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PRESIDENT'S OFFICE

No. 1869. 15 November 1996

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

No. 103 of 1996: Telecommunications Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1869. 15 November 1996

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

No. 103 van 1996: Wet op Telekommunikasie, 1996.

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.

ACT

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

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

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

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om opnuut voorsiening te maak vir die regulering van ander telekommunikasie-aktiwiteite as die uitsaaiwese en vir die beheer van die radiofrekwensiespektrum; en om vir daardie doel 'n onafhanklike Suid-Afrikaanse Telekommunikasie-reguleringsowerheid en 'n Universele Diens-agentskap in te stel; om die Radiowet, 1952, en die Radiowysigingswette van 1957, 1962, 1963, 1969 en 1974 te herroep en die Algemene Regswysigingswette van 1957 en 1975, die Poswet, 1958, die Poskantoor dienswet, 1974, die Uitsaaiwet, 1976, die Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989, en die Wet op die Onafhanklike Uitsaai-owerheid, 1993, te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 12 November 1996.)

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

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1. In this Act, unless the context indicates otherwise— 30
- (i) "Agency" means the Universal Service Agency established by section 58; (i)
 - (ii) "Authority" means the South African Telecommunications Regulatory Authority established by section 5; (xii)
 - (iii) "broadcasting" means broadcasting as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxix) 35
 - (iv) "broadcasting services frequency bands" means broadcasting services frequency bands as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxvii)
 - (v) "broadcasting signal distribution" means broadcasting signal distribution as defined in section 1 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993); (xxviii) 40
 - (vi) "Council" means the Council of the Authority; (xiii)
 - (vii) "councillor" means any member of the Council; (xiv)
 - (viii) "Department" means the Department of Communications; (ii)
 - (ix) "Director-General" means the Director-General: Communications; (iii) 45
 - (x) "Eskom" means Eskom referred to in section 2(1) of the Eskom Act, 1987 (Act No. 40 of 1987); (iv)
 - (xi) "family member" or "member of the family", in relation to any person, means his or her parent, child or spouse, including a person living with that person as if they were married to each other; (vi) 50
 - (xii) "fixed line operator" means Telkom and any other person who provides a licensed telecommunication service by means of a telecommunication system

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30 **Woordomskrywing**

- 1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) "Agentskap" die Universele Diens-agentskap ingestel by artikel 58; (i)
 - (ii) "Departement" die Departement van Kommunikasiewese; (viii)
 - (iii) "Direkteur-generaal" die Direkteur-generaal: Kommunikasiewese; (ix)
 - 35 (iv) "Eskom" Eskom bedoel in artikel 2(1) van die Eskomwet, 1987 (Wet No. 40 van 1987); (x)
 - (v) "frekwensieband" 'n bepaalde reeks frekwensies vir gebruik deur een of meer radiokommunikasiedienste;
 - "frekwensiebandplan" 'n tabel van die toekennings van die verskillende
 - 40 frekwensiebande vir gebruik deur een of meer radiokommunikasiedienste onder bepaalde omstandighede; (xiii)
 - (vi) "gesinlid" of "lid van die gesin", met betrekking tot enige persoon, sy of haar ouer, kind of gade, met inbegrip van 'n persoon wat met daardie persoon saamwoon asof hulle met mekaar getroud is; (xi)
 - 45 (vii) "hierdie Wet" ook die regulasies en die radioregulasies; (xxx)
 - (viii) "interverbinding" om twee telekommunikasiestelsels sodanig te verbind dat gebruikers van die een stelsel met gebruikers van die ander stelsel of enige ander telekommunikasiestelsel kan kommunikeer of dienste kan benut wat deur middel van sodanige stelsels verskaf word en het "interverbinding" 'n ooreenstemmende betekenis; (xv)
 - 50 (ix) "lisensie" 'n lisensie bedoel in artikel 32; (xvi)

- consisting mainly of fixed lines, and "operator" shall be construed accordingly; (xxxiii)
- (xiii) "frequency band" means a specified range of frequencies for use by one or more radio communication services;
 "frequency band plan" means a table setting out the allocations of various frequency bands for use by one or more radio communication services under specified conditions; (v) 5
- (xiv) "Human Resources Fund" means the Human Resources Fund established by section 78; (x)
- (xv) "interconnect" means to link two telecommunications systems so that users of either system may communicate with users of, or utilise services provided by means of, the other system or any other telecommunication system, and "interconnection" has a corresponding meaning; (viii) 10
- (xvi) "licence" means a licence referred to in section 32; (ix)
- (xvii) "Minister" means the Minister for Posts, Telecommunications and Broadcasting; (xi) 15
- (xviii) "prescribed"—
 (a) means, subject to paragraph (b), prescribed by regulation;
 (b) in relation to radio activities, radio apparatus and other radio matters, means prescribed by radio regulation; (xxxiv) 20
- (xix) "radio" means electromagnetic waves which are propagated in space without artificial guide and having frequencies of lower than 3 000 Ghz; (xv)
- (xx) "radio apparatus" means a telecommunication facility which is capable of transmitting or receiving any signal by radio, other than—
 (a) a sound radio set or other device capable of receiving broadcasting by radio in the form of sound but not also in the form of images or any other visible signal, if such set or device is used only for the reception of broadcasting; 25
 (b) except in sections 54 and 55, a television set as contemplated in the Broadcasting Act, 1976 (Act No. 73 of 1976); (xvi) 30
- (xxi) "radio regulation" means a regulation made under section 95; (xvii)
- (xxii) "regulation" means a regulation made under section 96; (xviii)
- (xxiii) "signal" includes signs, sounds, writing or information of any kind; (xix)
- (xxiv) "station" means any separate radio apparatus or a combination thereof; (xx)
- (xxv) "telecommunication" means the emission, transmission or reception of a signal from one point to another by means of electricity, magnetism, radio or other electromagnetic waves, or any agency of a like nature, whether with or without the aid of tangible conductors; (xxi) 35
- (xxvi) "telecommunication facility" includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with telecommunication; (xxiii) 40
- (xxvii) "telecommunication service" means any service provided by means of a telecommunication system; (xxii)
- (xxviii) "telecommunication system" means any system or series of telecommunication facilities or radio, optical or other electromagnetic apparatus or any similar technical system used for the purpose of telecommunication, whether or not such telecommunication is subject to rearrangement, composition or other processes by any means in the course of their transmission or emission or reception; (xxiv) 45
- (xxix) "Telkom" means Telkom S.A. Limited, a company contemplated in section 3(1) of the Post Office Act, 1958 (Act No. 44 of 1958); (xxv) 50
- (xxx) "this Act" includes the regulations and the radio regulations; (vii)
- (xxxi) "Transnet" means Transnet Limited, a company contemplated in section 2(1) of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989); (xxvi) 55
- (xxxii) "universal access" means universal access to telecommunication services as determined from time to time in terms of section 59(2)(a)(i); (xxxii)
- (xxxiii) "universal service" means the universal provision of telecommunication services as determined from time to time in terms of section 59(2)(a)(ii); (xxx) 60
- (xxxiv) "Universal Service Fund" means the Universal Service Fund established by section 65(1). (xxxi)

- (x) "Menslike Hulpbron-fonds" die Menslike Hulpbron-fonds by artikel 78 ingestel; (xiv)
- (xi) "Minister" die Minister vir Pos-, Telekommunikasie- en Uitsaaiwese; (xvii)
- 5 (xii) "Owerheid" die Suid-Afrikaanse Telekommunikasiereguleringsowerheid ingestel by artikel 5; (ii)
- (xiii) "Raad" die Raad van die Owerheid; (vi)
- (xiv) "raadslid" enige lid van die Raad; (vii)
- (xv) "radio" elektromagnetiese golwe wat deur die ruimte voortgeplant word sonder kunsmatige geleier en wat frekwensies van laer as 3 000 Ghz het; (xix)
- 10 (xvi) "radio-apparaat" 'n telekommunikasiefasiliteit wat in staat is om enige sein deur middel van radio te send of te ontvang, behalwe—
- (a) 'n klankradiostel of ander toerusting wat in staat is om uitsending deur radio in die vorm van klank te ontvang maar nie ook in die vorm van beelde of enige ander sigbare sein nie, indien sodanige stel of toerusting slegs vir die ontvangs van uitsending gebruik word;
- 15 (b) buiten in artikels 54 en 55, 'n televisiestel soos beoog in die Uitsaaiwet, 1976 (Wet No. 73 van 1976); (xx)
- (xvii) "radioregulاسie" 'n regulاسie kragtens artikel 95 gemaak; (xxi)
- 20 (xviii) "regulasie" 'n regulاسie kragtens artikel 96 gemaak; (xxii)
- (xix) "sein" ook seine, klanke, skrif of inligting van enige aard; (xxiii)
- (xx) "stasie" enige afsonderlike radio-apparaat of 'n kombinasie daarvan; (xxiv)
- (xxi) "telekommunikasie" die uitstraling, uitsending of ontvangs van 'n sein van die een punt na 'n ander deur middel van elektrisiteit, magnetisme, radio- of ander elektromagnetiese golwe, of enige middel van 'n soortgelyke aard, hetsy met of sonder die hulp van tasbare geleiers; (xxv)
- 25 (xxii) "telekommunikasiediens" enige diens wat deur middel van 'n telekommunikasiestelsel verskaf word; (xxvii)
- (xxiii) "telekommunikasiefasiliteit" ook enige draad, kabel, antenne, mas of ander voorwerp wat in verband met telekommunikasie gebruik word of daarvoor gebruik kan word; (xxvi)
- 30 (xxiv) "telekommunikasiestelsel" enige stelsel of reeks telekommunikasiefasiliteite of radio-, optiese of ander elektromagnetiese apparaat of enige soortgelyke tegniese stelsel wat vir die doel van telekommunikasie gebruik word, hetsy sodanige telekommunikasie op enige wyse in die loop van die oorsending of uitsending of ontvangs daarvan aan herrangskikking, samestelling of ander prosesse onderworpe is al dan nie; (xxviii)
- 35 (xxv) "Telkom" Telkom S.A. Beperk, 'n maatskappy beoog in artikel 3(1) van die Poswet, 1958 (Wet No. 44 van 1958); (xxix)
- 40 (xxvi) "Transnet" Transnet Beperk, 'n maatskappy beoog in artikel 2(1) van die Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989 (Wet No. 9 van 1989); (xxx)
- (xxvii) "uitsaaidiensfrekwensiebande" uitsaaidiensfrekwensiebande soos omskryf in artikel 1 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993 (Wet No. 153 van 1993); (iv)
- 45 (xxviii) "uitsaaiseindistribusie" uitsaaiseindistribusie soos omskryf in artikel 1 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993 (Wet No. 153 van 1993); (v)
- (xxix) "uitsaaiwese" die uitsaaiwese soos omskryf in artikel 1 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993 (Wet No. 153 van 1993); (iii)
- 50 (xxx) "universele diens" die universele verskaffing van telekommunikasiedienste soos van tyd tot tyd ingevolge artikel 59(2)(a)(ii) bepaal; (xxxiii)
- (xxxi) "Universele Diens-fonds" die Universele Diens-fonds by artikel 65(1) ingestel; (xxxiv)
- 55 (xxxii) "universele toegang" universele toegang tot telekommunikasiedienste soos van tyd tot tyd ingevolge artikel 59(2)(a)(i) bepaal; (xxxii)
- (xxxiii) "vastelyn-operateur" Telkom of enige ander persoon wat 'n gelisensieerde telekommunikasiediens verskaf deur middel van 'n telekommunikasiestelsel wat hoofsaaklik uit vaste lyne bestaan, en "operateur" word dienooreenkomstig uitgelê; (xii)
- 60 (xxxiv) "voorgeskryf" of "voorgeskrewe"—
- (a) behoudens paragraaf (b) deur regulاسie voorgeskryf;

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

Objects of Act

5

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

- (a) promote the universal and affordable provision of telecommunication services;
- (b) promote the provision of a wide range of telecommunication services in the interest of the economic growth and development of the Republic; 10
- (c) make progress towards the universal provision of telecommunication services;
- (d) encourage investment and innovation in the telecommunications industry;
- (e) encourage the development of a competitive and effective telecommunications manufacturing and supply sector; 15
- (f) promote the development of telecommunication services which are responsive to the needs of users and consumers;
- (g) ensure that, in relation to the provision of telecommunication services, the needs of the local communities and areas are duly taken into account; 20
- (h) ensure that the needs of disabled persons are taken into account in the provision of telecommunication services;
- (i) ensure compliance with accepted technical standards in the provision and development of telecommunication services;
- (j) ensure fair competition within the telecommunications industry; 25
- (k) promote the stability of the telecommunications industry;
- (l) encourage ownership and control of telecommunication services by persons from historically disadvantaged groups;
- (m) protect the interests of telecommunications users and consumers;
- (n) encourage the development of human resources in the telecommunications industry; 30
- (o) promote small, medium and micro-enterprises within the telecommunications industry;
- (p) ensure efficient use of the radio frequency spectrum;
- (q) promote the empowerment and advancement of women in the telecommunications industry. 35

Application of Act

3. This Act shall not apply in relation to broadcasting, broadcasting signal distribution or broadcasting services frequency bands, except as provided in sections 28(3) and 127 to 129. 40

State bound by Act

4. The provisions of this Act bind the State, except—
- (a) Chapter VI in relation to the South African National Defence Force; and
 - (b) sections 101 and 102.

CHAPTER II

45

South African Telecommunications Regulatory Authority

Establishment of South African Telecommunications Regulatory Authority

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

(b) met betrekking tot radio-aktiwiteit, radio-apparaat en ander radio-aangeleenthede, deur radioregulering voorgeskryf. (xviii)

(2) By die uitleg van 'n bepaling van hierdie Wet moet die Internasionale Telekommunikasiekonvensies wat in 1973 te Malaga en Torremolinos en in 1982 te Nairobi gesluit is en die Radioregulering van die Internasionale Telekommunikasieunie in ag geneem word.

Oogmerke van Wet

2. Die hoofogmerk van hierdie Wet is om in die openbare belang voorsiening te maak vir die regulering van en beheer oor telekommunikasie-aangeleenthede en om vir daardie doel—

- (a) die universele en bekostigbare verskaffing van telekommunikasiedienste te bevorder;
- (b) in belang van die ekonomiese groei en ontwikkeling van die Republiek die verskaffing van 'n wye reeks telekommunikasiedienste te bevorder;
- 15 (c) vordering te maak na die universele verskaffing van telekommunikasiedienste;
- (d) investering en innovering in die telekommunikasiebedryf aan te moedig;
- (e) die ontwikkeling van 'n mededingende en doeltreffende telekommunikasievervaardiging en -verskaffing aan te moedig;
- 20 (f) die ontwikkeling van telekommunikasiedienste wat ontvanklik vir die behoeftes van gebruikers en verbruikers is, te bevorder;
- (g) te verseker dat, ten opsigte van die verskaffing van telekommunikasiedienste, die behoeftes van die plaaslike gemeenskappe en gebiede na behore in ag geneem word;
- 25 (h) te verseker dat die behoeftes van gestremde persone by die verskaffing van telekommunikasiedienste in ag geneem word;
- (i) voldoening aan aanvaarde tegniese standaarde by die verskaffing en ontwikkeling van telekommunikasiedienste te verseker;
- (j) billike mededinging binne die telekommunikasiebedryf te verseker;
- 30 (k) die stabiliteit van die telekommunikasiebedryf te bevorder;
- (l) eienaarskap van en beheer oor telekommunikasiedienste deur persone uit histories agtergeblewe groepe aan te moedig;
- (m) die belange van telekommunikasiegebruikers en -verbruikers te beskerm;
- (n) die ontwikkeling van menslike hulpbronne in die telekommunikasiebedryf aan te moedig;
- 35 (o) klein, middelslag en mikro-ondernemings binne die telekommunikasiebedryf te bevorder;
- (p) die doeltreffende gebruik van die radiofrekwensiespektrum te verseker;
- 40 (q) bevorder die bemagtiging en vooruitgang van vroue in die telekommunikasiebedryf.

Toepassing van Wet

3. Hierdie Wet is nie van toepassing ten opsigte van die uitsaaiwese, uitsaaiseindistribusie of uitsaaiensfrekwensiebande nie behalwe soos in artikels 28(3) en 127 tot 129 bepaal.

45 Staat gebind deur Wet

4. Die bepalings van hierdie Wet bind die Staat, behalwe—
- (a) Hoofstuk VI ten opsigte van die Suid-Afrikaanse Nasionale Weermag; en
 - (b) artikels 101 en 102.

HOOFTUK II

50 *Suid-Afrikaanse Telekommunikasiereguleringsowerheid*

Instelling van Suid-Afrikaanse Telekommunikasiereguleringsowerheid

5. (1) Daar word hiermee 'n regs persoon ingestel wat as die Suid-Afrikaanse Telekommunikasiereguleringsowerheid bekend staan.

(2) (a) The Authority shall be capable in law of instituting, defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring, holding and alienating or otherwise disposing of movable or immovable property or any other real right or other right or interest, of entering into contracts and concluding agreements and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act. 5

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

(3) The Authority shall be independent and impartial in the performance of its functions. 10

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

(b) The Minister shall, before a policy direction contemplated in paragraph (a) is issued— 15

(i) consult the Authority;

(ii) in order to obtain the view of interested persons, cause the text of such direction to be published in the *Gazette* together with a notice declaring his or her intention to issue that direction and inviting interested persons to lodge written representations in relation to the direction in the manner specified in such notice within 30 days from the date of the notice; and 20

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

(c) The provisions of paragraph (b) shall not apply in respect of any alteration by the Minister of a policy direction in consequence of comments or representations received by him or her pursuant to consultation, publication or reference in terms of that paragraph. 25

(d) The Authority shall perform its functions in terms of this Act in accordance with a policy direction issued under this section. 30

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

Representation by Council

6. (1) The Authority shall be governed and represented by its Council. 35

(2) The Council shall consist of—

(a) a chairperson; and

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

(3) All acts of the Council shall in law be regarded as the acts of the Authority. 40

Personal requirements in respect of councillors

7. (1) Councillors shall be persons who—

(a) are committed to—

(i) fairness, openness and accountability on the part of those entrusted with the governance of a public service; 45

(ii) the objects and principles of this Act;

(b) when viewed collectively—

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

(ii) possess qualifications, expertise and experience in the fields of, amongst others, telecommunications policy and technology, frequency band planning, law, economics, business practice and finance. 50

Disqualification of councillors

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

(2) (a) Die Owerheid is regtens bevoeg om regstappe van welke aard ook al in te stel, te verdedig of teen te staan, om roerende of onroerende goedere of enige ander saaklike reg of ander reg of belang te koop of andersins te bekom en dit te hou, te vervreem of andersins daarvoor te beskik, om kontrakte aan te gaan en ooreenkomste te sluit en oor die algemeen die ander handeling uit te voer en die ander dinge te doen wat regspersone regtens kan uitvoer en doen, behoudens die bepalings van hierdie Wet.

(b) Die Owerheid kan al die handeling uitvoer en al die dinge doen wat redelikerwys nodig of bykomend, behorend of aanvullend is tot die verrigting van enige van sy werksaamhede met inbegrip van enige aangeleentheid bedoel in paragraaf 10 (a).

(3) Die Owerheid is onafhanklik onpartydig by die verrigting van sy werksaamhede.

(4) (a) Die Minister kan van tyd tot tyd by kennisgewing in die *Staatskoerant* breë beleidsvoorskrifte aan die Owerheid uitreik, wat met die oogmerke genoem in artikel 2 strook.

(b) Alvorens 'n beleidsvoorskrif beoog in paragraaf (a) uitgereik word, moet die Minister—

- (i) met die Owerheid oorleg pleeg;
- (ii) ten einde die mening van belanghebbende persone in te win, die teks van sodanige voorskrif in die *Staatskoerant* laat publiseer tesame met 'n kennisgewing wat sy of haar voorneme om daardie voorskrif uit te reik, te kenne gee en wat belanghebbende persone nooi om binne 30 dae vanaf die datum van die kennisgewing skriftelik vertoë met betrekking tot die voorskrif te rig op die wyse wat in sodanige kennisgewing uiteengesit word; en
- (iii) die voorgestelde voorskrif vir kommentaar verwys na die parlementêre komitees wat aangestel is om aangeleenthede te oorweeg wat op telekommunikasie betrekking het.

(c) Die bepalings van paragraaf (b) is nie van toepassing ten opsigte van enige wysiging van 'n beleidsvoorskrif deur die Minister wat voortspruit uit die kommentaar of vertoë wat na aanleiding van die oorlegpleging, publikasie of verwysing ingevolge daardie paragraaf deur hom of haar ontvang word nie.

(d) Die Owerheid verrig sy werksaamhede ingevolge hierdie Wet ooreenkomstig 'n beleidsvoorskrif wat kragtens hierdie artikel uitgereik is.

(e) 'n Beleidsvoorskrif wat kragtens hierdie artikel uitgereik is, kan deur die Minister gewysig, ingetrek of vervang word, en die bepalings van hierdie artikel geld met die nodige veranderings ten opsigte van enige sodanige wysiging, intrekking of vervanging.

Verteenwoordiging deur Raad

6. (1) Die Owerheid word deur sy Raad bestuur en verteenwoordig.

(2) Die Raad bestaan uit—

- (a) 'n voorsitter; en
- (b) minstens drie en hoogstens vyf ander raadslede, ingevolge artikel 9 deur die President aangestel.

(3) Alle handeling van die Raad word regtens as handeling van die Owerheid beskou.

45 Persoonlike vereistes ten opsigte van raadslede

7. (1) Raadslede is persone wat—

- (a) verbind is tot—
 - (i) billikheid, openlikheid en verantwoordbaarheid aan die kant van diegene aan wie die bestuur van 'n openbare diens toevertrou is;
 - (ii) die oogmerke en beginsels van hierdie Wet;
- (b) wanneer gesamentlik gesien—
 - (i) 'n breë deursnit van die bevolking van die Republiek verteenwoordig;
 - (ii) beskik oor kwalifikasies, kundigheid en ondervinding op die gebied van onder andere telekommunikasiebeleid en -tegnologie, frekwensiebandbeplanning, die reg, ekonomie, sakepraktyk en finansiering.

Onbevoegdheid van raadslede

8. (1) 'n Persoon mag nie as 'n raadslid aangestel word of voortgaan om as 'n raadslid te dien nie indien sodanige persoon—

- (a) is not a citizen of the Republic;
- (b) is not permanently resident in the Republic;
- (c) is a public servant or the holder of any other office of profit under the State;
- (d) is a member of Parliament, any provincial legislature or local authority, or any council; 5
- (e) is an office-bearer or employee of any party, movement, organisation or body of a party-political nature;
- (f) or a member of the family of such person has a controlling interest or any substantial financial interest in the telecommunications or broadcasting industry; 10
- (g) or his or her business partner holds an office in or with or is employed by any person, company, organisation or other body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f);
- (h) is an unrehabilitated insolvent;
- (i) is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or disordered; 15
- (j) has at any time been convicted, whether in the Republic or elsewhere, of—
- (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), or any other offence involving dishonesty; 20
- (ii) an offence under this Act; or
- (iii) any offence corresponding materially to any offence referred to in subparagraph (i) or (ii); or
- (k) has at any time been removed from an office of trust on account of misconduct. 25
- (2) A person who is subject to a disqualification contemplated in subsection (1)(b) to (g) may be nominated for appointment and may be appointed as a councillor if at the time of such appointment he or she is no longer subject to that disqualification.

Appointment of councillors

9. (1) The chairperson and other members of the Council shall be appointed by the President on the advice of the Parliamentary committees on communications. 30
- (2) (a) The Parliamentary committees shall cause a notice to be published in the *Gazette* inviting interested persons to submit, within a period which shall not be shorter than 10 days after such publication, nominations for appointment as councillors.
- (b) The Parliamentary committees shall— 35
- (i) after the expiry of the period for nomination contemplated in paragraph (a), compile a shortlist from the nominations received and publish it in the *Gazette*, stating the date and time when and the place where a public hearing in respect of each candidate mentioned in the shortlist, will take place; and
- (ii) hold such public hearing on such date and at such time and place. 40
- (c) The Parliamentary committees shall thereafter recommend candidates for appointment as councillors, with due regard to the provisions of sections 5(3), 7 and 8.
- (d) The number of candidates so recommended, shall not exceed the number of councillors to be appointed by more than 50 per cent.
- (e) If the President determines that circumstances exist which render any or some of such candidates unacceptable, he or she shall inform the Parliamentary committees of those circumstances. 45
- (f) After having been informed as contemplated in paragraph (e), the Parliamentary committees may—
- (i) invite further nominations in accordance with paragraphs (a), (b) and (c); 50
- (ii) recommend further candidates in accordance with paragraph (c);
- (iii) advise the President that the recommendation of further candidates is not warranted.
- (g) The President shall thereafter make appointments from the candidates, or the candidates as supplemented in terms of paragraph (f)(ii), as the case may be. 55

- (a) nie 'n burger van die Republiek is nie;
- (b) nie permanent in die Republiek woonagtig is nie;
- (c) 'n Staatsamptenaar is of die bekleër van enige ander besoldigde amp onder die Staat;
- 5 (d) 'n lid is van die Parlement, enige provinsiale wetgewer of plaaslike owerheid, of enige raad;
- (e) 'n ampsdraer of werknemer van enige party, beweging, organisasie of liggaam van 'n party-politieke aard is;
- (f) of 'n lid van die gesin van sodanige lid 'n beherende belang of enige finansiële belang by die telekommunikasie- of uitsaaibedryf het nie;
- 10 (g) of sy of haar vennoot 'n amp beklee in of by of in diens is by enige persoon, maatskappy, organisasie of ander liggaam, hetsy ingelyf of oningelyf, wat 'n belang het, beoog in paragraaf (f);
- (h) 'n ongerehabiliteerde insolvent is;
- 15 (i) geestesongesteld is of deur 'n bevoegde hof kranksinnig of versteurd verklaar is;
- (j) te eniger tyd skuldig bevind is, hetsy in die Republiek of elders, aan—
- (i) diefstal, bedrog, vervalsing of uitgifte van 'n vervalste dokument, meined, 'n misdryf ingevolge die Wet op Korruptsie, 1992 (Wet No. 94 van 1992), of enige ander misdryf waarvan oneerlikheid 'n element is;
- 20 (ii) 'n misdryf ingevolge hierdie Wet; of
- (iii) enige misdryf wat wesenlik ooreenstem met enige misdryf in subparagraaf (i) of (ii) bedoel; of
- (k) te eniger tyd weens wangedrag uit 'n vertrouensamp onthef is.
- 25 (2) 'n Persoon wat onderworpe is aan 'n diskwalifikasie beoog in subartikel (1)(b) tot (g) kan vir aanstelling benoem word en mag as 'n raadslid aangestel word indien hy of sy ten tyde van sodanige aanstelling nie meer aan daardie diskwalifikasie onderworpe is nie.

Aanstelling van raadslede

- 30 **9.** (1) Die voorsitter en ander lede van die Raad word deur die President aangestel op aanbeveling van die Parlementêre komitees oor kommunikasie.
- (2) (a) Die Parlementêre komitees nooi by kennisgewing in die *Staatskoerant* belanghebbende persone om binne 'n bepaalde tyd, wat nie korter as 10 dae na sodanige publikasie is nie, benoemings vir aanstelling as raadslede voor te lê.
- 35 (b) Die Parlementêre komitees moet—
- (i) na die verstryking van die tydperk vir benoeming in paragraaf (a) beoog, 'n kortlys uit die benoemings wat ontvang is, opstel en in die *Staatskoerant* publiseer, met vermelding van die datum en tyd waarop en plek waar 'n openbare verhoor ten opsigte van elke kandidaat wat in die kortlys genoem word, sal plaasvind; en
- 40 (ii) so 'n openbare verhoor op daardie datum, tyd en plek hou.
- (c) Die Parlementêre komitees beveel daarna kandidate aan vir aanstelling as raadslede, met behoorlike inagneming van die bepalings van artikels 5(3), 7 en 8.
- (d) Die getal kandidate wat so aanbeveel word, is hoogstens 50 persent meer as die 45 getal raadslede wat aangestel moet word.
- (e) Indien die President bepaal dat daar omstandighede bestaan wat enige of sommige van sodanige kandidate onaanvaarbaar maak, lig hy of sy die Parlementêre komitees oor daardie omstandighede in.
- (f) Nadat kennis gegee is soos beoog in paragraaf (e), kan die Parlementêre 50 komitees—
- (i) verdere benoemings ooreenkomstig paragrawe (a), (b) en (c) aanvra;
- (ii) verdere kandidate ooreenkomstig paragraaf (c) aanbeveel;
- (iii) die President adviseer dat die aanbeveling van verdere kandidate nie geregverdig is nie.
- 55 (g) Die President doen daarna aanstellings uit die kandidate, of die kandidate soos aangevul ingevolge paragraaf (f)(ii), na gelang van die geval.

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

(4) Where a vacancy in the office of a councillor has arisen as contemplated in section 13(1), the procedure contemplated in subsection (2)(a), (b) and (c) shall apply. 5

Terms of office of councillors

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

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

(b) One half or, if their number is not a multiple of two, a number nearest to one half of the total number of additional councillors shall vacate their offices every two years. 10

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

(i) half or a number nearest to half, as the case may be, of the additional councillors appointed to the first Council after the date of commencement of this Act, as determined by the Council by lot shall vacate office two years as from the date of their appointment; and 15

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

(d) If the President at any time appoints further councillors except in order to fill a vacancy and the number of additional councillors is thereby increased, the provisions of paragraphs (a) to (c) shall apply, with the necessary changes, to any councillor so appointed: Provided that any such councillor appointed more than one year after the appointment of the incumbent councillors shall vacate office at the same time as the councillors referred to in paragraph (c)(ii). 20

(3) A councillor may at any time, upon at least three months' written notice tendered to the President, resign from office. 25

(4) Notwithstanding subsections (1) and (2)(a), the chairperson and additional councillors may remain in office after expiry of their term of office until the commencement of the term of office of their successors: Provided that such increased term of office shall not exceed 45 days. 30

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

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

Remuneration and allowances of councillors 35

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

Removal from office

12. Notwithstanding section 10, a councillor may be removed from office by the President on account of— 40

(a) misconduct;

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

(c) absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown; 45

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

(e) failure to disclose an interest in terms of section 15(2)(a) or attendance at or participation in proceedings of the Council while having an interest contemplated in section 15(1). 50

Vacancies in Council

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

(a) becomes subject to a disqualification referred to in section 8;

(3) Die administratiewe werk wat nodig is vir voldoening aan subartikel (2) word gedoen deur beamptes van die Departement wat vir daardie doel deur die Direkteur-generaal aangewys word.

(4) Waar 'n vakature in die amp van 'n raadslid ontstaan het soos beoog in artikel 13(1), geld die prosedure beoog in subartikel (2)(a), (b) en (c).

Ampstermyne van raadslede

10. (1) Die voorsitter beklee die amp vir vyf jaar.

(2) (a) Behoudens paragrawe (c) en (d), beklee die bykomende raadslede in artikel 6(2)(b) bedoel, die amp vir vier jaar.

15 (b) Die helfte of, indien hulle getal nie 'n veelvoud van twee is nie, 'n getal wat die naaste is aan die helfte van die totale getal bykomende raadslede, lê hulle ampte elke twee jaar neer.

(c) Vir die doeleindes van paragraaf (b)—

15 (i) lê die helfte of 'n getal wat die naaste aan die helfte is, na gelang van die geval, van die bykomende raadslede aangestel in die eerste Raad na die datum van inwerkingtreding van hierdie Wet, soos by wyse van loting deur die Raad bepaal, hulle ampte neer twee jaar vanaf die datum van hulle aanstelling; en

20 (ii) lê die raadslede wat op daardie stadium oorbly, hulle ampte op 'n datum twee jaar later neer.

(d) Indien die President te eniger tyd verdere raadslede aanstel behalwe ten einde 'n vakature te vul en die getal bykomende raadslede daardeur vermeerder word, geld die bepalinge van paragrawe (a) tot (c) met die nodige veranderings vir enige raadslid wat aldus aangestel word: Met dien verstande dat enige sodanige raadslid wat meer as een 25 jaar na die aanstelling van die dienende raadslede aangestel word, terselfdertyd as die raadslede bedoel in paragraaf (c)(ii) die amp neerlê.

(3) 'n Raadslid kan te eniger tyd met minstens drie maande skriftelike kennisgewing aan die President uit die amp bedank.

30 (4) Ondanks subartikels (1) en 2(a) kan die voorsitter en bykomende raadslede na verstryking van hulle ampstermyne en tot die aanvang van hulle opvolgers se ampstermyne in die amp aanbly: Met dien verstande dat sodanige verlengde ampstermyne nie 45 dae oorskry nie.

(5) By verstryking van sy of haar ampstermyne kom 'n raadslid vir heraanstelling ingevolge artikel 9 in aanmerking.

35 (6) Elke raadslid dien in 'n heeltydse hoedanigheid en met die uitsluiting van alle ander besoldigde werk, beroep of amp.

Besoldiging en toelaes van raadslede

40 11. Die voorsitter en ander raadslede word die besoldiging en toelaes betaal en is geregtig op die byvoordele wat die Minister met die instemming van die Minister van Finansies bepaal.

Ontslag uit amp

12. Ondanks artikel 10 kan 'n raadslid deur die President uit die amp ontslaan word weens—

- 45 (a) wangedrag;
- (b) onvermoë om die pligte van sy of haar amp doeltreffend uit te voer;
- (c) afwesigheid by drie agtereenvolgende vergaderings van die Raad sonder die vooraf verkreë toestemming van die voorsitter, behalwe as 'n goeie rede aangevoer kan word;
- 50 (d) die feit dat hy of sy ander besoldigde werk teenstrydig met artikel 10(6) verrig het; of
- (e) versuim om 'n belang ingevolge artikel 15(2)(a) bekend te maak of bywoning van of deelname aan die verrigtinge van die Raad terwyl hy of sy 'n belang het beoog in artikel 15(1).

Vakatures in Raad

55 13. (1) Daar is 'n vakature in die Raad indien 'n raadslid—

- (a) onderworpe raak aan 'n diskwalifikasie bedoel in artikel 8;

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

(2) A vacancy in the council shall be filled by the appointment of another councillor 5
by the President in terms of section 9 as soon as may be reasonably practicable after the
occurrence of such vacancy, and any councillor so appointed shall hold office for the
unexpired period of his or her predecessor's term of office.

Meetings of Council

14. (1) Meetings of the Council shall be held whenever necessary for the expeditious 10
conduct of its business, at such times and places as may be determined by the Council:
Provided that the first meeting shall be held at such time and place as the chairperson
may determine.

(2) In the absence of the chairperson, the remaining councillors shall from their 15
number elect an acting chairperson who, while he or she so acts, may perform all the
functions of the chairperson.

(3) The chairperson may at any time convene a special meeting of the Council, which
shall be held at such time and place as the chairperson may determine: Provided that the
chairperson shall, upon being presented with a requisition for that purpose signed by at
least two councillors, convene a special meeting, and if the chairperson fails to convene 20
a special meeting within seven days after such presentation, such councillors may
convene a special meeting.

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

(5) Subject to subsection (4), a decision of the Council shall be taken by resolution 25
agreed to by the majority of councillors at any meeting of the Council and, in the event
of an equality of votes regarding any matter, the chairperson shall have a casting vote in
addition to his or her deliberative vote.

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

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

Disclosure of conflicting interests 30

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

- (a) in relation to an application relating to a licence, he or she or his or her family 35
member or partner is a director, member or business partner of or has an
interest in the business of the applicant or of any person who made
representations in relation to the application; or
- (b) in relation to any matter before the Council, he or she has any interest which
may preclude him or her from performing his or her functions as a councillor
in a fair, unbiased and proper manner.

(2) If at any stage during the course of any proceedings before the Council there is 40
reason to believe that a councillor has any interest contemplated in subsection (1)—

- (a) that councillor shall forthwith and fully disclose the nature of his or her 45
interest and leave the meeting or hearing in question so as to enable the
remaining councillors to discuss the matter and determine whether that
councillor is to be precluded from participating in such proceedings by reason
of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining councillors regarding
such determination, shall be recorded in the minutes of the proceedings in
question.

Proceedings of Council not invalid in certain circumstances 50

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

- (a) any irregularity in the appointment of a councillor;
- (b) a vacancy in the Council;

- (b) sy of haar bedanking indien soos beoog in artikel 10(3) en sodanige bedanking in werking tree;
 - (c) uit die amp ontslaan word ingevolge artikel 12; of
 - (d) sterf of onbevoeg raak.
- 5 (2) 'n Vakature in die Raad word gevul deur die aanstelling van 'n ander raadslid deur die President ingevolge artikel 9 so gou as wat redelikerwys uitvoerbaar is na die ontstaan van die vakature, en enige raadslid wat so aangestel word, beklee die amp vir die onverstreke termyn van sy of haar voorganger se ampstermyn.

Vergaderings van Raad

- 10 **14.** (1) Vergaderings van die Raad word gehou wanneer ook al nodig vir die spoedige afhandeling van besigheid, op die tye en plekke wat deur die Raad bepaal word: Met dien verstande dat die eerste vergadering op die tyd en plek gehou word wat die voorsitter bepaal.
- (2) By die afwesigheid van die voorsitter verkies die oorblywende raadslede 'n
15 waarnemende voorsitter uit hulle geledere wat, terwyl hy of sy aldus optree, al die werksaamhede van die voorsitter kan verrig.
- (3) Die voorsitter kan te eniger tyd 'n spesiale vergadering van die Raad belê wat op die tyd en plek gehou word wat die voorsitter bepaal: Met dien verstande dat die
20 voorsitter 'n spesiale vergadering moet belê indien 'n versoek wat vir daardie doel deur minstens twee raadslede geteken is, aan hom voorgelê word, en indien die voorsitter versuim om 'n spesiale vergadering binne sewe dae na so 'n versoek te belê, kan daardie raadslede 'n spesiale vergadering belê.
- (4) Die kworum vir enige vergadering van die Raad is 'n meerderheid van die totale
getal dienende raadslede.
- 25 (5) Behoudens subartikel (4) word 'n besluit deur die Raad geneem by wyse van 'n resoluëie waartoe die meerderheid raadslede by enige vergadering van die Raad instem, en in geval van 'n staking van stemme ten opsigte van enige aangeleentheid, het die voorsitter 'n beslissende stem benewens sy of haar beraadslagende stem.
- (6) Die Raad kan lede van die publiek toelaat om enige van sy vergaderings by te
30 woon.
- (7) Die setel van die Raad word deur die Minister bepaal.

Openbaarmaking van botsende belange

- 15.** (1) 'n Raadslid stem nie by enige vergadering of verhoor van die Raad, of woon dit by of neem op enige ander wyse daaraan deel nie indien—
- 35 (a) ten opsigte van 'n aansoek met betrekking tot 'n lisensie, hy of sy of sy of haar gesinslid of vennoot 'n direkteur, lid of vennoot is van of 'n belang het by die besigheid van die aansoeker of dié van enige persoon wat vertoë in verband met die aansoek gerig het; of
- (b) in verband met enige aangeleentheid voor die Raad, hy of sy enige belang het
40 wat hom of haar kan verhinder om sy of haar werksaamhede as 'n raadslid op 'n regverdige, onpartydige en behoorlike wyse te verrig.
- (2) Indien daar in enige stadium gedurende die loop van enige verrigtinge voor die Raad rede is om te glo dat 'n raadslid enige belang het in subartikel (1) beoog—
- 45 (a) moet daardie raadslid onmiddellik die aard van sy of haar belang volledig bekend maak en die betrokke vergadering of verhoor verlaat ten einde die oorblywende raadslede in staat te stel om die saak te bespreek en te bepaal of die raadslid uitgesluit moet word van deelname aan sodanige verrigtinge op grond van 'n botsing van belange; en
- 50 (b) sodanige bekendmaking en die besluit wat ten opsigte van sodanige bepaling deur die oorblywende raadslede geneem word, word in die notule van die betrokke verrigtinge aangeteken.

Verrigtinge van Raad in sekere omstandighede nie ongeldig nie

- 16.** 'n Besluit wat deur die Raad geneem word of 'n handeling wat op gesag van sodanige besluit verrig word, is nie ongeldig nie bloot op grond van—
- 55 (a) enige onreëlmatigheid by die aanstelling van 'n raadslid;
- (b) 'n vakature in die Raad;

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- (c) the fact that a councillor is guilty of an act or omission justifying his or her removal from office; or
- (d) the fact that any person who is disqualified from being a councillor or who was removed from that office sat as such in the Council at the time when such decision was taken, 5
- if such decision was taken by a majority of the councillors lawfully entitled to vote and present at the time, and the said councillors at the time constituted a quorum.

Staff of Authority

17. (1) The Council shall, in consultation with the Public Service Commission and subject to the approval of the Minister with regard to staff and resources, establish its own administration to assist the Authority in the performance of its functions and to this end the Council shall appoint— 10
- (a) a chief executive officer; and
- (b) such other staff as the Council may deem necessary.
- (2) The Authority shall, in the appointment of its staff— 15
- (a) provide for the advancement of persons disadvantaged by past unfair discrimination, with the aim that its staff, when viewed collectively, shall represent a broad cross-section of the population of the Republic;
- (b) subject to paragraph (a), apply equal opportunity employment practices.
- (3) The Authority may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other benefits as the Authority may determine with the approval of the Minister with the concurrence of the Minister of Finance and after consultation with the Public Service Commission. 20

Financing of Authority

18. (1) The operating and capital costs of the Authority shall be financed from money appropriated by Parliament from time to time for that purpose. 25
- (2) The Authority shall utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).
- (3) The Authority—
- (a) shall in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure for the following financial year to the Minister for his or her approval, granted in consultation with the Minister of Finance; and 30
- (b) may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted in consultation with the Minister of Finance. 35

Banking account

19. The Council shall, with the approval of the Director-General, open and maintain in the name of the Authority with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), an account in which there shall be deposited the money received by the Authority and from which payments to the Authority or on its behalf shall be made. 40

Annual and other reports

20. (1) The Council shall furnish to the Minister such information and particulars as he or she may from time to time in writing require in connection with the activities of the Authority, and shall annually, as soon as may be reasonably practicable after the end of each financial year, furnish to the Minister a report in regard to the functions, affairs, activities and financial position of the Authority in respect of such financial year. 45
- (2) Without derogating from the generality of the provisions of subsection (1), the annual report referred to in that subsection shall include— 50
- (a) information regarding licences granted, renewed, amended, transferred, suspended or revoked;

- (c) die feit dat 'n raadslid skuldig is aan 'n handeling of nalate wat sy of haar ontslag uit die amp regverdig; of
- (d) die feit dat enige persoon wat onbevoeg is om 'n raadslid te wees of wat uit daardie amp ontslaan is, op die tyd toe sodanige besluit geneem is, as sodanig in die Raad gesit het,
- 5 indien sodanige besluit deur die meerderheid van die raadslede wat op daardie tydstip wettig geregtig om te stem en teenwoordig was, geneem is en genoemde raadslede op daardie tydstip 'n kworum uitgemaak het.

Personeel van Owerheid

- 10 **17.** (1) Die Raad stel in oorleg met die Staatsdienskommissie en onderworpe aan die goedkeuring van die Minister ten opsigte van personeel en hulpbronne sy eie administrasie in om die Owerheid by te staan in die verrigting van sy werksaamhede en vir hierdie doel stel die Raad—
- (a) 'n hoof- uitvoerende beampte aan; en
- 15 (b) die ander personeel aan wat die Raad nodig ag.
- (2) By die aanstelling van personeel—
- (a) maak die Owerheid voorsiening vir die vordering van persone wat in die verlede deur onbillike diskriminasie benadeel is, met die oogmerk dat sy personeel, indien dit kollektief beskou word, 'n breë deursnit van die
- 20 bevolking van die Republiek sal weerspieël;
- (b) pas die Owerheid behoudens paragraaf (a) indiensnemingspraktyke gerig op gelykberegting toe.
- (3) Die Owerheid kan aan die persone in sy diens die besoldiging en toelaes betaal en aan hulle die pensioen- en ander voordele voorsien wat die Owerheid met die
- 25 goedkeuring van die Minister met die instemming van die Minister van Finansies en na oorleg met die Staatsdienskommissie bepaal.

Finansiering van Owerheid

- 18.** (1) Die bedryfs- en kapitaalkoste van die Owerheid word gefinansier uit geld wat van tyd tot tyd deur die Parlement vir daardie doel bewillig word.
- 30 (2) Die Owerheid wend enige geld beoog in subartikel (1) aan ooreenkomstig die staat van begrote uitgawes bedoel in subartikel (3).
- (3) Die Owerheid—
- (a) moet vir elke boekjaar, op die tyd deur die Minister bepaal, 'n staat van begrote inkomste en uitgawes vir die volgende boekjaar aan die Minister vir
- 35 sy of haar goedkeuring, in oorleg met die Minister van Finansies, voorlê; en
- (b) kan in enige boekjaar gewysigde state van begrote inkomste en uitgawes aan die Minister vir sy of haar goedkeuring, in oorleg met die Minister van Finansies, voorlê.

Bankrekening

- 40 **19.** Met die goedkeuring van die Direkteur-generaal open en hou die Raad 'n bankrekening in stand in die naam van die Owerheid by 'n bank wat finaal as 'n bank geregistreer is ingevolge die Bankwet, 1990 (Wet No. 94 van 1990), waarin die geld gedeponeer word wat deur die Owerheid ontvang word en waaruit betalings aan die Owerheid of ten behoeve daarvan gedoen word.

45 Jaar- en ander verslae

- 20.** (1) Die Raad verskaf aan die Minister die inligting en besonderhede in verband met die bedrywighede van die Owerheid wat hy of sy van tyd tot tyd skriftelik vereis, en jaarliks, so gou as wat redelik uitvoerbaar is na die einde van elke boekjaar, verskaf hy aan die Minister 'n verslag ten opsigte van die werksaamhede, sake, bedrywighede
- 50 en finansiële posisie van die Owerheid ten opsigte van daardie boekjaar.
- (2) Sonder om afbreuk te doen aan die algemeenheid van die bepalings van subartikel (1), bevat die jaarverslag in daardie subartikel bedoel—
- (a) inligting aangaande lisensies wat toegestaan, hernu, gewysig, oorgedra, opgeskort of herroep is;

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

(3) The Minister shall table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session.

5

CHAPTER III

Committees, appointment of experts and enquiries

Establishment of committees of Council

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

10

Composition of committees

22. (1) Each committee shall consist of—

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

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

15

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

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

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

20

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

Functions of committees

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

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

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

Meetings of committees

30

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

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

Remuneration and allowances of committee members

35

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

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

40

Appointment of experts

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

45

(2) The terms, conditions, remuneration and allowances applicable in respect of any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be determined

(b) die ander inligting wat die Minister bepaal.

(3) Die Minister lê 'n afskrif van die jaarverslag in die Parlement ter tafel binne 30 dae nadat dit deur hom of haar ontvang is indien die Parlement dan in gewone sitting is of, indien die Parlement nie in gewone sitting is nie, binne 30 dae na die aanvang van sy volgende gewone sitting.

HOOFSUK III

Komitees, aanstelling van deskundiges en ondersoek

Instelling van komitees van Raad

21. Die Raad kan die staande of spesiale komitees instel vir die doeleindes wat hy 10 nodig ag ten einde behulpsaam te wees met die doeltreffende verrigting van sy werksaamhede en kan te eniger tyd enige sodanige komitee uitbrei, beperk of ontbind.

Samestelling van komitees

22. (1) Elke komitee bestaan uit—

(a) een of meer raadslede wat deur die Raad aangewys is; en 15

(b) die bykomende lede wat die Raad van tyd tot tyd bepaal.

(2) Die bykomende lede bedoel in subartikel (1)(b), is persone—

(a) wat nie onderworpe is aan enige diskwalifikasie beoog in artikel 8(1)(h), (i), 20 (j) of (k) nie; en

(b) wat op grond van hulle kundigheid, kwalifikasies en ondervinding met betrekking tot die mandaat of punt van opdrag van die betrokke komitee geskik is om daarin te dien.

(3) Die voorsitter van 'n komitee is een van die betrokke raadslede.

Werksaamhede van komitees

23. Met behoorlike inagneming van die oogmerke vermeld in artikel 2, verrig 'n 25 komitee die werksaamhede—

(a) in die geval van die Menslike Hulpbronontwikkeling-komitee, wat aan daardie komitee by of kragtens hierdie Wet opgedra of opgelê is; en

(b) in die geval van enige ander komitee, wat deur die Raad aan die betrokke komitee gedelegeer is.

30 Komiteevergaderings

24. (1) Die vergaderings van 'n komitee (met inbegrip van 'n spesiale vergadering) word byeengeroep deur die voorsitter, wat die prosedure by enige sodanige vergadering bepaal.

(2) Die bepalinge van artikel 14(2), (4) en (5) geld met die nodige veranderings ten 35 opsigte van die vergaderings van 'n komitee.

Besoldiging en toelaes van komiteelede

25. (1) Die lede van 'n komitee wat nie raadslede of lede van die personeel van die Owerheid is nie, word die besoldiging en toelaes betaal wat die Raad van tyd tot tyd met die goedkeuring van die Minister met die instemming van die Minister van 40 Finansies bepaal.

(2) Vir die doeleindes van subartikel (1) kan die Raad tussen verskillende komitees en verskillende lede daarvan onderskei.

Aanstelling van deskundiges

26. (1) Die Owerheid kan soveel deskundiges aanstel as wat nodig is, met inbegrip 45 van deskundiges uit ander lande, ten einde die Owerheid behulpsaam te wees in die verrigting van sy werksaamhede.

(2) Die bedinge, voorwaardes, besoldiging en toelaes wat ten opsigte van enige deskundige geld uit hoofde van sy of haar aanstelling ingevolge subartikel (1), en die werk wat gedoen moet word of die diens wat gelewer moet word uit hoofde van

in a written agreement entered into for that purpose between the Authority and the expert concerned.

Enquiries by Authority

27. (1) The Authority may from time to time conduct an enquiry into any matter relevant to— 5
- (a) the achievement of the objects mentioned in section 2;
 - (b) the performance of its functions in terms of this Act.
- (2) The Authority shall make known its intention to conduct such an enquiry by the publication in the *Gazette* of a notice to that effect.
- (3) The notice referred to in subsection (2) shall indicate the subject-matter of the enquiry and invite interested persons, within the period specified in the notice— 10
- (a) to submit written representations; and
 - (b) to indicate whether they require an opportunity to make oral representations to the Authority.
- (4) Written representations made pursuant to a notice contemplated in subsection (2) shall, subject to subsection (7), be open to inspection by interested parties during the normal office hours of the Authority. 15
- (5) The Authority shall, at the request of any interested person and on payment of such fees as may be prescribed, furnish him or her with a certified copy of or extract from representations open to inspection as contemplated in subsection (4). 20
- (6) (a) The Authority shall advise persons referred to in subsection (3)(b) of the place where and time when oral representations may be made.
- (b) Such oral representations shall, subject to subsection (7), be made in public.
- (7) The provisions of section 34(4) and (5) shall apply, with the necessary changes, in relation to representations contemplated in subsections (4) and (6). 25
- (8) The Authority shall, after it has conducted an enquiry, by notice in the *Gazette*—
- (a) make known its findings and any recommendations or conclusions pursuant to such enquiry; or
 - (b) state that such findings and any such recommendations or conclusions are open to inspection, and the provisions of subsections (4) and (5) shall apply, with the necessary changes, in relation thereto. 30
- (9) The Authority shall, within two years after the commencement of this Act, conduct an enquiry in terms of this section into matters relating to mobile cellular telecommunication services referred to in section 37(2).

CHAPTER IV

35

Radio frequency spectrum

Control of radio frequency spectrum

28. (1) The Authority shall be vested with the control, planning, administration, management and licensing of the radio frequency spectrum.
- (2) (a) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority shall comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Republic. 40
- (b) The Authority shall honour present and future commitments of the Republic in terms of international agreements and standards in respect of radiocommunication and telecommunication matters. 45
- (3) (a) The Authority and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993), shall establish a Joint Liaison Committee consisting of an equal number, determined by the Minister after consultation with the two authorities, of members of the council of each authority. 50
- (b) The Joint Liaison Committee shall—
 - (i) co-ordinate the management of the radio frequency spectrum, including the broadcasting services frequency bands;

sodanige aanstelling word bepaal in 'n skriftelike ooreenkoms wat vir daardie doel tussen die Owerheid en die betrokke deskundige aangegaan word.

Ondersoeke deur Owerheid

27. (1) Die Owerheid kan van tyd tot tyd 'n ondersoek instel na enige aangeleentheid
5 met betrekking tot—
- (a) die bereiking van die oogmerke genoem in artikel 2;
 - (b) die verrigting van sy werksaamhede ingevolge hierdie Wet.
- (2) Die Owerheid maak sy voorneme om sodanige ondersoek te hou, bekend deur die publikasie van 'n kennisgewing in hier voege in die *Staatskoerant*.
- 10 (3) Die kennisgewing in subartikel (2) bedoel, dui die onderwerp van die ondersoek aan en nooi belanghebbende persone om binne die tydperk wat in die kennisgewing vermeld word—
- (a) skriftelike vertoë voor te lê; en
 - (b) aan te dui of hulle 'n geleentheid verlang om mondelinge vertoë tot die
15 Owerheid te rig.
- (4) Skriftelike vertoë wat gerig is na aanleiding van 'n kennisgewing beoog in subartikel (2) is behoudens subartikel (7) ter insae van belanghebbende partye gedurende die gewone kantoore van die Owerheid.
- (5) Op versoek van enige belanghebbende persoon en teen betaling van die gelde wat
20 voorgeskryf is, verskaf die Owerheid aan hom of haar 'n gesertifiseerde afskrif van of 'n uittreksel uit vertoë ter insae soos in subartikel (4) beoog.
- (6) (a) Die Owerheid stel die persone bedoel in subartikel (3)(b) in kennis van die plek waar en die tyd wanneer mondelinge vertoë gerig kan word.
- (b) Sodanige mondelinge vertoë word behoudens subartikel (7) in die openbaar
25 gerig.
- (7) Die bepalinge van artikel 34(4) en (5) geld met die nodige veranderings met betrekking tot vertoë beoog in subartikels (4) en (6).
- (8) Nadat die Owerheid 'n ondersoek gehou het, moet die Owerheid by kennisgewing in die *Staatskoerant*—
- (a) sy bevindings en enige aanbevelings of gevolgtrekkings na aanleiding van
30 sodanige ondersoek bekend maak; of
 - (b) verklaar dat sodanige bevindings en enige aanbevelings of gevolgtrekkings ter insae is en die bepalinge van subartikels (4) en (5) geld met die nodige veranderinge, met betrekking daartoe.
- 35 (9) Die Owerheid moet binne twee jaar na die inwerkingtreding van hierdie Wet 'n ondersoek instel ingevolge hierdie artikel na aangeleenthede wat betrekking het op die mobiele sellulêre telekommunikasiedienste bedoel in artikel 37(2).

HOOFSTUK IV

Radiofrekwensiespektrum

40 **Beheer oor radiofrekwensiespektrum**

28. (1) Die Owerheid word beklee met die beheer, beplanning, administrasie, bestuur en lisensiering van die radiofrekwensiespektrum.
- (2) (a) By die beheer, beplanning, administrasie, bestuur en lisensiering van die gebruik van die radiofrekwensiespektrum voldoen die Owerheid aan die toepaslike
45 standaarde en vereistes van die Internasionale Telekommunikasie-unie en sy Radio-regulasies soos deur die Republiek ooreengekom of aanvaar.
- (b) Die Owerheid kom huidige en toekomstige verpligtinge van die Republiek ingevolge internasionale ooreenkomste en standaarde ten opsigte van radiokommunikasie- en telekommunikasie-aangeleenthede na.
- 50 (3) (a) Die Owerheid en die Onafhanklike Uitsaai-owerheid wat by artikel 3 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993 (Wet No. 153 van 1993), ingestel is, moet 'n Gesamentlike Skakelkomitee instel wat bestaan uit 'n gelyke getal lede van die raad van elke owerheid soos bepaal deur die Minister na oorleg met die twee owerhede.
- (b) Die Gesamentlike Skakelkomitee moet—
- 55 (i) die bestuur van die radiofrekwensiespektrum met inbegrip van die uitsaai-diensfrekwensiebande koördineer;

- (ii) determine which additional parts of the radio frequency spectrum shall form part of the broadcasting services frequency bands from time to time;
- (iii) with due regard to the requirements of the International Telecommunication Union and its Radio Regulations, determine any dispute between the two authorities, or decide whether a particular telecommunications matter pertains or does not pertain to broadcasting. 5
- (c) In the event of any failure by the members of the Committee to agree on any matter contemplated in paragraph (a) or (b), the issue shall be referred to the Minister for his or her decision.
- (d) Any decision by the Committee or the Minister in terms of paragraph (b) or (c), respectively, may be made known by notice in the *Gazette*. 10

Frequency band plans

29. (1) The Authority may from time to time prepare a frequency band plan in respect of any part of the radio frequency spectrum.
- (2) A frequency band plan shall— 15
- (a) define how the radio spectrum shall be used;
 - (b) aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient and effective manner;
 - (c) aim at reducing congestion in the use of frequencies and at protecting frequency users from any interference or other inability to make use of the frequencies assigned to them; 20
 - (d) avoid obstacles to the introduction of new technologies and telecommunication services;
 - (e) aim at providing opportunities for the introduction of the widest range of telecommunication services and the maximum number of users thereof as is practically feasible. 25
- (3) In preparing a frequency band plan in terms of this section, the Authority—
- (a) shall have due regard to the reports of experts in the field of spectrum or frequency band planning and to internationally accepted methods for preparing such plans; 30
 - (b) shall take into account existing uses of the radio frequency spectrum and any frequency band plans in existence or in the course of preparation.
- (4) The Authority shall give notice in the *Gazette* of its intention to prepare a plan and in such notice invite interested parties to submit their written representations to the Authority within such period as may be specified in such notice. 35
- (5) The Authority shall, after the period referred to in subsection (4) has passed, hold a hearing in respect of the proposed plan.
- (6) After the hearing and after due consideration of any representations received pursuant to the notice mentioned in subsection (4) or tendered at the hearing, the Authority shall adopt the frequency band plan in question, with or without amendment, and cause such plan to be published in the *Gazette*. 40
- (7) (a) Any frequency band plan adopted in terms of this section and all such comments, representations and other documents as have been received in response to the notice contemplated in subsection (4) or tendered at the hearing, shall be kept at the offices of the Authority and shall, subject to paragraph (b), be open to public inspection by interested persons during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof. 45
- (b) The provisions of section 34(4) and (5) shall apply, with the necessary changes, in relation to any comments or representations contemplated in paragraph (a). 50
- (8) (a) The Authority may review a frequency band plan adopted in terms of this section.
- (b) The provisions of subsections (2) to (7) shall apply, with the necessary changes, in relation to any amendment contemplated in paragraph (a).

Frequency and station licences, certificates and authorities

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30. (1) No person shall transmit any signal by radio or use radio apparatus to receive

- (ii) bepaal watter bykomende dele van die radiofrekwensiespektrum van tyd tot tyd deel van die uitsaaidiensfrekwensiebande uitmaak;
- (iii) met inagneming van die vereistes van die Internasionale Telekommunikasie-unie en sy Radioregulasies enige geskil tussen die twee owerhede besleg of
- 5 beslis of 'n bepaalde telekommunikasie-aangeleentheid op uitsaai betrekking het al dan nie.
- (c) In geval van enige versuim van die lede van die Komitee om ooreen te kom oor enige aangeleentheid wat in paragraaf (a) of (b) beoog word, moet die aangeleentheid na die Minister verwys word vir sy of haar beslissing.
- 10 (d) Enige besluit deur die Komitee of the Minister ingevolge onderskeidelik paragraaf (b) of (c) kan by kennisgewing in die *Staatskoerant* bekend gemaak word.

Frekwensiebandplanne

29. (1) Die Owerheid kan van tyd tot tyd 'n frekwensiebandplan ten opsigte van enige deel van die radiofrekwensiespektrum opstel.
- 15 (2) 'n Frekwensiebandplan moet—
- (a) omskryf hoe die radiofrekwensiespektrum gebruik moet word;
- (b) daarop gemik wees om te verseker dat die radiofrekwensiespektrum op 'n ordelike, doeltreffende en doelmatige wyse benut en bestuur word;
- 20 (c) daarop gemik wees om oorlading met die gebruik van frekwensies te verminder en om frekwensiegebruikers te beskerm teen enige steuring of ander onvermoë om gebruik te maak van die frekwensies wat aan hulle toegeken is;
- (d) hindernisse teen die invoer van nuwe tegnologieë en telekommunikasiedienste te vermy;
- 25 (e) daarna streef om geleenthede te verskaf vir die bekendstelling van die wydste reeks telekommunikasiedienste vir die maksimum getal gebruikers daarvan wat prakties moontlik is.
- (3) By die opstel van 'n frekwensiebandplan ingevolge hierdie artikel moet die Owerheid—
- 30 (a) die verslae van deskundiges op die gebied van spektrum- of frekwensiebandbeplanning en internasionaal aanvaarde metodes vir die opstel van sodanige planne in ag neem;
- (b) bestaande gebruike van die radiofrekwensiespektrum en enige frekwensiebandplanne wat bestaan of opgestel word, in ag neem.
- 35 (4) Die Owerheid gee in die *Staatskoerant* kennis van sy voorneme om 'n plan op te stel en in sodanige kennisgewing nooi hy belanghebbende partye om hulle skriftelike verhoë aan die Owerheid voor te lê binne die tydperk wat in die kennisgewing vermeld word.
- (5) Nadat die tydperk bedoel in subartikel (4) verstryk het, hou die Owerheid 'n
- 40 verhoor ten opsigte van die beoogde plan.
- (6) Na die verhoor en na behoorlike oorweging van enige verhoë 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.
- 45 (7) (a) Enige frekwensiebandplan wat ingevolge hierdie artikel aanvaar word en al die kommentaar, verhoë en ander dokumente wat ontvang is in reaksie op die kennisgewing bedoel in subartikel (4) of wat by die verhoor aangebied is, word by die kantore van die Owerheid gehou en is behoudens paragraaf (b) beskikbaar ter insae deur belanghebbende persone gedurende die gewone kantoorure van die Owerheid en
- 50 die Owerheid verskaf aan enige persoon 'n afskrif daarvan op versoek en teen betaling van die gelde wat voorgeskryf is.
- (b) Die bepalinge van artikel 34(4) en (5) geld met die nodige veranderings in verband met enige kommentaar of verhoë beoog in paragraaf (a).
- (8) (a) Die Owerheid kan 'n frekwensiebandplan wat ingevolge hierdie artikel
- 55 aanvaar is, hersien.
- (b) Die bepalinge van subartikels (2) tot (7) geld met die nodige veranderings in verband met enige wysiging beoog in paragraaf (a).

Frekwensie- en stasielisensies, sertifikate en magtigings

30. (1) Geen persoon mag enige sein per radio send of radio-apparaat gebruik om

any signal by radio, or do or permit to be done anything for which a licence, certificate or authority is required in terms of this section, except under and in accordance with—

- (a) a licence conferring on the licensee the right to use, or to cause any person in his or her employ or under his or her control to use, a station for any prescribed purpose or to use any radio frequency or group of radio frequencies for any purpose and in the manner prescribed; 5
- (b) a certificate of proficiency, issued to any person who passes the examinations referred to in subsection (4) or who qualifies therefor under the radio regulations, to use a station for any prescribed purpose or to maintain a station in a category which may in terms of the radio regulations only be maintained by the holder of such a certificate; 10
- (c) an authority issued to the holder of a certificate referred to in paragraph (b) and conferring on such holder the right to use any station which under the conditions of any licence issued under paragraph (a) or under the radio regulations or any other law may only be used by the holder of such an authority; 15
- (d) a licence deemed to be issued or issued by the Minister as provided in subsection (3)(a).

(2) (a) Licences, certificates and authorities referred to in subsection (1)(a) to (c) shall be issued by the Authority. 20

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

(3) (a) Telkom shall be deemed to be the holder of a licence to provide local exchange telecommunications services by way of radio-local-loop and fixed radio facilities, as was provided immediately before the date of commencement of this Act: Provided that as at the date of commencement of this Act Telkom shall be deemed to have applied to the Minister for a frequency spectrum or a station licence in terms of this Act and, after the provisions of section 36(6), (7), (8) and (9) have been complied with in relation to the terms and conditions of the licence, and if a licence has been issued to Telkom in accordance with section 36(1), the Minister shall grant the application and the Minister shall issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act. 25 30

(b) A frequency spectrum or station licence shall be required as provided in subsection (1)(a) in addition to any telecommunication service licence contemplated in Chapter V, where the provision of the service or the use thereof entails the use of radio as contemplated in that subsection: Provided that this paragraph shall not apply to the licences referred to in paragraph (a). 35

(c) Upon application and payment of a licence fee, Telkom shall be entitled to a licence issued by the Minister to provide local exchange telecommunication services by means of radio-local-loop and fixed radio facilities. 40

(d) Where the applicant intends to provide a telecommunication service he or she shall make application for a frequency spectrum or station licence contemplated in subsection (1)(a), with the necessary changes in accordance with section 34, except in so far as the regulations or radio regulations provide otherwise: Provided that this paragraph shall not apply to the licences referred to in paragraph (a). 45

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

(4) The Authority may conduct examinations, or cause examinations to be conducted, to determine the proficiency of any person to use or maintain a station as contemplated in subsection (2)(b). 50

(5) (a) A licence, certificate or authority issued in terms of section 7(1)(a), (c) or (d) of the Radio Act, 1952 (Act No. 3 of 1952), and which was still valid immediately before the date of commencement of this Act, shall be deemed to have been issued in terms of this section. 55

(b) The South African National Defence Force shall be deemed to be the holder of a licence under subsection (1)(a) authorising it to use the radio frequencies and groups of radio frequencies which had been assigned to it for defence purposes immediately before the date of commencement of this Act: Provided that the said Force shall apply

enige sein per radio te ontvang of enigiets doen of toelaat dat dit gedoen word waarvoor 'n lisensie, sertifikaat of magtiging ingevolge hierdie artikel vereis word nie buiten kragtens en ooreenkomstig—

- 5 (a) 'n lisensie wat aan die lisensiehouer die reg verleen om 'n stasie te gebruik, of om enige persoon in sy of haar diens of onder sy of haar beheer 'n stasie te laat gebruik vir enige voorgeskrewe doel of om enige radiofrekwensie of groep radiofrekwensies te gebruik vir enige doel en op die wyse wat voorgeskryf is;
- 10 (b) 'n bevoegdheidsertifikaat, wat uitgereik is aan enige persoon wat in die eksamens bedoel in subartikel (4) slaag of wat ingevolge die radioregulasies daarvoor in aanmerking kom, om 'n stasie te gebruik vir enige voorgeskrewe doel of om 'n stasie in stand te hou in 'n kategorie wat ingevolge die radioregulasies slegs deur die houer van sodanige sertifikaat in stand gehou mag word;
- 15 (c) 'n magtiging wat aan die houer van 'n sertifikaat bedoel in paragraaf (b) uitgereik is en wat aan sodanige houer die reg verleen om enige stasie te gebruik wat kragtens die voorwaardes van 'n lisensie kragtens paragraaf (a) uitgereik of kragtens die radioregulasies of enige ander wet slegs deur die houer van so 'n magtiging gebruik mag word;
- 20 (d) 'n lisensie wat deur die Minister ingevolge subartikel (3)(a) uitgereik is of geag uitgereik te gewees het.
- (2) (a) Lisensies, sertifikate en magtigings bedoel in subartikel (1)(a) tot (c) word deur die Owerheid uitgereik.
- (b) Die prosedures in verband met aansoeke om sodanige lisensies, sertifikate en 25 magtigings en die inligting wat verskaf moet word vir oorweging van sodanige aansoeke is soos voorgeskryf, behoudens subartikel (3)(b) en (c).
- (3) (a) Telkom word geag die houer te wees van 'n lisensie om lokale sentrale-telekommunikasiedienste by wyse van radio-lokale-lus en vaste radiofasiliteite te verskaf, soos onmiddellik voor die datum van inwerkingtreding van hierdie Wet 30 verskaf is: Met dien verstande dat op die datum van inwerkingtreding van hierdie Wet Telkom geag word by die Minister ingevolge hierdie Wet aansoek te gedoen het vir 'n frekwensiespektrum of 'n stasielisensie en, nadat voldoen is aan die bepalings van artikel 36(6), (7), (8) en (9) met betrekking tot die bedinge en voorwaardes van die lisensie, en indien 'n lisensie aan Telkom uitgereik is ooreenkomstig artikel 36(1), die 35 Minister die aansoek moet toestaan en die Minister so 'n lisensie aan Telkom moet uitreik met 'n geldigheidsduur van 25 jaar vanaf die datum van inwerkingtreding van hierdie Wet.
- (b) 'n Frekwensiespektrum- of stasielisensie word vereis soos in subartikel (1)(a) bepaal benewens enige telekommunikasiedienslisensie beoog in Hoofstuk V, waar die 40 verskaffing van die diens of die gebruik daarvan die gebruik van radio behels soos in daardie subartikel beoog: Met dien verstande dat hierdie paragraaf nie toepassing vind by die lisensies beoog in paragraaf (a) nie.
- (c) By aansoek en betaling van 'n lisensiegeld is Telkom geregtig op die uitreiking van 'n lisensie deur die Minister om lokale sentrale-telekommunikasiedienste by wyse 45 van radio-lokale-lus en vaste radiofasiliteite te verskaf.
- (d) Waar die aansoeker van voorneme is om 'n telekommunikasiediens te verskaf, doen hy of sy aansoek om 'n frekwensiespektrum- of stasielisensie beoog in subartikel (1)(a) met die nodige veranderings ooreenkomstig artikel 34, buiten vir sover die regulasies of radioregulasies anders bepaal: Met dien verstande dat hierdie paragraaf 50 nie op die lisensies bedoel in paragraaf (a) van toepassing is nie.
- (e) Artikel 35(2), (3) en (4) geld met die nodige veranderings in verband met 'n besluit oor 'n aansoek bedoel in paragraaf (c).
- (4) Die Owerheid kan eksamens afneem, of eksamens laat afneem om die bedrewenheid van enige persoon om 'n radiostasie te gebruik of in stand te hou, te toets 55 soos beoog in subartikel (2)(b).
- (5) (a) 'n Lisensie, sertifikaat of magtiging uitgereik ingevolge artikel 7(1)(a), (c) of (d) van die Radiowet, 1952 (Wet No. 3 van 1952), en wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet nog geldig was, word geag ingevolge hierdie artikel uitgereik te wees.
- 60 (b) Die Suid-Afrikaanse Nasionale Weermag word geag die houer te wees van 'n lisensie kragtens subartikel (1)(a) wat dit magtig om die radiofrekwensies en groepe radiofrekwensies te gebruik wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet vir verdedigingsdoeleindes aan hom toegeken is: Met dien verstande dat

to the Authority within six months after the date of commencement of this Act or such extended period as the Authority may allow, for such a licence, and that the Authority shall grant such a licence in terms of this section to the Force.

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

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

(b) if requested thereto by the licensee concerned.

(7) The procedures in relation to the amendment, renewal or transfer of a frequency spectrum licence, certificate or authority contemplated in this section shall be as prescribed. 10

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

(a) in the course of making due and proper use of a telecommunication service, the provision of which is duly licensed in terms of this section and Chapter V, as a customer or end user thereof; 15

(b) in the course of making due and proper use of a telecommunication service, the provision of which is duly licensed in terms of this section and Chapter V, as part of his or her duties in the service of the State or a local authority, including any military, police or traffic force; or 20

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

(9) (a) The authority may prescribe—

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

(ii) the circumstances in which the use or possession of radio apparatus,

shall not require a licence, certificate or authority in terms of this section or a permit in terms of section 31. 25

(b) An article mentioned in a notice published in the *Gazette* immediately before the date of commencement of this Act declaring any article not to be radio apparatus for the purposes of the laws governing radio, shall be deemed to have been prescribed in terms of this subsection. 30

Control of possession of radio apparatus

31. (1) Subject to section 30(9), no person shall have in his or her possession any radio apparatus unless he or she is in possession of a permit issued by the Authority in terms of this section or a frequency spectrum or station licence issued in terms of section 30 authorising such possession, or unless he or she is a supplier registered in terms of section 56. 35

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

(3) Where any radio apparatus is found in the possession of any person in contravention of the provisions of this section, the Authority may— 40

(a) seal or alter such apparatus or any part thereof in order to prevent the use of that radio apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose; 45

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

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

(a) its possession is authorised in terms of subsection (1) or (3)(a); or 50

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

CHAPTER V

Telecommunication services

Prohibition on provision of telecommunication service without licence

32. (1) Subject to the provisions of this Act, no person shall provide a telecommuni- 55

genoemde Mag binne ses maande na die datum van inwerkingtreding van hierdie Wet of die verlengde tydperk wat die Owerheid toelaat by die Owerheid aansoek moet doen om sodanige lisensie, en dat die Owerheid sodanige lisensie ingevolge hierdie artikel aan die Mag moet toestaan.

- 5 (6) Die Owerheid kan 'n frekwensiespektrum- of stasielisensie wysig wat kragtens subartikel (1)(d) of (5)(b) uitgereik is—
- (a) om enige frekwensiebandplan te implementeer of in belang van ordelike frekwensiebestuur, indien die wysiging nie wesenlike benadeling vir die lisensiehouer sal veroorsaak nie;
- 10 (b) indien hy deur die betrokke lisensiehouer daarom versoek word.
- (7) Die prosedures in verband met die wysiging, hernuwing of oordrag van 'n frekwensiespektrumlisensie, -sertifikaat of -magtiging bedoel in hierdie artikel is soos voorgeskryf.
- (8) Subartikel (1) is nie van toepassing op 'n persoon wat radio gebruik—
- 15 (a) in die loop van die behoorlike gebruik van 'n telekommunikasiediens waarvan die verskaffing behoorlik ingevolge hierdie artikel en Hoofstuk V gelisensieer is, as 'n kliënt of die eindgebruiker daarvan;
- (b) in die loop van die behoorlike gebruik van 'n telekommunikasiediens waarvan die verskaffing behoorlik ingevolge hierdie artikel en Hoofstuk V
- 20 gelisensieer is, as deel van sy of haar pligte in diens van die Staat of 'n plaaslike owerheid, met inbegrip van enige militêre, polisie- of verkeersmag; of
- (c) ooreenkomstig die regulasies beoog in subartikel (9).
- (9) (a) Die Owerheid kan—
- 25 (i) die kategorieë radio-apparaat waarvan die gebruik of besit; of
- (ii) die omstandighede waarin die gebruik of besit van radio-apparaat, nie 'n lisensie, sertifikaat of magtiging ingevolge hierdie artikel of 'n permit ingevolge artikel 31 vereis nie, voorskryf.
- (b) 'n Artikel genoem in 'n kennisgewing wat in die *Staatskoerant* onmiddellik voor
- 30 die datum van inwerkingtreding van hierdie Wet verskyn het, en wat verklaar dat enige artikel nie vir die doeleindes van die wette wat radio reël 'n radio-apparaat is nie, word geag ingevolge hierdie artikel voorgeskryf te wees.

Beheer oor besit van radio-apparaat

- 35 **31.** (1) Behoudens artikel 30(9) mag geen persoon enige radio-apparaat in sy of haar besit hê nie tensy hy of sy in besit is van 'n permit wat deur die Owerheid uitgereik is ingevolge hierdie artikel of 'n frekwensiespektrum- of stasielisensie wat ingevolge artikel 30 uitgereik is wat sodanige besit magtig, of tensy hy of sy 'n verskaffer is wat ingevolge artikel 56 geregistreer is.
- (2) Die prosedure om 'n permit ingevolge subartikel (1) te bekom, is soos
- 40 voorgeskryf.
- (3) Waar enige radio-apparaat strydig met die bepalinge van hierdie artikel in besit van enige persoon gevind word, kan die Owerheid—
- (a) sodanige apparaat of enige gedeelte daarvan verseël of verander ten einde die gebruik van daardie radio-apparaat vir die doel van transmissie of ontvangs
- 45 te verhoed, en aan sodanige persoon vir 'n beperkte of onbepaalde tydperk 'n permit uitreik wat die besit van daardie apparaat wettig op voorwaarde dat dit nie gedurende sodanige tydperk vir sodanige doel gebruik word nie;
- (b) beslag lê op die apparaat, hetsy dit verseël is soos beoog in paragraaf (a) al dan nie vir beskikking ingevolge subartikel (4).
- 50 (4) Radio-apparaat waarop daar kragtens subartikel (3)(b) beslag gelê is, word deur die Owerheid gehou totdat—
- (a) die besit daarvan ingevolge subartikel (1) of (3)(a) gemagtig word; of
- (b) daarmee deur 'n hof ingevolge artikel 102(2) gehandel word.

HOOFSTUK V

55 *Telekommunikasiedienste*

Verbod op verskaffing van telekommunikasiediens sonder lisensie

- 32.** (1) Behoudens die bepalinge van hierdie Wet mag geen persoon 'n telekommu-

ation service except under and in accordance with a telecommunication service licence issued to that person in terms of this Chapter.

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

Kinds of licences

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

- (a) as contemplated in sections 34(2)(a)(i) to (iv) and 39 to 41; and
- (b) subject to subsection (2), as prescribed.

(2) The Authority may prescribe the telecommunication services and activities, other than those referred to in subsection (1)(a), which may be provided or conducted without a licence. 10

Applications and consideration thereof

34. (1) Any person may, subject to the provisions of this Act, make application for a licence in the manner prescribed. 15

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

- (i) a public switched telecommunication service;
- (ii) a mobile cellular telecommunication service;
- (iii) a national long-distance telecommunication service; 20
- (iv) an international telecommunication service; or
- (v) any other telecommunication service prescribed for the purposes of this subsection,

unless such application is lodged pursuant to and in accordance with an invitation issued by the Minister by notice in the *Gazette*: Provided that this subsection and subsections (3), (4) and (5) shall not apply to an application which is deemed to have been made in terms of section 30(3)(a), 36(1)(a) or 40(1)(a). 25

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

- (i) the kind of service in respect of which applications are invited;
- (ii) the form in which applications shall be submitted and the manner in which it is contemplated that the service shall be provided, or the place where and times when a document in that regard may be obtained; 30
- (iii) the period within and manner in which such applications shall be lodged.

(c) For the purpose of paragraph (a)(i), a public switched telecommunication network service shall not include— 35

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

(3) In the case of an application for a licence to provide a telecommunication service referred to in subsection (2) or any other telecommunication service prescribed for the purposes of this subsection the Authority shall— 40

- (a) give notice of the application in the *Gazette* and invite interested persons to lodge representations in relation to the application within the period mentioned in the notice; 45
- (b) in the same or a subsequent such notice, make known the conditions contemplated in section 35(4) on which it is proposed the licence shall be granted;
- (c) after the period for lodging representations in terms of paragraphs (a) and (b) has passed, hold a hearing in respect of the application and such terms and conditions. 50

(4) (a) All applications, representations and other documents relating to an application which are lodged with the Authority shall, subject to this subsection, be open to public inspection during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof. 55

(b) The Authority may, at the request of an applicant or person who lodged

nikasiediens verskaf nie buiten kragtens en ooreenkomstig 'n telekommunikasiediens-lisensie wat ingevolge hierdie Hoofstuk aan daardie persoon uitgereik is.

(2) 'n Lisensie verleen aan die houer daarvan die voorregte en onderwerp hom of haar aan die verpligtinge waarvoor daar in hierdie Wet voorsiening gemaak is of wat in die lisensie vermeld is.

Soorte lisensies

33. (1) Die kategorieë lisensies wat toegestaan kan word en die telekommunikasiedienste wat deur sodanige lisensies gemagtig word, is—

- (a) soos beoog in artikels 34(2)(a)(i) tot (iv) en 39 tot 41; en
 10 (b) behoudens subartikel (2), soos voorgeskryf.

(2) Die Owerheid kan die telekommunikasiedienste en -aktiwiteite anders as dié bedoel in subartikel (1)(a) voorskryf wat sonder 'n lisensie verskaf of uitgevoer mag word.

Aansoeke

15 34. (1) Behoudens die bepalings van hierdie Wet kan enige persoon op die voorgeskrewe wyse om 'n lisensie aansoek doen.

(2) (a) Geen aansoek om 'n lisensie om—

- (i) 'n publieke skakeltelekommunikasiediens;
 (ii) 'n mobiele sellulêre telekommunikasiediens;
 20 (iii) 'n nasionale langafstandtelekommunikasiediens;
 (iv) 'n internasionale telekommunikasiediens; of
 (v) enige ander telekommunikasiediens wat vir die doeleindes van hierdie subartikel voorgeskryf is nie,

te verskaf, mag gebring of oorweeg word nie, tensy sodanige aansoek gebring word na
 25 aanleiding van en ooreenkomstig 'n uitnodiging deur die Minister wat by kennisgewing in die *Staatskoerant* gerig is: Met dien verstande dat hierdie subartikel en subartikels (3), (4) en (5) nie van toepassing is nie ten opsigte van 'n aansoek wat geag word ingevolge artikel 30(3)(a), 36(1)(a) of 40(1)(a) gedoen te gewees het.

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

- (i) die soort diens ten opsigte waarvan aansoeke ingewag word;
 30 (ii) die vorm waarin aansoeke ingedien moet word en die wyse waarop daar beoog word dat die diens gelewer moet word, of die plek waar en die tye waarop 'n dokument ten opsigte daarvan verkry kan word;
 (iii) die tydperk waarbinne en die wyse waarop sodanige aansoeke gerig moet
 35 word.

(c) Vir die doeleindes van paragraaf (a)(i) sluit 'n publieke skakeltelekommunikasienetwerkdienste nie die volgende in nie—

- (i) 'n diens bedoel in paragraaf (a)(ii) tot (iv) of artikels 39 en 40;
 (ii) die verskaffing van enige diens met betrekking tot telegramme; of
 40 (iii) die verskaffing van telekommunikasietoerusting wat op kliëntpersele geïnstalleer is of beoog word om daar geïnstalleer te word.

(3) In geval van 'n aansoek om 'n lisensie om 'n telekommunikasiedienste bedoel in subartikel (2) of enige telekommunikasiedienste wat vir die doeleindes van hierdie subartikel voorgeskryf is, moet die Owerheid—

- (a) in die *Staatskoerant* kennis van die aansoek gee en belanghebbende persone
 45 nooi om binne die tydperk in die kennisgewing vermeld, vertoë met betrekking tot die aansoek te rig;
 (b) in dieselfde of daaropvolgende sodanige kennisgewing die voorwaardes bekend maak wat in artikel 35(4) beoog word en waaronder daar voorgestel
 50 word dat die lisensie toegestaan word;
 (c) nadat die tydperk vir die rig van vertoë ingevolge paragrafe (a) en (b) verstryk het, 'n verhoor hou ten opsigte van die aansoek en sodanige bedinge en voorwaardes.

(4) (a) Behoudens hierdie subartikel is alle aansoeke, vertoë en ander dokumente met
 55 betrekking tot 'n aansoek wat aan die Owerheid gerig is, gedurende die gewone kantoorure van die Owerheid vir publieke insae oop en die Owerheid verskaf op versoek van enige persoon en teen betaling van die gelde wat voorgeskryf is, aan hom of haar 'n afskrif daarvan.

(b) Op versoek van 'n aansoeker of persoon wat vertoë gerig het, kan die Owerheid

representations, determine that any document or information relating to the financial capacity or business plans of any person or to any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question.

(c) If the Authority refuses a request contemplated in paragraph (b), the applicant or person concerned shall be allowed to withdraw the document or information in question. 5

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

(b) Before considering any document or information which the Authority has determined shall not be open for public inspection, the Authority may direct that the public or any member or category thereof shall not be present at the hearing: Provided that before making such direction the Authority shall notify those present of its intention to do so, allow persons to object to such direction and give due consideration to any objection made. 10

(6) When issuing invitations for applications in respect of licences to be lodged in terms of this section, the Minister shall have regard to any relevant provision made in terms of section 36(3) in the licence issued to Telkom. 15

Decision on applications

35. (1) (a) The Authority shall, after having duly considered any application for a licence made in terms of this Act and any representations and further information and evidence tendered, other than in respect of an application which is deemed to have been made pursuant to section 30(3)(a), 36(1)(a) or 40(1)(a)— 20

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

(ii) on request made by the applicant within the prescribed period, furnish him or her with its reasons for such decision or recommendation. 25

(b) The applicant may within the prescribed period make representations to the Authority in relation to the intended decision or recommendation, and the Authority may adjust or alter such decision or recommendation in any manner in the light of such representations. 30

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

(a) refuse the application; or

(b) in the case of—

(i) an application for a licence to provide a telecommunication service referred to in section 34(2), recommend that the Minister grant the application conditionally and suggest conditions contemplated in subsection (4) for the Minister to impose; or 35

(ii) any other application, grant the application.

(3) In the consideration of applications to provide a telecommunication service referred to in section 34(2), due regard shall be given to applications by persons from historically disadvantaged groups. 40

(4) Subject to section 36(6), a licence shall be granted on such conditions appropriate to the licence and consistent with the objects referred to in section 2 and the other provisions of this Act and stated in the licence, as the Minister or the Authority, as the case may be, may determine. 45

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

(6) The Authority or the Minister, as the case may be, shall on request furnish written reasons for the decision— 50

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

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

Public switched telecommunication services

36. (1) (a) Telkom shall be deemed to be the holder of a licence to provide public switched telecommunication services as contemplated in section 78(1) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before its repeal by this Act: Provided that as at the date of commencement of this Act, Telkom shall be deemed to have applied for a licence in terms of this Act, and after the provisions of 55

bepaal dat enige dokument of inligting met betrekking tot die finansiële vermoë of besigheidsplanne van enige persoon of met betrekking tot enige ander aangeleentheid wat redelikerwys vertroulikheid regverdig, nie ter insae vir publieke inspeksie is nie indien sodanige dokument of inligting van die aansoek, vertoë of ander betrokke 5 dokumente geskei kan word.

(c) Indien die Owerheid 'n versoek beoog in paragraaf (b) weier, word die aansoeker of die betrokke persoon toegelaat om die betrokke dokument of inligting te onttrek.

(5) (a) Behoudens paragraaf (b) is 'n verhoor in subartikel (3)(c) beoog, oop vir die publiek.

10 (b) Voordat die Owerheid enige dokument of inligting oorweeg wat die Owerheid bepaal het nie vir publieke inspeksie oop moet wees nie, gee die Owerheid opdrag dat die publiek of enige lid of enige kategorie daarvan nie by die verhoor teenwoordig moet wees nie: Met dien verstande dat voordat hy so 'n opdrag gee, die Owerheid die persone wat teenwoordig is van sy voorneme moet verwittig, persone moet toelaat om 15 teen so 'n opdrag beswaar te maak, en enige beswaar wat gemaak is, behoorlik moet oorweeg.

(6) Wanneer die Minister uitnodigings rig dat aansoeke gebring word ten opsigte van lisensies ingevolge hierdie artikel, neem hy of sy enige tersaaklike bepaling in ag wat ingevolge artikel 36(3) gemaak is in die lisensie wat aan Telkom uitgereik is.

20 Beslissing oor aansoeke

35. (1) (a) Nadat die Owerheid enige aansoek om 'n lisensie ingevolge hierdie Wet gedoen en enige vertoë en nadere inligting en getuienis wat aan hom voorgelê is, oorweeg het, moet die Owerheid, behalwe ten opsigte van 'n aansoek wat geag word ingevolge artikel 30(3)(a), 36(1)(a) of 40(1)(a) gedoen te gewees het—

25 (i) die aansoeker in kennis stel van sy voorgenome besluit of aanbeveling, met inbegrip van voorwaardes beoog in subartikels (2)(b) en (4);

(ii) op versoek van die aansoeker binne die voorgeskrewe tydperk aan hom of haar redes vir sodanige besluit of aanbeveling verskaf.

(b) Die aansoeker kan binne die voorgeskrewe tydperk vertoë rig aan die Owerheid 30 in verband met die beoogde besluit of aanbeveling, en die Owerheid kan sodanige besluit of aanbeveling op enige wyse aanpas of wysig in die lig van sodanige vertoë.

(2) Nadat daar aan die bepalings van subartikel (1) voldoen is, moet die Owerheid—

(a) die aansoek weier; of

(b) in die geval van—

35 (i) 'n aansoek om 'n lisensie om 'n telekommunikasiediens bedoel in artikel 34(2), aanbeveel dat die Minister die aansoek voorwaardelik toestaan en voorwaardes beoog in subartikel (4) voorstel wat die Minister kan stel; of

(ii) enige ander aansoek, die aansoek toestaan.

40 (3) By die oorweging van aansoeke om 'n telekommunikasiediens bedoel in artikel 34(2) te lewer, word behoorlik ag geslaan op aansoeke deur persone uit histories agtergeblewe groepe.

(4) Behoudens artikel 36(6), word 'n lisensie toegestaan op die voorwaardes, in die lisensie vermeld, wat toepaslik is vir die lisensie en wat strook met die oogmerke 45 bedoel in artikel 2 en die ander bepalings van hierdie Wet, wat die Minister of die Owerheid, na gelang van die geval, bepaal.

(5) Waar 'n lisensie toegestaan is, reik die Owerheid die betrokke lisensie aan die aansoeker uit.

(6) Die Owerheid of die Minister, na gelang van die geval, verskaf op versoek 50 skriftelike redes vir die besluit—

(a) aan die aansoeker, waar die aansoek geweier is of onderworpe aan voorwaardes toegestaan is;

(b) aan enige persoon wat vertoë gerig het, waar die aansoek toegestaan is.

Publieke skakeltelekommunikasiedienste

55 36. (1) (a) Telkom word geag die houer te wees van 'n lisensie om publieke skakeltelekommunikasiedienste te verskaf soos beoog in artikel 78(1) van die Poswet, 1958 (Wet No. 44 van 1958), soos daardie artikel onmiddellik voor die herroeping daarvan deur hierdie Wet bestaan het: Met dien verstande dat Telkom op die datum van inwerkingtreding van hierdie Wet geag word om aansoek te gedoen het om 'n lisensie

subsections (6), (7), (8) and (9) have been complied with in relation to the terms and conditions of the licence, the Minister shall grant the application and the Minister shall issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act.

(b) For the purposes of this subsection, the telecommunication services to be licensed as provided in paragraph (a) shall include— 5

- (i) national long-distance and international telecommunication services, subject to the provisions of section 48(4); and
- (ii) local access telecommunication services and public pay-telephone services.

(c) Any service of Telkom contemplated in this subsection may be provided by a wholly-owned subsidiary of Telkom, without such subsidiary being required to hold a licence in terms of this Act. 10

(d) Where it appears to the Authority that Telkom, in the provision of its telecommunication services, is taking or proposing to take any step which confers or may confer on it an undue advantage over any person who may in future be granted a licence in competition with Telkom, the Authority may direct Telkom to cease or refrain from taking such step, as the case may be. 15

(2) Telkom and any other holder of a licence to provide a public switched telecommunication service shall, until a date to be fixed by the Minister by notice in the *Gazette*, after consultation with the Authority and the Agency, comply with conditions specified in the licence in question relating to the extension of its public switched telecommunication service to areas and communities which are not served or not adequately served by telecommunication services, with a view to the achievement of universal service. 20

(3) In the licence to be issued to Telkom in terms of subsection (1) there shall be specified, in respect of any service rendered by Telkom immediately prior to the commencement of this section and specified in the licence after consultation with Telkom, a fixed period during which no person other than Telkom shall be licensed— 25

- (a) to provide a similar service; or
- (b) in the case of any service in respect of which an alternative is provided for in the licence issued to Telkom, to provide a similar service otherwise than in accordance with the special limitations stipulated in respect of it. 30

(4) All the fixed periods specified in terms of subsection (3) shall commence on the date of commencement of the licence issued to Telkom, and the length of each such period shall before such commencement be planned in such a way as to result in the phasing-in and completion over a number of years, determined by the Minister, of the process of licensing or, as the case may be, discontinuing the application of special limitations imposed in the licensing of persons other than Telkom to provide services similar to those specified in the licence issued to Telkom. 35

(5) The fixed period or, as the case may be, the fixed period and special limitations, in respect of any particular service specified in the licence issued to Telkom as contemplated in subsection (3), shall be subject to the approval of the Minister, and notwithstanding any provision to the contrary contained in this Act or any other law, the fixed periods and limitations specified and stipulated in the licence issued to Telkom shall be binding on the Authority and the Minister, and shall not be subject to alteration without the concurrence of Telkom. 45

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

(7) In respect of Telkom's application for a licence under subsection (1), the Minister shall— 50

- (a) issue a notice in the *Gazette*, making known the conditions contemplated in subsection (6) on which it is proposed the licence shall be granted and inviting interested persons to lodge representations in relation to the application within the period mentioned in the notice; 55

- ingevolge hierdie Wet en, nadat daar voldoen is aan die bepalings van subartikels (6), (7), (8) en (9) met betrekking tot die bedinge en voorwaardes van die lisensie, staan die Minister die aansoek toe en reik die Minister sodanige lisensie met 'n geldigheidsduur van 25 jaar vanaf die datum van inwerkingtreding van hierdie Wet aan Telkom uit.
- 5 (b) Vir die doeleindes van hierdie subartikel sluit die telekommunikasiedienste wat gelisensieer staan te word, soos bepaal in paragraaf (a)—
- (i) nasionale langafstand- en internasionale telekommunikasiedienste, behoudens artikel 48(4) in; en
 - (ii) plaaslike toegang-telekommunikasiedienste en openbare betaaltelefoondienste in.
- 10 (c) Enige diens van Telkom wat in hierdie subartikel beoog word, kan deur 'n volle filiaal van Telkom verskaf word, sonder dat daar van sodanige filiaal vereis word om 'n lisensie ingevolge hierdie Wet te hê.
- (d) Waar dit vir die Owerheid lyk asof Telkom in die verskaffing van sy
- 15 telekommunikasiedienste enige stap doen of beoog om te doen wat aan hom 'n onregverdige voordeel verskaf of kan verskaf bo enige persoon aan wie daar in die toekoms 'n lisensie in mededinging met Telkom toegestaan kan word, kan die Owerheid Telkom opdrag gee om op te hou of hom daarvan te weerhou om sodanige stap te doen, na gelang van die geval.
- 20 (2) Telkom en enige ander houër van 'n lisensie om 'n publieke skakeltelekommunikasiediens te verskaf, moet tot die datum wat deur die Minister by kennisgewing in die *Staatskoerant* na oorleg met die Owerheid en die Agentskap bepaal word, die voorwaardes nakom wat in die betrokke lisensie vermeld is met betrekking tot die uitbreiding van sy publieke skakeldiens na gebiede en gemeenskappe wat nie of wat nie
- 25 voldoende deur telekommunikasiedienste bedien word nie met die oog op die bereiking van universele diens.
- (3) In die lisensie wat ingevolge subartikel (1) aan Telkom uitgereik staan te word, word daar ten opsigte van enige diens wat onmiddellik voor die inwerkingtreding van hierdie artikel deur Telkom gelewer is en wat na oorleg met Telkom in die lisensie
- 30 vermeld is, 'n vaste tydperk vermeld waartydens geen ander persoon as Telkom gelisensieer sal word—
- (a) om 'n soortgelyke diens te verskaf nie; of
 - (b) in die geval van enige diens ten opsigte waarvan daar vir 'n alternatief voorsiening gemaak is in die lisensie wat aan Telkom uitgereik is, om 'n
- 35 soortgelyke diens te verskaf anders as ooreenkomstig die spesiale beperkings wat ten opsigte daarvan gestipuleer is nie.
- (4) Al die vaste tydperke wat ingevolge subartikel (3) vermeld word, begin op die aanvangsdatum van die lisensie wat aan Telkom uitgereik word, en die lengte van elke sodanige tydperk moet voor sodanige aanvang so beplan word dat dit sal lei tot die
- 40 infasering en afhandeling van die lisensieringsproses oor 'n aantal jare deur die Minister bepaal of, na gelang van die geval, die staking van die toepassing van spesiale beperkings wat by die lisensiering opgelê is van ander persone as Telkom om dienste te verskaf wat soortgelyk is aan dié wat vermeld is in die lisensie wat aan Telkom uitgereik is.
- 45 (5) Die vaste tydperk of, na gelang van die geval, die vaste tydperk en spesiale beperkings ten opsigte van enige besondere diens wat vermeld is in die lisensie wat aan Telkom uitgereik is soos beoog in subartikel (3) is onderworpe aan die goedkeuring van die Minister, en ondanks enige strydige bepaling wat in hierdie Wet of enige ander wet vervat is, bind die vaste tydperke en die beperkings wat vermeld en gestipuleer is in die
- 50 lisensie wat aan Telkom uitgereik is, die Owerheid en die Minister en is dit nie onderworpe aan verandering sonder die instemming van Telkom nie.
- (6) Die lisensie wat uitgereik staan te word kragtens subartikel (1), word toegestaan op voorwaardes toepaslik tot die lisensie en verenigbaar met die oogmerke in artikel 2 en die ander bepalings van hierdie Wet beoog en neergelê in die lisensie wat die
- 55 Minister bepaal.
- (7) Ten opsigte van die aansoek van Telkom om 'n lisensie kragtens subartikel (1), moet die Minister—
- (a) in die *Staatskoerant* van die aansoek kennis gee, met vermelding van die voorwaardes beoog in subartikel (6) op grond waarvan dit die voorneme is om die lisensie toe te ken, en belanghebbende persone nooit om binne die tydperk in die kennisgewing vermeld verhoë met betrekking tot die aansoek te rig;
- 60

- (b) consult with and obtain the views of the Authority on the representations received pursuant to paragraph (a);
- (c) after the period for lodging representations in terms of paragraph (a) has passed, hold a hearing in respect of the application and such terms and conditions. 5
- (8) (a) All representations and other documents relating to Telkom's application for a licence in terms of subsection (1) which are lodged with the Minister shall, subject to this subsection, be open to public inspection during the normal office hours of the Minister, and the Minister shall at the request of any person and on the payment of such fee as the Minister may prescribe, furnish him or her with a copy thereof. 10
- (b) The Minister may, at the request of Telkom or a person who has lodged representations, determine that any document or information relating to the financial capacity or business plans of any person, or to any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from Telkom's application or the representations or documents in question. 15
- (c) If the Minister refuses a request contemplated in paragraph (b), Telkom or the person concerned shall be allowed to withdraw the document or information in question.
- (9) (a) A hearing contemplated in subsection (7)(c) shall, subject to paragraph (b), be open to the public. 20
- (b) Before considering any document or information which the Minister has determined shall not be open for public inspection, the Minister may direct that the public or any member or category thereof shall not be present at the hearing: Provided that before making such direction, the Minister shall notify those present of his or her intention to do so, allow persons to object to such direction and give due consideration to any objection made. 25

Mobile cellular telecommunication services

37. (1) Vodacom (Pty.) Ltd. and Mobile Telephone Networks (Pty.) Ltd., companies incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), shall each be deemed to be the holder of a licence in terms of this Act to provide a mobile cellular telecommunication service in accordance with the terms and conditions of the telecommunications licences and multiparty implementation agreement published under General Notice No. 1078 of 29 October 1993: Provided that each such company shall apply to the Minister through the Authority within six months after the date of commencement of this Act, or such extended period as the Authority may allow, for such a licence and the Minister shall grant the application and the Authority shall issue to that company a licence which shall, subject to section 42(3)(a), incorporate those terms and conditions. 30
- (2) (a) An invitation contemplated in section 34(2) shall be issued in accordance with the provisions of paragraph (b). 40
- (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. 45
- (c) If the Minister follows that recommendation the provisions of sections 34 and 35 shall apply.
- (d) A licence contemplated in paragraph (a) shall contain a condition prohibiting the mobile cellular telecommunication service in question, until a date to be fixed by the Minister by notice in the *Gazette*, from utilising any fixed lines which may be required for the provision of the service other than fixed lines made available by Telkom or any other person providing a public switched telecommunication service. 50
- (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. 55

- (b) met die Owerheid oorleg pleeg en sy mening verkry oor die vertoë ontvang ingevolge paragraaf (a);
- (c) nadat die tydperk vir die rig van vertoë ingevolge paragraaf (a) verstryk het, 'n verhoor hou ten opsigte van die aansoek en sodanige bedinge en voorwaardes.
- 5 (8) (a) Behoudens hierdie subartikel is alle vertoë en ander dokumente met betrekking tot Telkom se aansoek om 'n lisensie kragtens artikel 36(1) wat tot die Minister gerig is, gedurende die gewone kantoorure van die Minister vir publieke insae oop, en die Minister verskaf op versoek van enige persoon en teen betaling van gelde 10 wat die Minister voorskryf, aan hom of haar 'n afskrif daarvan.
- (b) Op versoek van Telkom of 'n persoon wat vertoë gerig het, kan die Minister bepaal dat enige dokument of inligting met betrekking tot die finansiële vermoë of besigheidsplanne van enige persoon, of met betrekking tot enige ander aangeleentheid wat redelikerwys vertroulikheid regverdig, nie vir publieke inspeksie ter insae is nie, 15 indien sodanige dokument of inligting van die aansoek van Telkom of die vertoë of ander betrokke dokumente geskei kan word.
- (c) Indien die Minister 'n versoek beoog in paragraaf (b) weier, word Telkom of die betrokke persoon toegelaat om die betrokke dokument of inligting te onttrek.
- (9) (a) Behoudens paragraaf (b) is 'n verhoor in subartikel (7)(c) beoog, oop vir die 20 publiek.
- (b) Voordat enige dokument of inligting oorweeg word wat die Minister bepaal het nie vir publieke inspeksie oop moet wees nie, kan die Minister opdrag gee dat die publiek of enige lid of kategorie daarvan nie by die verhoor teenwoordig moet wees nie: Met dien verstande dat voordat die Minister so 'n opdrag gee, die Minister die 25 persone wat teenwoordig is van sy of haar voorneme om dit te doen, moet verwittig, persone moet toelaat om teen so 'n opdrag beswaar te maak, en enige beswaar wat gemaak is, behoorlik moet oorweeg.

Mobiele sellulêre telekommunikasiedienste

37. (1) Vodacom (Edms) Bpk en Mobile Telephone Networks (Edms) Bpk, 30 maatskappye wat ingevolge die Maatskappyyewet, 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-implementerings- 35 ooreenkomms 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 die 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 lisensie uitreik wat behoudens artikel 42(3)(a) daardie bedinge en voorwaardes 40 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 45 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 lisensie om sodanige diens te verskaf.
- 50 (c) Indien die Minister daardie aanbeveling volg, is die bepaling van artikels 34 en 35 van toepassing.
- (d) 'n Lisensie beoog in paragraaf (a) bevat 'n voorwaarde wat die betrokke mobiele sellulêre telekommunikasiediens verbied om, tot die datum wat deur die Minister by 55 kennisgewing in die *Staatskoerant* bepaal word, van enige ander vaste lyne vir die verskaffing van die diens 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 lisensie ingevolge hierdie artikel vereis om 'n lisensie beoog in artikels 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 60 verskaf nie.

National long-distance telecommunication services

38. (1) No person 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*.

(2) A licence issued to a person other than Telkom authorising the provision of a national long-distance telecommunication service shall contain a condition requiring the telecommunication system in question to be interconnected, in terms of section 43, to the telecommunication system of Telkom or any other person providing a public switched telecommunication service. 5

(3) No licence to provide a national long-distance telecommunication service shall be granted to Transnet or to Eskom, but such a licence may, with the concurrence of the Minister and the Minister for Public Enterprises, be granted to a subsidiary company of Transnet or Eskom. 10

Local access telecommunication services and public pay-telephone services

39. (1) (a) No person other than Telkom shall be granted a licence to provide a local access telecommunication service until after a date to be fixed by the Minister by notice in the *Gazette*. 15

(b) Every licence contemplated in paragraph (a) shall contain a condition requiring the telecommunication system by means of which the service concerned is provided, to be interconnected, in terms of section 43, to the telecommunication system of Telkom or any other person providing a public switched telecommunication service. 20

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

(b) Every licence contemplated in paragraph (a) shall contain a condition requiring the telephones in question to be connected to the exchanges or local network of the telecommunication system of Telkom or any other person providing a public switched telecommunication service, and Telkom or such person shall permit such connection. 25

(3) Different dates may be fixed under subsections (1)(a) and (2)(a) in respect of different areas. 30

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

Value-added network services

40. (1) (a) Telkom shall be deemed to be the holder of a licence to provide, subject to subsection (3), the value-added network services provided by it immediately before the date of commencement of this Act: Provided that as at the date of commencement of this Act Telkom shall be deemed to have applied to the Minister for a licence in terms of this Act in respect of each such service, and the Minister shall, after the provisions of section 36(6), (7), (8) and (9) have been complied with, in relation to the terms and conditions of the licence, grant the application and issue such licence to Telkom with a period of validity of 25 years from the date of commencement of this Act. 35 40

(b) Any person who, immediately prior to 20 May 1996, provided a value-added network service in terms of a lease contemplated in section 78(2)(a) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before such commencement, or in terms of any other agreement with Telkom, shall be deemed to be the holder of a licence to provide the service in question: Provided that such person shall apply to the Authority within six months after the date of such commencement or such extended period as the Authority may allow, for a licence in terms of this Act in respect of such service, and the Authority shall, notwithstanding the provisions of sections 34 and 35, grant the application and issue to that person such a licence, which shall, subject to section 42(3)(a), incorporate the terms and conditions of such lease or other agreement. 45 50

(2) A licence to provide any value-added network service, including, but not limited to, electronic data interchange, E-mail, protocol conversion, access to a database or a managed data network service, shall contain a condition that the service in question shall 55

Nasionale langafstandtelekommunikasiedienste

38. (1) Geen lisensie word aan 'n ander persoon 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.
- 15 (2) 'n Lisensie wat aan 'n ander persoon as Telkom uitgereik word en wat die verskaffing van 'n nasionale langafstand-telekommunikasiediens magtig, bevat 'n voorwaarde wat vereis dat die betrokke telekommunikasiestelsel ingevolge artikel 43 tussenverbind word met die telekommunikasiestelsel van Telkom of enige ander persoon wat 'n publieke skakeltelekommunikasiediens verskaf.
- 10 (3) Geen lisensie om 'n nasionale langafstand-telekommunikasienetwerk te verskaf, word aan Transnet of Eskom toegeken nie, maar so 'n lisensie kan met die instemming van die Minister en die Minister vir Openbare Ondernemings aan 'n filiaalmaatskappy van Transnet of Eskom toegestaan word.

Plaaslike toegang-telekommunikasiedienste en openbare betaaltelefoondienste

- 15 39. (1) (a) Geen lisensie word aan n ander persoon 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.
- (b) Elke lisensie beoog in paragraaf (a) bevat 'n voorwaarde wat vereis dat die telekommunikasiestelsel waardeur die diens verskaf word, ingevolge artikel 43
- 20 tussenverbind word aan die telekommunikasiestelsel van Telkom of enige ander persoon wat 'n publieke skakeltelekommunikasiediens verskaf.
- (2) (a) Geen lisensie word aan 'n ander persoon 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.
- 25 (b) Elke lisensie beoog in paragraaf (a) bevat 'n voorwaarde wat vereis dat die betrokke telefone verbind word aan die sentrales van die plaaslike netwerk van die telekommunikasiestelsel van Telkom of enige ander persoon wat 'n publieke skakeltelekommunikasiediens verskaf, en Telkom of daardie persoon moet sodanige verbinding toelaat.
- 30 (3) Verskillende datums kan ingevolge subartikels (1)(a) en (2)(a) ten opsigte van verskillende gebiede bepaal word.
- (4) By die bepaling van datums ingevolge hierdie artikel neem die Minister in die lisensie wat aan Telkom uitgereik is enige relevante bepaling in ag wat ingevolge artikel 36(3) gemaak is.

35 Toegevoegde waarde-netwerkdienste

- 40 40. (1) (a) Telkom word geag die houer te wees van 'n lisensie om behoudens subartikel (3) die toegevoegde waarde-netwerkdienste wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet deur hom verskaf is, te verskaf: Met dien verstande dat Telkom op die datum van inwerkingtreding van hierdie Wet geag word om aansoek by die Minister te gedoen het om 'n lisensie ingevolge hierdie Wet ten opsigte van elke sodanige diens en dat die Minister met betrekking tot die bedinge en voorwaardes van die lisensie, die aansoek toestaan en sodanige lisensie aan Telkom uitreik met 'n geldigheidsduur van 25 jaar vanaf die datum van inwerkingtreding van hierdie Wet nadat daar aan die bepalings van artikel 36(6), (7), (8) en (9) voldoen is.
- 45 (b) Enige persoon wat onmiddellik voor 20 Mei 1996 'n toegevoegde waarde-netwerkdienste verskaf het ingevolge 'n huurooreenkoms beoog in artikel 78(2)(a) van die Poswet, 1958 (Wet No. 44 van 1958), soos daardie artikel onmiddellik voor sodanige inwerkingtreding bestaan het, of ingevolge enige ander ooreenkoms met Telkom, word geag die houer te wees van 'n lisensie om die betrokke diens te verskaf:
- 50 Met dien verstande dat sodanige persoon binne ses maande na die datum van sodanige inwerkingtreding of die verlengde tydperk wat die Owerheid toelaat, aansoek doen om 'n lisensie ingevolge hierdie Wet ten opsigte van sodanige diens, en die Owerheid staan die aansoek toe ondanks die bepalings van artikels 34 en 35 en reik aan daardie persoon sodanige lisensie uit wat behoudens artikel 42(3)(a) die bedinge en voorwaardes van
- 55 sodanige huurooreenkoms of ander ooreenkoms insluit.
- (2) 'n Lisensie om enige toegevoegde waarde-netwerkdienste, met inbegrip van maar nie beperk nie tot elektroniese data-uitruiling, E-mail, protokol-omskakeling, toegang tot 'n databasis- of 'n bestuurde datanetwerkdienste, bevat 'n voorwaarde dat die

be provided by means of telecommunication facilities provided by Telkom or made available to Telkom as contemplated in section 44 until a date to be fixed by the Minister by notice in the *Gazette*, and a different date may be so fixed in respect of national long-distance facilities.

(3) No person who provides a value-added network service shall permit that service to be used for the carrying of voice until a date to be fixed by the Minister by notice in the *Gazette*. 5

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

(i) shall, until a date to be fixed by the Minister by notice in the *Gazette*, not be entitled to cede or assign his or her rights to use such facilities or to sublet or part with control or otherwise dispose of the telecommunication facilities in question; and 10

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

(b) The provisions of paragraph (a)(i) shall not prevent the due and proper use of such facilities by the customers of such person, in the course of utilising the service in question. 15

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

(5) The holder of a licence in terms of this section shall not be required to hold a licence contemplated in section 34(2)(a)(iii) or (iv) to enable him or her to provide the value-added network service in question. 20

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

Private telecommunication networks

41. (1) (a) A person providing a telecommunication network for purposes principally or integrally related to the operations of such person (hereinafter referred to as a private telecommunication network), shall, notwithstanding the provisions of sections 32(1) and 33(1) and regardless of whether or not such network is utilised by means of telecommunication facilities made available by Telkom, not require a licence except as contemplated in paragraph (b). 25 30

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

(c) Any person who, immediately before the commencement of this Act, provided a private telecommunication network, other than a network contemplated in paragraph (a), in terms of a lease contemplated in section 78(2)(a) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before such commencement, or in terms of any other agreement with Telkom, shall be deemed to be the holder of a licence to provide the service in question: Provided that such person shall apply to the Authority within six months after the date of such commencement or such extended period as the Authority may allow, for a licence in terms of this Act in respect of such service, and the Authority shall, notwithstanding the provisions of sections 34 and 35, grant the application and issue to that person such a licence, which shall, subject to section 42(3), incorporate the terms and conditions of such lease or other agreement. 35 40 45

(2) (a) A private telecommunication network shall not be provided by means of telecommunication facilities other than facilities made available by Telkom or any other person providing a public switched telecommunication network service as contemplated in section 46(1), except as provided in paragraph (b). 50

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

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

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

(3) (a) Until a date to be fixed by the Minister by notice in the *Gazette*, or in any other circumstances which may be prescribed, Transnet and Eskom shall, subject to paragraph (d), not install or extend their telecommunication facilities so as to cause unnecessary duplication of such facilities with the telecommunication facilities of Telkom, or embark 55

betrokke diens verskaf word deur middel van telekommunikasiefasiliteite deur Telkom 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.

- 5 (3) Geen persoon wat 'n toegevoegde waarde-netwerkdien verskaf, mag toelaat dat daardie diens gebruik word om spraak te dra nie tot 'n datum deur die Minister by kennisgewing in die *Staatskoerant* bepaal.

(4) (a) 'n Persoon wat 'n toegevoegde waarde-netwerkdien verskaf—

- 10 (i) is tot 'n datum wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word, nie daarop geregtig om sy of haar regte om sodanige fasiliteite te gebruik, te sedeer of te verpand of om dit te onderverhuur of afstand te doen van sy of haar beheer daarvoor of andersins oor die betrokke telekommunikasiefasiliteite te beskik nie; en

(ii) is na sodanige datum daarop geregtig.

- 15 (b) Die bepaling van paragraaf (a)(i) verhoed nie die regmatige en behoorlike gebruik van sodanige fasiliteite deur kliënte van sodanige persoon by die benutting van die betrokke diens nie.

(c) Enige ooreenkoms wat strydig is met die bepaling van paragraaf (a)(ii) is onafdwingbaar in die mate waarin dit aldus teenstrydig is.

- 20 (5) Daar word nie van die houer van 'n lisensie ingevolge hierdie artikel vereis om 'n lisensie te hê soos beoog in artikel 34(2)(a)(iii) of (iv) om hom of haar in staat te stel om die betrokke toegevoegde waarde-netwerkdien te verskaf nie.

(6) Die bepaling van artikel 39(4) geld met die nodige veranderings vir die bepaling van datums deur die Minister ingevolge hierdie artikel.

25 Private telekommunikasienetwerke

41. (1) (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 bepaling van artikels 32(1) en 33(1), behalwe soos wat in paragraaf (b) beoog word,
- 30 hetsy sodanige netwerk benut word al dan nie deur middel van telekommunikasiefasiliteite wat deur Telkom beskikbaar gestel is.

(b) 'n Lisensie 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

35 skakeltelekommunikasienetwerkdien verskaf.

(c) Enige persoon wat onmiddellik voor die inwerkingtreding van hierdie Wet 'n private telekommunikasienetwerk verskaf het anders as 'n netwerk beoog in paragraaf (a), ingevolge 'n huurooreenkoms beoog in artikel 78(2)(a) van die Poswet, 1958 (Wet No. 44 van 1958), soos daardie artikel bestaan het onmiddellik voor sodanige

40 inwerkingtreding of ingevolge enige ander ooreenkoms met Telkom, word geag die houer te wees van 'n lisensie om die betrokke diens te verskaf: Met dien verstande dat sodanige persoon binne ses maande na die datum van sodanige inwerkingtreding of verlengde tydperk wat die Owerheid toelaat, by die Owerheid ingevolge hierdie Wet om 'n lisensie ten opsigte van sodanige diens aansoek moet doen, en die Owerheid

45 staan ondanks die bepaling van artikels 34 en 35 die aansoek toe en reik aan daardie persoon sodanige lisensie uit wat behoudens artikel 42(3) die bedinge en voorwaardes van sodanige huurooreenkoms of ander ooreenkoms insluit.

(2) (a) 'n Private telekommunikasienetwerk word nie verskaf deur middel van ander telekommunikasiefasiliteite as fasiliteite wat beskikbaar gestel word deur Telkom of

50 enige ander persoon wat 'n publieke skakeltelekommunikasienetwerkdien verskaf soos beoog in artikel 46(1) nie, behalwe soos in paragraaf (b) bepaal.

(b) Die bepaling van paragraaf (a) geld nie ten opsigte van—

- 55 (i) 'n private telekommunikasienetwerk wat verskaf word deur middel van 'n telekommunikasiestelsel wat geleë is op 'n enkele stuk grond of aangrensende stukke grond wat deur dieselfde persoon besit word nie; of

(ii) enige private telekommunikasienetwerk wat deur Transnet of Eskom in stand gehou word nie.

(3) (a) Tot 'n datum wat deur die Minister bepaal word by kennisgewing in die *Staatskoerant*, of in enige ander omstandighede wat voorgeskryf mag word, kan

60 Transnet en Eskom behoudens paragraaf (d) nie hulle telekommunikasiefasiliteite so installeer of uitbrei dat dit lei tot onnodige duplisering van sodanige fasiliteite met die

on any major installation or extension of their telecommunication facilities, without the proposed installation or extension in question having been referred to a liaison committee contemplated in paragraph (b) for consideration, and unless Telkom consents or the Authority authorises such installation or extension in terms of paragraph (c).

(b) A liaison committee shall consist of representatives of Transnet, Eskom, Telkom, the Agency and the Department, and be chaired by a member or employee of the Authority designated by the Council. 5

(c) Where Telkom does not agree to any installation or extension contemplated in paragraph (a), Transnet or Eskom, as the case may be, may refer the matter to the Authority, which may authorise the installation or extension in question. 10

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

(4) A private telecommunication network shall not be restricted to the carrying of voice only or data only or to any other such limited use. 15

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

(i) shall, until a date to be fixed by the Minister by notice in the *Gazette*, not be entitled to resell spare capacity on such facilities or to cede or assign his or her rights to use such facilities or to sublet or otherwise part with control thereof; 20

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

(b) The provisions of paragraph (a)(i) shall not prevent the due and proper use of any such facilities by any person for any purpose principally or integrally related to the operations of the person providing the network. 25

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

(7) Where a private telecommunication network is interconnected to Telkom's telecommunication system, the person providing that private telecommunication network shall not permit any telecommunication which originates in Telkom's system and which is intended to be received in that system to bypass that system by being transmitted via the private telecommunication network. 30

(8) Transnet or Eskom shall not be required to hold a licence contemplated in section 34(2)(a)(iv) to enable it to utilise any private telecommunication network maintained by it for purposes related to its operations outside the Republic. 35

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

Existing licences and authorities

42. (1) Any licence which was issued or authority which was granted under section 78(2)(b) or (5) of the Post Office Act, 1958 (Act No. 44 of 1958), as that section existed immediately before its repeal by this Act, and which was valid immediately before the date of commencement of this Act shall be deemed to be a licence issued in terms of this Act. 40

(2) Any condition which was prescribed generally under section 78(2) of the Post Office Act, 1958, and to which a licence issued under paragraph (b) of that section was subject immediately before the commencement of this Act, shall be deemed to be a condition of the licence in terms of this Act referred to in subsection (1) in so far as such condition is not inconsistent with anything prescribed by or under this Act. 45

(3) (a) A licence issued in terms of section 37(1), 40(1)(b) or 41(1)(c) shall not incorporate a term or condition of the applicable agreement referred to in those sections which is inconsistent with a provision of this Act or which relates to interconnection or 50

telekommunikasiefasiliteite van Telkom, of enige groot installasies of uitbreiding van hulle telekommunikasiefasiliteite onderneem sonder dat die betrokke voorgestelde installasie of uitbreiding na 'n skakelkomitee beoog in paragraaf (b) vir oorweging voorgelê is nie, en tensy Telkom toestem of die Owerheid sodanige installasie of uitbreiding ingevolge paragraaf (c) magtig.

(b) 'n Skakelkomitee bestaan uit verteenwoordigers van Transnet, Eskom, Telkom, die Agentskap en die Departement, en die voorsitter daarvan is 'n lid of werknemer van die Owerheid wat deur die Raad aangewys is.

(c) Waar Telkom nie toestem tot enige installasie of uitbreiding beoog in paragraaf (a) nie, kan Transnet of Eskom, na gelang van die geval, die saak na die Owerheid verwys wat die betrokke installasie of uitbreiding kan magtig.

(d) Die bepalings van hierdie artikel geld nie met betrekking tot enige installasie of uitbreiding van die telekommunikasiefasiliteite wat Transnet of Eskom vir hulle bedrywe benodig, waar menseleuens in gevaar mag verkeer of vir hulle interne bedryfsvereistes nie.

(4) 'n Private telekommunikasienetwerk word nie beperk tot die dra van slegs spraak of slegs data of enige ander sodanige beperkte gebruik nie.

(5) (a) 'n Persoon wat 'n private telekommunikasienetwerk met telekommunikasiefasiliteite verskaf, is—

(i) tot 'n datum wat by kennisgewing in die *Staatskoerant* deur die Minister bepaal word, nie daarop geregtig om spaarkapasiteit op sodanige fasiliteite te herverkoop of om sy of haar regte op sodanige fasiliteite te sedeer of te beswaar of om dit te onderverhuur of andersins van die beheer daarvoor afstand te doen nie;

(ii) na sodanige verstryking, daarop geregtig.

(b) Die bepalings van paragraaf (a)(i) verhoed nie die behoorlike en regmatige gebruik van enige sodanige fasiliteite deur enige persoon vir enige doel wat hoofsaaklik of integrerend verband hou met die bedrywighede van die persoon wat die netwerk verskaf nie.

(6) Enige ooreenkoms wat strydig is met die bepalings van subartikel (3) of (5)(a)(ii) is onafdwingbaar in die mate waarin dit aldus teenstrydig is.

(7) Waar 'n private telekommunikasienetwerk tussenverbind is aan Telkom se telekommunikasiestelsel moet die persoon wat daardie private telekommunikasienetwerk verskaf, nie toelaat dat enige telekommunikasie wat in Telkom se stelsel ontstaan en wat bedoel is om in daardie stelsel ontvang te word daardie stelsel omseil deur via die private telekommunikasienetwerk versend te word nie.

(8) Daar word nie van Transnet en Eskom vereis om 'n lisensie te hê soos bedoel in artikel 34(2)(a)(iv) om hulle in staat te stel om enige private telekommunikasienetwerk te gebruik wat deur hulle in stand gehou word vir doeleindes wat verband hou met hulle bedrywighede buite die Republiek nie.

(9) Die bepalings van artikel 39(4) geld met die nodige veranderinge vir die bepaling van datums deur die Minister ingevolge hierdie artikel.

Bestaande lisensies en magtigings

42. (1) 'n Lisensie wat uitgereik is of magtiging wat toegestaan is kragtens artikel 78(2)(b) of (5) van die Poswet, 1958 (Wet No. 44 van 1958), soos daardie artikel bestaan het onmiddellik voor die herroeping daarvan deur hierdie Wet en wat onmiddellik voor die inwerkingtreding van hierdie Wet geldig was, word geag 'n lisensie te wees wat ingevolge hierdie Wet uitgereik is.

(2) 'n Voorwaarde wat in die algemeen kragtens artikel 78(2) van die Poswet, 1958, voorgeskryf is en waaraan 'n lisensie wat uitgereik is kragtens paragraaf (b) van daardie artikel onmiddellik voor die inwerkingtreding van hierdie Wet onderworpe was, word geag 'n voorwaarde te wees van die lisensie ingevolge hierdie Wet bedoel in subartikel (1), vir sover sodanige voorwaarde nie strydig is met enigiets wat by of kragtens hierdie Wet voorgeskryf word nie.

(3) (a) 'n Lisensie wat ingevolge artikel 37(1), 40(1)(b) of 41(1)(c) uitgereik word, bevat nie 'n beding of voorwaarde van die toepaslike ooreenkoms bedoel in daardie artikels wat strydig is met 'n bepaling van hierdie Wet of wat betrekking het op

making available the telecommunication facilities of Telkom.

(b) A term or condition of an agreement referred to in section 37(1), 40(1)(b) or 41(1)(c) requiring any consent or approval by Telkom, the Director-General or any other authority shall, subject to paragraph (a), be incorporated in the licence in question as a condition requiring consent or approval by the Authority. 5

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

(d) The Authority shall furnish to the holder of such licence or to Telkom, on request, a statement in writing of the terms and conditions of such agreement which are unenforceable as contemplated in paragraph (c). 10

Interconnection

43. (1) (a) Telkom shall, when requested by any other person providing a telecommunication service, interconnect its telecommunication system to the telecommunication system of that person unless such request is unreasonable. 15

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

(c) For the purposes of paragraphs (a) and (b), a request contemplated in those paragraphs is not unreasonable where the Authority determines that the requested interconnection is technically feasible and will promote increased public use of telecommunication services or more efficient use of telecommunication facilities. 20

(d) An agreement between the parties contemplated in paragraph (a) or (b) relating to interconnection shall be entered into within the prescribed period or such extended period as the Authority may allow in any particular case. 25

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

- (i) notify the Authority if any request contemplated in paragraph (a) or (b), as the case may be, is made;
- (ii) where the reasonableness of any such request is disputed, refer the dispute to the Authority for its decision; 30
- (iii) where the parties are unwilling or unable to negotiate or agree on any terms and conditions within the period or extended period contemplated in paragraph (d), submit the issue to the Authority.

(2) Every agreement for the interconnection of telecommunication systems, including any agreement contemplated in subsection (1), shall, unless exempted by the regulations, be lodged by the parties with the Authority to enable it to determine whether the agreement is consistent with the guidelines contemplated in subsection (3). 35

(3) The Authority shall prescribe guidelines relating to the form and content of interconnection agreements, and such guidelines shall determine, among others— 40

- (a) the time by or period within which interconnection pursuant to the agreement shall be carried out;
- (b) the quality or level of service to be provided by means of the one telecommunication system for the other telecommunication service;
- (c) the fees and charges payable for such interconnection: 45

Provided that within 12 months after the date of commencement of this Act the Minister shall determine by notice in the *Gazette* such guidelines in respect of Telkom, and such guidelines shall be in force until the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 36(1)(a). 50

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

- (a) in the case of a dispute relating to reasonableness as contemplated in subsection (1)(e)(ii), make a determination as contemplated in subsection (1)(c); 55
- (b) in the case of unwillingness or inability by the parties to negotiate or agree, propose terms and conditions in accordance with the guidelines contemplated in subsection (3) which, subject to renegotiation, shall be agreed by the parties within such period as the Authority may specify, failing which the Authority

tussenverbinding of die beskikbaarstelling van telekommunikasiefasiliteite van Telkom nie.

(b) 'n Beding of voorwaarde van 'n ooreenkoms bedoel in artikel 37(1), 40(1)(b) of 41(1)(c) wat enige toestemming of goedkeuring van Telkom, die Direkteur-generaal of enige ander owerheid vereis, word behoudens paragraaf (a) in die betrokke lisensie vervat as 'n voorwaarde wat die toestemming of goedkeuring van die Owerheid vereis.

(c) Enige beding of voorwaarde van 'n ooreenkoms wat vervat is in 'n lisensie bedoel in paragraaf (a) is onafdwingbaar as deel van die kontrak vir sover dit aldus vervat is.

10 (d) Die Owerheid voorsien die houer van sodanige lisensie of Telkom op versoek van 'n skriftelike verklaring van die bedinge en voorwaardes van sodanige ooreenkoms wat onafdwingbaar is soos in paragraaf (c) beoog.

Tussenverbinding

43. (1) (a) Op versoek van enige ander persoon wat 'n telekommunikasiediens verskaf, tussenverbind Telkom sy telekommunikasiestelsel aan die telekommunikasiestelsel van daardie persoon tensy sodanige versoek onredelik is.

(b) Met ingang van 'n datum wat by kennisgewing in die *Staatskoerant* deur die Minister bepaal word, moet elke persoon wat 'n telekommunikasiediens verskaf, op versoek van enige ander sodanige persoon sy telekommunikasiestelsel tussenverbind aan die telekommunikasiestelsel van sodanige ander persoon tensy sodanige versoek onredelik is.

(c) Vir die doeleindes van paragrafe (a) en (b) is 'n versoek beoog in daardie paragrafe nie onredelik nie waar die Owerheid bepaal dat die verlangde tussenverbinding tegnies uitvoerbaar is en verhoogde publieke gebruik van telekommunikasiedienste of doeltreffender gebruik van telekommunikasiefasiliteite sal bevorder.

(d) 'n Ooreenkoms tussen die partye beoog in paragraaf (a) of (b) met betrekking tot tussenverbinding word gesluit binne die voorgeskrewe tydperk of die verlengde tydperk wat die Owerheid in 'n bepaalde geval toelaat.

(e) Tensy deur die regulasies vrygestel, moet die betrokke partye—

30 (i) die Owerheid in kennis stel indien enige versoek beoog in paragraaf (a) of (b), na gelang van die geval, gerig word;

(ii) waar die redelikheid van enige sodanige versoek betwis word die geskil na die Owerheid vir 'n beslissing verwys;

35 (iii) die kwessie aan die Owerheid voorlê waar die partye onwillig of nie in staat is nie om te onderhandel of ooreen te kom oor die bedinge en voorwaardes binne die tydperk of verlengde tydperk in paragraaf (d) beoog.

(2) Elke ooreenkoms vir die tussenverbinding van telekommunikasiestelsels, met inbegrip van enige ooreenkoms in subartikel (1) beoog, moet, tensy dit deur die regulasies vrygestel is, deur die partye by die Owerheid ingedien word ten einde hom in staat te stel om te bepaal of die ooreenkoms met die riglyne in subartikel (3) beoog, strook.

(3) Die Owerheid skryf riglyne voor met betrekking tot die vorm en inhoud van tussenverbindingooreenkomste en sodanige riglyne bepaal onder andere—

45 (a) die tyd of tydperk waarbinne die tussenverbinding na aanleiding van die ooreenkoms uitgevoer moet word;

(b) die gehalte of vlak van die diens wat deur middel van die een telekommunikasiestelsel aan die ander telekommunikasiediens verskaf moet word;

(c) die gelde en heffings wat vir sodanige tussenverbinding betaalbaar is:

50 Met dien verstande dat die Minister binne 12 maande na die datum van inwerkingtreding van hierdie Wet by kennisgewing in die *Staatskoerant* sodanige riglyne ten opsigte van Telkom bepaal, en sodanige riglyne bly van krag tot die derde herdenking van die datum waarop die Minister 'n lisensie aan Telkom uitgereik het ooreenkomstig artikel 36(1)(a).

55 (4) Nadat hy enige skriftelike verhoë oorweeg het en nadat hy die partye aangehoor het, moet die Owerheid—

(a) in die geval van 'n geskil met betrekking tot die redelikheid soos beoog in subartikel (1)(e)(ii) 'n bepaling maak soos beoog in subartikel (1)(c);

60 (b) in die geval van onwilligheid of onvermoë deur die partye om te onderhandel of ooreen te kom, bedinge en voorwaardes voorstel ooreenkomstig die riglyne beoog in subartikel (3) en waarop, onderworpe aan heronderhandeling, deur die partye ooreengekom moet word binne die tydperk wat die

shall declare the terms and conditions so proposed, subject to any variation which the Authority deems fit, to be applicable between the parties;

- (c) in the case of an agreement lodged as contemplated in subsection (2), inform the parties that it is satisfied that the agreement is consistent with the guidelines contemplated in subsection (3) or, where it determines that any terms and conditions of the agreement are not consistent with those guidelines, furnish the parties in writing with particulars of those terms and conditions and the reasons for its determination. 5

(5) (a) The Authority may, on the request of either party, determine that a particular portion of that party's written or oral representations discloses confidential commercial information and should on that account not be disclosed to the other party, and the requesting party shall be entitled, where the Authority refuses such request, to exclude such information from his or her representations. 10

(b) Where the Authority determines that any terms and conditions are not consistent with the guidelines contemplated in subsection (3), it may direct the parties to negotiate and agree on new terms and conditions within such period as the Authority may specify, or itself propose terms and conditions consistent with those guidelines and which, subject to renegotiation, shall be agreed by the parties within such period as it may specify, and the provisions of subsections (1)(e)(iii) and (4)(b) shall apply with the necessary changes. 15 20

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

(b) Terms and conditions determined under subsection (4)(c) to be inconsistent with the guidelines contemplated in subsection (3) shall not be enforceable between the parties. 25

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

(b) For the purposes of paragraph (a), any interconnection agreement entered into before the commencement of this Act, including terms or conditions relating to interconnection referred to in section 42(3)(a), shall be deemed to be terms and conditions contemplated in this section. 30

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

(9) The provisions of section 39(4) shall apply, with the necessary changes, to the fixing of dates by the Minister in terms of this section. 35

Making telecommunication facilities available

44. (1) (a) Until a date to be fixed by the Minister by notice in the *Gazette*, Transnet and Eskom shall, when requested by Telkom, lease or otherwise make available to Telkom any of their telecommunication facilities so requested, on terms and conditions to be negotiated and agreed between the parties without undue delay and approved by the Authority, unless such request is unreasonable having regard, among others, to the provisions of this subsection. 40

(b) Transnet and Eskom shall make available their facilities as contemplated in paragraph (a) unless there is no spare capacity on those facilities. 45

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

(d) The provisions of paragraphs (a), (b) and (c) shall also apply in relation to the leasing or otherwise making available by Telkom of its telecommunication facilities to Transnet and Eskom. 50

(2) Telkom and any other provider of a public fixed telecommunication service shall, when requested by any other person providing a telecommunication service, including a private telecommunication network, lease or otherwise make available telecommunication facilities to such other person pursuant to an agreement to be entered into between the parties, unless such request is unreasonable. 55

(3) The provisions of section 43(1)(c), (d) and (e) shall apply, with the necessary

Owerheid vermeld, by gebreke waaraan die Owerheid die bedinge en voorwaardes wat aldus voorgestel is, behoudens die wysiging wat die Owerheid nodig ag, verklaar as van toepassing tussen die partye;

- 5 (c) die partye, in die geval van 'n ooreenkoms wat voorgelê word soos beoog in subartikel (2), inlig dat hy tevrede is dat die ooreenkoms strook met die riglyne beoog in subartikel (3) of, waar hy bepaal dat enige bedinge en voorwaardes van die ooreenkoms nie strook met daardie riglyne nie, aan die partye skriftelik besonderhede van daardie bedinge en voorwaardes en die redes vir sy bepaling verstrek.
- 10 (5) (a) Die Owerheid kan op versoek van enigeen van die partye bepaal dat 'n besondere gedeelte van daardie party se skriftelike of mondelinge vertoë vertroulike handelsinligting openbaar en dat dit om daardie rede nie aan die ander party bekend gemaak moet word nie, en die party wat die versoek rig, is geregtig om, waar die Owerheid sodanige versoek weier, sodanige inligting uit sy of haar vertoë uit te sluit.
- 15 (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 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
- 20 tydperk wat hy vermeld en geld die voorwaardes van subartikels (1)(e)(iii) en (4)(b) met die nodige veranderings.
- (6) (a) Waar daar verklaar is dat bedinge en voorwaardes ingevolge subartikel (4)(b) van toepassing is, is hulle tussen die partye afdwingbaar.
- (b) Waar daar ingevolge subartikel (4)(c) bepaal is dat bedinge en voorwaardes
- 25 strydig is met die riglyne beoog in subartikel (3), is hulle nie afdwingbaar tussen die partye nie.
- (7) (a) Die bepalinge van subartikels (1) tot (6) geld met die nodige veranderings met betrekking tot 'n wysiging of voorgestelde wysiging van enige beding of voorwaarde in hierdie artikel beoog.
- 30 (b) Vir die doeleindes van paragraaf (a) word enige tussenverbindingooreenkoms wat voor die inwerkingtreeding van hierdie Wet aangegaan is, met inbegrip van bedinge en voorwaardes met betrekking tot tussenverbinding bedoel in artikel 42(3)(a), geag bedinge en voorwaardes te wees beoog in hierdie artikel.
- (8) Hierdie artikel word nie uitgelê as sou onderhandelings vir tussenverbinding voor
- 35 die uitreiking van 'n lisensie wat die verskaffing van enige telekommunikasiediens magtig, verhoed nie.
- (9) Die bepalinge van artikel 39(4) geld met die nodige veranderings vir die bepaling van datums deur die Minister ingevolge hierdie artikel.

Beskikbaarstelling van telekommunikasiefasiliteite

- 40 44. (1) (a) Tot 'n datum wat by kennisgewing in die *Staatskoerant* deur die Minister bepaal word, verhuur of stel Transnet en Eskom, wanneer hulle deur Telkom versoek word, enige van hulle telekommunikasiefasiliteite wat aldus versoek word aan Telkom beskikbaar op bedinge en voorwaardes waarvoor sonder onnodige vertraging tussen die partye onderhandel en ooreengekom word en wat deur die Owerheid goedgekeur word,
- 45 tensy sodanige versoek onredelik is, met inagneming van onder andere die bepalinge van hierdie subartikel.
- (b) Transnet en Eskom stel hulle fasiliteite beskikbaar soos beoog in paragraaf (a) tensy daar geen spaarkapasiteit op daardie fasiliteite is nie.
- (c) Telkom rig 'n versoek beoog in paragraaf (a) indien sy eie fasiliteite ontoereikend
- 50 is en hy nie self die nodige bykomende fasiliteite ekonomies, tegnies en betyds kan bekom nie, of indien die gebruik van Transnet of Eskom se fasiliteite op enige wyse die verskaffing van dienste deur Telkom sal vergemaklik.
- (d) Die bepalinge van paragrawe (a), (b) en (c) geld ook ten opsigte van die verhuring of ander beskikbaarstelling deur Telkom van sy telekommunikasiefasiliteite
- 55 aan Transnet en Eskom.
- (2) Indien Telkom en enige ander verskaffer van 'n publieke vaste telekommunikasiediens deur enige persoon wat 'n telekommunikasiediens lewer, met inbegrip van 'n private telekommunikasienetwerk, versoek word, verhuur hy of stel hy telekommunikasiefasiliteite aan sodanige ander persoon beskikbaar na aanleiding van 'n ooreenkoms wat tussen die partye gesluit staan te word tensy sodanige versoek onredelik is.
- 60 (3) Die bepalinge van artikel 43(1)(c), (d) en (e) geld met die nodige veranderings

changes, in relation to any request and agreement contemplated in subsections (1) and (2).

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

(5) The Authority shall prescribe guidelines relating to the form and content of agreements for the leasing or other manner in which telecommunication facilities are made available as contemplated in section 43(3), with the necessary changes. 10

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

(7) In the application of section 43(1)(e)(iii) and (4)(b) in relation to making the telecommunication facilities of Telkom available to another person and where the Authority is satisfied that Telkom is unwilling or unable to make suitable facilities available to that person within a reasonable period of time, the Authority may, instead of proposing terms and conditions as contemplated in section 43(4)(b), authorise that person to provide or obtain any necessary telecommunication facilities other than from Telkom on conditions determined by the Authority, notwithstanding the provisions of sections 37(2)(c), 38(2), 40(2) and 41(2)(a) and this section. 15 20

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

Fees and charges for telecommunication services

45. (1) The fees and charges which may be levied by a licensee in respect of the provision of a telecommunication service shall be determined in such manner as may, subject to subsection (2), be prescribed. 25

(2) The manner of determining fees and charges shall be prescribed only in respect of fields where no or insufficient competition exists: Provided that within 12 months after the date of commencement of this Act, the Minister shall determine such fees and charges in respect of Telkom, and such fees and charges shall be in force until the third anniversary of the date on which the Minister issued a licence to Telkom in accordance with section 36(1)(a). 30

Accounts and records to be kept by licensees

46. (1) A telecommunication service licensee shall keep such accounts and records relating to the provision of his or her telecommunication service as may be prescribed. 35

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

- (a) each telecommunication service provided by it, where another person also provides such a telecommunication service in competition with Telkom;
- (b) each interconnection to its telecommunication system or instance where its telecommunication facilities are made available; 40
- (c) any other prescribed part of its operations.

Duration of telecommunication service licences

47. (1) The period of validity of a telecommunication service licence shall be stipulated in the licence. 45

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

Amendment of telecommunication service licences

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

- (a) in the case of a licence to provide a public switched telecommunication network service, if the amendment relates to universal access or universal service obligations contemplated in section 36(2) and is necessary, in the opinion of the Authority after consultation with the Agency, as a result of changed circumstances or an amendment of the definition of universal access or universal service; 50 55

met betrekking tot enige versoek en ooreenkoms beoog in subartikels (1) en (2).

(4) Elke ooreenkoms vir die verhuring of ander beskikbaarstelling van telekommunikasiefasiliteite, met inbegrip van enige ooreenkoms beoog in subartikels (1) en (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.

(5) Die Owerheid skryf riglyne voor met betrekking tot die vorm en inhoud van ooreenkomste vir die verhuring of ander beskikbaarstelling van telekommunikasiefasiliteite, soos beoog in artikel 43(3), met die nodige veranderings.

(6) Die bepalinge van artikel 43(4) tot (8) geld met die nodige veranderings met betrekking tot die verhuring of ander beskikbaarstelling van telekommunikasiefasiliteite.

(7) By die toepassing van artikel 43(1)(e)(iii) en (4)(b) met betrekking tot die beskikbaarstelling van die telekommunikasiefasiliteite van Telkom aan 'n ander persoon en waar die Owerheid tevrede is dat Telkom onwillig is of nie in staat is om geskikte fasiliteite 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 telekommunikasiefasiliteite anders as van Telkom te verskaf of te bekom op voorwaardes deur die Owerheid bepaal, ondanks die bepalinge van artikels 37(2)(c), 38(2), 40(2) en 41(2)(a) en hierdie artikel.

(8) Die bepalinge van artikel 39(4) geld met die nodige veranderings vir die bepaling van datums deur die Minister ingevolge hierdie artikel.

Gelde en heffings vir telekommunikasiedienste

45 **45.** (1) Die gelde en heffings wat ten opsigte van die verskaffing van 'n telekommunikasiediens deur 'n lisensiehouer gehef kan word, word op die wyse bepaal wat behoudens subartikel (2) voorgeskryf word.

(2) Die wyse om die gelde en heffings te bepaal, word slegs voorgeskryf 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 derde herdenking van die datum waarop die Minister 'n lisensie aan Telkom uitgereik het ooreenkomstig artikel 36(1)(a).

Rekeninge en rekords wat deur lisensiehouers gehou moet word

35 **46.** (1) 'n Telekommunikasiediens-lisensiehouer hou die rekenings en rekords met betrekking tot die verskaffing van sy of haar telekommunikasiediens wat voorgeskryf is.

(2) Telkom hou die rekeninge soos voorgeskryf ten opsigte van—

- 40 (a) elke kommunikasiediens wat deur hom verskaf word, waar 'n ander persoon ook sodanige telekommunikasiediens in mededinging met Telkom verskaf;
- (b) elke tussenverbinding aan sy telekommunikasiestelsel of beskikbaarstelling van sy telekommunikasiefasiliteite;
- (c) enige ander voorgeskrewe deel van sy bedrywighede.

Duur van telekommunikasiedienslisensies

45 **47.** (1) Die geldigheidsduur van 'n telekommunikasiedienslisensie word in die lisensie gestipuleer.

(2) Die geldigheid van 'n lisensie word beëindig met die toestemming van die lisensiehouer indien daar aan hom of haar 'n ander lisensie toegestaan word ter vervanging van die betrokke lisensie.

50 Wysiging van telekommunikasiedienslisensies

48. (1) 'n Telekommunikasiedienslisensie kan slegs gewysig word—

- 55 (a) in die geval van 'n lisensie om 'n publieke skakeltelekommunikasienetwerkdienste te verskaf indien die wysiging verband hou met universele toegang of universele diens-verpligtinge beoog in artikel 36(2) en indien dit nodig is na die mening van die Owerheid na oorleg met die Agentskap, as

- (b) in the case of Telkom's licence issued in terms of section 36(1), if the amendment is necessitated by the introduction of competition to Telkom in any field as contemplated in section 34(2)(a)(iii) or (iv) or 39;
 - (c) to make the conditions of the licence consistent with conditions being imposed generally in respect of all licences issued in the same category, for the purpose of ensuring fair competition between licensees in that category; 5
 - (d) to the extent necessitated by technological change;
 - (e) to the extent requested by the licensee.
- (2) The Authority shall give the licensee concerned written notice of a proposed amendment contemplated in subsection (1)(a), (b), (c) or (d) and an opportunity to be heard. 10
- (3) The provisions of—
- (a) section 34(3), (4) and (5) shall apply, with the necessary changes, in relation to an amendment contemplated in subsection (1)(e);
 - (b) section 35 shall apply, with the necessary changes, in relation to any amendment of a licence in terms of this section. 15

Renewal of telecommunication service licences

49. (1) A licensee may, during the prescribed period, apply for the renewal of his or her licence.
- (2) The provisions of sections 34 and 35 shall apply, with the necessary changes, in relation to the renewal of a licence: Provided that, where a licence contemplated in section 37(1) or 42(1) makes provision for its renewal on substantially the same conditions as applied during its previous period of validity, no other conditions contemplated in section 35(4) shall be imposed on renewal of the licence in question which are not acceptable to the holder of the licence. 20 25
- (3) An application for the renewal of a licence shall be refused only if—
- (a) the licensee has failed to comply materially with the licence conditions or the provisions of this Act during the term of the licence; and
 - (b) the Authority or the Minister, as the case may be, is satisfied that the applicant would not so comply if the licence were to be renewed. 30
- (4) A licence shall continue to be valid until such time as a decision has been made regarding the application for its renewal.

Transfer of telecommunication service licences

50. (1) Application may be made in the prescribed manner for the transfer of a telecommunication service licence from one person to another. 35
- (2) The provisions of sections 34 and 35 shall apply, with the necessary changes, in relation to the transfer of a licence.

International telecommunication facilities

51. The right of any provider or user of a telecommunication service to utilise a telecommunication facility made available in terms of any international treaty, agreement or arrangement shall be as prescribed. 40

Limitations on control of telecommunication services

52. (1) The Authority may by regulation restrict or prohibit the ownership or control of or the holding of any financial or voting interest in—
- (a) a telecommunication service of any category or kind; 45
 - (b) two or more telecommunication services of the same category or kind;
 - (c) a telecommunication service of one category or kind and another telecommunication service of a different category or kind.
- (2) No regulations referred to in subsection (1) shall be made until the Authority has

- gevolg van veranderde omstandighede of 'n wysiging van die omskrywing van universele toegang of universele diens;
- (b) in die geval van Telkom se lisensie wat ingevolge artikel 36(1) uitgereik is, indien die wysiging genoodsaak word deur die invoer van mededinging vir
- 5 (c) om die voorwaardes van die lisensie te laat strook met voorwaardes wat gewoonlik gestel word ten opsigte van alle lisensies wat in dieselfde kategorie uitgereik word, met die doel om billike mededinging tussen lisensiehouers in daardie kategorie te verseker;
- 10 (d) in die mate wat deur tegnologiese verandering genoodsaak word;
- (e) in die mate wat deur die lisensiehouer versoek word.
- (2) Die Owerheid gee aan die betrokke lisensiehouer skriftelik kennis van 'n voorgestelde wysiging beoog in subartikel (1)(a), (b), (c) of (d) en 'n geleentheid om aangehoor te word.
- 15 (3) Die bepalings van—
- (a) artikel 34(3), (4) en (5) geld met die nodige veranderings ten opsigte van 'n wysiging beoog in subartikel (1)(e);
- (b) artikel 35 geld met die nodige veranderings ten opsigte van enige wysiging van 'n lisensie ingevolge hierdie artikel.

20 **Hernuwing van telekommunikasiedienslisensies**

- 49.** (1) 'n Lisensiehouer kan gedurende die voorgeskrewe tydperk om hernuwing van sy of haar lisensie aansoek doen.
- (2) Die bepalings van artikels 34 en 35 geld met die nodige wysigings ten opsigte van die hernuwing van 'n lisensie: Met dien verstande dat waar 'n lisensie beoog in
- 25 artikel 37(1) of 42(1) voorsiening maak vir die hernuwing daarvan op wesenlik dieselfde voorwaardes soos van toepassing gedurende die vorige geldigheidstydperk daarvan, geen ander voorwaardes beoog in artikel 35(4) by die hernuwing van die betrokke lisensie gestel word wat nie vir die houer van die lisensie aanvaarbaar is nie.
- (3) 'n Aansoek om hernuwing van 'n lisensie word slegs geweier indien—
- 30 (a) die lisensiehouer versuim het om gedurende die duur van die lisensie wesenlik aan die lisensievoorwaardes of die bepalings van hierdie Wet te voldoen; en
- (b) die Owerheid of die Minister, na gelang van die geval, tevrede is dat die aansoeker nie aldus sal voldoen indien die lisensie hernu sou word nie.
- 35 (4) 'n Lisensie bly geldig tot tyd en wyl 'n besluit geneem is ten opsigte van die aansoek om die hernuwing daarvan.

Oordrag van telekommunikasiedienslisensies

- 50.** (1) Aansoek om die oordrag van 'n telekommunikasiedienslisensie van die een persoon aan 'n ander kan op die voorgeskrewe wyse gedoen word.
- 40 (2) Die bepalings van artikels 34 en 35 geld met die nodige veranderings ten opsigte van die oordrag van 'n lisensie.

Internasionale telekommunikasiefasiliteite

- 51.** Die reg van enige verskaffer of gebruiker van 'n telekommunikasiediens om 'n telekommunikasiefasiliteit te gebruik wat ingevolge enige internasionale verdrag,
- 45 ooreenkoms of reëling verskaf word, is soos voorgeskryf.

Beperkings op beheer oor telekommunikasiedienste

- 52.** (1) Die Owerheid kan by regulasie die eienaarskap van of beheer oor of die hou van enige finansiële of stembelange in—
- (a) 'n telekommunikasiediens van enige kategorie of soort;
- 50 (b) twee of meer telekommunikasiedienste van dieselfde kategorie of soort;
- (c) 'n telekommunikasiediens van die een kategorie of soort en 'n ander telekommunikasiediens van 'n ander kategorie of soort,
- beperk of verbied.
- (2) Geen regulasies bedoel in subartikel (1) mag gemaak word alvorens die

conducted an enquiry in terms of section 27 into the regulations proposed.

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

Uncompetitive actions

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53. If it appears to the Authority that the holder of a telecommunication licence is taking or intends taking any action which has or is likely to have the effect of giving an undue preference to or causing undue discrimination against any person or category of persons, the Authority may, after giving the licensee concerned an opportunity to be heard, direct the licensee by written notice to cease or refrain from taking such action, as the case may be. 10

CHAPTER VI

Telecommunication equipment, suppliers and technicians

Telecommunication equipment to be of approved type

54. (1) No person shall use any type of telecommunication equipment or facility, including radio apparatus, in connection with telecommunication unless that type has, subject to subsection (2), been approved by the Authority. 15

(2) The Authority may prescribe—

- (a) types of equipment or facility the use of which shall not require such approval;
- (b) circumstances in which the use of telecommunication equipment or facilities shall not require such approval. 20

Technical standards for telecommunication facilities and equipment

55. (1) The Authority, taking into account the provisions of the Standards Act, 1993 (Act No. 29 of 1993), may prescribe standards for the performance and operation of any telecommunication facility or equipment, including radio apparatus. 25

(2) Any such standard shall be aimed at—

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

(3) (a) The regulations may, for the purposes of this section, incorporate any technical standard, without publishing the text thereof, merely by reference to the number, title and year of issue thereof or to other particulars by which it may be identified sufficiently. 30

(b) Any technical standard incorporated in the regulations as contemplated in paragraph (a) shall, in so far as it is not contrary to the regulations, be deemed to be a regulation. 35

(c) Whenever any technical standard is, at any time after the incorporation thereof under paragraph (a), amended or substituted by a competent authority, the regulation whereby such technical standard was incorporated in the regulations shall, unless otherwise stated therein, be deemed to refer to such technical standard as so amended or substituted, as the case may be. 40

(d) The Authority shall keep the text of each technical standard incorporated in the regulations under paragraph (a) and of each amendment or substitution thereof, and such text shall be open to inspection during the normal office hours of the Authority, and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof. 45

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

Owerheid nie 'n ondersoek ingevolge artikel 27 na die voorgestelde regulasies gehou het nie.

(3) Die bepalings van hierdie artikel en artikel 53 doen nie afbreuk aan die bepalings van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979), nie.

Onmededingende bedrywighede

53. Indien dit vir die Owerheid voorkom dat die houër van 'n telekommunikasie-lisensie enige stappe doen of beoog om stappe te doen wat waarskynlik die uitwerking sal hê dat dit onbehoorlike voorkeur aan enige persoon of kategorie persone sal verleen of onregmatige diskriminasie teenoor enige persoon of kategorie persone sal veroorsaak, kan die Owerheid, nadat hy aan die betrokke lisensiehouer die geleentheid gebied het om aangehoor te word, die lisensiehouer skriftelik beveel om sodanige stappe te staak of om hom of haar daarvan te weerhou om sodanige stappe te doen, na gelang van die geval.

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HOOFSTUK VI

Telekommunikasietoerusting, verskaffers en tegnisi

Telekommunikasietoerusting moet van goedgekeurde tipe wees

54. (1) Geen persoon mag enige tipe telekommunikasietoerusting of -fasiliteit, met inbegrip van radio-apparaat, in verband met telekommunikasie gebruik tensy daardie tipe, behoudens subartikel (2), deur die Owerheid goedgekeur is nie.

(2) Die Owerheid kan—

(a) tipes toerusting of fasiliteite waarvan die gebruik nie sodanige goedkeuring vereis nie;

(b) omstandighede waarin die gebruik van telekommunikasietoerusting of -fasiliteit nie sodanige goedkeuring vereis nie, voorskryf.

Tegniese standaarde vir telekommunikasiefasiliteite en -toerusting

55. (1) Die Owerheid kan, met inagneming van die bepalings van die Wet op Standaarde, 1993 (Wet No. 29 van 1993), standaard voorskryf vir die werkverrigting en bedryf van enige telekommunikasiefasiliteit of -toerusting, met inbegrip van radio-apparaat.

(2) Enige sodanige standaard word gerig op—

(a) die beskerming van die integriteit van die telekommunikasiediensnetwerk;

(b) versekering dat verbindende fasiliteite of toerusting behoorlik funksioneer;

(c) vermyding van radio- of ander steuringe by telekommunikasie.

(3) (a) Die regulasies kan, vir die doeleindes van hierdie artikel, enige tegniese standaard by blote verwysing na die nommer, titel en jaar van uitgawe daarvan of enige ander besonderhede waardeur dit voldoende geïdentifiseer kan word, inlyf sonder om die teks daarvan te publiseer.

(b) Enige tegniese standaard wat by die regulasies ingelyf is soos beoog in paragraaf (a), word geag 'n regulasie te wees vir sover dit nie strydig is met die regulasies nie.

(c) Wanneer 'n tegniese standaard te eniger tyd na die inlywing daarvan kragtens paragraaf (a) deur 'n bevoegde owerheid gewysig of vervang word, word die regulasie waarby sodanige tegniese standaard by die regulasies ingelyf is, geag te verwys na sodanige tegniese standaard soos aldus gewysig of vervang, na gelang van die geval, tensy die teendeel daarin vermeld word.

(d) Die Owerheid hou die teks van elke tegniese standaard wat kragtens paragraaf (a) by die regulasies ingelyf is en van elke wysiging of vervanging daarvan, en sodanige teks is gedurende die gewone kantoorure van die Owerheid ter insae en die Owerheid verskaf aan enige persoon op sy of haar versoek en teen betaling van die gelde wat voorgeskryf word, 'n afskrif daarvan.

(e) Die bepalings van artikel 31 van die Wet op Standaarde, 1993 (Wet No. 29 van 1993), geld nie vir enige inlywing van 'n tegniese standaard of vir enige wysiging of vervanging van 'n tegniese standaard kragtens hierdie subartikel nie.

Registration of suppliers of telecommunication facilities and equipment

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

(2) The Authority may prescribe types or categories of telecommunication facilities or equipment for the supply of which registration in terms of this section shall not be required. 5

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

Certification of technicians

57. (1) No person shall install or maintain any telecommunication facilities or equipment unless he or she has, subject to subsection (2), been certified by the Authority as being proficient to do so. 10

(2) The Authority may prescribe types or categories of telecommunication facilities or equipment, the installation or maintenance of which, or certain categories of installation or maintenance of which, shall not require certification in terms of this section. 15

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

CHAPTER VII***Universal Service Agency*** 20**Establishment of Universal Service Agency**

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

Functions of Agency

59. (1) The Agency shall— 25

(a) strive to promote the goal of universal service;

(b) encourage, facilitate and offer guidance in respect of any scheme to provide—

(i) universal access or universal service; or

(ii) telecommunication services as part of reconstruction and development projects and programmes contemplated in section 3(a) of the Reconstruction and Development Programme Fund Act, 1994 (Act No. 7 of 1994), where such provision will contribute to the attainment of the object of the project or programme in question; 30

(c) foster the adoption and use of new methods of attaining universal access and universal service; 35

(d) stimulate public awareness of the benefits of telecommunication services.

(2) (a) The Agency shall from time to time, with due regard to circumstances and attitudes prevailing in the Republic and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what shall constitute— 40

(i) universal access by all areas and communities in the Republic to telecommunication services; and

(ii) the universal provision for all persons in the Republic of telecommunication services,

including any elements or attributes thereof. 45

(b) Such a determination—

(i) shall be made known in the *Gazette*; and

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

(3) The Agency— 50

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

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

Registrasie van verskaffers van telekommunikasiefasiliteite en -toerusting

56. (1) Behoudens subartikel (2) verskaf geen persoon telekommunikasiefasiliteite of -toerusting tensy hy of sy deur die Owerheid geregistreer is nie.

(2) Die Owerheid kan die tipes of kategorieë telekommunikasiefasiliteite of -toerusting voorskryf waarvoor registrasie vir die verskaffing daarvan ingevolge hierdie artikel nie vereis word nie.

(3) Die prosedure vir die verkryging van registrasie ingevolge hierdie artikel is soos voorgeskryf.

Sertifisering van tegnisi

57. (1) Geen persoon installeer enige telekommunikasiefasiliteite of -toerusting of hou dit in stand nie tensy hy of sy, behoudens subartikel (2), deur die Owerheid bevoeg gesertifiseer is om dit te doen.

(2) Die Owerheid kan tipes of kategorieë telekommunikasiefasiliteite of -toerusting, of sekere kategorieë installasies of instandhouding voorskryf waarvan die installasie of instandhouding nie sertifisering ingevolge hierdie artikel vereis nie.

(3) Die prosedure vir die verkryging van sertifisering ingevolge hierdie artikel en die eksamens waarin daar geslaag moet word of ander kwalifikasies wat besit moet word alvorens 'n bevoegdheidsertifikaat uitgereik kan word, is soos voorgeskryf.

HOOFSTUK VII20 **Universele Diens-agentskap****Instelling van Universele Diens-agentskap**

58. Hiermee word daar 'n regs persoon ingestel wat as die Universele Diens-agentskap bekend sal staan.

Wersaamhede van Agentskap

59. (1) Die Agentskap—

(a) strewe daarna om die doelwit van universele diens te bevorder;

(b) bevorder, fasiliteer en bied leiding ten opsigte van enige skema om—

(i) universele toegang of universele diens; of

(ii) telekommunikasiedienste as deel van heropbou- en ontwikkelingsprojekte en -programme beoog in artikel 3(a) van die Wet op die Heropbou- en Ontwikkelingsprogramfonds, 1994 (Wet No. 7 van 1994), waar sodanige voorsiening sal bydra tot die bereiking van die doelstelling van die betrokke projek of program,

te voorsien;

(c) bevorder die aanvaarding en gebruik van nuwe metodes om universele toegang en universele diens te bereik;

(d) stimuleer publieke bewustheid van die voordele van telekommunikasiedienste.

(2) (a) Met inagneming van die heersende omstandighede en ingesteldhede in die Republiek en nadat soveel publieke deelname as prakties moontlik verkry is, doen die Agentskap van tyd tot tyd aanbevelings om die Minister in staat te stel om te bepaal—

(i) wat universele toegang tot telekommunikasiedienste deur alle gebiede en gemeenskappe in die Republiek; en

(ii) wat die universele voorsiening van telekommunikasiedienste vir alle persone in die Republiek,

met inbegrip van enige elemente of kenmerke daarvan, behels.

(b) Sodanige bepaling—

(i) moet in die *Staatskoerant* afgekondig word; en

(ii) kan gewysig of vervang word deur die Minister op die aanbeveling van die Agentskap soos in hierdie subartikel bepaal, met die nodige veranderings.

(3) Die Agentskap—

(a) kan die ondersoek instel wat hy nodig ag;

(b) moet navorsing doen na en op hoogte bly van ontwikkelinge in die Republiek en elders in telekommunikasiedienste en inligtingstechnologie;

- (c) shall continually survey and evaluate the extent to which universal service has been achieved;
 - (d) may issue information from time to time on the provision of telecommunication services in the Republic and access thereto;
 - (e) may, and shall when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to universal access or universal service;
 - (f) may, and shall when so requested by the Authority, advise the Authority on any matter relating to the universal access, universal service or community service obligations of applicants for and holders of licences;
 - (g) shall continually evaluate the effectiveness of this Act and things done in terms thereof towards the achievement of the goal of universal service;
 - (h) may liaise, consult and cooperate with any person or authority;
 - (i) may appoint experts and other consultants on such conditions as the Agency may determine.
- (4) The Agency shall manage the Universal Service Fund in accordance with the provisions of Chapter VIII.

Head and staff of Agency

60. (1) The Agency shall be under the direction and control of the Head of the Agency appointed by the Minister.
- (2) The Head shall—
- (a) employ such other persons;
 - (b) accept the secondment, as contemplated in section 16(4) of the Communications Service Act, 1974 (Act No. 66 of 1974), of such persons in the service of the Department,
- as are necessary to assist him or her with the performance of the functions of the Agency.
- (3) The Head shall, in the selection of the staff of the Agency—
- (a) provide for the advancement of persons disadvantaged by past unfair discrimination, with the aim that the staff, when viewed collectively, shall represent a broad cross-section of the population of the Republic;
 - (b) subject to paragraph (a), apply equal opportunity employment practices.
- (4) The Head and other staff of the Agency shall be appointed on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively of development planning, community development, social sciences, economics, telecommunications and publicity.
- (5) A person shall not be appointed or continue in office as Head or other member of the staff of the Agency if he or she is a person contemplated in section 8.
- (6) (a) The Head and other staff of the Agency shall be appointed for such period not exceeding five years as may be determined when he or she is appointed.
- (b) The Head and other employees of the Agency shall hold office on such conditions as to remuneration and otherwise—
- (i) in the case of the Head, as the Minister may determine with the concurrence of the Minister of Finance;
 - (ii) in the case of other employees, as the Head may determine with the concurrence of the Minister and the Minister of Finance.
- (c) Different periods and conditions may be determined under paragraph (a) or (b) in respect of different employees.

Financing of Agency

61. (1) The operating and capital costs of the Agency shall be financed from money appropriated by Parliament from time to time for that purpose.
- (2) The Authority shall utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).
- (3) The Authority—
- (a) shall in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure for the following financial

- (c) moet deurlopend die mate waarin universele diens bereik is, ondersoek en evalueer;
- (d) kan van tyd tot tyd inligting uitreik oor die voorsiening van telekommunikasiedienste in die Republiek en toegang daartoe;
- 5 (e) kan, en moet indien deur die Minister daartoe versoek, aanbevelings met betrekking tot beleid oor enige saak met betrekking tot universele toegang of universele diens doen;
- (f) kan, en moet indien deur die Owerheid daartoe versoek, die Owerheid oor enige aangeleentheid met betrekking tot die universele toegang, universele diens of gemeenskapdiensverpligtinge van aansoekers om en houders van lisensies adviseer;
- 10 (g) moet deurlopend die doeltreffendheid van hierdie Wet en die dinge wat ingevolge daarvan gedoen word vir die bereiking van die doelwit van universele diens, evalueer;
- 15 (h) kan met enige persoon of owerheid skakel, konsulteer en saamwerk;
- (i) kan deskundiges en ander konsultante aanstel op die voorwaardes wat die Agentskap bepaal.
- (4) Die Agentskap bestuur die Universele Diens-fonds ooreenkomstig die bepalinge van Hoofstuk VIII.

20 Hoof en personeel van Agentskap

- 60.** (1) Die Agentskap is onder die bestuur en beheer van die Hoof van die Agentskap wat deur die Minister aangestel word.
- (2) Die Hoof—
- (a) neem sodanige ander persone in diens;
- 25 (b) aanvaar die sekondering soos beoog in artikel 16(4) van die Kommunikasiedienswet, 1974 (Wet No. 66 van 1974), van die persone in diens van die Departement,
- wat nodig is om hom of haar met die verrigting van die werksaamhede van die Agentskap by te staan.
- 30 (3) By die keuring van die personeel van die Agentskap moet die Hoof—
- (a) voorsiening maak vir die bevordering van persone wat benadeel is deur vroeëre onbillike diskriminasie, met die doel dat die personeel, indien hulle kollektief beskou word, 'n breë deursnit van die bevolking van die Republiek sal verteenwoordig;
- 35 (b) behoudens paragraaf (a) gelykegeleentheid-indiensnemingspraktyke toepas.
- (4) Die Hoof en ander personeel van die Agentskap word aangestel op grond van hulle kwalifikasies, kundigheid of ervaring, kollektief beskou op die gebiede van ontwikkelingsbeplanning, gemeenskapsontwikkeling, sosiale wetenskappe, ekonomie, telekommunikasie en publisiteit.
- 40 (5) 'n Persoon word nie aangestel of bly aan in die pos van Hoof of 'n ander lid van die personeel van die Agentskap indien hy of sy 'n persoon is beoog in artikel 8 nie.
- (6) (a) Die Hoof en ander personeel van die Agentskap word aangestel vir die tydperk van hoogstens vyf jaar wat bepaal word wanneer hy of sy aangestel word.
- (b) Die Hoof en ander werknemers van die Agentskap beklee hulle ampte op die
- 45 voorwaardes wat besoldiging en andersins betref—
- (i) in die geval van die Hoof, wat die Minister met die instemming van die Minister van Finansies bepaal;
- (ii) in die geval van ander werknemers, wat die Hoof met die instemming van die Minister en die Minister van Finansies bepaal.
- 50 (c) Verskillende tydperke en voorwaardes kan kragtens paragraaf (a) of (b) ten opsigte van verskillende werknemers bepaal word.

Finansiering van Agentskap

- 61.** (1) Die bedryfs- en kapitaalkoste van die Agentskap word gefinansier uit geld wat van tyd tot tyd vir daardie doel deur die Parlement bewillig word.
- 55 (2) Die Agentskap wend enige geld beoog in subartikel (1) aan ooreenkomstig die staat van begrote uitgawes bedoel in subartikel (3).
- (3) Die Agentskap—
- (a) moet vir elke boekjaar, op 'n tyd deur die Minister bepaal, 'n staat van begrote inkomste en uitgawes vir die volgende boekjaar aan die

- year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and
- (b) may in any financial year submit adjusted statements of estimated income and expenditure to the Minister for his or her approval, granted with the concurrence of the Minister of Finance. 5

Banking account

62. The Agency shall, with the approval of the Director-General, open and maintain with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), an account in which there shall be deposited the money received by the Agency and from which payments for it or on its behalf shall be made. 10

Annual and other reports

63. (1) The Agency shall furnish to the Minister such information and particulars as he or she may from time to time in writing require in connection with the activities of the Agency, and shall annually, as soon as is reasonably practicable after the end of each period of 12 months ending on 31 March, furnish to the Minister a report in regard to the functions, affairs and activities of the Agency in respect of such period. 15

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

- (a) information regarding progress towards achieving the goal of universal service; and 20
- (b) such other information as the Minister may determine.

(3) The Minister shall table a copy of the annual report in Parliament within 30 days after it is received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session. 25

Lapsing of certain sections

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

- (a) the provisions of sections 58, 60, 61, and 62 shall lapse; and 30
- (b) any reference in this Act to the Agency or the Head of the Agency shall be deemed to be a reference to the Authority.

CHAPTER VIII

Universal Service Fund

Establishment and control of Universal Service Fund 35

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

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

(2) All money received, the amounts of which in terms of subsection (1) shall be credited to the Universal Service Fund in the books of the Agency, shall be paid into the National Revenue Fund established by section 185 of the Constitution. 40

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

(4) The Universal Service Fund shall be administered by the Agency subject to the control and in accordance with the instructions of the Authority. 45

Application of money in Universal Service Fund

66. (1) The money in the Universal Service Fund shall be utilised exclusively for the payment of subsidies—

Minister vir sy of haar goedkeuring, met die instemming van die Minister van Finansies, voorlê; en

- (b) kan in enige boekjaar gewysigde state van begrote inkomste en uitgawes aan die Minister vir sy of haar goedkeuring, met die instemming van die Minister van Finansies, voorlê.

Bankrekening

62. Met die goedkeuring van die Direkteur-generaal open die Agentskap 'n bankrekening waarin die geld gedeponeer word wat deur die Agentskap ontvang word en waaruit betaling aan hom en namens hom gedoen word, by 'n bank wat finaal as 'n bank geregistreer is ingevolge die Bankwet, 1990 (Wet No. 94 van 1990), en hou dit in stand.

Jaar- en ander verslae

63. (1) Die Agentskap verskaf aan die Minister die inligting en besonderhede wat hy of sy van tyd tot tyd skriftelik verlang in verband met die werksaamhede van die Agentskap en verskaf jaarliks so gou na die einde van elke tydperk van 12 maande wat op 31 Maart eindig as wat redelik prakties moontlik is, aan die Minister 'n verslag ten opsigte van die werksaamhede, sake en bedrywighede van die Agentskap ten opsigte van sodanige tydperk.

- (2) Sonder om afbreuk te doen aan die algemeenheid van die bepalings van subartikel (1), sluit die jaarverslag onder andere in—

(a) inligting ten opsigte van vordering met die bereiking van die doelwit van universele diens; en

(b) die ander inligting wat die Minister bepaal.

- (3) Die Minister lê 'n afskrif van die jaarverslag in die Parlement ter tafel binne 30 dae nadat dit deur hom of haar ontvang word indien die Parlement dan in gewone sitting is of, indien die Parlement dan nie in gewone sitting is nie, binne 30 dae na die aanvang van die volgende gewone sitting.

Verval van sekere artikels

64. Met ingang van 'n datum wat deur die President by proklamasie in die *Staatskoerant* bepaal word, maar wat nie vroeër as vyf jaar na die inwerkingtreding van hierdie Wet is nie—

(a) verval die bepalings van artikels 58, 60, 61 en 62; en

(b) word enige verwysing in hierdie Wet na die Agentskap of die Hoof van die Agentskap geag 'n verwysing na die Owerheid te wees.

35

HOOFSTUK VIII

Universele Diens-fonds

Instelling van en beheer oor die Universele Diens-fonds

65. (1) Daar is 'n Universele Diens-fonds, waarvan die Agentskap in sy boeke verantwoordings doen en wat gekrediteer word met—

- (a) universele diens-bydraes bedoel in artikel 67(1); en

(b) geld wat uit enige ander bron aan die fonds toeval.

- (2) Alle geld wat ontvang word, waarvan die bedrae ingevolge subartikel (1) aan die Universele Diens-fonds in die boeke van die Agentskap gekrediteer word, word inbetaal in die Nasionale Inkomstefonds wat deur artikel 185 van die Grondwet ingestel is.

(3) Subsidies wat ingevolge artikel 66 uit die Universele Diens-fonds betaal word, word gefinansier met geld bewillig deur die Parlement vir daardie doel.

(4) Die Universele Diens-fonds word geadministreer deur die Agentskap onderworpe aan die beheer en ooreenkomstig die opdragte van die Owerheid.

50 Aanwending van geld in Universele Diens-fonds

66. (1) Die geld in die Universele Diens-fonds word uitsluitlik aangewend vir die betaling van subsidies—

- (a) for the assistance of needy persons towards the cost of the provision to or the use by them of telecommunication services;
- (b) subject to subsection (3), to Telkom and to any other holder of a licence in terms of Chapter V which imposes obligations on the holder relating to the extension of its public switched telecommunication service to areas and communities which are not served or not adequately served by telecommunication services, for the purpose of financing such extension. 5
- (2) The money in the fund shall be apportioned for the separate purposes of paragraph (a) and paragraph (b) of subsection (1) in accordance with the prescribed formula.
- (3) After the date to be fixed in terms of section 36(2), all moneys in the Universal Service Fund shall be utilised for payments contemplated in subsection (1)(a), if Telkom's rates have been rebalanced to recover all its costs associated with universal service obligations for all areas of the Republic: Provided that if Telkom's rates have not been so rebalanced, requiring a subsidy from the Universal Service Fund, the Authority shall, in consultation with Telkom, determine the costs to be recovered. 10 15
- (4) The Authority may, for the purposes of payments referred to in subsection (1)(a) and (3), prescribe—
- (a) categories of needy persons to whom assistance may be given;
- (b) the persons who shall make application for assistance and the manner in which such applications shall be made; 20
- (c) the manner in which and persons to whom subsidies shall be paid. 20

Contributions to Universal Service Fund

67. (1) Every holder of a licence granted or deemed to have been granted in terms of Chapter V shall pay, in addition to licence fees contemplated in section 88(2), the prescribed annual contributions to the Universal Service Fund with effect from a date fixed by the Minister by notice in the *Gazette*. 25
- (2) The Authority shall prescribe—
- (a) the basis and manner of determination of such contributions; and
- (b) the dates when such contributions shall become payable and the manner in which they shall be paid. 30

Accounts of Universal Service Fund

68. (1) The Agency shall—
- (a) cause full records to be kept of the transactions of the Universal Service Fund;
- (b) as soon as possible, but not later than three months after 31 March in each year, cause the books and accounts relating to such transactions to be balanced as at that date and thereafter prepare a statement showing in all necessary detail the income and expenditure of the Fund during the preceding financial year, and a balance sheet showing the assets and liabilities of the Fund as at the end of that year. 35
- (2) The accounts and balance sheet of the Fund shall be audited by the Auditor-General. 40
- (3) As soon as may be after the accounts and balance sheet for any year have been audited, the Agency shall submit a copy to the Minister.
- (4) The Minister shall table a copy of the audited accounts and balance sheet in Parliament— 45
- (a) within 30 days after it has been received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session; or
- (b) if so determined by the Minister, together with the annual report of the Agency in regard to the period concerned. 50
- (5) For the purposes of this section, "financial year" shall mean the period extending from 1 April in any year to 31 March in the next succeeding year.

- (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 verpligtinge aan die houer oplê met betrekking tot die uitbreiding van sy publieke skakeltelekommunikasiediens na gebiede en gemeenskappe wat nie deur telekommunikasiedienste bedien of voldoende bedien word nie met die doel om sodanige uitbreiding te finansier.
- 5 (2) Die geld in die fonds word toegesê vir die afsonderlike doeleindes van paragraaf (a) en paragraaf (b) van subartikel (1) ooreenkomstig die voorgeskrewe formule.
- 10 (3) Na die datum wat ingevolge artikel 36(2) vasgestel staan te word, word al die geld in die Universele Diens-fonds aangewend vir betalings in subartikel (1)(a) beoog, indien Telkom se tariewe geherbalanseer is om al sy kostes verbonde aan universele diensverpligtinge vir alle gebiede van die Republiek te verhaal: Met dien verstande dat as Telkom se tariewe nie aldus geherbalanseer is nie, wat 'n subsidie van die Universele
- 15 Diens-fonds vereis, die Owerheid in oorleg met Telkom die kostes wat verhaal moet word, bepaal.
- (4) Die Owerheid kan vir die doeleindes van betalings bedoel in subartikel (1)(a) en (3)—
- (a) kategorieë behoeftige persone aan wie bystand verleen mag word;
- 20 (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.

Bydraes tot Universele Diens-fonds

- 25 67. (1) Elke houer van 'n lisensie wat toegestaan is of geag word toegestaan te wees ingevolge Hoofstuk V, betaal benewens lisensiegelde beoog in artikel 88(2) die voorgeskrewe jaarlikse bydraes tot die Universele Diens-fonds met ingang van 'n datum wat by wyse van 'n kennisgewing in die *Staatskoerant* deur die Minister bepaal word.
- 30 (2) Die Owerheid skryf voor—
- (a) die grondslag en wyse van bepaling van sodanige bydraes; en
- (b) die datums wanneer sodanige bydraes betaalbaar word en die wyse waarop dit betaal moet word.

Rekening van Universele Diens-fonds

- 35 68. (1) Die Agentskap—
- (a) laat volledige rekord van die transaksies van die Universele Diens-fonds hou;
- (b) laat die boeke en rekeninge met betrekking tot sodanige transaksies so gou moontlik maar nie later nie as drie maande na 31 Maart elke jaar balanseer soos op daardie datum en berei daarna 'n staat voor wat in alle nodige
- 40 besonderhede die inkomste en uitgawe van die Fonds gedurende die voorafgaande boekjaar toon en 'n balansstaat wat die bates en laste van die Fonds aan die einde van daardie jaar toon.
- (2) Die rekeninge en balansstaat van die Fonds word deur die Ouditeur-generaal geouditeer.
- 45 (3) So gou moontlik nadat die rekeninge en balansstaat vir enige jaar geouditeer is, lê die Agentskap 'n afskrif aan die Minister voor.
- (4) Die Minister lê 'n afskrif van die geouditeerde rekeninge en balansstaat in die Parlement ter tafel—
- (a) binne 30 dae nadat dit deur hom of haar ontvang is indien die Parlement in
- 50 'n gewone sitting is of, indien die Parlement nie in 'n gewone sitting is nie, binne 30 dae na die aanvang van die volgende gewone sitting; of
- (b) indien die Minister dit so bepaal, saam met die jaarverslag van die Agentskap ten opsigte van die betrokke tydperk.
- (5) Vir die doeleindes van hierdie artikel beteken "boekjaar" die tydperk wat strek
- 55 vanaf 1 April in enige jaar tot 31 Maart in die daaropvolgende jaar.

CHAPTER IX***Functions of fixed line operators in relation to telecommunication facilities and works*****Operators to perform functions in prescribed manner**

69. (1) A fixed line operator shall perform its functions in terms of this Chapter in accordance with the regulations contemplated in subsection (2). 5

(2) The Authority shall prescribe—

- (a) the manner, form and period of notice to be given by an operator to any person or authority in connection with the performance by the operator of functions contemplated in this Chapter; 10
- (b) the procedure to be followed and consultations to be held between an operator and any affected person or authority. 20

Entry upon and construction of lines across any lands

70. (1) A fixed line operator may, for the purposes of provision of its telecommunications services, enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a telecommunications facility upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure. 15
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(2) In taking any action in terms of subsection (1), due regard must be had to the environmental policy of the Republic.

Underground pipes for telecommunication service purposes

71. (1) If any local authority and fixed line operator agree that in a particular area electricity supply and the telecommunication services of that operator shall be provided by means of underground cable, that local authority may on any premises within the said area, when installing such cable for an underground electricity supply line on the said premises, in accordance with the requirements of the operator provide a conduit-pipe or other facilities for the installation of an underground telecommunication service line from a point of connection on the street boundary to a building on those premises. 25
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(2) The costs of the provision of the said conduit-pipe or other facilities shall be payable to the local authority in question and shall for the purpose of any law be deemed to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

Pipes under streets

72. A fixed line operator may, after reasonable notice in writing to the local authority or person owning or having the care and maintenance of any street, road or footpath, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for telecommunication facilities under any such street, road or footpath, and may alter or remove the same, and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity: Provided that the local authority or person to whom any such pipe belongs or by whom it is used shall be entitled at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the operator shall pay all reasonable expenses incurred by any such local authority or person in connection with any alteration or removal under this section or any supervision of work relating to such alteration. 35
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HOOFSTUK IX

Werksaamhede van vastelyn-operateurs met betrekking tot telekommunikasiefasiliteite en -werke

Operateurs moet werksaamhede op voorgeskrewe wyse verrig

- 5 **69.** (1) 'n Vastelyn-operateur verrig sy werksaamhede ingevolge hierdie Hoofstuk ooreenkomstig die regulasies in subartikel (2) beoog.
- (2) Die Owerheid skryf voor—
- (a) die wyse, vorm en tydperk van die kennisgewing wat deur 'n operateur aan enige persoon of owerheid gegee moet word in verband met die verrigting
- 10 deur enige operateur van werksaamhede in hierdie Hoofstuk beoog;
- (b) die prosedure wat gevolg moet word en beraadslagings wat gevoer moet word tussen die operateur en enige persoon of owerheid wat geraak word.

Betreding van en oprigting van lyne oor enige grond

- 70.** (1) 'n Vastelyn-operateur kan vir die doeleindes van die verskaffing van sy
- 15 telekommunikasiedienste enige grond betree, met in begrip van enige straat, pad, voetpad of grond wat vir publieke doeleindes gereserveer is, en 'n spoorweg, en 'n telekommunikasiefasiliteit oprig of in stand hou op, onder, bo-oor, langs of regoor enige grond, straat, pad, voetpad of waterweg of enige spoorweg, en genoemde verander of verwyder, en kan vir daardie doel drade, ankerpale of enige ander soort
- 20 ondersteuning aan enige gebou of ander struktuur heg.
- (2) By enige optrede ingevolge subartikel (1) word behoorlik ag geslaan op die omgewingsbeleid van die Republiek.

Ondergrondse pype vir telekommunikasiediensdoeleindes

- 71.** (1) Indien enige plaaslike owerheid en vastelyn-operateur ooreenkom dat
- 25 elektrisiteitsvoorsiening en die telekommunikasiedienste van daardie operateur in 'n spesifieke gebied deur middel van 'n ondergrondse kabel verskaf moet word, kan daardie plaaslike owerheid op enige perseel binne genoemde gebied, wanneer hy of sy so 'n kabel vir ondergrondse elektrisiteitsvoorsiening op genoemde perseel installeer, ooreenkomstig die vereistes van die operateur 'n geleibuis of ander fasiliteite vir die
- 30 installering van 'n ondergrondse telekommunikasiedienslyn van 'n aansluitingspunt op die straatgrens na 'n gebou op daardie perseel verskaf.
- (2) Die koste verbonde aan die verskaffing van genoemde geleipyp of ander fasiliteite is aan die betrokke plaaslike owerheid betaalbaar en word vir die doeleindes van enige wet beskou as gelde wat deur die eienaar van die betrokke perseel aan die
- 35 plaaslike owerheid betaalbaar is ten opsigte van die installering van die elektrisiteit-toevoerlyn.

Pype onder strate

- 72.** 'n Vastelyn-operateur kan, na redelike skriftelike kennisgewing aan die plaaslike owerheid of persoon wat enige straat, pad of voetpad besit of verantwoordelik is vir die
- 40 versorging en instandhouding daarvan, op die wyse wat in daardie kennisgewing uiteengesit is, enige pype, tunnels of buise wat vir telekommunikasiefasiliteite benodig word, onder enige sodanige straat, pad of voetpad oprig en in stand hou, en kan genoemde verander of verwyder, en kan vir sodanige doeleindes enige straat, pad of voetpad breek of oopmaak en die posisie van enige pyp daaronder (wat nie 'n
- 45 rioolafvoer of hoofwaterpyp is nie) vir die toevoer van water, gas of elektrisiteit verander: Met dien verstande dat die plaaslike owerheid of persoon aan wie enige sodanige pyp behoort of deur wie dit gebruik word, daarop geregtig is om te eniger tyd terwyl enige werk in verband met die verandering van die posisie van sodanige pyp aan die gang is, toesig oor daardie werk te hou, en die operateur moet alle redelike uitgawes
- 50 betaal wat sodanige plaaslike owerheid of persoon moet aangaan in verband met enige verandering of verwydering kragtens hierdie artikel of enige toesig oor werk in verband met sodanige verandering.

Removal of pipes and facilities

73. (1) If a fixed line operator finds it necessary to move any telecommunication facility, pipes, tunnels or tubes constructed upon, in, over, along, across or under any land, railway, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the cost of the alteration or removal shall be borne by that local authority or person. 5

(2) (a) Where any telecommunication facility, pipe, tunnel or tube constructed by an operator passes over any private property and interferes with any building about to be erected on that property, the operator shall, on receiving satisfactory proof that a building is actually to be erected, cause the line to be deviated or altered in such manner as will remove all obstacles to building operations. 10

(b) Notice that any such deviation or alteration is required shall be given to the operator in writing not less than 28 days before the alteration or deviation is to be effected. 15

(3) If any deviation or alteration of a telecommunication facility, pipe, tunnel or tube constructed by an operator and passing over any private property is desired on any ground other than those contemplated in subsection (2), 28 days' notice thereof in writing shall be served on the operator, who shall decide whether or not the deviation or alteration is possible, necessary or expedient, and if the operator agrees to make the deviation or alteration, the cost thereof shall be borne by the person at whose request the deviation or alteration is effected: Provided that in any case where in the opinion of the operator it is justified, the operator may bear the whole or any part of the said cost. 20

Fences

74. (1) If any fence erected or to be erected on land over which a telecommunication facility, pipe, tunnel or tube is constructed or is to be constructed by a fixed line operator, renders or would render it impossible or inconvenient for the operator to obtain access to that land the operator may at its own expense erect and maintain gates in that fence and shall provide duplicate keys therefor, one of which shall be handed to the owner or occupier of the land. 25

(2) Any person intending to erect any such fence shall give not less than six weeks' notice in writing to the operator of his or her intention. 30

Trees obstructing telecommunication facilities

75. (1) Any tree or vegetation which in the opinion of a fixed line operator obstructs or interferes or is likely to obstruct or interfere with the working or maintenance of any of its telecommunication facilities, pipes, tunnels or tubes, whether growing upon State-owned land or upon any road or street or upon private land, shall, after reasonable notice to the owner or occupier of the land, be cut down or trimmed in accordance with its requirements by the authority having the care and the management of such State-owned land, road or street or by the owner or occupier of such private land, as the case may be, at the expense of the operator, and, in the event of failure to comply with any such notice, the operator may itself cause the said tree or vegetation to be cut down or trimmed as it may deem necessary: Provided that where telecommunication is actually interfered with or endangered by any such tree or vegetation, the operator may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice. 35 40 45

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

Height or depth of cables and facilities

76. (1) (a) Aerial telecommunication wires or cables along any railway or public or private street, road, footpath or land shall be at the prescribed height above the surface of the ground. 50

Verwydering van pype en fasiliteite

73. (1) Indien dit vir 'n vastelyn-operateur nodig is om enige telekommunikasiefasiliteit, pype, tunnels of buise wat opgerig is op, in, bo-oor, langs, dwarsoor of onder enige grond, spoorlyn, straat, pad, voetpad of waterweg te verskuif weens enige 5 verandering aan die belyning of vlak van enige ander werk deur enige publieke owerheid of persoon, word die koste van die verandering of verwydering deur daardie plaaslike owerheid of persoon gedra.

(2) (a) Waar enige telekommunikasiefasiliteit, pyp, tunnel of buis wat deur 'n operateur opgerig is, oor enige private eiendom loop en inmeng met enige gebou wat 10 op daardie eiendom opgerig staan te word, moet die operateur wanneer hy bevredigende bewys ontvang dat daardie gebou inderdaad opgerig gaan word, die lyn op sodanige wyse laat afwyk of verander dat alle belemmerings van die boubedrywighede verwyder word.

(b) Kennisgewing dat sodanige afwyking of verandering vereis word, moet nie 15 minder nie as 28 dae voordat die afwyking of verandering uitgevoer moet word, skriftelik aan die operateur gegee word.

(3) Indien enige afwyking van of verandering aan 'n telekommunikasiefasiliteit, pyp, tunnel of buis wat deur 'n operateur opgerig is en wat oor enige private eiendom loop, verlang word op enige ander grond as dié in subartikel (2) beoog, word 28 dae 20 skriftelike kennisgewing daarvan aan die operateur afgelewer, wat dan besluit of die afwyking of verandering moontlik, nodig of gewens is al dan nie, en indien die operateur instem om die afwyking of verandering aan te bring, word die koste verbonde daaraan gedra deur die persoon op wie se versoek die afwyking of verandering 25 uitgevoer is: Met dien verstande dat in enige geval waar dit na die mening van die operateur geregverdig is, die operateur al die koste of 'n gedeelte daarvan kan betaal.

Heinings

74. (1) Indien enige heining wat opgerig is of opgerig staan te word op grond waaroor 'n telekommunikasiefasiliteit, pyp, tunnel of buis opgerig is of opgerig staan 30 te word deur 'n vastelyn-operateur, dit onmoontlik of ongerieflik maak of sal maak vir die operateur om toegang tot daardie grond te verkry, kan die operateur op eie koste hekke in daardie heining oprig en in stand hou en duplikaatsleutels daarvoor verskaf waarvan die een aan die eienaar of okkupeerder van die grond oorhandig word.

(2) Enige persoon wat van voorneme is om enige sodanige heining op te rig, moet 35 minstens ses weke skriftelike kennisgewing van sy of haar voorneme aan die operateur gee.

Bome wat telekommunikasiefasiliteite versper

75. (1) 'n Boom of plantegroei wat na die mening van 'n vastelyn-operateur die werking of instandhouding van enige van sy telekommunikasiefasiliteite, -pype, -tunnels of -buise versper of daarmee inmeng of waarskynlik sal inmeng, hetsy hulle 40 op Staatsgrond of op enige pad of straat of private grond groei, word na redelike kennisgewing aan die eienaar of bewoner van die grond volgens sy of haar behoeftes afgekap of gesnoei deur die owerheid belas met die versorging en die bestuur van sodanige Staatsgrond, pad of straat of deur die eienaar of bewoner van sodanige private grond, na gelang van die geval, op die onkoste van die operateur en, in geval van 45 versuim om aan enige sodanige kennisgewing te voldoen, kan die operateur self sodanige boom of plantegroei laat afkap of snoei soos wat hy of sy nodig ag: Met dien verstande dat waar daar werklik met telekommunikasie ingemeng word of waar dit werklik in gevaar gestel word deur sodanige boom of plantegroei, die operateur die werk wat onmiddellik nodig is vir die verwydering van die inmenging of gevaar laat 50 doen sonder enige sodanige kennisgewing.

(2) By enige optrede ingevolge subartikel (1) word behoorlik ag geslaan op die omgewingsbeleid van die Republiek.

Hoogte of diepte van kables en fasiliteite

76. (1) (a) Lugtelekommunikasiedrade of -kables langs enige spoorlyn of publieke 55 of private straat, pad, voetpad of grond moet op die voorgeskrewe hoogte bokant die oppervlak van die grond wees.

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

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

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

Electrical works

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

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

CHAPTER X

Human resource development

Establishment and control of Human Resources Fund

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

- (a) the annual contributions to the Fund contemplated in section 86(1); and
- (b) money accruing to the Fund from any other source.

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

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

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

Application of money in Human Resources Fund

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

(b) Ondergrondse telekommunikasiefasiliteite, -pype, -tonnels en -buis word op die voorgeskrewe diepte onder die oppervlak van die grond deur 'n operateur geplaas.

(2) Indien die eienaar van enige private grond tot bevrediging van 'n operateur bewys dat hy of sy in die vrye gebruik van sy of haar grond belemmer word as gevolg 5 van onvoldoende hoogte of diepte van enige telekommunikasiedraad, -kabel of ander fasiliteit, pyp, tunnel of buis wat deur daardie operateur opgerig is, doen die operateur behoudens artikel 73 en 75 die stappe wat hy nodig ag om verligting aan sodanige eienaar te verskaf.

(3) By enige optrede ingevolge hierdie artikel word behoorlik ag geslaan op die 10 omgewingsbeleid van die Republiek.

Elektriese werke

77. (1) Enige persoon wat enige spoorweg of werke oprig, toerus of bedryf vir die verskaffing van lig, warmte of krag deur middel van elektrisiteit, voldoen aan die vereistes van 'n vastelyn-operateur om te voorkom dat enige van sy of haar 15 telekommunikasiefasiliteite of -werke nadelig daardeur geraak word en alvorens daar begin word met die oprigting van enige sodanige spoorlyn of werke gee hy of sy skriftelike kennis van een maand aan die operateur van sy of haar voorneme om met die konstruksie te begin en voorsien die operateur van 'n plan van die voorgestelde spoorlyn of werke tesame met besonderhede wat die wyse aandui waarop en posisie 20 waarin daar beoog word om dit op te rig, uit te voer en te bedryf en die nadere inligting met betrekking tot die voorgestelde spoorlyn of werke wat die operateur verlang.

(2) Indien dit vir die operateur lyk of die oprigting, uitrusting of bedryf van enige sodanige spoorlyn of werke waarskynlik enige van sy of haar telekommunikasiefasiliteite of -werke nadelig sal beïnvloed, of indien enige sodanige fasiliteite of werke 25 nadelig geraak word deur die oprigting, toerusting of bedryf van enige sodanige spoorweg of werke, gee die operateur redelike kennis van sy of haar vereistes aan die betrokke persoon en enige persoon wat, nadat hy of sy enige sodanige kennisgewing ontvang het, voortgaan met enige sodanige oprigting, toerusting of bedryf of dit laat 30 voortgaan strydig met genoemde vereistes, is teenoor die operateur aanspreeklik vir skadevergoeding, wat deur aksie in 'n bevoegde hof gevorder kan word, van R50 vir elke dag waarop daarmee voortgegaan word of waarop die nadelige uitwerking voortduur, en vergoed daarbenewens ook enige skade of uitgawe wat deur die operateur gely word as gevolg van die versuim om aan die operateur se vereistes te voldoen.

HOOFSTUK X

35 *Menslike hulpbron-ontwikkeling*

Instelling en beheer van Menslike Hulpbron-fonds

78. (1) Daar is 'n Menslike Hulpbron-fonds, waarvan die Departement in sy boeke rekord hou en wat gekrediteer word met—

- (a) die jaarlikse bydraes tot die Fonds beoog in artikel 86(1); en
40 (b) geld wat uit enige ander bron aan die Fonds toeval.

(2) Alle geld beoog in subartikel (1) word inbetaal in die Nasionale Inkomstefonds wat by artikel 185 van die Grondwet ingestel is.

(3) Toekennings en subsidies wat ingevolge artikel 79 uit die Menslike Hulpbron-fonds betaal word, word gefinansier uit geld bewillig deur die Parlement vir daardie 45 doel.

(4) Die Menslike Hulpbron-fonds word deur die Direkteur-generaal in oorleg met die Owerheid geadministreer.

Aanwending van geld in die Menslike Hulpbron-fonds

79. Die geld in die Menslike Hulpbron-fonds word uitsluitlik gebruik om die 50 verskaffing van voldoende geskoolde menslike hulpbronne op alle vlakke van die telekommunikasiesektor in voldoende getalle vir die telekommunikasiebehoefes van die Republiek te voorsien by wyse van die betaling van toekennings en subsidies uit die Fonds ooreenkomstig die bepalinge van hierdie Hoofstuk.

Funding of human resource development

80. (1) Grants and subsidies referred to in section 79 shall be applied for the purposes of telecommunications education, research and training as contemplated in sections 81 to 85, in addition to any funds applied for those purposes from any other source, including the State. 5

(2) The Director-General—

- (a) shall monitor and keep abreast of the human resource needs of the telecommunication sector;
- (b) shall evaluate the effectiveness of education, research and training in the Republic in meeting those needs; 10
- (c) shall identify courses, programmes and schemes which will best serve those needs;
- (d) may entertain applications for grants and subsidies from educational institutions, employers, voluntary associations and community development organisations in the field of education, research or training; 15
- (e) shall monitor and control the use of such grants and subsidies by recipients and beneficiaries thereof;
- (f) shall promote closer cooperation between educational institutions and the telecommunication industry;
- (g) may delegate any of his or her functions in terms of this Chapter to any person or body subject to such conditions as the Director-General may impose. 20

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

(4) In order to achieve the objects of this Chapter the Director-General may make donations and contributions to the funds of the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), as contemplated in section 10(1)(d) of that Act. 25

(5) The Director-General shall pursue the objects of this Chapter within the framework of the education, science and technology, and labour policies of the Republic. 30

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

- (a) to pay a grant or subsidy to any particular applicant therefor; or
- (b) to provide any education, research or training.

Training and retraining of unskilled and underskilled persons 35

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

- (a) equipping workseekers and other unemployed persons with skills to facilitate their employment in the telecommunication sector;
- (b) training or retraining unskilled or underskilled employees in the telecommunication sector to upgrade their skills or facilitate their employment mobility within the sector. 40

Training of artisans and technicians

82. The Director-General may pay grants or subsidies for the purpose of extending, enhancing or improving the training of artisans and technicians for the telecommunication sector. 45

Undergraduate tertiary education

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

- (a) the extension or improvement of courses of study and instruction in telecommunications, technology and engineering at universities and technikons; 50
- (b) the awarding to students of bursaries, scholarships, prizes and other financial assistance for the purposes of undertaking any such course;
- (c) the facilitation of the mobility of teaching staff and students of universities or

Befondsing van menslike hulpbron-ontwikkeling

80. (1) Toekennings en subsidies bedoel in artikel 79 word aangewend vir die doeleindes van telekommunikasie-onderrig, navorsing en opleiding beoog in artikels 81 tot 85, benewens enige fondse wat uit enige ander bron met inbegrip van die Staat vir daardie doeleindes aangewend word.

(2) Die Direkteur-generaal—

- (a) moniteer en bly op die hoogte van die menslike hulpbron-behoefes van die telekommunikasiesektor;
- (b) evalueer die doeltreffendheid waarmee die onderrig, navorsing en opleiding in die Republiek aan daardie behoeftes voldoen;
- (c) identifiseer kursusse, programme en skemas wat ten beste aan daardie behoeftes sal voldoen;
- (d) kan aansoeke om toekennings en subsidies van opvoedkundige inrigtings, werkgewers, vrywillige verenigings en gemeenskapsontwikkelingsorganisasies op die gebied van onderwys, navorsing en opleiding oorweeg;
- (e) moniteer en beheer die gebruik van sodanige toekennings en subsidies deur die ontvangers en bevoordeeldes daarvan;
- (f) bevorder nouer samewerking tussen opvoedkundige inrigtings en die telekommunikasiebedryf;
- (g) kan enige van sy of haar werksaamhede ingevolge hierdie Hoofstuk delegeer aan enige persoon of liggaam behoudens die voorwaardes wat die Direkteur-generaal stel.

(3) In ooreenstemming met die Owerheid verrig die Direkteur-generaal sy of haar werksaamhede op 'n wyse wat onbillike diskriminasie van die verlede in onderwys-, opleiding- en indiensnemingsgeleenthede regstel.

(4) Die Direkteur-generaal kan, ten einde die doelstellings van hierdie Hoofstuk te bereik, aan die Suid-Afrikaanse Kwalifikasie-owerheid wat ingevolge artikel 3 van die Wet of die Suid-Afrikaanse Kwalifikasie-owerheid, 1995 (Wet No. 58 van 1995), ingestel is, donasies en bydraes tot sy fondse maak soos in artikel 10(1)(d) van daardie Wet beoog.

(5) Die Direkteur-generaal strewende die doelstellings van hierdie Hoofstuk na binne die raamwerk van die onderwys-, wetenskap-en-tegnologie- en die arbeidsbeleidsrigtings van die Republiek.

(6) Niks in hierdie Hoofstuk verplig die Direkteur-generaal om—

- (a) 'n toekenning of subsidie aan enige bepaalde aansoeker daarom te betaal nie; of
- (b) enige onderwys, navorsing of opleiding te voorsien nie.

Opleiding en heropleiding van ongeskoolde en halfgeskoolde persone

81. Die Direkteur-generaal kan toekennings of subsidies betaal ten einde—

- (a) werkzoekers en ander werklose persone toe te rus met vaardighede om hulle indiensneming in die telekommunikasiesektor te vergemaklik;
- (b) ongeskoolde en halfgeskoolde werknemers in die telekommunikasiesektor op te lei of opnuut op te lei om hulle vaardighede op te gradeer of hulle indiensnemingbeweeglikheid binne die sektor te vergemaklik.

45 Opleiding van vakmanne en tegnisi

82. Die Direkteur-generaal kan toekennings of subsidies betaal met die doel om die opleiding van vakmanne en tegnisi vir die telekommunikasiesektor uit te brei, te bevorder en te verbeter.

Voorgraadse tersiêre onderrig

83. (1) Die Owerheid kan toekennings en subsidies betaal vir die doeleindes van—

- (a) die uitbreiding of verbetering van studie- en onderrigkursusse in die telekommunikasie, tegnologie en ingenieurswese aan universiteite en teknikon;
- (b) die toekenning aan studente van beurse, studiebeurse, pryse en ander finansiële bystand vir die doeleindes van die onderneem van enige sodanige kursus;
- (c) die fasilitering van die beweeglikheid van onderwyspersoneel en studente

- technikons, between those institutions and the telecommunication industry;
- (d) the provision of assistance in the field of telecommunications, technology or engineering by one university or technikon to another.
- (2) Telecommunications shall, for the purposes of this section, include the social, economic, policy and legal aspects of telecommunications. 5
- (3) The payments in terms of subsection (1) and section 84 shall be subject to the approval of the Minister of Education as contemplated in section 14 of the Universities Act, 1955 (Act No. 61 of 1955), and section 31 of the Technikons Act, 1993 (Act No. 125 of 1993), in respect of any matter contemplated in those sections.

Postgraduate study and research 10

- 84.** The Director-General may pay grants or subsidies for the purposes of—
- (a) the extension or improvement of postgraduate and research courses and instructional programmes in the field of telecommunications, technology and engineering at universities and technikons;
- (b) the provision, by universities and technikons, of research and other services to the telecommunications industry. 15

Support for science and technology at schools

- 85.** The Director-General may pay grants or subsidies to secondary or primary schools for the purposes of projects, schemes and programmes to stimulate interest among pupils in telecommunications and technology. 20

Contributions to Human Resources Fund

- 86.** (1) Every holder of a licence granted or deemed to have been granted in terms of Chapter V shall pay, in addition to licence fees contemplated in section 88(2), the prescribed annual contributions to the Human Resources Fund.
- (2) The Authority shall prescribe— 25
- (a) the basis and manner of determination of such contributions; and
- (b) the dates when such contributions shall become payable and the manner in which they shall be paid.

Accounts of Human Resources Fund

- 87.** (1) The Director-General shall— 30
- (a) cause full records to be kept of the transactions of the Human Resources Fund;
- (b) as soon as possible, but not later than three months after 31 March in each year, cause the books and accounts relating to such transactions to be balanced as at that date and thereafter prepare a statement showing in all necessary detail the income and expenditure of the Fund during the preceding financial year, and a balance sheet showing the assets and liabilities of the Fund as at the end of that year. 35
- (2) The accounts and balance sheet of the Fund shall be audited by the Auditor-General.
- (3) The Minister shall table a copy of the audited accounts and balance sheet in Parliament within 30 days after it is received by him or her if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session. 40
- (4) For the purposes of this section, "financial year" means the period extending from 1 April in any year to 31 March in the next year. 45

CHAPTER XI

General provisions

Application fees and annual fees

- 88.** (1) An application for a licence, approval, certification or registration in terms of this Act shall be accompanied by the prescribed application fee. 50

van universiteite of teknikons tussen daardie inrigtings en die telekommunikasiebedryf;

(d) hulpverlening op die gebied van telekommunikasie, tegnologie of ingenieurswese deur die een universiteit of technikon aan die ander.

5 (2) Vir die doeleindes van hierdie artikel sluit telekommunikasie die sosiale, ekonomiese, beleids- en regsaspekte van telekommunikasie in.

(3) Die betalings ingevolge subartikel (1) en artikel 84 is onderworpe aan die goedkeuring van die Minister van Onderwys soos beoog in artikel 14 van die Wet op Universiteite, 1955 (Wet No. 61 van 1955), en artikel 31 van die Wet op Teknikons, 10 1993 (Wet No. 125 van 1993), ten opsigte van enige aangeleentheid in daardie artikels beoog.

Nagraadse studie en navorsing

84. Die Direkteur-generaal kan toekennings en subsidies betaal vir die doeleindes van—

15 (a) die uitbreiding of verbetering van nagraadse en navorsingskursusse en onderrigprogramme op die gebied van die telekommunikasie, tegnologie en ingenieurswese aan universiteite en teknikon;

(b) die verskaffing van navorsings- en ander dienste deur universiteite en teknikons aan die telekommunikasiebedryf.

20 Ondersteuning vir wetenskap en tegnologie by skole

85. Die Direkteur-generaal kan toekennings of subsidies aan sekondêre of primêre skole betaal vir die doeleindes van projekte, skemas en programme om belangstelling in die telekommunikasie en die tegnologie by leerlinge aan te wakker.

Bydraes tot Menslike Hulpbron-fonds

25 **86.** (1) Elke houër van 'n lisensie wat toegestaan is of geag word toegestaan te wees ingevolge Hoofstuk V betaal benewens lisensiegelde beoog in artikel 88(2) die voorgeskrewe jaarlikse bydraes aan die Menslike Hulpbron-fonds.

(2) Die Owerheid skryf voor—

(a) die grondslag en wyse om sodanige bydraes te bepaal; en

30 (b) die datums waarop sodanige bydraes betaalbaar word en die wyse waarop hulle betaal word.

Rekening van Menslike Hulpbron-fonds

87. (1) Die Direkteur-generaal—

35 (a) laat volledige rekords hou van die transaksies van die Menslike Hulpbron-fonds;

(b) laat so gou moontlik maar nie later nie as drie maande na 31 Maart van elke jaar die boeke en rekeninge met betrekking tot sodanige transaksies balanseer soos op daardie datum en berei daarna 'n staat voor wat in alle nodige besonderhede die inkomste en uitgawe van die Fonds gedurende die 40 voorafgaande boekjaar aantoon en 'n balansstaat wat die bates en laste van die Fonds soos aan die einde van daardie jaar toon.

(2) Die rekening en balansstaat van die Fonds word deur die Ouditeur-generaal geouditeer.

(3) Die Minister lê 'n afskrif van die geouditeerde rekening en balansstaat ter tafel 45 in die Parlement binne 30 dae nadat dit deur hom of haar ontvang is indien die Parlement dan in 'n gewone sitting is of, indien die Parlement nie in 'n gewone sitting is nie, binne 30 dae na die aanvang van sy volgende gewone sitting.

(4) Vir die doeleindes van hierdie afdeling beteken "boekjaar" die tydperk wat van 1 April in enige jaar tot 31 Maart in die daaropvolgende jaar strek.

50

HOOFSTUK XI

Algemene bepalinge

Aansoekgelde en jaargelde

88. (1) 'n Aansoek om 'n lisensie, goedkeuring, sertifisering of registrasie ingevolge hierdie Wet gaan vergesel van die voorgeskrewe aansoekgeld.

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

(3) A licence holder who fails to pay the licence fee contemplated in subsection (2) on the due date shall be liable to pay a penalty of a prescribed amount, in addition to such fee. 5

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

(b) Notwithstanding paragraph (a), such fees and penalties shall be paid into the Post Office Fund referred to in section 12D of the Post Office Act, 1958 (Act No. 44 of 1958), until the date on which in terms of any law the Department forms part of the public service as contemplated in the Public Service Act, 1994 (Proclamation No. 103 of 1994). 10

Numbering plans

89. (1) The Authority shall prescribe a numbering plan for use in respect of telecommunication services. 15

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

(3) In preparing a numbering plan the Authority shall take account of existing numbering plans or schemes. 20

Financial assistance to telecommunication forums

90. The Director-General may, out of funds appropriated by Parliament from time to time for that purpose, pay grants or subsidies to consultative or advisory forums in the telecommunications sector, including those in the provinces, which have been recognized by the Minister for those purposes. 25

Delegation of functions

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

(2) The power to make regulations shall not be delegated in terms of subsection (1). 30

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

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

(a) shall be subject to such conditions and restrictions as may be determined by the Council or chief executive officer, as the case may be; and 35

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

(5) The Council shall not be divested of any power or function or relieved of any duty which it may have delegated in terms of subsection (1), and may amend or rescind any decision made in terms of such a delegation, except where any licence, approval, certification or registration will be affected thereby. 40

(6) The Minister may, subject to such conditions as he or she may determine, delegate any power conferred on him or her by this Act, other than a power to be exercised by notice in the *Gazette*, to the Director-General or any other person in the service of the Department, but shall not be divested of any power so delegated and may set aside or amend any decision of the delegate made in the exercise of such a power, except where any licence will be affected thereby. 45

(7) The Director-General may, subject to such conditions as he or she may determine, delegate any power conferred on him or her by Chapter X to any other person in the service of the Department. 50

(2) Elke houër van 'n frekwensiespektrumlisensie of 'n telekommunikasiedienslisensie betaal op die voorgeskrewe tyd aan die Owerheid die lisensiegeld wat in die lisensie aangedui word of, waar daar geen sodanige gelde aangedui is nie, die voorgeskrewe lisensiegeld.

5 (3) 'n Lisensiehouër wat versuim om die lisensiegeld beoog in subartikel (2) op die verpligte datum te betaal, is aanspreeklik om 'n boete van 'n voorgeskrewe bedrag benewens sodanige geld te betaal.

(4) (a) Alle gelde en boetes wat ingevolge hierdie artikel ontvang word, word in die Nasionale Inkomstefonds bedoel in artikel 185 van die Grondwet inbetaal.

10 (b) Ondanks paragraaf (a) word sodanige gelde en boetes in die Poskantoorfonds, bedoel in artikel 12D van die Poswet, 1958 (Wet No. 44 van 1958) inbetaal tot op die datum waarop die Departement ingevolge enige wet deel uitmaak van die staatsdiens soos beoog in die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

Nommeringsplanne

15 **89.** (1) Die Owerheid skryf die nommeringsplan vir gebruik ten opsigte van telekommunikasiedienste voor.

(2) 'n Nommeringsplan bestaan uit 'n identifiseringskema met die doel om te verseker dat telekommunikasie korrek en doeltreffend gerig word na die ontvangspunt waarvoor dit bedoel is.

20 (3) By die voorbereiding van 'n nommeringsplan neem die Owerheid bestaande nommeringsplanne of -skemas in ag.

Finansiële bystand aan telekommunikasieforums

90. Die Direkteur-generaal betaal na goëddunke uit fondse wat van tyd tot tyd deur die Parlement vir daardie doel bewillig word, toekennings en subsidies aan konsulterende of raadgewende forums in die telekommunikasiesektor, met inbegrip van dié in die provinsies, wat vir daardie doeleindes deur die Minister erken word.

Delegering van werksaamhede

91. (1) Die Raad kan skriftelik aan enige raadslid of enige komitee van die Raad of aan die hoof- uitvoerende beampte bedoel in artikel 17(1) enige bevoegdheid of plig van die Owerheid ingevolge hierdie Wet delegeer.

(2) Die bevoegdheid om regulasies te maak, word nie ingevolge subartikel (1) gedelegeer nie.

(3) 'n Bevoegdheid of plig wat aan die hoof- uitvoerende beampte gedelegeer is, kan uitgeoefen of uitgevoer word deur enige ander personeellid van die Owerheid wat deur die hoof- uitvoerende beampte daartoe gemagtig is, behalwe waar dit deur die voorwaardes van sodanige delegering uitgesluit is.

(4) Enige delegering of magtiging ingevolge subartikel (1) of (3)—

(a) is onderworpe aan die voorwaardes en beperkings wat deur die Raad of die hoof- uitvoerende beampte bepaal word, na gelang van die geval; en

40 (b) kan te eniger tyd gewysig of herroep word.

(5) Die Raad word nie van enige bevoegdheid ontnem of van enige plig onthef wat hy ingevolge subartikel (1) gedelegeer het nie en kan enige besluit wysig of intrek wat ingevolge sodanige delegering geneem is, behalwe waar enige lisensie, goedkeuring, sertifisering of registrasie daardeur geraak word.

45 (6) Die Minister kan behoudens die voorwaardes wat hy of sy bepaal, enige bevoegdheid wat aan hom of haar deur hierdie Wet verleen is behalwe 'n bevoegdheid wat uitgeoefen moet word by kennisgewing in die *Staatskoerant*, aan die Direkteur-generaal of enige ander persoon in diens van die Departement delegeer, maar word nie ontnem van enige bevoegdheid wat aldus gedelegeer is nie en mag enige besluit van die gedelegeerde wat in die uitoefening van sodanige bevoegdheid geneem is, tersyde 50 stel, behalwe waar enige lisensie daardeur geraak word.

(7) Die Direkteur-generaal kan behoudens die voorwaardes wat hy of sy bepaal enige bevoegdheid wat by Hoofstuk X aan hom of haar verleen is, aan enige ander persoon in diens van die Departement delegeer.

Register of licences and approvals

92. (1) The Authority shall keep a register of every licence, approval, certification or registration issued or renewed in terms of this Act and, subject to the powers of the Minister in terms of this Act, the administration, amendment, renewal or transfer of every licence, approval, certification or registration shall be under the control of the Authority. 5

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

(3) The Authority shall, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of or extract from any part of that register. 10

Confidentiality

93. No councillor, member of a committee of the Council, expert appointed in terms of section 28, member of the staff of the Authority and inspector appointed in terms of section 99, director or member of staff of the Agency, shall disclose any information in regard to any matter which may come to his or her knowledge in the performance of any function in terms of this Act or any work arising therefrom or by virtue of the office held by him or her, except— 15

- (a) in so far as the provisions of the Constitution or this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter; 20
- (b) in so far as may be necessary for the purpose of the due and proper performance of any function in terms of this Act; or
- (c) on the order of a competent court of law.

Financial year and auditing of accounts of Authority and Agency 25

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

(2) The accounts of the Authority and Agency shall be audited by the Auditor-General. 30

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

- (a) accounting for money received or paid out; and
- (b) causing the necessary accounting and other records to be kept. 35

Radio regulations

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

- (a) any matter which shall or may be prescribed by regulation in terms of Chapter IV, or in terms of Chapter VI in relation to radio apparatus; and
- (b) generally, the control of radio activities and the use of radio apparatus. 40

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

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

(4) The regulations made under section 18 of the Radio Act, 1952 (Act No. 3 of 1952), and which were in force immediately prior to the commencement of this Act shall remain in force until amended or repealed under this section. 45

Regulations

96. (1) The Authority may make regulations in relation to any matter which in terms of this Act shall or may be prescribed by regulation. 50

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

(3) A regulation may declare any contravention thereof or failure to comply therewith

Register van lisensies en goedkeurings

92. (1) Die Owerheid hou 'n register van elke lisensie, goedkeuring, sertifisering of registrasie wat ingevolge hierdie Wet uitgereik of hernu is en, behoudens die bevoegdheids van die Minister ingevolge hierdie Wet, is die administrasie, wysiging, 5 hernuwing of oorpasing van elke lisensie, goedkeuring, sertifisering of registrasie onder die beheer van die Owerheid.

(2) Op versoek van enige persoon en by betaling van die voorgeskrewe gelde verstrek die Owerheid aan hom of haar 'n afskrif van of uittreksel uit enige gedeelte van daardie register.

10 Vertroulikheid

93. Geen raadslid, komiteelid van die Raad, deskundige wat ingevolge artikel 28 aangestel is, personeellid van die Owerheid, inspekteur wat ingevolge artikel 99 aangestel is, direkteur en personeellid van die Agentskap en onthul enige inligting met betrekking tot enige saak waarvan hy of sy te wete kom in die verrigting van enige 15 werksaamheid ingevolge hierdie Wet of enige werk wat daaruit voortspruit of uit hoofde van die amp wat hy of sy beklee nie, behalwe—

- (a) vir sover die bepalings van die Grondwet of hierdie Wet die publikasie van of toegang deur die publiek of enige belanghebbende tot inligting met betrekking tot sodanige saak vereis of daarvoor voorsiening maak;
- 20 (b) vir sover dit nodig mag wees vir die behoorlike verrigting van enige werksaamheid ingevolge hierdie Wet; of
- (c) op bevel van 'n bevoegde hof.

Boekjaar en ouditering van rekening van Owerheid en Agentskap

94. (1) Die boekjaar van die Owerheid en Agentskap begin op 1 April van enige jaar 25 en eindig op 31 Maart van die daaropvolgende jaar: Met dien verstande dat die eerste boekjaar van die Owerheid en Agentskap begin op die datum van inwerkingtreding van onderskeidelik artikels 5 en 60.

(2) Die rekenings van die Owerheid en Agentskap word deur die Ouditeur-generaal geouditeer.

30 (3) Behoudens die Skatkiswet, 1975 (Wet No. 66 van 1975), is die Direkteur-generaal daarvoor verantwoordelik, ten opsigte van die Owerheid en die Agentskap, om—

- (a) geld ontvang of uitbetaal, te verreken; en
- (b) toe te sien dat die nodige rekenkundige en ander rekords gehou word.

35 Radioregulasies

95. (1) Die Owerheid kan radioregulasies maak met betrekking tot—

- (a) enige aangeleentheid wat by regulasie ingevolge Hoofstuk IV of ingevolge Hoofstuk VI met betrekking tot radioapparaat voorgeskryf word of voorgeskryf kan word; en
- 40 (b) die beheer van radioaktiwiteit en die gebruik van radio-apparaat oor die algemeen.

(2) Verskillende radioregulasies kan ten opsigte van die verskillende kategorieë radiogebruikers, radiofrekwensies, frekwensiebande, lisensies, magtigings of sertifikate en gebiede gemaak word.

45 (3) Geen radioregulasie of enige wysiging of intrekking daarvan is van krag totdat dit deur die Minister goedgekeur is en in die *Staatskoerant* afgekondig is nie.

(4) Die regulasies wat kragtens artikel 18 van die Radiowet, 1952 (Wet No. 3 van 1952), gemaak is en wat onmiddellik voor die inwerkingtreding van hierdie Wet gegeld het, bly van krag totdat hulle kragtens hierdie artikel gewysig of herroep word.

50 Regulasies

96. (1) Die Owerheid kan regulasies met betrekking tot enige aangeleentheid maak wat ingevolge hierdie Wet by regulasie voorgeskryf word of voorgeskryf kan word.

(2) Verskillende regulasies kan ten opsigte van verskillende kategorieë telekommunikasiedienste, toerusting en fasiliteite en tydperke gemaak word.

55 (3) 'n Regulasie kan verklaar dat enige oortreding daarvan of versuim om daaraan

to be an offence, and may in respect thereof provide for the imposition of a fine, or imprisonment for a period not exceeding six months.

(4) The Authority shall, not less than three months before any regulation is made, cause the text of such regulation to be published in the *Gazette*, together with a notice declaring its intention to make that regulation and inviting interested persons to furnish the Authority with comments thereon or representations in regard thereto. 5

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

(a) any regulation made by the Authority which, after the provisions of that subsection have been complied with, has been amended in consequence of comments or representations received pursuant to a notice issued thereunder; 10
or

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

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

(7) The regulations made under section 119A of the Post Office Act, 1958 (Act No. 44 of 1958), and which were in force immediately prior to the commencement of this Act shall remain in force until amended or repealed under this section. 15

CHAPTER XII

Enforcement

Production of licensees' books and records 20

97. The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at the time and place specified in the notice, such accounts, records and other documents or information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee in terms of this Act, his or her licence or any agreement for the interconnection of telecommunication systems or the making available of telecommunication facilities as contemplated in sections 43 and 44, respectively, as the Authority may reasonably require. 25

Appointment of inspectors

98. (1) The Council may appoint any person in the service of the Authority or any other suitable person as an inspector. 30

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

(3) An inspector shall be provided with a certificate of appointment signed by or on behalf of the chairperson of the Council in which it is stated that he or she has been appointed an inspector in terms of this Act. 35

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

Powers of inspectors 40

99. (1) An inspector appointed in terms of section 98 may, in order to determine whether the provisions of this Act or of any licence, permit, certificate or other authority in terms of this Act or of any agreement for the interconnection of telecommunication systems or the making available of telecommunication facilities as contemplated in sections 43 and 44, respectively, are being complied with, at any reasonable time and without prior notice, on the authority of a warrant, enter the premises in question and— 45

(a) inspect and make copies of or extracts from books, records or other documents;

te voldoen 'n oortreding is en kan ten opsigte daarvan voorsiening maak vir die oplegging van 'n boete of tronkstraf vir 'n tydperk van hoogstens ses maande.

(4) Die Owerheid laat die teks van sodanige regulasie minstens drie maande voordat die regulasie gemaak word, in die *Staatskoerant* afkondig tesame met 'n kennisgewing wat sy voorneme verklaar om sodanige regulasie uit te vaardig en belanghebbendes 5
nooi om aan die Owerheid kommentaar daaroor of verhoë ten opsigte daarvan te verstrek.

(5) Die bepalings van subartikel (1) geld nie ten opsigte van—

(a) enige regulasie wat deur die Owerheid gemaak is wat, nadat daar aan die 10
bepalings van daardie subartikel voldoen is, gewysig is as gevolg van kommentaar of verhoë wat ontvang is na aanleiding van 'n kennisgewing wat daarkragtens uitgereik is nie; of

(b) enige regulasie wat in die openbare belang sonder vertraging gemaak moet word.

(6) Die bepalings van artikel 95(3) geld met die nodige veranderings met betrekking 15
tot 'n regulasie wat kragtens hierdie artikel gemaak is of enige wysiging of herroeping daarvan.

(7) Die regulasies wat gemaak is kragtens artikel 119A van die Poswet, 1958 (Wet 20
No. 44 van 1958), en wat onmiddellik voor die inwerkingtreding van hierdie Wet 20
geldig is, bly van krag totdat dit kragtens hierdie Wet gewysig of herroep word.

HOOFSTUK XII

Afdwinging

Toon van lisensiehouers se boeke en rekords

97. Die Owerheid kan deur skriftelike kennisgewing 'n lisensiehouer aansê om aan 25
die Owerheid op die tyd en plek wat in die kennisgewing aangedui word, die rekenings, rekords en ander dokumente of inligting te toon of te verstrek wat in daardie kennisgewing vermeld word en wat betrekking het op enige aangeleentheid ten opsigte waarvan daar 'n plig of verpligting op die lisensiehouer ingevolge hierdie Wet opgelê 30
is, sy of haar lisensie of enige ooreenkoms vir die tussenverbinding van telekommunikasiestelsels of beskikbaarstelling van telekommunikasiefasiliteite soos beoog in onderskeidelik artikels 43 en 44 rus, wat die Owerheid redelikerwys vereis.

Aanstelling van inspekteurs

98. (1) Die Raad kan enige persoon in diens van die Owerheid of enige ander 35
geskikte persoon as 'n inspekteur aanstel.

(2) 'n Persoon wat nie in die voltydse diens van die Owerheid is nie en wat as 'n 35
inspekteur aangestel word, word die besoldiging betaal wat die Minister met die instemming van die Minister van Finansies bepaal.

(3) 'n Inspekteur word van 'n aanstellingsertifikaat voorsien wat deur of namens die 40
voorsitter van die Raad geteken is waarin daar gemeld word dat hy of sy ingevolge hierdie Wet as 'n inspekteur aangestel is.

(4) Wanneer 'n inspekteur enige werksaamheid ingevolge artikel 100 verrig, moet hy 40
of sy sodanige aanstellingsertifikaat in sy of haar besit hê en dit toon op versoek van enige persoon wat deur die verrigting van daardie werksaamheid geraak word.

Bevoegdhede van inspekteurs

99. (1) 'n Inspekteur wat ingevolge artikel 98 aangestel is, mag ten einde vas te stel 45
of die bepalings van hierdie Wet of van enige lisensie, permit, sertifikaat of ander magtiging ingevolge hierdie Wet of enige ooreenkoms vir die tussenverbinding van telekommunikasiestelsels of die beskikbaarstelling van telekommunikasiefasiliteite soos bedoel in onderskeidelik artikels 43 en 44 nagekom word, op enige redelike tyd 50
en sonder vooraf kennisgewing op gesag van 'n lasbrief die betrokke perseel betree en—

(a) boeke, rekords of ander dokumente inspekteer en afskrifte daarvan of uittreksels daaruit maak;

- (b) demand the production of and inspect the relevant licence, permit, certificate or authority;
- (c) inspect any radio apparatus or other telecommunication facilities on the premises.

(2) A warrant contemplated in subsection (1) shall be issued by a judge or a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears from information on oath that there are reasonable grounds for believing that the provisions contemplated in subsection (1) are being contravened on those premises. 5

(3) No person shall— 10

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

Offences by licensees 15

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

- (a) any alleged contravention of or failure by a licensee to comply with a provision of this Act, the relevant licence, any relevant agreement for the interconnection or provision of telecommunication facilities as contemplated in sections 43 and 44, respectively, or any direction in terms of section 36(1)(d), 53 or 98; 20
- (b) any failure by a provider of a telecommunication service to provide that service to or for any customer or end-user thereof, where such customer or end-user has, after complaint to the provider concerned, not obtained satisfaction. 25

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

(3) Where the Authority, after investigation, finds that the licensee concerned has been responsible for a failure or contravention contemplated in subsection (1), the Authority may— 30

- (a) direct the licensee to desist from any further failure or contravention;
- (b) direct the licensee to pay the prescribed fine;
- (c) direct the licensee to take such remedial and other steps as may be determined by the Authority; 35
- (d) where the licensee has repeatedly been guilty of such failure or contraventions, in terms of this section, revoke his or her licence.

(4) Any person affected by an order contemplated in subsection (3) may apply to a competent court to have the order set aside. 40

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

Offences by other persons 45

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

- (a) in making application for a licence, approval, certification or registration in terms of this Act, furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or wilfully fails to disclose any information or particulars material to his or her application; 50
- (b) contravenes the provisions of section 30(1), 31(1) or 32(1); or
- (c) contravenes any provision of section 99(3); or
- (d) fails, subject to section 100(4), to comply with any order made by the Authority in terms of section 100(3).

Penalties 55

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

- (b) eis dat die betrokke lisensie, permit, sertifikaat of magtiging getoon word en dit inspekteer;
 - (c) enige radioapparaat of ander telekommunikasiefasiliteite op die perseel inspekteer.
- 5 (2) 'n Lasbrief beoog in subartikel (1) word deur 'n regter of 'n landdros wat regsbevoegdheid het in die gebied waar die betrokke perseel geleë is, uitgereik, en word slegs uitgereik indien dit blyk uit inligting onder eed dat daar redelike gronde is om te glo dat die bepalings beoog in subartikel (1) op daardie perseel oortree word.
- (3) Geen persoon mag—
- 10 (a) versuim om aan 'n versoek beoog in subartikel (1)(b) te voldoen nie;
- (b) 'n inspekteur verhinder of dwarsboom in die uitoefening van sy of haar bevoegdhede ingevolge hierdie artikel nie;
- (c) hom of haar bedrieglik as 'n inspekteur voordoen nie.

Misdrywe deur lisensiehouers

- 15 **100.** (1) Die Owerheid ondersoek en beoordeel—
- (a) enige beweerde oortreding van of versuim deur 'n lisensiehouer om te voldoen aan 'n bepaling van hierdie Wet, die betrokke lisensie, enige tersaaklike ooreenkoms oor die tussenverbinding of beskikbaarstelling van telekommunikasiefasiliteite soos beoog in onderskeidelik artikels 43 en 44,
- 20 of enige voorskrif ingevolge artikel 36(1)(d), 53 of 98;
- (b) enige versuim deur 'n verskaffer van 'n telekommunikasiediens om daardie diens aan of vir enige kliënt of eindgebruiker daarvan te verskaf, waar sodanige kliënt of eindgebruiker na 'n klage aan die betrokke verskaffer nie bevrediging gekry het nie.
- 25 (2) Die prosedure vir sodanige ondersoek en beoordeling is soos voorgeskryf en die Owerheid het vir die doeleindes van sodanige ondersoek en beoordeling die voorgeskrewe bevoegdheid ten opsigte van die dagvaarding en ondervraging van getuies en die beskikbaarstelling van boeke en voorwerpe.
- (3) Waar die Owerheid na ondersoek bevind dat die betrokke lisensiehouer
- 30 verantwoordelik was vir 'n versuim of oortreding beoog in subartikel (1), kan die Owerheid—
- (a) die lisensiehouer beveel om hom of haar te weerhou van enige verdere versuim of oortreding;
 - (b) die lisensiehouer beveel om die voorgeskrewe boete te betaal;
- 35 (c) die lisensiehouer beveel om die regstellende en ander stappe te doen wat deur die Owerheid bepaal word;
- (d) waar die lisensiehouer herhaaldelik skuldig was aan sodanige versuim of oortredings, ingevolge hierdie artikel, sy of haar lisensie intrek.
- (4) Enige persoon wat deur 'n bevel beoog in subartikel (3) geraak word, kan by 'n
- 40 bevoegde hof aansoek om tersydestelling van die bevel doen.
- (5) Waar die Owerheid tevrede is dat die betrokke versuim of oortreding 'n misdryf uitmaak, verwys hy die rekord van die ondersoek na die betrokke Prokureur-generaal.

Misdrywe deur ander persone

- 45 **101.** 'n Persoon is skuldig aan 'n misdryf indien hy of sy—
- (a) wanneer hy of sy aansoek doen om 'n lisensie, goedkeuring, sertifisering of registrasie ingevolge hierdie Wet, enige valse of misleidende inligting of besonderhede verstrek of enige verklaring doen wat in enige wesenlike opsig vals of misleidend is, of opsetlik versuim om enige inligting of besonderhede van belang vir sy of haar aansoek te verstrek;
- 50 (b) die bepalings van artikel 30(1), 31(1) of 32(1) oortree; of
- (c) enige bepaling van artikel 99(3) oortree; of
 - (d) versuim behoudens artikel 100(4) om te voldoen aan enige bevel wat kragtens artikel 100(3) deur die Owerheid gemaak word.

Strawwe

- 55 **102.** (1) Enige persoon wat skuldig bevind word aan 'n misdryf beoog in artikel 101 is by skuldigbevinding strafbaar met 'n boete van hoogstens R500 000 of tronkstraf van 'n tydperk van hoogstens twee jaar, of beide sodanige boete en sodanige tronkstraf.

(2) The court convicting a person of any offence contemplated in section 101 may, in addition to any fine or imprisonment which it may impose in terms of that subsection, declare any telecommunication facility or equipment and any other article, object or thing by means of which such offence was committed, to be forfeited to the Authority for the credit of the Telecommunications Fund: Provided that no such declaration shall be so made upon proof to the satisfaction of the court that such facility, equipment, article or thing is not the property of the person so convicted and that its owner was unable to prevent it from being used as a means to commit such offence. 5

CHAPTER XII

Repeal and amendment of laws

10

Repeal of Act 3 of 1952

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

Repeal of section 42 of Act 68 of 1957

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

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

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

- (a) by the substitution for the definition of “department” of the following definition: 20
 “ ‘department’ means the Department of [Posts and Telecommunications] Communications;”;
- (b) by the insertion after the definition of department of the following definition: 25
 “ ‘Director-General’ means the officer occupying the post with that designation on the fixed establishment of the department;”;
- (c) by the deletion of the definition of “Postmaster-General”.

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

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

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

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

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

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

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

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

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

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

- (2) Die hof wat 'n persoon skuldig bevind aan 'n misdryf beoog in artikel 101 kan benewens enige boete of tronkstraf wat hy ingevolge daardie subartikel oplê, beveel dat enige telekommunikasiefasiliteit of toerusting en enige ander artikel, voorwerp of ding waarmee sodanige oortreding begaan is, verbeurd verklaar word aan die Owerheid vir krediet van die Telekommunikasiefonds: Met dien verstande dat geen sodanige verbeurdverklaring aldus gedoen word as tot bevrediging van die hof bewys word dat sodanige fasiliteit, toerusting, artikel of ding nie die eiendom is van die persoon wat aldus skuldig bevind is nie en dat die eienaar daarvan nie in staat was om te verhoed dat dit gebruik word om sodanige misdryf mee te pleeg nie.

10

HOOFTUK XIII*Herroeping en wysiging van wette***Herroeping van Wet 3 van 1952**

103. Die Radiowet, 1952, word hierby herroep.

Herroeping van artikel 42 van Wet 68 van 1957

- 15 104. Artikel 42 van die Algemene Regswysigingswet, 1957, word hierby herroep.

Wysiging van artikel 1 van Wet 44 van 1958, soos gewysig deur artikel 1 van Wet 56 van 1973, artikel 1 van Wet 13 van 1974, artikel 1 van Wet 113 van 1976, artikel 1 van Wet 1 van 1978, artikel 1 van Wet 37 van 1984, artikel 1 van Wet 85 van 1991, artikel 3 van Wet 101 van 1992 en artikel 1 van Wet 35 van 1995

- 20 105. Artikel 1 van die Poswet, 1958, word hierby gewysig—
- (a) deur die omskrywing van “departement” deur die volgende omskrywing te vervang:
- “ ‘departement’ die Departement van [Pos- en Telekommunikasiewese] Kommunikasiewese;”;
- 25 (b) deur die volgende omskrywing na die omskrywing van “departement” in te voeg:
- “ ‘Direkteur-generaal’ die beamppte wat die pos met daardie posbenaming op die vaste diensstaat van die departement beklee;”;
- (c) deur die skraping van die omskrywing van “Posmeester-generaal”.

- 30 **Herroeping van artikel 78 van Wet 44 van 1958, soos vervang deur artikel 34 van Wet 85 van 1991**

106. Artikel 78 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 79 van Wet 44 van 1958, soos vervang deur artikel 35 van Wet 85 van 1991

- 35 107. Artikel 79 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 80 van Wet 44 van 1958, soos vervang deur artikel 36 van Wet 85 van 1991

108. Artikel 80 van die Poswet, 1958, word hierby herroep.

- 40 **Herroeping van artikels 80A en 80B van Wet 44 van 1958, soos ingevoeg deur artikel 14 van Wet 56 van 1973 en gewysig deur artikel 75 van Wet 85 van 1991**

109. Artikels 80A en 80B van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 81 van Wet 44 van 1958, soos vervang deur artikel 37 van Wet 85 van 1991

110. Artikel 81 van die Poswet, 1958, word hierby herroep.

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

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

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

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

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

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

Repeal of sections 86 and 87 of Act 44 of 1958, as amended by section 75 of Act 85 of 1991 10

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

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

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

Repeal of section 90A of Act 44 of 1958, as inserted by section 43 of Act 85 of 1991 and amended by section 14 of Act 129 of 1993 15

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

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

(3) Any authorization or provision made, notice given or conditions prescribed in terms of the said section 90A before its repeal by this section shall, in respect of the telecommunications service or telecommunications company, be deemed to have been made, given or prescribed in terms of this Act. 20

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

117. Section 106 of the Post Office Act, 1958, is hereby repealed. 25

Substitution of certain expression in Act 44 of 1958

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

(2) Any reference in any law to the Postmaster-General shall be deemed to be a reference to the Director-General, Department of Communications. 30

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

119. The Radio Amendment Act, 1957, the Radio Amendment Act, 1962, the Radio Amendment Act, 1963, the Radio Amendment Act, 1969, and the Radio Amendment Act, 1974, are hereby repealed. 35

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

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

Herroeping van artikel 82 van Wet 44 van 1958, soos gewysig deur artikel 33 van Wet 55 van 1965, artikel 44 van Wet 63 van 1975 en artikel 75 van Wet 85 van 1991

111. Artikel 82 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 83 van Wet 44 van 1958, soos gewysig deur artikel 1 van Wet 50 van 1962, artikel 5 van Wet 80 van 1965, artikel 21 van Wet 80 van 1971, artikel 15 van Wet 56 van 1973 en artikel 75 van Wet 85 van 1991

112. Artikel 83 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 84 van Wet 44 van 1958, soos vervang deur artikel 38 van Wet 85 van 1991

10 113. Artikel 84 van die Poswet, 1958, word hierby herroep.

Herroeping van artikels 86 en 87 van Wet 44 van 1958, soos gewysig deur artikel 75 van Wet 85 van 1991

114. Artikels 86 en 87 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 88 van Wet 44 van 1958, soos vervang deur artikel 40 van Wet 85 van 1991

115. Artikel 88 van die Poswet, 1958, word hierby herroep.

Herroeping van artikel 90A van Wet 44 van 1958, soos ingevoeg deur artikel 43 van Wet 85 van 1991 en gewysig deur artikel 14 van Wet 129 van 1993

116. (1) Artikel 90A van die Poswet, 1958, word hierby herroep.

20 (2) Ondanks die herroeping van genoemde artikel 90A by subartikel (1), geld die artikel steeds ten opsigte van aangeleenthede met betrekking tot die posdiens.

(3) Enige magtiging wat gegee is, bepaling wat gemaak is, kennis wat gegee is of voorwaardes wat voorgeskryf is ingevolge gemelde artikel 90A, voor die herroeping daarvan deur hierdie artikel word, met betrekking tot die telekommunikasiediens of die telekommunikasiemaatskappy, geag gemaak, gegee of voorgeskryf te wees ingevolge hierdie Wet.

Herroeping van artikel 106 van Wet 44 van 1958, soos vervang deur artikel 59 van Wet 85 van 1991

117. Artikel 106 van die Poswet, 1958, word hierby herroep.

30 Vervanging van sekere uitdrukking in Wet 44 van 1958

118. (1) Die Poswet, 1958, word hierby gewysig deur die vervanging van die uitdrukking "Posmeester-generaal", waar dit ook al voorkom, deur die uitdrukking "Direkteur-generaal".

(2) Enige verwysing in enige wet na die Posmeester-generaal word geag 'n 35 verwysing na die Direkteur-generaal, Departement van Kommunikasiewese te wees.

Herroeping van Wet 68 van 1957, Wet 51 van 1962, Wet 90 van 1963, Wet 93 van 1969 en Wet 50 van 1974

119. Die Radiowysigingswet, 1957, die Radiowysigingswet, 1962, die Radiowysigingswet, 1963, die Radiowysigingswet, 1969, en die Radiowysigingswet, 1974, word 40 hierby herroep.

Wysiging van artikel 1 van Wet 66 van 1974, soos gewysig deur artikel 1 van Wet 27 van 1985, artikel 78 van Wet 85 van 1991 en artikel 12 van Wet 101 van 1992

120. Artikel 1 van die Poskantoorwet, 1974, word hierby gewysig—

- (a) by the substitution for the definition of “department” of the following definition:
 “ ‘department’ means the Department of [**Posts and Telecommunications**] Communications;”;
- (b) by the insertion after the definition of “department” of the following definition:
 “ ‘Director-General’ means the officer who holds the post with that designation on the fixed establishment;”;
- (c) by the deletion of the definition of “Postmaster General”.

Substitution of certain expression in Act 66 of 1974 10

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

Substitution of long title of Act 66 of 1974

122. The following long title is hereby substituted for the long title of the Post Office Service Act, 1974: 15

“To consolidate and amend the laws relating the organization of, and the appointment, conditions of service, discipline, retirement and discharge of officers and employees in, the Department of [**Posts and Telecommunications**] Communications of the Republic.”. 20

Substitution of section 58 of Act 66 of 1974

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

“Short title and commencement

58. This Act shall be called the [**Post Office**] Communications Service Act, 1974, and the provisions thereof shall come into operation on 1 November 1974.”. 25

Repeal of sections 14 to 21 of Act 57 of 1975

124. Sections 14 to 21 of the General Law Amendment Act, 1975, are hereby repealed. 30

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

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

“Unauthorised use of television set for reception by radio prohibited

21A. (1) (a) No person shall use any television set for the reception of anything broadcast in a broadcasting service unless he or she— 35

- (i) is in possession of a television licence; or
- (ii) is entitled to do so by virtue of an exemption in terms of regulations made under section 23(1)(c); or
- (iii) is entitled to do so by virtue of any permission granted under a television licence issued in terms of section 17(2); or 40
- (iv) is a person to whom that television set has been rented or otherwise made available in accordance with a television licence issued in terms of section 17(3)(b) or (c).

(b) No owner or manager of any business or institution shall in connection with that business or institution use, or permit any other person 45

- (a) deur die vervanging van die omskrywing van "departement" deur die volgende omskrywing:
 " 'departement' die Departement van [**Pos- en Telekommunikasiewese**] Kommunikasiewese.";
- 5 (b) deur die invoeging van die volgende omskrywing na die omskrywing van "departement"
 " 'Direkteur-generaal' die beampte wat die pos met daardie postitel op die vaste diensstaat beklee;";
- (c) deur die skraping van die omskrywing van "Posmeester-generaal".

10 Vervanging van sekere uitdrukking in Wet 66 van 1974

121. Die Poskantoorwet, 1974, word hierby gewysig deur die vervanging van die uitdrukking "Posmeester-generaal", waar dit ook al voorkom, deur die uitdrukking "Direkteur-generaal".

Vervanging van die lang titel van Wet 66 van 1974

- 15 122. Die lang titel van die Poskantoorwet, 1974, word hierby vervang deur die volgende lang titel:

20 "Tot samevatting en wysiging van die wette met betrekking tot die organisasie van, en die aanstelling, diensvoorwaardes, dissipline, aftreding en ontslag van beamptes en werknemers in die Departement van [**Pos- en Telekommunikasiewese**] Kommunikasiewese van die Republiek."

Vervanging van artikel 58 van Wet 66 van 1974

123. Artikel 58 van die Poskantoorwet, 1974, word hierby deur die volgende artikel vervang:

"Kort titel en inwerkingtreding

- 25 58. Hierdie Wet heet die [**Poskantoorwet**] Kommunikasiewese-dienswet, 1974, en die bepalings daarvan tree in werking op 1 November 1974."

Herroeping van artikels 14 tot 21 van Wet 57 van 1975

- 30 124. Artikels 14 tot 21 van die Algemene Regswysigingswet, 1975, word hierby herroep.

Invoeging van artikels 21A en 21B in Wet 73 van 1976

125. Die volgende artikels word hierby na artikel 21 in die Uitsaaiwet, 1976, ingevoeg:

- 35 "Ongemagtigde gebruik van televisiestel vir ontvangs deur radio verbied

- 21A. (1) (a) Geen persoon gebruik 'n televisiestel vir die ontvangs van enigiets wat in 'n uitsaaidiens uitgesaai word nie tensy hy of sy—
- (i) in besit van 'n televisielisensie is nie; of
- 40 (ii) daarop geregtig is om dit te doen uit hoofde van 'n vrystelling ingevolge regulasies wat kragtens artikel 23(1)(c) uitgevaardig is nie; of
- (iii) daarop geregtig is om dit te doen uit hoofde van enige toestemming wat kragtens 'n televisielisensie verleen is wat ingevolge artikel 17(2) uitgereik is; of
- 45 (iv) 'n persoon is aan wie daardie televisiestel verhuur is of andersins beskikbaar gestel is ooreenkomstig 'n televisielisensie wat ingevolge artikel 17(3)(b) of (c) uitgereik is.
- (b) Geen eenaar of bestuurder van enige sakeonderneming of instansie mag in verband met daardie sake-onderneming of instansie enige televi-

to use, any television set for the reception of anything broadcast in a broadcasting service unless—

- (i) he or she is in possession of a television licence issued in terms of section 17(2); and
- (ii) such television set is used in accordance with such licence; and
- (iii) such person is able to produce such licence on demand.

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

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

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

Possession of television set without licence or permit prohibited

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

- (a) he has such television set in his possession at a place where and in circumstances in which he, by virtue of any exemption in terms of regulations made under section 23(1)(c), is entitled to use it for the reception of broadcasts in a broadcasting service; or
- (b) he is a person to whom that television set is hired out or otherwise made available by a radio dealer under a television licence issued to that radio dealer in terms of section 17(3)(b) or (c).

(2) Any person, other than a radio dealer, who sells, gives or in any other manner supplies any television set to any person other than a radio dealer, shall within fourteen days after such television set has been delivered to such other person, notify the Corporation in writing of—

- (a) the name and address of such person;
- (b) the date on which such television set was so delivered; and
- (c) the number of the licence or permit under which such first-mentioned person was in possession of that television set.

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

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

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

- (a) in the case of such seizure, order that the television set that has been seized, be returned to the person concerned; or
- (b) in the case of such sealing, order that the seal be broken and the permit in question be cancelled.

siestel gebruik vir die ontvangs van enigiets wat in 'n uitsaaidiens uitgesaai word, of enige ander persoon toelaat om dit te doen nie tensy—

- (i) hy of sy in besit is van 'n televisielisensie wat ingevolge artikel 17(2) uitgereik is; en
 5 (ii) daardie televisiestel gebruik word ooreenkomstig daardie lisensie; en
 (iii) daardie persoon in staat is om daardie lisensie op versoek te toon.

(c) Behoudens die bepalings van regulasies wat kragtens artikel 23(1)(d) uitgevaardig is, mag geen persoon 'n televisiestel gebruik vir die ontvangs van enigiets wat in 'n uitsaaidiens uitgesaai word of enige ander persoon toelaat om daardie televisiestel te gebruik behalwe ooreenkomstig die bepalings van 'n lisensie of die voorwaardes en vereistes onderworpe waaraan daardie televisiestel aan hom verhuur is of soos in paragraaf (b) beoog, beskikbaar gestel is.

(2) Die bepalings van subartikel (1) geld nie vir 'n persoon wat televisiestelle as 'n sakeonderneming vervaardig nie of wat in die uitvoering van sy pligte in diens van sodanige persoon optree nie vir sover hy enige televisiestel wat deur hom vervaardig is, gebruik in of op die perseel waar dit vervaardig is of op enige ander perseel wat deur die Korporasie goedgekeur is met die doel om sodanige stel te toets, vir die ontvangs van enigiets wat in 'n uitsaaidiens uitgesaai word.

(3) Die bepalings van artikel 1(2) geld met die nodige veranderings vir die doeleindes van subartikel (1).

Besit van televisiestel sonder lisensie of permit verbode

21B. (1) Geen persoon mag enige televisiestel in sy besit hê nie tensy—

(a) hy sodanige televisiestel in sy besit het op 'n plek waar en in omstandighede waarin hy uit hoofde van enige vrystelling ingevolge regulasies wat kragtens artikel 23(1)(c) uitgevaardig is, daarop geregtig is om dit vir die ontvangs van uitsendings in 'n uitsaaidiens te gebruik; of

(b) hy 'n persoon is aan wie daardie televisiestel verhuur is of andersins beskikbaar gestel is deur 'n radiohandelaar kragtens 'n televisielisensie wat ingevolge artikel 17(3)(b) of (c) aan daardie radiohandelaar uitgereik is.

(2) Enige persoon behalwe 'n radiohandelaar wat enige televisiestel aan enige persoon behalwe 'n radiohandelaar verkoop, gee of op enige ander manier verskaf, moet binne veertien dae nadat sodanige televisiestel aan sodanige ander persoon gelewer is, die Korporasie skriftelik in kennis stel van—

- (a) die naam en adres van sodanige persoon;
 (b) die datum waarop sodanige televisiestel aldus gelewer is; en
 (c) die nommer van die lisensie of permit waarkragtens sodanige eersgenoemde persoon in besit van daardie televisiestel was.

(3) Indien 'n inspekteur oortuig is dat enige televisiestel wat in enige persoon se besit gevind word, in oortreding van die bepalings van hierdie Wet in die besit van sodanige persoon is, kan hy of sy—

- (a) op sodanige televisiestel beslag lê en dit hou totdat besit daarvan ingevolge hierdie Wet gemagtig is; of
 (b) sodanige televisiestel of enige deel daarvan verseël ten einde die gebruik van daardie televisiestel vir die doel van ontvangs te verhoed en aan sodanige persoon 'n permit uitreik vir 'n beperkte of 'n onbepaalde tydperk vir die besit van daardie televisiestel met dien verstande dat dit nie gedurende sodanige tydperk vir die doel van ontvangs gebruik word nie.

(4) Enige persoon wat gegrief is as gevolg van sodanige beslaglegging of verseëling, het die reg benewens enige ander reg, op appèl tot die Minister teen sodanige beslaglegging of verseëling en die Minister kan die beslaglegging of verseëling óf bevestig óf—

- (a) in geval van sodanige beslaglegging, beveel dat die televisiestel waarop daar beslag gelê is, aan die betrokke persoon teruggegee word; of
 (b) in die geval van sodanige verseëling, beveel dat die seël verbreek word en dat die betrokke permit gekanselleer word.”

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

126. (1) Schedule 1 to the Legal Succession to the South African Transport Services Act, 1989, is hereby amended by the substitution for paragraph (1) of item 9 of the following paragraph: 5

“(1) Subject to the provisions of paragraph (2) and the Telecommunications Act, 1996, the Company shall be entitled, for the purpose of any activity in which it may legally engage, to construct and maintain telecommunication and electricity supply networks on any premises or at any place that it occupies for the purpose of any such activity or between such premises or place and any other premises or place that it likewise occupies.”. 10

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

127. Section 1 of the Independent Broadcasting Authority Act, 1993, is hereby amended by the substitution for the definition of “broadcasting services frequency bands” of the following definition: 15

“ ‘broadcasting services frequency bands’ means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such assignment has been agreed to or adopted by the Republic, as well as any other additional part of the electromagnetic radio frequency spectrum determined [nationally] in terms of section 29(3A) for the use of broadcasting services, but excluding any of the broadcasting services frequency bands which have been made available for use by telecommunications users as contemplated in section 29(4);” 20 25

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

128. Section 29 of the Independent Broadcasting Authority Act, 1993, is hereby amended— 30

- (a) by the substitution in subsection (1) for the expression “Postmaster-General” of the expression “Director-General: Communications”;
- (b) by the substitution for subsection (4) of the following subsection: 35

“(4) (a) The Authority may, if requested thereto in writing by the [Postmaster General], South African Telecommunications Regulatory Authority established by section 5 of the Telecommunications Act, 1996, make any of the broadcasting services frequency bands available to [the Postmaster General] that Authority for use by telecommunications users in terms of [the Radio Act, 1952,] that Act, which request shall not be unreasonably refused. 40

(b) Where, pursuant to any request contemplated in paragraph (a), the Authority has made any broadcasting services frequency bands available for use by telecommunications users, the administration, management, planning and control over the use of those broadcasting services frequency bands shall cease to vest in the Authority. 45

(c) Frequencies within the broadcasting services frequency bands which, on 1 September 1993, are used by telecommunications users under valid licences issued for that purpose by the Postmaster General in terms of any law, shall be deemed to have been made available [to the Postmaster General] in terms of paragraph (b).” 50

Insertion of section 66A in Act 153 of 1993

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

“Powers of Authority in relation to broadcasting signal distribution apparatus and use of television sets for certain purposes 55

66A. (1) No person shall have in his or her possession any apparatus used or intended for use for the purpose of broadcasting signal distribution

Wysiging van Bylae 1 by Wet 9 van 1989, soos gewysig deur artikel 27 van Wet 52 van 1991 en artikel 29 van Wet 45 van 1992

126. Bylae 1 by die Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989, word hierby gewysig deur paragraaf (1) van item 9 deur die volgende paragraaf te vervang:

“(1) Die Maatskappy is, onderworpe aan die bepalings van paragraaf (2) en die Telekommunikasiewet, 1996, daarop geregtig om vir die doeleindes van enige bedrywigheid wat hy wettiglik mag onderneem, telekommunikasieverbindings en elektrisiteitvoorsieningverbindings aan te lê en in stand te hou in of op enige perseel of plek wat hy vir die doeleindes van enige sodanige bedrywigheid okkupeer of tussen so ’n perseel of plek en enige ander perseel of plek wat hy aldus okkupeer.”.

Wysiging van artikel 1 van Wet 153 van 1993, soos gewysig deur artikel 1 van Wet 36 van 1995

127. Artikel 1 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993, word hierby gewysig deur die omskrywing van “uitsaaidiens-frekwensiebande” deur die volgende omskrywing te vervang:

“ ‘uitsaaidiens-frekwensiebande’ daardie gedeelte van die elektromagnetiese radiofrekwensie-spektrum wat vir gebruik vir uitsaaidienste toegewys is deur die Internasionale Telekommunikasie-Unie (ITU) vir sover die Republiek tot sodanige toewysing ingestem het of dit aangeneem het asook enige ander bykomende gedeelte van die elektromagnetiese radiofrekwensie-spektrum wat [nasionaal] ingevolge artikel 29(3A) vir gebruik vir uitsaaidienste bepaal word, maar nie enige van die uitsaaidiensfrekwensiebande wat beskikbaar gestel is vir gebruik deur telekommunikasiegebruikers soos beoog in artikel 29(4) nie.”.

Wysiging van artikel 29 van Wet 153 van 1993, soos gewysig deur artikel 5 van Wet 36 van 1995

128. Artikel 29 van die Wet op die Onafhanklike Uitsaai-owerheid, 1993, word hierby gewysig—

- (a) deur in subartikel (1) die uitdrukking “Posmeester-generaal” deur die uitdrukking “Direkteur-generaal: Kommunikasiewese” te vervang;
- (b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) (a) Die Owerheid kan, indien hy skriftelik deur die [Posmeester-generaal], Suid-Afrikaanse Telekommunikasiereguleringsowerheid ingestel by artikel 5 van die Telekommunikasiewet, 1996, daarom versoek word, enige van die uitsaaidiens-frekwensiebande aan [die Posmeester-generaal] daardie Owerheid beskikbaar stel vir gebruik deur telekommunikasiegebruikers ingevolge [die Radiowet, 1952,] daardie Wet, welke versoek nie onredelik geweier mag word nie.

(b) Indien die Owerheid na aanleiding van ’n versoek beoog in paragraaf (a), enige uitsaaidiens-frekwensiebande beskikbaar gestel het vir gebruik deur telekommunikasiegebruikers, hou die administrasie, bestuur, beplanning en beheer oor die gebruik van daardie uitsaaidiens-frekwensiebande op om by die Owerheid te berus.

(c) Frekwensies binne die uitsaaidiens-frekwensiebande wat op 1 September 1993 deur telekommunikasiegebruikers gebruik word uit hoofde van geldende lisensies aan hulle vir dié doel deur die Posmeester-generaal ingevolge enige wet uitgereik, word geag ingevolge paragraaf (b) [aan die Posmeester-generaal] beskikbaar gestel te gewees het.”.

Invoeging van artikel 66A in Wet 153 van 1993

129. Die volgende artikel word hierby na artikel 66 in die Wet op die Onafhanklike Uitsaai-owerheid, 1993, ingevoeg:

“Bevoegdhede van Owerheid met betrekking tot uitsaaiseindistribusie-apparaat en die gebruik van televisiestelle vir sekere doeleindes

66A. (1) Geen persoon mag ’n apparaat in sy of haar besit hê wat gebruik word of beoog word om gebruik te word vir die doel van

unless he or she is in possession of a permit issued by the Authority in terms of this section or a broadcasting signal distribution licence or unless he or she is a supplier registered in terms of section 56 of the Telecommunications Act, 1996.

(2) The procedure for obtaining a permit in terms of subsection (1), shall be as prescribed. 5

(3) No person shall use any television set for the reception of anything broadcast by a pay-television service which has been licensed in terms of section 46, unless such person has been authorized by such licensee to do so. 10

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

(5) The provisions of section 67(3)(b) shall apply, with the necessary changes, in respect of any apparatus or television set by means of which an offence in terms of subsection (4) was committed." 15

CHAPTER XIV

Approved transactions and commencement of Act

Approved transactions

130. (1) Notwithstanding any provision of law to the contrary the Minister may transfer so much of the Government's equity interest in Telkom as the Cabinet shall approve for the purpose of achieving the objects of the Act as contemplated in section 2, to such transferees, in such manner and on such terms and conditions as the Cabinet shall approve. 20

(2) The proceeds of such transfers shall be applied wholly or partially for the purposes mentioned in subsection (1) in such manner and amounts as the Cabinet shall approve: 25
Provided that all proceeds not applied for the purposes mentioned in subsection (1) shall be remitted to the National Revenue Fund.

Short title and commencement

131. This Act shall be called the Telecommunications Act, 1996, and shall come into operation on the date fixed by the President by proclamation in the *Gazette*. 30

uitsaaieindistribusie tensy hy of sy in besit is van permit wat deur die Owerheid uitgereik is ingevolge hierdie artikel of 'n uitsaaieindistribusielisensie, of tensy hy of sy 'n verskaffer is wat ingevolge artikel 56 van die Telekommunikasiewet, 1996, geregistreer is nie.

5 (2) Die prosedure vir die verkryging van 'n permit ingevolge subartikel (1) is soos voorgeskryf.

(3) Geen persoon mag enige televisiestel gebruik vir die ontvangs van enigiets wat uitgesaai word deur 'n betaaltelevisiediens wat ingevolge artikel 46 gelisensieer is, tensy sodanige persoon deur sodanige lisensiehouer gemagtig is om dit te doen nie.

10 (4) Enige persoon wat subartikel (1) of (3) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n maksimum boete van R250 000.

15 (5) Die bepaling van artikel 67(3)(b) is met die nodige veranderings van toepassing ten opsigte van 'n apparaat of televisiestel waarmee 'n misdryf ingevolge subartikel (4) gepleeg is."

HOOFSTUK XIV

Goedgekeurde transaksies en inwerkingtreding van Wet

Goedgekeurde transaksies

20 **130.** (1) Ondanks enige andersluidende bepaling van die reg kan die Minister daardie gedeelte van die Regering se eienaarsbelang in Telkom oordra wat die Kabinet goedkeur ten einde die oogmerke van die Wet soos beoog in artikel 2 te verwesenlik, aan die ander eienaars, op die wyse en op die bedinge en voorwaardes wat die Kabinet goedkeur.

25 (2) Die opbrengs van sodanige oordragte word in die geheel of gedeeltelik gebruik vir die doel in subartikel (1) vermeld op die wyse en in die bedrae wat die Kabinet goedkeur: Met dien verstande dat enige opbrengs wat nie vir die doel vermeld in subartikel (1) gebruik word nie in die Nasionale Inkomstefonds gestort word.

Kort titel en inwerkingtreding

30 **131.** Hierdie Wet heet die Telekommunikasiewet, 1996, en tree in werking op die datum deur die President by proklamasie in die *Staatskoerant* bepaal.

