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GOVERNMENT NOTICE

DEPARTMENT OF COMMUNICATIONS

No. R. 676

6 May 1997

RADIO ACT, 1952

AMENDMENT OF RADIO REGULATIONS

The Minister for Posts, Telecommunications and Broadcasting has, under section 18, read with sections 2, 4(1), 7, 8, 9 and 14 of the Radio Act, 1952 (Act No. 3 of 1952), made the regulations in the Schedule.

SCHEDULE

DEFINITION

1. In these regulations, unless the context indicates otherwise, "the regulations" means the Radio Regulations published by Government Notice No. R.2862 of 28 December 1979, as amended by Government Notices Nos. R.148 of 25 January 1980, R.2661 of 4 December 1981, R.366 of 26 February 1982, R.855 of 30 April 1982, R.1945 of 10 September 1982, R.181 of 31 January 1986, R.587 of 27 March 1986, R.624 of 4 April 1986, R.2633 of 12 December 1986, R.1145 of 29 May 1987, R.712 of 15 April 1988, R.1349 of 30 June 1989, R.1356 of 22 June 1990, R.1814 and R.1826 of 3 August 1990, R.114 and R.115 of 25 January 1991, R.367 of 1 March 1991, R.1666 of 19 July 1991, R.2133 of 31 July 1992, R.3302 of 4 December 1992, R.1898 of 1 October 1993, R.2412 of 17 December 1993, R.2557 of 31 December 1993, R.334 of 18 February 1994, R.1546 of 9 September 1994, R.19 of 6 January 1995, R.62 of 20 January 1995, R.1421 of 22 September 1995, R.1676 of 18 October 1996 and R.328 of 21 February 1997.

AMENDMENT OF INDEX TO THE REGULATIONS

2. The Index to the Regulations is hereby amended by the substitution for "Chapter 9: Implementation of Migration within the Wireless Local Loop Bands" of the following:

"Chapter 9: Implementation of accelerated migration within all frequency bands."

SUBSTITUTION OF CHAPTER 9 OF THE REGULATIONS

3. The following chapter is hereby substituted for Chapter 9 in the Regulations:

"CHAPTER 9

Control of radio activities for the implementation of accelerated migration within all frequency bands

1. In this chapter:

"control of radio activities" means the power or authority to direct, order, limit, manage or regulate all activities in connection with or regarding electromagnetic waves of frequencies lower than 3 000 GHz propagated in space, including, but not limited to—

- (a) the internationally accepted principles of managing the radio spectrum as embodied in the radio regulations of the International Telecommunications Union (hereinafter referred to as "ITU") embodying the use of a table of frequency allocations (also referred to as a "band plan"), in conjunction with various schemes to effect changes to the table of frequency allocations from time to time (also referred to as "migration

- strategies") contained, *inter alia*, in resolutions of ITU World Radio Conferences which form part of the ITU radio regulations, to ensure controlled, ordered and efficient use of the radio spectrum;
- (b) the revised South African Frequency Allocation Plan (hereinafter referred to as the "Band Plan"), concerning electromagnetic waves of certain frequencies below 3 000 GHz, and the revised band planning for the frequency spectrum from 3,4 GHz to 3,6 GHz, both published in Government Gazette No. 17983, Notice 759 of 1997, dated 6 May 1997, and used for national management of the radio spectrum;
 - (c) the revised Migration Strategy to Implement the Band Plan (hereinafter referred to as the "Migration Strategy") concerning electromagnetic waves of certain frequencies below 3 000 GHz, and a new migration strategy for the frequency spectrum from 3,4 GHz to 3,6 GHz, both published in Government Gazette No. 17983, Notice 759 of 1997, dated 6 May 1997, and used for national management of the radio spectrum;
 - (d) the management of frequencies for the form of telecommunication channels using electromagnetic waves of frequencies below 3 000 GHz, including, but not limited to, such telecommunication channels as those being implemented between a local exchange in the Public Switched Telephone Network (hereinafter referred to as the "PSTN") and an item of customer premises equipment (hereinafter referred to as "Wireless Local Loop"), which provides interconnectivity for purposes of basic telecommunication services;
 - (e) the management of frequencies for fixed services that pertain to the provision of backbone for the delivery of Wireless Local Loop.

"Effective Date" means the date on which the licence issued to Telkom SA Limited (hereinafter referred to as "Telkom") in terms of section 36 of the Telecommunications Act, 1996 (Act No. 103 of 1996) was issued by the Minister.

Start date of migration

2. (1) Where the Migration Strategy indicates the start date of migration of 1 January 1997, this regulation will apply only from the date of publication of this Chapter and this date will be regarded as the start of migration (hereinafter referred to as the "Migration Start Date").
- (2) In all other cases where the Migration Strategy indicates a start date of migration beyond the date of publication of this Chapter, the Migration Start Date shall be defined as the start date of migration as indicated in the Migration Strategy.

Facilitation of migration earlier than the time-scales indicated in the Migration Strategy by the Director-General

3. (1) If during the Exclusivity Period (as defined in the licence issued to Telkom in terms of section 36 of the Telecommunications Act, 1996), Telkom requires frequencies prior to the end of the period specified in the Migration Strategy for migration to occur (hereinafter referred to as the "Migration Strategy End Date"), Telkom may request a licensee using any

such frequencies to accelerate migration in accordance with the principles and procedures set out in this regulation.

(2) The following principles shall apply to migration occurring as contemplated in subregulation (1):

- (a) Subject to regulation 2 with regard to Migration Start Date, the time-scales stipulated by Telkom and the Migration Strategy will form the basis of the procedures set out in this regulation.
- (b) The maximum amount for which Telkom as the incoming licensee shall be liable, in connection with spectrum pertaining specifically to Wireless Local Loop and fixed services that pertain to the provision of backbone for the delivery of Wireless Local Loop, is a value calculated in Rands equal to US\$25 million at the prevailing rate of exchange at the time of payment, in the aggregate for all such spectrum, in accordance with the procedures set out in subregulation (3) for accelerated migration.
- (c) In connection with spectrum not specifically pertaining to Wireless Local Loop or fixed services that pertain to the provision of backbone for the delivery of Wireless Local Loop, Telkom shall provide the outgoing licensee with an indemnity, to be negotiated in good faith between Telkom and such outgoing licensee, for such outgoing licensee's costs of migration. Such indemnity shall be limited to costs necessarily and directly incurred by such outgoing licensee in order to effect migration by the time or times agreed with Telkom and, for the avoidance of doubt, shall not include additional expenses incurred as a result of such outgoing licensee upgrading or otherwise modifying its equipment.

(3) The following procedures shall be utilized in order to facilitate the accelerated time-scales in such cases required by the Director-General following a request by Telkom as contemplated in subregulation (1):

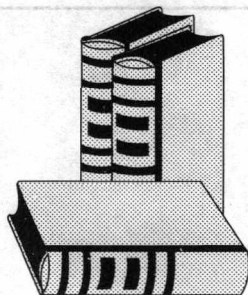
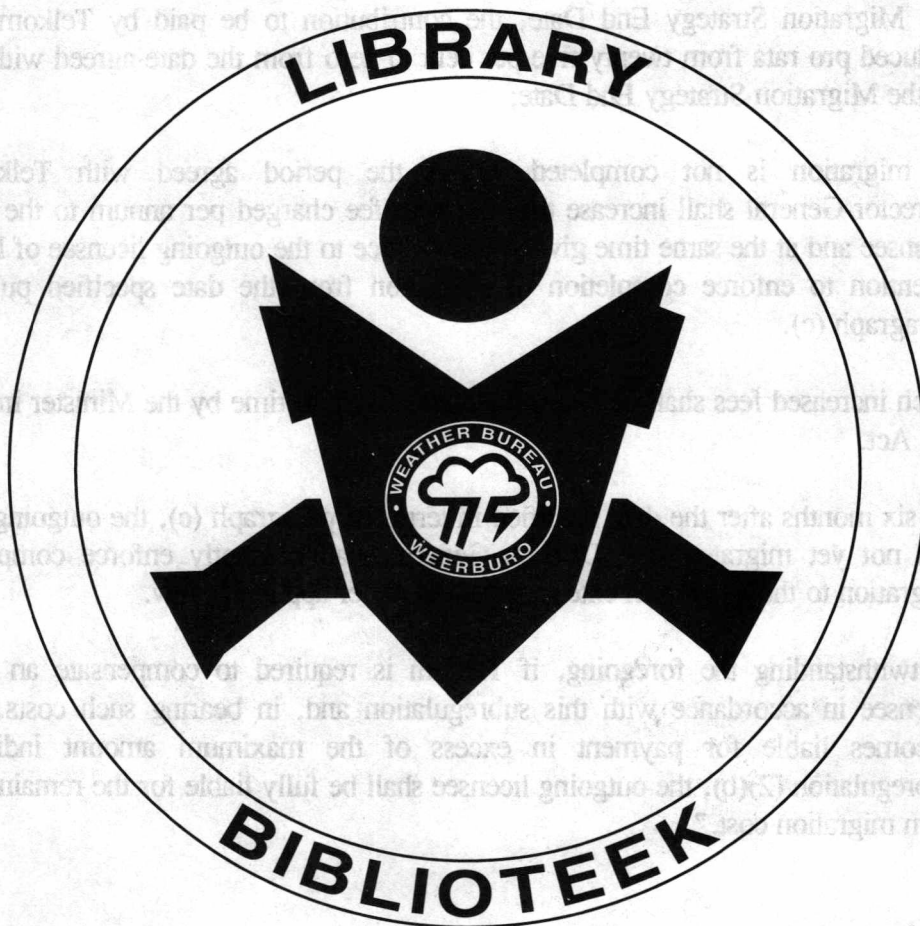
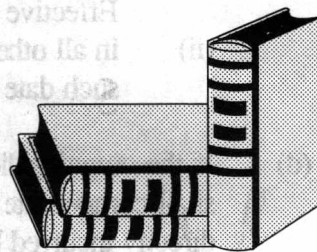
- (a) Outgoing licensees adhering to the shortened time-scales as agreed with Telkom shall be charged license fees determined from time to time by the Minister in terms of the Act at preferential rates in the spectrum to which they migrate for a period equal to the period from the date of accelerated migration up to the Migration Strategy End Date.
- (b) If migration is not completed by the date agreed with Telkom, but is nonetheless completed before the Migration Strategy End Date, preferential rates shall be determined from time to time by the Minister in terms of the Act.
- (c) At all times the Director-General shall facilitate good faith negotiations with the aim of completing migration—
 - (i) in Wireless Local Loop bands and fixed services bands pertaining to the provision of backbone for the delivery of Wireless Local Loop, as soon as

- may be practicable but in any event within a period of six months of the Effective Date or such later date as Telkom may request; and
- (ii) in all other bands, as soon as may be practicable but in any event no later than such date as Telkom may reasonably request.
- (d) If the outgoing licensee migrates on or before the date agreed with Telkom, Telkom shall compensate the outgoing licensee for fifty per cent of the costs necessarily and directly incurred by an outgoing licensee in order to effect migration;
- (e) If the outgoing licensee migrates after the date agreed with Telkom, but on or before the Migration Strategy End Date, the contribution to be paid by Telkom shall be reduced pro rata from twenty five per cent to zero from the date agreed with Telkom to the Migration Strategy End Date;
- (f) If migration is not completed within the period agreed with Telkom, the Director-General shall increase the spectrum fee charged per annum to the outgoing licensee and at the same time give written notice to the outgoing licensee of his or her intention to enforce completion of migration from the date specified pursuant to paragraph (c).
- (g) Such increased fees shall be determined from time to time by the Minister in terms of the Act.
- (h) If, six months after the date specified in terms of paragraph (c), the outgoing licensee has not yet migrated, the Director-General shall promptly enforce completion of migration to the maximum extent permitted under applicable law.
- (i) Notwithstanding the foregoing, if Telkom is required to compensate an outgoing licensee in accordance with this subregulation and, in bearing such costs, Telkom becomes liable for payment in excess of the maximum amount indicated in subregulation (2)(b), the outgoing licensee shall be fully liable for the remainder of its own migration cost."

J. NAIDOO

MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING.

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