

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

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## THE PRESIDENCY

No. 266

7 April 2014

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

**Act No. 1 of 2014: Electronic Communications Amendment Act, 2013**



**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.
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*(English text signed by the President)*  
*(Assented to 3 April 2014)*

# ACT

To amend the Electronic Communications Act, 2005, so as to insert, amend or delete certain definitions; to align the Act with broad-based black economic empowerment legislation; to refine provisions relating to licensing; to make further provision towards ensuring effective competition amongst persons licensed under the Act; to remove regulatory bottlenecks; to require the Minister of Communications to establish a council to advise the Minister on broadband policy and implementation; to make further provision for the discounted rate at which Internet services must be provided to schools, educational institutions and public health establishments; to authorise the Minister to require that certain information be submitted to the Minister; to make provision for the fiduciary duties of members of the Board of the Universal Service and Access Agency of South Africa; to provide afresh for the appointment and conditions of appointment of the chief executive officer of the Board; to make further provision for the utilisation of money in the Universal Service and Access Fund; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 36 of 2005, as amended by section 1 of Act 37 of 2007**

1. Section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion before the definition of “affiliate” of the following definition: 5  
    “ **‘Advertising Standards Authority of South Africa’** means the entity which regulates the content of advertising, or any entity that replaces it but has the same functions;”;
- (b) by the insertion after the definition of “Agency” of the following definitions: 10  
    “ **‘allocation’**, in relation to a frequency band, means the entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space radio-communication services or radio astronomy service under specified conditions;  
    **‘assignment’**, in relation to a radio frequency or radio frequency channel, means authorisation given by the Authority for a radio station to use a radio frequency or radio frequency channel under specified conditions, and “assign” must be interpreted accordingly;” 15

- (c) by the insertion after the definition of “Authority” of the following definitions:
- “**‘broad-based black economic empowerment’** has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
  - “**‘broadband’** means an always available, multimedia capable connection with a minimum download speed as determined by the Minister by notice in the *Gazette*.”;
- (d) by the substitution for the definition of “broadcasting service radio frequency bands” of the following definition:
- “**‘broadcasting service radio frequency bands’** means that part of the electromagnetic radio frequency spectrum which is allocated for the use of broadcasting services by the Authority, taking into account the ITU table of **‘[allotment] allocation’**, in so far as such allocation has been agreed to or approved by the Republic.”;
- (e) by the insertion after the definition of “carrier pre-selection” of the following definition:
- “**‘CEO’** means the chief executive officer of the Agency appointed in terms of section 82A.”;
- (f) by the substitution for the definition of “common carrier” of the following definition:
- “**‘common carrier’** means [a] Sentech Limited, a state owned company established in terms of the Sentech Act, 1996 (Act No. 63 of 1996), and any other person licensed to provide an electronic communications network service who is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis;”;
- (g) by the substitution for the definition of “electronic communications facility” of the following definition:
- “**‘electronic communications facility’** includes but is not limited to any—
    - (a) wire, including wiring in multi-tenant buildings;
    - (b) cable (including undersea and land-based fibre optic cables);
    - (c) antenna;
    - (d) mast;
    - (e) satellite transponder;
    - (f) circuit;
    - (g) cable landing station;
    - (h) international gateway;
    - (i) earth station; [and]
    - (j) radio apparatus;
    - (k) exchange buildings;
    - (l) data centres; and
    - (m) carrier neutral hotels,or other thing, which can be used for, or in connection with, electronic communications, including, where applicable—
    - (i) collocation space;
    - (ii) monitoring equipment;
    - (iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and
    - (iv) associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities;”;
- (h) by the substitution for the definition of “electronic communications service licensee” of the following definition:
- “**‘electronic communications service licensee’** means a person whom an electronic communications services licence has been granted in terms of section 5(2) or 5(4);”;
- (i) by the substitution for the definition of “end-user” of the following definition:
- “**‘end-user’** means a subscriber and persons who use the services of a licensed service, or use a service pursuant to a licence exemption, referred to in Chapter 3;”;

- (j) by the substitution for the definition of “ICT Charter” of the following definition:  
“**‘ICT Charter’** means the [**Black Economic Empowerment Charter for the ICT sector**] ICT Sector Charter, a sector code on broad-based black economic empowerment, issued in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);” 5
- (k) by the substitution for the definition of “ITU” of the following definition:  
“**‘ITU’** means International [**Telecommunications**] Telecommunication Union;”;
- (l) by the substitution for the definition of “licensee” of the following definition: 10  
“**‘licensee’** means a person issued with a licence to provide services in terms of Chapter 3 or to use the radio frequency spectrum in terms of Chapter 5 of this Act”;
- (m) by the insertion after the definition of “political advertisement” of the following definition: 15  
“**‘political party’**, for the purposes of Chapter 9, means—  
(a) any registered party defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998); or  
(b) any alliance of such registered parties, as the case may be, which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature, contemplated in the Constitution;” 20
- (n) by the substitution for the definition of “radio frequency plan” of the following definition: 25  
“**‘radio frequency plan’** means [**a national plan**] the national radio frequency plan contemplated in section 34 that includes, but is not limited to—  
(a) a table of frequency allocations for all bands below 3000 GHz taking into account the ITU table of [**allotments**] allocations, in so far as such [**allotments**] allocations have been adopted and agreed upon by the Republic, which may include designations of certain utilisations; and 30  
(b) a plan, as applicable, for the migration of systems and equipment of existing users within specific radio frequency bands, including radio frequency bands for security services, to different frequency bands;” 35
- (o) by the substitution for the definition of “radio frequency spectrum” of the following definition: 40  
“**‘radio frequency spectrum’** means the portion of the electromagnetic spectrum used as a transmission medium for electronic communications and broadcasting;”;
- (p) by the substitution for the definition of “radio frequency spectrum licence” of the following definition: 45  
“**‘radio frequency spectrum licence’** means a licence authorising the holder to use the radio frequency spectrum in terms of Chapter 5 of this Act;”;
- (q) by the substitution for the definition of “radio station” of the following definition: 50  
“**‘radio station’** means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying an electronic communications service, broadcasting service or any electronic communications authorised by the Authority;”;
- (r) by the deletion of the definition of “registered political party”; 55

- (s) by the substitution in the definition of “reseller” for paragraph (a) of the following paragraph:  
 “(a) acquires, through lease or other commercial arrangement, **[by]** any electronic communications network service or electronic communications service; and”;
- (t) by the substitution for the definition of “service charter” of the following definition:  
 “**‘service charter’** means a document, developed by a licensee after consultation with its staff, subscribers and end-users which sets out the standards of service subscribers and end-users can expect and is a performance measurement and accountability tool that focuses on subscriber and end-user service outcomes;”;
- (u) by the insertion after the definition of “service charter” of the following definition :  
 “**‘service licence’** means a licence authorising the holder to provide any service contemplated in Chapter 3;”;
- (v) by the substitution for the definition of “universal service” of the following definition:  
 “**‘universal service’** means the universal provision of electronic communications network services, electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14;”.

#### **Amendment of section 2 of Act 36 of 2005, as amended by section 2 of Act 37 of 2007**

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (h) of the following paragraph:  
 “(h) promote **[the]** broad-based black economic empowerment **[of historically disadvantaged persons, including Black people]**, with particular attention to the needs of women, opportunities for youth and challenges for **[people]** persons with disabilities;”.

#### **Amendment of section 3 of Act 36 of 2005, as amended by section 3 of Act 37 of 2007**

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1), for paragraph (e) of the following paragraph:  
 “(e) guidelines for the determination by the Authority of licence fees and spectrum fees associated with the award of the licences contemplated in Chapter 3 and Chapter 5, including incentives that may apply to individual licences where the applicant makes binding commitments to construct electronic communications networks and provide electronic communications services in rural and under-serviced areas of the Republic;”;
- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) The Minister may, subject to subsections (3) and (5), issue to the Authority or, subject to subsection (5), issue to the Agency policy directions consistent with the objects of this Act, national policies and of the related legislation in relation to—
- (a) the undertaking of an inquiry in terms of section 4B of the ICASA Act on any matter within the Authority’s jurisdiction and the submission of reports to the Minister in respect of such matter;

- (b) the determination of priorities for the development of electronic communications networks and electronic communications services or any other service contemplated in Chapter 3;
- (c) the consideration of any matter within the Authority's or Agency's jurisdiction reasonably placed before it by the Minister for urgent consideration; 5
- (d) guidelines for the determination by the Authority of spectrum fees; and
- (e) any other matter which may be necessary for the application of this Act or the related legislation."; 10
- (c) by the substitution for subsection (4) of the following subsection:  
 "(4) The Authority or the Agency, as the case may be, in exercising its powers and performing its duties in terms of this Act and the related legislation must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2)."; 15
- (d) by the substitution for subsection (5) of the following subsection:  
 "(5) When issuing a policy under subsection (1) or a policy direction under subsection (2) the Minister—
- (a) must consult the Authority or the Agency, as the case may be; and 20
- (b) must, in order to obtain the views of interested persons, publish the text of such policy or policy direction by notice in the *Gazette*—
- (i) declaring his or her intention to issue the policy or policy direction; 25
- (ii) inviting interested persons to submit written submissions in relation to the policy or policy direction in the manner specified in such notice in not less than 30 days from the date of the notice; 30
- (c) must publish a final version of the policy or policy direction in the *Gazette*."; and 30
- (e) by the addition of the following subsection:  
 "(10) If it is reasonable and justifiable in the circumstances, as contemplated under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may depart from the time period specified in subsection (5)(b)(ii).". 35

#### **Amendment of section 4 of Act 36 of 2005**

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- "(5) The Authority must, not less than 30 days prior to making regulations, inform the Minister in writing of its intention and **[the subject matter of the]** provide the Minister with a copy of the proposed regulations." 40

#### **Amendment of section 5 of Act 36 of 2005, as amended by section 4 of Act 37 of 2007**

5. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 45  
 "(b) commercial broadcasting and public broadcasting of national and **[regional] provincial** scope whether provided free-to-air or by subscription.";
- (b) by the deletion in subsection (3) of paragraph (d);
- (c) by the substitution in subsection (5) for paragraph (b) of the following paragraph: 50  
 "(b) community broadcasting **[and] or** low power services whether provided free-to-air or by subscription.";
- (d) by the insertion in subsection (5) after paragraph (b) of the following paragraph: 55  
 "(bA) electronic communications services of district municipality or local municipal scope operated for commercial purposes;";

- (e) by the substitution for subsection (6) of the following subsection:  
“(6) **[In consideration of the implementation of the managed liberalisation policies, the]** The Authority may only accept and consider applications for individual electronic communications network services licences in terms of a policy direction issued by the Minister in terms of section 3.”;
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:  
“(b) a juristic person, is~~is~~, **[or will be,]** registered under the laws of the Republic and has **[or will have]** its principal place of business located within the Republic.”;
- (g) by the insertion after subsection (8) of the following subsection:  
“(8A) Subsection (8) applies with the changes required by the context to any electronic communications service or network service that may be provided, electronic communications network that may be operated and any radio frequency spectrum that may be used, as contemplated in section 6.”; and
- (h) by the substitution in subsection (9) for paragraph (b) of the following paragraph:  
“(b) promote **[the empowerment of historically disadvantaged persons]** broad-based black economic empowerment including the empowerment of women and the youth and **[people]** persons with disabilities, in accordance with the requirements of the ICT charter.”.

**Amendment of section 8 of Act 36 of 2005** 25

**6.** Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
“Such standard terms and conditions may **[take into account]** include, but are not limited to—”;
- (b) by the deletion in subsection (2) of the word “and” at the end of paragraph (m), the addition of the expression “; and” at the end of paragraph (n) and the addition of the following paragraph:  
“(o) access to broadcasting, postal and electronic communications services for persons with disabilities that include, but are not limited to, services designed to improve accessibility for persons with disabilities, such as videotext, subtitling, audio description and sign language.”;
- (c) by the substitution for subsections (3) and (4) of the following subsections, respectively:  
“(3) The Authority may prescribe additional terms and conditions that may be applied to any individual licence or class licence **[taking into account]** subject to the provisions of Chapter 10.  
(4) The Authority may by regulation make provision for the designation of licensees to whom universal service and universal access obligations are to be applicable and may prescribe additional terms and conditions in respect of the relevant universal service and universal access obligations on such designated licensees.”; and
- (d) by the addition of the following subsection:  
“(5) The Authority, in exercising its powers and performing its functions in terms of this section, as it relates to universal service and universal access, must exercise such powers and perform such functions after consultation with the Agency and must consider determinations made by the Minister in terms of section 82.”.

**Amendment of section 9 of Act 36 of 2005** 55

**7.** Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  
“(b) include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 60



30%, or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the ICASA Act;” and

- (b) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) may impose such additional terms and conditions as may be prescribed in terms of section 8(3) and make a designation contemplated in section 8(4).”

#### Amendment of section 10 of Act 36 of 2005

8. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) if the amendment is **[in pursuance of and]** in accordance with **[the regulations made under]** Chapter 10 and any regulations that have been made under it.”

#### Amendment of section 13 of Act 36 of 2005

9. Section 13 of the principal Act is hereby amended—

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

“(1) An individual licence may not be let, sub-let, assigned, ceded or in any way transferred, and the control of an individual licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority.

(2) An application for permission to let, sub-let, assign, cede or in any way transfer an individual licence, or assign, cede or transfer control of an individual licence may be made to the Authority in the prescribed manner.”

- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) promote the ownership and control of electronic communications services by historically disadvantaged groups and to promote broad-based black economic empowerment; or”

- (c) by the addition of the following subsection:

“(6) The provisions of section 9(2) to (6) apply, with the necessary changes, to this section.”

#### Amendment of section 16 of Act 36 of 2005

10. Section 16 of the principal Act is hereby amended—

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

“(1) The Authority may, upon receipt of a written registration in the manner prescribed and satisfying the conditions provided for in section 5(8), **[grant]** issue a class licence, provided that the class licences obtained by one person do not collectively assume the scope or coverage of an individual licence.

(2) Registration for a class licence may be submitted **[at any time]** in the manner prescribed by the Authority.”

- (b) by the substitution for subsection (6) of the following subsection:

“(6) No class licence may be ceded, let, sub-let or transferred without the prior written approval of the Authority, provided that if the Authority has not refused or denied the cession, let, sublet or transfer within 30 days after notice has been given to the Authority, approval shall be considered to have been given.”



**Amendment of section 17 of Act 36 of 2005**

11. Section 17 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

“(3) Subject to section 18, the Authority must, within ~~[sixty (60)]~~ thirty (30) days after receipt of a registration notice, ~~[grant]~~ issue the class licence and update its internal records by including ~~[the]~~—

- (a) the name of the accepted registrant;
- (b) the nature of the service that the registrant proposes to provide; and
- (c) the licence conditions applicable to the class licence.

(4) If the Authority delays the ~~[grant]~~ issue of a class licence beyond the ~~[sixty (60)]~~ thirty (30) day period, the Authority must give written notice of the delay and of the reasons for the delay, to the registrant.

(5) In any case where—

- (a) the Authority fails to give notice of a delay to the registrant and fails to ~~[grant]~~ issue the class licence within the ~~[sixty (60)]~~ thirty (30) days as required in terms of subsection (4);
- (b) the registrant has complied with the regulations prescribed in terms of section 5(7) applicable to class ~~[licenses]~~ licences;
- (c) the registrant satisfies the conditions provided for in section 5(8); and
- (d) the Authority has not ~~[declined to accept]~~ refused or denied the registration notice for the class licence in terms of section 18,

the class licence is considered to have been ~~[granted]~~ issued by the Authority on the ~~[61st]~~ 31st day after receipt of the registration notice by the Authority.”.

**Amendment of section 20 of Act 36 of 2005**

12. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Authority must, within 18 months of the coming into operation of the Electronic Communications Amendment Act, 2014, prescribe how electronic communications network service licensees must exercise their rights and fulfil their obligations under this Chapter and may, within that period, in the prescribed manner, impose conditions and obligations on licensees in the exercise and fulfilment of such rights and obligations, having considered the policy and policy directions contemplated in section 21.”.

**Substitution of section 21 of Act 36 of 2005**

13. The following section is hereby substituted for section 21 of the principal Act:

**“[Guidelines for rapid] Rapid deployment of electronic communications facilities**

21. (1) The Minister must, in consultation with the Minister of ~~[Provincial and Local Government]~~ Cooperative Governance and Traditional Affairs, the Minister of ~~[Land Affairs]~~ Rural Development and Land Reform, the Minister of Water and Environmental Affairs, the Authority and other relevant institutions, develop ~~[guidelines]~~ a policy and policy directions for the rapid deployment and provisioning of electronic communications facilities, following which the Authority must prescribe regulations.

(2) The ~~[guidelines]~~ regulations must provide procedures and processes for—

- (a) obtaining any necessary permit, authorisation, approval or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval or other governmental authority; and
- (b) resolving disputes that may arise between an electronic communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.

(3) The policy and policy directions contemplated in subsection (1) must be made within twelve (12) months of the coming into operation of the Electronic Communications Amendment Act, 2014.”.

#### **Amendment of section 30 of Act 36 of 2005**

14. Section 30 of the principal Act is hereby amended by— 5
- (a) the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 10
- “In controlling, planning, administering, managing [**and**], licensing and assigning the use of the radio frequency spectrum, the Authority must—”; and
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 15
- “(a) comply with the applicable standards and requirements of the ITU and its Radio Regulations, as agreed to or adopted by the Republic, as well as with the national radio frequency plan contemplated in section 34;”.

#### **Amendment of section 31 of Act 36 of 2005**

15. Section 31 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 20
- “(2) (a) A radio frequency spectrum licence is required in addition to any service licence contemplated in Chapter 3, where the provision of such service entails the use of radio frequency spectrum. 25
- (b) A service licence is required in addition to any radio frequency spectrum licence where the provision of such service entails the use of radio frequency spectrum.”;
- (b) by the insertion after subsection (2) of the following subsection: 30
- “(2A) A radio frequency spectrum licence may not be assigned, ceded or in any way transferred, and the control of a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority.”;
- (c) by the substitution for subsection (3) of the following subsection: 35
- “(3) The Authority may, taking into account the objects of the Act, prescribe procedures and criteria for—
- (a) [**awarding**] radio frequency spectrum licences [**for competing applications or**] in instances where there is insufficient spectrum available to accommodate demand; 40
- (b) the amendment, transfer, transfer of control, renewal, suspension, cancellation and withdrawal of radio frequency spectrum licences; and
- (c) permission to assign, cede, share or in any way transfer a radio frequency spectrum licence, or assign, cede or transfer control of a radio frequency spectrum licence as contemplated in subsection (2A).”;
- (d) by the insertion after subsection (4) of the following subsection: 45
- “(4A) The Authority must notify the licensee within 60 days of its decision with regard to an application for an amendment of a spectrum licence.”; and
- (e) by the substitution for subsections (8), (9) and (10) of the following subsections, respectively: 50
- “(8) Subject to subsection (9), the Authority may withdraw any radio frequency spectrum licence or assigned radio frequency spectrum when the licensee fails to utilise the assigned radio frequency spectrum in accordance with the licence conditions applicable to such licence. 55
- (9) Before the Authority withdraws a radio frequency spectrum licence or assigned radio frequency spectrum in terms of subsection (8), it must give the licensee prior written notice of at least 30 days and the licensee must have 7 (seven) business days in which to respond in

writing to the notice (unless otherwise extended by the Authority) demonstrating that it is utilising the radio frequency spectrum in compliance with this Act and the licence conditions.

(10) The Authority, based on the written response of the licensee, must notify the licensee of its decision to withdraw or not to withdraw the licence or assigned radio frequency spectrum.”. 5

#### **Amendment of section 34 of Act 36 of 2005**

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

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

“(1) The Minister, in the exercise of his or her functions, represents the Republic in international fora, including the ITU, in respect of— 10

(a) the international [**allotment**] allocation of radio frequency spectrum; [**and**]

(b) the international coordination of radio frequency spectrum usage; and 15

(c) the co-ordination and approval of any regional radio frequency spectrum plans applicable to the Republic,

in accordance with international treaties[,] and multinational and bilateral agreements entered into by the Republic.”; and

(b) by the substitution in subsection (7) for paragraph (a) of the following paragraph: 20

“(a) take into account the ITU’s international spectrum [**allotments**] allocations for radio frequency spectrum use, in so far as ITU allocations have been adopted or agreed upon by the Republic, and give due regard to the reports of experts in the field of spectrum or radio frequency planning and to internationally accepted methods for preparing such plans;” 25

#### **Amendment of section 35 of Act 36 of 2005**

17. Section 35 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

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

#### **Amendment of section 36 of Act 36 of 2005**

18. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Authority may, subject to the provisions of the Standards Act, [**1993** (Act No. 29 of 1993) 2008 (Act No. 8 of 2008), prescribe standards for the performance and operation of any equipment or electronic communication facility, including radio apparatus.”. 40

#### **Amendment of section 37 of Act 36 of 2005**

19. Section 37 of the principal Act is hereby amended— 45

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

“(a) is technically and [**financially**] economically feasible; and”;

(b) by the substitution for subsection (6) of the following subsection:

“(6) The interconnection agreement entered into by a licensee in terms of subsection (1) must, unless otherwise requested by the party seeking interconnection, be non-discriminatory as among comparable types of interconnection and not be of a lower technical standard and quality than the technical standard and quality provided by such licensee to itself or to an affiliate or in any other way discriminatory compared to the 50 55

comparable network services provided by such licensee to itself or to an affiliate.”.

**Amendment of section 38 of Act 36 of 2005**

20. Section 38 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 5  
“(1) (a) The Authority must prescribe regulations to facilitate the conclusion of interconnection agreements by stipulating interconnection agreement principles.  
(b) The regulations may include any regulations referred to in [section 39] sections 39 and 41.”; 10
  - (b) by the substitution in subsection (3) for paragraph (j) of the following paragraph:  
“(j) the framework for determining technical and [financial] economic feasibility and promotion of efficient use of the electronic communications networks and provision of services contemplated in section 37(3);” 15
  - (c) by the substitution in subsection (3) for paragraph (k) of the following paragraph:  
“(k) the requirement that a licensee negotiate and enter into an interconnection agreement with an applicant for an individual licence or registrant of a class licence; and” 20
  - (d) by the substitution for subsections (5) and (6) of the following subsections, respectively:  
“(5) The interconnection regulations may include a framework for the exemption (in whole or in part) of licensees that have less than 25% market share from the obligation to interconnect under section 37(1). 25  
(6) Where a licensee is exempt from the obligation to interconnect in terms of subsection (5) and such exempted licensee enters into an interconnection agreement with another exempted licensee, or a person providing services pursuant to a licence exemption, sections 37(6) and [39(3) and (4)] 39(2) do not apply to such an interconnection agreement.”. 30

**Amendment of section 42 of Act 36 of 2005**

21. Section 42 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35  
“The framework contemplated in subsection (1)(b) must **[be in force not later than 1 July 2006 and]** ensure that—”.

**Amendment of section 43 of Act 36 of 2005**

22. Section 43 of the principal Act is hereby amended—
- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
“(a) is technically and [financially] economically feasible; and”;
  - (b) by the substitution for subsection (7) of the following subsection:  
“(7) The lease of electronic communications facilities by an electronic communications network service licensee in terms of subsection (1) must, unless otherwise requested by the leasing party, be non-discriminatory as among comparable types of electronic communications facilities being leased and not be of a lower technical standard and quality than the technical standard and quality provided by such electronic communications network service licensee to itself or to an affiliate or in any other way discriminatory compared to the comparable network services provided by such licensees to itself or an affiliate.”;
  - (c) by the insertion after subsection (8) of the following subsection:  
“(8A) (a) Requests for leasing of essential facilities are deemed to promote efficient use of electronic communication networks and services. 55

(b) All electronic communications network services licensees receiving requests contemplated in paragraph (a) are required to agree on non-discriminatory terms and conditions of a facilities leasing agreement for those essential facilities within 20 days of receiving the request.

(c) If the electronic communications network licensee can prove that the request is not technically or economically feasible within the 20 day period the electronic communications network services licensee may refuse the request.

(d) If no agreement regarding the non-discriminatory terms and conditions contemplated in paragraph (b) can be reached, the Authority must impose terms and conditions consistent with this Chapter within 20 days of receiving notification of the failure to reach an agreement.”; and

(d) by the substitution for subsection (11) of the following subsection:

“(11) Any exclusivity provision contained in any agreement or other arrangement that is prohibited under subsection (10) is invalid from a date **[to be determined by the Minister after consultation with relevant parties]** one year after the commencement of the Electronic Communications Amendment Act, 2014.”.

**Amendment of section 44 of Act 36 of 2005**

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

(a) by the substitution in subsection (3) for paragraph (k) of the following paragraph:

“(k) the framework for determining technical and **[financial]** economic feasibility and promotion of efficient use of electronic communications networks and provision of services contemplated in section 43(4);”; and

(b) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) The electronic communications facilities leasing regulations may include a framework for the exemption (in whole or in part) of electronic communications network service licensees that have less than 25% market share from the obligation to lease electronic communications facilities in terms of section 43(1).

(6) Where a licensee is exempt from the obligation to lease electronic communications facilities in terms of subsection (5) and such exempted licensee enters into **[a]** an electronic communications facilities leasing agreement with another exempted licensee, or a person providing services pursuant to a licence exemption, section 43(7) and section **[45(3) and (4)]** 45(2) and (7) do not apply to any such electronic communications facilities leasing agreement.”.

**Amendment of section 45 of Act 36 of 2005**

24. Section 45 of the principal Act is hereby amended by the deletion of subsection (3).

**Substitution of section 55 of Act 36 of 2005**

25. The following section is hereby substituted for section 55 of the principal Act:

**“Control over advertisements**

55. (1) All broadcasting service licensees must adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa and to any advertising regulations prescribed by the Authority in respect of scheduling of adverts, infomercials and programme sponsorships.

(2) The Complaints and Compliance Committee must adjudicate complaints concerning alleged breaches of the Code by broadcasting service licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with section 17C of the ICASA Act, as well as complaints concerning alleged breaches of the advertising regulations. 5

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

**Amendment of section 62 of Act 36 of 2005**

26. Section 62 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) A common carrier must— 15
- (a) subject to its technological capacity to do so and to the provisions of paragraph (b), provide broadcasting signal distribution to broadcasting licensees upon their request and in accordance with the national radio frequency plan contemplated in section 34, on an equitable, reasonable, non-preferential and non-discriminatory basis; 20
  - (b) in determining its tariffs, duly take into account the following:
    - (i) the different categories of broadcasting service [**licenses**] licences referred to in sections 49, 50 and 51; and
    - (ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate; 25
  - (c) carry public broadcasting services, including educational, commercial and community services and shall be deemed an electronic communications network service licensee that provides signal distribution for public broadcasting services.” 30

**Amendment of section 65 of Act 36 of 2005**

27. Section 65 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) No person may— 35
- (a) directly or indirectly exercise control over more than one commercial broadcasting service licence in the commercial television broadcasting service; or
  - (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one commercial broadcasting service licence in the commercial television broadcasting service; or 40
  - (c) be in a position to exercise control over a commercial broadcasting service licence in the commercial television broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service [**license**] licence in the commercial television broadcasting service.” 45

**Amendment of section 67 of Act 36 of 2005**

28. Section 67 of the principal Act is hereby amended—

- (a) by the deletion of subsections (1), (2) and (3); 50
- (b) by the substitution for subsection (4) of the following subsection:

“(4) The Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments[, as applicable, that pro-competitive conditions may be imposed upon licensees having significant market power where the Authority determines such markets or market segments have] and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is 55



ineffective competition, and if any licensee has significant market power in such markets or market segments. The regulations must, among other things—

- (a) **[define and identify the retail or]** define relevant wholesale and retail markets or market segments [in which it intends to impose pro-competitive measures in cases where such markets are found to have ineffective competition]; 5
  - (b) **[set out the methodology to be used to determine the effectiveness of]** determine whether there is effective competition in [such] those relevant markets [or] and market segments[, taking into account subsection (8)]; 10
  - (c) **[set out the pro-competitive measures the Authority may impose in order to remedy the perceived market failure in the]** determine which, if any, licensees have significant market power in those markets [or] and market segments [found to have] where there is ineffective competition [taking into account subsection (7)]; 15
  - (d) **[declare licensees in the relevant market or market segments, as applicable, that have significant market power, as determined in accordance with subsection (6), and the]** impose appropriate pro-competitive licence conditions [applicable to each such licensee] on those licensees having significant market power to remedy the market failure; 20
  - (e) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments, taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and 25
  - (f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments.”; 30
- (c) by the insertion after subsection (4) of the following subsections:
- “(4A) When determining whether there is effective competition in markets and market segments, the Authority must consider, among other things—
- (a) the non-transitory (structural, legal, and regulatory) entry barriers to the applicable markets or market segments; and 35
  - (b) the dynamic character and functioning of the markets or market segments, including an assessment of relative market share of the various licensees or providers of exempt services in the markets or market segments, and a forward looking assessment of the relative market power of the licensees in the markets or market segments. 40
- (4B) Subject to section 4D of the ICASA Act, licensees must provide to the Authority any information specified by the Authority in order that the Authority may carry out its duties in terms of this section.”;
- (d) by the substitution for subsection (5) of the following subsection: 45
    - “(5) A licensee has significant market power **[with regard to the relevant]** in a market or market segment **[where the Authority finds that the particular individual licensee or class]** if that licensee—
    - (a) is dominant;
    - (b) has control of an essential [facilities] facility; or 50
    - (c) has a vertical relationship that the Authority determines could harm competition [in the market or market segments applicable to the particular category of licence].”;
  - (e) by the deletion of subsection (6);
  - (f) by the substitution for subsection (7) of the following subsection: 55
    - “(7) Pro-competitive licence terms and conditions may include but are not limited to—
    - (a) obligations in respect of interconnection and facilities leasing in addition to those provided for in Chapters 7 and 8 and any regulations made in terms thereof; 60



- (b) penalties for failure to abide by the pro-competitive licence conditions;
- (c) obligations to publish any information specified by the Authority in the manner specified by it;
- (d) obligations to maintain separate accounting for any services specified by the Authority;
- (e) obligations to maintain structural separation for the provision of any services specified by the Authority;
- (f) rate regulation for the provision of specified services, including without limitation price controls on wholesale and retail rates as determined by the Authority, and matters relating to the recovery of costs;
- (g) obligations relating to accounts, records and other documents to be kept, provided to the Authority, and published;
- (h) obligations concerning the amount and type of premium, sports and South African programming for broadcasting; and
- (i) distribution, access and reselling obligations for broadcasters.

#### Amendment of section 68 of Act 36 of 2005

29. Section 68 of the principal Act is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words: 20  
 “measures to ensure that number portability is introduced [**in 2005 or soon thereafter, as far as is practicably possible**], including—”.

#### Amendment of section 70 of Act 36 of 2005

30. The following section is hereby substituted for section 70 of the principal Act:

“**[People] Persons with disabilities** 25

70. The Authority must prescribe regulations setting out a code on **[people] persons** with disabilities that will be applicable to all categories of licences.”.

#### Amendment of section 72 of Act 36 of 2005

31. Section 72 of the principal Act is hereby amended— 30  
 (a) by the substitution for subsection (6) of the following subsection:

“(6) The Authority must allocate a four-digit number through which the public can access government directory<sub>2</sub> information and related services at the centre free of charge.”; and

- (b) by the substitution for subsection (7) of the following subsection: 35

“(7) **[The cost of providing the government directory information service]** Electronic communications service and electronic communications network service licensees that carry communications to the centre may not levy any charge on the caller for placing calls to the centre since such costs must be borne by the licensee.” 40

#### Insertion of section 72A in Act 36 of 2005

32. The following section is hereby inserted in the principal Act, after section 72:

“**National Broadband Council**

**72A.** (1) The Minister must establish a National Broadband Council to perform the functions referred to in subsection (3) having regard to the provisions of any other national law on the development of infrastructure. 45

(2) The terms and conditions of appointment of members who may be from the public and private sector, including allowances, composition and meetings applicable to the Council by virtue of its appointment in terms of subsection (1), must be as determined by the Minister.

(3) The Council must report to and advise the Minister on broadband policy and implementation and must, where required to do so by the Minister, perform the following functions:

- (a) Coordinate overall broadband implementation by government at national, provincial and local government levels;
- (b) facilitate the monitoring and measurement of broadband penetration in South Africa;
- (c) develop a broadband implementation plan that supports the Broadband Policy for South Africa which plan must include, without limitation, skills development, research and development of broadband priority areas;
- (d) advise the Minister and the Minister of Finance on government investment in electronic communications facilities and networks that contribute to broadband at national, provincial and local government level to avoid unnecessary duplication;
- (e) recommend measures to increase uptake and usage of broadband as well as enhance public awareness on the benefits of broadband; and
- (f) annually survey and evaluate the status of broadband penetration in the Republic including, without limitation, household broadband penetration and electronic communications network connectivity to municipalities and broadband providers.”.

**Substitution of section 73 of Act 36 of 2005**

33. The following section is hereby substituted for section 73 of the principal Act:

**“E-rate**

73. (1) Internet services, provided to all public health establishments defined in the National Health Act, 2003 (Act No. 61 of 2003), all public and independent schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), all public and private colleges and all public and private further education and training institutions [as defined in] established, declared or registered in terms of the Further Education and Training Colleges Act, [1998 (Act No. 98 of 1998)] 2006 (Act No. 16 of 2006), and all public and private higher education institutions defined in the Higher Education Act, 1997 (Act No. 101 of 1997), must be provided at a minimum discounted rate of 50% off the total charge levied by the electronic communications service licensee providing Internet services to such institutions.

(2) The discount is applicable **[of]** to the total charge levied by the electronic communications service licensee which includes but is not limited to the following:

- (a) Any connectivity charges for access to the Internet;
- (b) charges for any **[equipment]** electronic communications facilities used for or in association with connectivity to the Internet; and
- (c) **[all calls made to an Internet Service Provider]** all call charges for access to the Internet.

(3) Where the electronic communications service licensee, who provides Internet services to the institutions and schools as contemplated in subsection (1), obtains its electronic communications facilities for the provision of Internet services from [a] an electronic communications network service licensee, the licensee is entitled to a minimum of 50% off

the **[retail]** wholesale rate charged to it by the electronic communications network service licensee for the facilities in question, which discount shall be passed on to the schools and other institutions mentioned in subsection (1).

(4) The implementation of this section must be in the manner prescribed. 5

**[(5) The Minister may, in consultation with the Minister responsible for Education, declare categories of independent schools or private further education and training institutions to be entitled to the discount mentioned in subsection (1).]**

(6) The Agency may pay the charge contemplated in subsection (1) on behalf of any school or other institution contemplated in subsection (1), in which event the Agency is entitled to the discount mentioned in subsection (1).”.

**Insertion of sections 79A and 79B in Act 36 of 2005**

34. The following sections are hereby inserted in the principal Act, after section 79: 15

**“Limitation of liability**

**79A.** No person in the employ of a 112 Emergency Centre, including the State, shall be liable for any damage or loss suffered by any person in consequence of any act which in good faith was performed or omitted in the performance of any function in terms of this Act. 20

**Provision of information**

**79B.** (1) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Minister may, in writing, require the Authority or the Agency, or any other person to provide, within a reasonable time or on a regular basis, any data, information or documents to the Minister that are required for the purposes of the performance of the functions of the Minister. 25

(2) A notice under subsection (1) may also indicate the manner in which the information must be furnished and, if required, how the information must be verified. 30

(3) When information is requested by the Minister the relevant person may request the Minister to treat specific information as confidential, and for that purpose section 4D of the ICASA Act applies with the changes required by the context.”.

**Amendment of section 80 of Act 36 of 2005** 35

35. Section 80 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The Agency is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).”.

**Insertion of section 81A in Act 36 of 2005** 40

36. The following section is hereby inserted in the principal Act, after section 81:

**“Fiduciary duties of Board members, and removal and dissolution**

**81A.** In addition to any other applicable law relating to the fiduciary duties of members of a board, the following shall apply to members of the Board: 45

(a) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest.

- (b) A member of the Board or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the Board or his or her family member, business partner or associate has a direct or indirect interest, may not—
- (i) offer goods or services to the Agency or conclude any business with the Agency; or
  - (ii) make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member.
- (c) A member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
- (i) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
  - (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
  - (iii) regularly attend Board meetings;
  - (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
  - (v) exercise due diligence in the performance of his or her functions as a member;
  - (vi) comply with any internal code of conduct that the Agency may establish for Board members;
  - (vii) not engage in any activity that may undermine the integrity of the Agency;
  - (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member; and
  - (ix) treat any confidential matters relating to the Agency, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Agency or as required as part of that person's official functions as a member of the Board.

#### Amendment of section 82 of Act 36 of 2005

37. Section 82 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what constitutes—
- (i) universal access [**by all areas and communities in the Republic to electronic communications services and electronic communications network services**]; and
  - (ii) [**the universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks, including any elements or attributes thereof**] universal service.”

**Insertion of sections 82A to 82E in Act 36 of 2005**

**38.** (1) The following sections are hereby inserted in the principal Act, after section 82:

**“Appointment of chief executive officer**

**82A.** (1) The Board must, with the approval of the Minister, appoint a CEO to ensure that the Agency meets its objectives. 5

(2) The Board must invite applications for the post of CEO by publishing advertisements in the media.

(3) A person appointed as CEO must—

(a) have the qualifications or experience relevant to the functions of the Agency; and 10

(b) not be disqualified due to any action contemplated in section 81A(1)(b).

**Conditions of appointment of CEO**

**82B.** (1) The appointment of the CEO is subject to the conclusion of an annual performance agreement with the Agency. 15

(2) The CEO is appointed for a term not exceeding five years and may, subject to the approval of the Minister, be reappointed for one additional term not exceeding five years.

(3) The CEO holds office on terms and conditions determined by the Board, with the concurrence of the Minister. 20

(4) The CEO is a member of the Board by virtue of his or her office.

(5) The CEO is entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance.

(6) The CEO is accountable to the Board. 25

**Termination of employment of CEO**

**82C.** (1) The Board must, with the concurrence of the Minister and subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and applicable labour legislation, terminate the employment of the CEO— 30

(a) for misconduct; or

(b) for failing to perform the duties connected with that office diligently.

(2) The Board may suspend the services of the CEO pending the finding of any misconduct proceedings against him or her, during which period the CEO is also suspended as member of the Board. 35

(3) The CEO must vacate the office if he or she becomes disqualified from membership of the Board due to any action contemplated in section 81A(1)(b).

(4) The CEO may resign on written notice of at least 30 days to the chairperson of the Board. 40

**Acting chief executive officer**

**82D.** (1) The Board may in writing appoint any senior employee of the Agency to act as CEO when the holder of that office—

(a) is temporarily unable to perform the duties connected with that office; 45

(b) has been suspended from office; or

(c) has vacated or been removed from that office and a new CEO has not yet been appointed.

(2) An acting chief executive officer may exercise all the powers and must perform all the duties of the CEO, as the case may be.

**Delegation and assignment by CEO**

**82E.** (1) The CEO may delegate any of his or her powers and assign any of his or her duties to an employee of the Agency.

- (2) Any delegation or assignment contemplated in subsection (1)—
- (a) may be made subject to such conditions as the Board may determine;
  - (b) must be communicated to the delegatee or assignee in writing;
  - (c) may be amended or withdrawn in writing by the CEO; and
  - (d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), the CEO is not divested of any power or duty so delegated or assigned.”

(2) (a) Any reference in any other law to the CEO referred to in section 83 of the principal Act prior to the insertion of sections 82A by subsection (1) of this section, must be construed as a reference to the CEO referred to in the said section 82A.

(b) Anything done by the CEO prior to the commencement of this section in the administration of any law, must be regarded to have been done by the CEO referred to in section 82A.

(c) The person who held office as CEO immediately prior to the commencement of this section, must be regarded to have been appointed as the CEO under section 82A of the principal Act as inserted by subsection (1) of this section.

**Amendment of section 83 of Act 36 of 2005**

**39.** Section 83 of the principal Act is hereby amended—

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

“(1) The Agency is under the direction and control of the CEO **[appointed by the Board]**.”;

(b) by the deletion of subsections (2) and (4);

(c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) promote the empowerment of historically disadvantaged persons, including women, the youth and **[people] persons** with disabilities; **and**”;

(d) by the substitution for subsections (9) and (10) of the following subsections, respectively:

“(9) The **[CEO and other]** staff of the Agency must be appointed on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively, of development planning, community development, social sciences, economics, electronic communications and publicity.

(10) A person may not be appointed or continue in office as **[CEO or other]** a member of the staff of the Agency if he or she becomes unfit to hold the office or becomes incapacitated.”;

(e) by the deletion of subsection (11); and

(f) by the substitution for subsections (12) and (13) of the following subsections, respectively:

“(12) The **[CEO and other employees]** members of the staff of the Agency hold office on such conditions as to remuneration and otherwise—

(a) **in the case of the CEO, as the Minister may determine with the concurrence of the Minister of Finance;**

(b) **in the case of other employees,** as the CEO may determine with the concurrence of the Minister and the Minister of Finance.

(13) Different periods and conditions may be determined under **[subsections (11) or]** subsection (12) in respect of different **[employees] members of the staff of the Agency.**”



**Amendment of section 87 of Act 36 of 2005**

40. Section 87 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) All money received, the amounts of which in terms of subsection (1) must be credited to to the Universal Service and Access Fund in the books of the Agency, must be paid into the National Revenue Fund established by section [185] 213 of the Constitution.”. 5

**Amendment of section 88 of Act 36 of 2005**

41. Section 88 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 10

“(a) for the assistance of needy persons towards the cost of the provision to, or the use by, them of broadcasting, electronic communications network services and electronic communications services;

(b) subject to subsection (2), to any [**broadcasting service licensee and**] electronic communications network service licensee for the purpose of financing the construction or extension of electronic communications networks in underserved areas as prescribed;” 15

(b) by the deletion in subsection (1) of paragraph (c);

(c) by the substitution in subsection (1)(d) for the words preceding subparagraph (i) of the following words: 20

“to schools and [**further education and training institutions**] colleges as defined in or established, declared or registered in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), and the Further Education and Training Colleges Act, [1998 (Act No. 98 of 1998)] 2006 (Act No. 16 of 2006), respectively, for the procurement of broadcasting and electronic communications services and access to electronic communications networks: Provided that—” 25

(d) by the deletion in subsection (1)(d) of subparagraph (i);

(e) by the substitution in subsection (1)(d)(ii) for the words preceding item (aa) of the following words: 30

“in the case of independent schools and [**independent further education and training institutions**] private colleges—”;

(f) by the substitution in subsection (1) for paragraph (e) of the following paragraph: 35

“(e) for the establishment and operation of [**broadcasting services and for the establishment and operation**] community centres, including training of and the payment of allowances to personnel of centres, where access can be obtained to electronic communications [networks] network services, electronic communications services and broadcasting services.” 40

(g) by the addition to subsection (1) of the following paragraph:

“(f) as may be prescribed by regulation by the Minister, with the concurrence of the Minister of Finance.”;

(h) by the insertion after subsection (1) of the following subsection: 45

“(1A) The Agency must at least every two years, after obtaining public participation, determine by notice in the *Gazette*, for the purposes of payments referred to in subsection (1), the manner in which applications must be made and the manner in which subsidies will be paid.”; and 50

(i) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) The Authority must at least [**bi-annually**] every two years review and update, the prescribed definition of under-served area and the list of designated under-served areas eligible for construction payments from the Universal Service and Access Fund. 55

(4) [**The Minister may**] The Agency must at least every two years, after obtaining public participation, make recommendations to enable the Minister to determine by notice in the *Gazette*, for the purposes of



payments referred to in subsection (1)(a)[, **by notice in the *Gazette* determine**]

- (a) types of needy persons to whom assistance may be given;
- (b) the persons who must apply for assistance [**and the manner in which such applications must be made**]; and
- (c) [**the manner in which and**] persons to whom subsidies may be paid.”.

#### Amendment of section 89 of Act 36 of 2005

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

- (a) by the substitution for subsection (1) of the following subsection:
  - “(1) Subject to subsection (3), every holder of a licence granted or considered to have been granted in terms of Chapter 3, except holders of community broadcasting service licences, must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions of the licensee’s licensed activity to the Universal Service and Access Fund.”;
- (b) by the addition of the following subsection:
  - “(4) The Agency must collect all money that is due and payable to the Universal Service and Access Fund from the Authority.”.

#### Amendment of section 95 of Act 36 of 2005

43. Section 95 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) [**Within twenty-four months of the coming into force of this Act, the** The Authority may, if the Authority considers it necessary, repeal or amend the regulations made under—
  - (a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);
  - (b) the Telecommunications Act;
  - (c) the Broadcasting Act;
  - (d) the IBA Act;
  - (e) the Radio Act, 1952 (Act No. 3 of 1952); and
  - (f) the Sentech Act,
 which were in force immediately prior to the commencement of [**this Act**] the Electronic Communications Amendment Act, 2014.”.

#### Amendment of Arrangement of Sections

44. The Arrangement of Sections which occur before section 1 of the principal Act is hereby amended—

- (a) by the substitution for item 21 of the following item:
  - “**21. [Guidelines for rapid]** Rapid deployment of electronic communications facilities”;
- (b) by the insertion after item 72 of the following item:
  - “**72A. National Broadband Council**”;
- (c) by the insertion after item 79 of the following items:
  - “**79A. Limitation of liability**”;
  - “**79B. Provision of information**”;
- (d) by the insertion after item 81 of the following item:
  - “**81A. Fiduciary duties of Board members, and removal and dissolution**”;
 and
- (e) by the insertion after item 82 of the following items:
  - “**82A. Appointment of chief executive officer**”;
  - “**82B. Conditions of appointment of CEO**”;
  - “**82C. Termination of employment of CEO**”;
  - “**82D. Acting chief executive officer**”;
  - “**82E. Delegation and assignment by CEO**”.

**Amendment of law**

**45.** The law referred to in the first column of the Schedule is hereby amended to the extent indicated in the third column thereof.

**Short title and commencement**

**46.** (1) This Act is called the Electronic Communications Amendment Act, 2014, and comes into operation on a date determined by the Minister of Communications by notice in the *Gazette*. 5

(2) Different dates may be so determined in respect of different sections of this Act.

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**SCHEDULE****LAW AMENDED***(Section 45)*

Act No. and Year	Short Title	Extent of Amendment
Act No. 4 of 1999	Broadcasting Act, 1999	<b>1.</b> Amendment of section 1 by the substitution for the definition of “common carrier” of the following definition: “ ‘ <b>common carrier</b> ’ [means a service for broadcasting signal distribution as provided by Sentech Limited, established in terms of the Sentech Act, 1996] has the meaning assigned to it in the <u>Electronic Communications Act, 2005 (Act No. 36 of 2005);</u> ”