bepalings van subartikel [(1)] (4) geld nie ten opsigte van—”; en

(d) deur die volgende subartikel by te voeg:

“(8) Wanneer regulasies voorgeskryf word, moet die Owerheid behoorlik ag slaan op artikel 2(j).”.

15

20

25

30

Invoeging van artikel 96A in Wet 103 van 1996

33. Die volgende artikel word hierby in die Hoofwet na artikel 96 ingevoeg:

35

“Telekommunikasiemuseum

96A. (1) Die Direkteur-generaal moet 'n museum wat die evolusie en die geskiedenis van die telekommunikasiesektor in Suid-Afrika uitbeeld, instel en bestuur.

(2) Die museum en sy inhoud is 'n nasionale bate soos omskryf in die Wet op Nasionale Erfeniselpbronne, 1999 (Wet No. 25 van 1999).

(3) Die inhoud van die museum wat in die Telkom-museum oor Telekommunikasiegeskiedenis gehuisves word, moet na die museum wat ingevolge subartikel (1) ingestel is, oorgedra word.

40

Inligting, Kommunikasie en Tegnologie Strategie

45

96B. (1) (a) Die Minister moet so spoedig moontlik na die inwerkingtreding van hierdie artikel, 'n Inligting, Kommunikasie en Tegnologie (IKT) strategie ontwikkel.

(b) Die strategie word elke twee jaar hersien.

(c) Die strategie word nadat dit ontwikkel of hersien is, in die Staatskoerant gepubliseer.

(2) Wanneer die strategie ontwikkel of hersien word, moet die Minister behoorlik aandag gee aan—

(a) die Republiek se nasionale doelwitte;

(b) artikel 2(r) en (s);

50

55

- (c) die Republiek se internasionale verpligtinge; en
(d) enige ander toepaslike faktor.”.

Wysiging van artikel 101 van Wet 103 van 1996

34. Artikel 101 van die Hoofwet word hierby gewysig deur die skrapping in paragraaf (b) van die woord “of” en die invoeging na daardie paragraaf van die volgende paragrawe:

- “(bA) artikels 54 en 56 oortree;
(bB) die bepalings van artikel 81(2) of (3) oortree;”.

Herroeping en wysiging van wette

35. Die wette in die Bylae gespesifieer, word hierby herroep of gewysig, na gelang van die geval, in die mate in die derde kolom daarvan uiteengesit.

Herroeping van regulasies

36. Die regulasies wat kragtens artikel 52 uitgevaardig is betreffende beperkings op eienaarskap en beheer in verband met mobiele sellulêre telekommunikasiedienste gepubliseer in *Staatskoerant* No. 19828 van 5 Maart 1999, word hierby herroep.

15

Kort titel

37. Hierdie Wet heet die Wysigingswet op Telekommunikasie, 2001.

BYLAE**Wette herroep of gewysig**

No. en jaar van Wet	Kort titel	Omvang van wysiging of herroeping
Wet No. 143 van 1993	Wet op die Nasionale Noodtelefoon diens, 1993	Die herroeping van die geheel.
Wet No. 63 van 1996	Wet op Sentech, 1996	Die vervanging van artikel 5 deur die volgende artikel: “5. Die hoofdoelstelling en die hoofbesigheid van die Maatskappy is om— <u>(a)</u> as 'n algemene verspreider, uitsaai-seindistribusie aan uit-sailisensiehouers ooreenkomsdig die bepalings van die Wet op die Onafhanklike Uitsaai-owerheid; en <u>(b)</u> telekommunikasiedienste ooreenkomsdig die bepalings van die Telekommunikasiewet, 1996 (Wet No. 103 van 1996), te verskaf.”.

