South Africa

Electronic Communications Act, 2005

Act 36 of 2005

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(English text signed by the President)

ACT

To promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors; to make new provision for the regulation of electronic communications services, electronic communications network services and broadcasting services; to provide for the granting of new licences and new social obligations; to provide for the control of the radio frequency spectrum; to provide for the continued existence of the Universal Service Agency and the Universal Service Fund; and to provide for matters incidental thereto.

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

Chapter 1
Introductory provisions

1. Definitions

In this Act, unless the context indicates otherwise—

"**affiliate**" means with respect to any person, any other person that, directly or indirectly—

(a) controls the first mentioned person;

(b) is controlled by the first mentioned person; or

(c) is under common control, with the first mentioned person;

"**Agency**" means the Universal Service and Access Agency of South Africa established by section 80;

"**Authority**" means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

"**broadcasting**" means any form of unidirectional electronic communications intended for reception by—

(a) the public;

(b) sections of the public; or

(c) subscribers to any broadcasting service,

whether conveyed by means of radio frequency spectrum or any electronic communications network or any combination thereof, and "broadcast" is construed accordingly;

"**Broadcasting Act**" means the Broadcasting Act, 1999 (Act No. 4 of 1999);

"**broadcasting service**" means any service which consists of broadcasting and which service is conveyed by means of an electronic communications network, but does not include—

(a) a service which provides no more than data or text, whether with or without associated still images;

(b) a service in which the provision of audio-visual material or audio material is incidental to the provision of that service, or

(c) a service or a class of service, which the Authority may prescribe as not falling within this definition;

"**broadcasting service licensee**" means a person to whom a broadcasting service licence has been granted in terms of this Act;

"**broadcasting service radio frequency bands**" means that part of the electromagnetic radio frequency spectrum which is allocated for the use of broadcasting services by the Authority, taking into account the ITU table of allotment, in so far as such allocation has been agreed to or approved by the Republic;

"**broadcasting service licence**" means a licence granted by the Authority to a person in terms of section 5 (2) (b) or section 5 (4) (b);

"**broadcasting signal distribution**" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed, to any broadcast target area, by means of electronic communications and includes multi-channel distribution;

"**carrier pre-selection**" means the ability of a subscriber of an electronic communications service to access and use the electronic communications services of another electronic communications service licensee or person exempted as provided for in section 6;

"**channel**" means a single defined programming service of a broadcasting services licensee;

"**class licence**" means a licence granted by the Authority to a person in terms of section 5 (4);

"**class licensee**" means a person to whom a class licence has been granted in terms of this Act;

"**commercial broadcasting**" means a broadcasting service operating for profit or as part of a profit entity but excludes any public broadcasting service;

"**common carrier**" means a person licensed to provide an electronic communications network service who is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis;

"**community**" includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

"**community broadcasting service**" means a broadcasting service which—

(a) is fully controlled by a non-profit entity and carried on for non-profit purposes;

(b) serves a particular community;

(c) encourages members of the community served by it or persons associated with or promoting the interests of such community, to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and

(d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;

"**Competition Act**" means the Competition Act, 1998 (Act No. 89 of 1998);

"**Complaints and Compliance Committee**" means the committee established by the Authority in terms of section 17A of the ICASA Act;

"**days**" means working days unless otherwise specified;

"**Director-General**" means the Director-General of the Department of Communications;

"**dominant**" has the same meaning given to that term in section 7 of the Competition Act;

"**election**" means an election as defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998);

"**election period**" means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected;

"**electronic communications**" means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service;

"**electronic communications facility**" includes but is not limited to any—

(a) wire;

(b) cable (including undersea and land-based fibre optic cables);

(c) antenna;

(d) mast;

(e) satellite transponder;

(f) circuit;

(g) cable landing station;

(h) international gateway;

(i) earth station; and

(j) radio apparatus or other thing,

which can be used for, or in connection with, electronic communications, including where applicable—

(i) collocation space;

(ii) monitoring equipment;

(iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and

(iv) associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities;

"**electronic communications network**" means any system of electronic communications facilities (excluding subscriber equipment), including without limitation—

(a) satellite systems;

(b) fixed systems (circuitand packet-switched);

(c) mobile systems;

(d) fibre optic cables (undersea and land-based);

(e) electricity cable systems (to the extent used for electronic communications services); and

(f) other transmission systems, used for conveyance of electronic communications;

"**electronic communications network service**" means a service whereby a person makes available an electronic communications network, whether by sale, lease or otherwise—

(a) for that person's own use for the provision of an electronic communications service or broadcasting service;

(b) to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or

(c) for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by this Act,

and "network services" is construed accordingly;

"**electronic communications network service licensee**" means a person to whom an electronic communications network service licence has been granted in terms of section 5 (2) or 5 (4);

"**electronic communications service**" means any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

"**electronic communications service licensee**" means a person whom an electronic communications services licence has been granted in terms of section 5 (2);

"**emergency organisation**" means, in respect of any locality, the relevant police, fire, ambulance or traffic authority or coast guard services for that locality and any other similar organisation providing assistance to the public in emergencies;

"**end-user**" means a subscriber and persons who use the services of a licensed service referred to in Chapter 3;

"**essential facility**" means an electronic communications facility or combination of electronic communications or other facilities that is exclusively or predominantly provided by a single or limited number of licensees and cannot feasibly (whether economically, environmentally or technically) be substituted or duplicated in order to provide a service in terms of this Act;

"**existing licences**" means the licences granted to persons prior to the coming into force of this Act in accordance with the provisions of the Telecommunications Act, the IBA Act or the Broadcasting Act;

"**financial interest**" means an interest that may not have voting rights attached to it but which gives the person or entity an equity or debt interest directly through shares or other securities or indirectly through an agreement giving it—

(a) the power to control the licensee; or

(b) an effective say over the affairs of the licensee;

"**free-to-air service**" means a service which is broadcast and capable of being received without payment of subscription fees;

"**harmful interference**" means interference which—

(a) seriously degrades, obstructs, or repeatedly interrupts an electronic communication or broadcasting service operating in accordance with ITU Radio Regulations; or

(b) is not within CISPR interference level limits as agreed to or adopted by the Republic;

"**IBA Act**" means the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993);

"**ICASA Act**" means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

"**ICT Charter**" means the Black Economic Empowerment Charter for the ICT sector;

"**individual licence**" means a licence that is granted by the Authority to a person in terms of section 5 (2);

"**interconnection**" means the physical or logical linking of two or more electronic communications networks, electronic communications services, broadcasting services, services provided pursuant to a licence exemption or any combination thereof;

"**interference**" means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any—

(a) performance degradation;

(b) misinterpretation; or

(c) loss of information,

which could be extracted in the absence of such unwanted energy;

"**ICT**" means information, communications and technology;

"**ITU**" means International Telecommunications Union;

"**licensee**" means a person issued with a licence to provide services in terms of Chapter 3 of this Act;

"**licence exemption**" means an exemption granted by the Authority in terms of section 6 of this Act;

"**licence area**" means the geographical area specified in a licence;

"**market power**" has the same meaning as that term is defined in the Competition Act;

"**Minister**" means the Minister responsible for Communications;

"**multi-channel distribution service**" means a broadcasting signal distribution service that provides broadcasting signal distribution for more than one channel at the same time on the same signal, and "multi-channel distributor" is construed accordingly;

"**number portability**" means the ability of subscribers to an electronic communications service or persons providing a service pursuant to a licence exemption, to retain their existing numbers without impairment of quality, reliability, or convenience when switching from one electronic communications service licensee to another electronic communications service licensee;

"**party election broadcast**" means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party;

"**person**" means a natural or a juristic person;

"**political advertisement**" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting service licensee has received or is to receive, directly or indirectly, any money or other consideration;

"**prescribed**" means prescribed by regulation made by the Authority in terms of this Act or the related legislation;

"**private electronic communications network**" means an electronic communications network used primarily for providing electronic communications for the owner's own use;

"**public broadcasting service**" means any broadcasting service provided by the South African Broadcasting Corporation or other public state-owned enterprise;

"**radio**" means an electromagnetic wave which is propagated in space without artificial guide and having a frequency below 3000 GHz;

"**radio apparatus**" means an electronic communications facility which is capable of transmitting or receiving any signal by radio, excluding subscriber equipment, if such subscriber equipment is used solely for that purpose;

"**radio frequency band**" means a specified range of frequencies for use by one or more persons authorised to use the band;

"**radio frequency band for security services**" means one or more specified range of frequencies for use by one or more agencies classified as a security service;

"**radio frequency plan**" means a national plan that includes, but is not limited to—

(a) a table of frequency allocations for all bands below 3000 GHz taking into account the ITU table of allotments, in so far as such allotments have been adopted and agreed upon by the Republic, which may include designations of certain utilisations; and

(b) a plan, as applicable, for the migration of systems and equipment of existing users within specific radio frequency bands, including radio frequency bands for security services, to different frequency bands;

"**radio frequency spectrum**" means the portion of the electromagnetic spectrum used as a transmission medium for electronic communications;

"**radio frequency spectrum licence**" means a licence authorising the holder to use the radio frequency spectrum;

"**radio station**" means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying an electronic communications service or any electronic communications authorised by the authority;

"**registered political party**", for the purposes of Chapter 9, means—

(a) any registered party defined in section 1 of the Electoral Act, 1998; or

(b) any alliance of such registered parties, as the case may be, which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution;

"**related legislation**" means the Broadcasting Act and the Independent Communications Authority of South Africa Act and any regulations, determinations and guidelines made in terms of such legislation and not specifically repealed by this Act;

"**Republic**" means the Republic of South Africa, its possessions, air space and territorial waters;

"**reseller**" means a person who—

(a) acquires, through lease or other commercial arrangement, by any electronic communications network service or electronic communications service; and

(b) makes such electronic communications network service or electronic communications service available to subscribers for a fee,

whether or not such electronic communications network services or electronic communications services made available by the reseller—

(i) are identical to the electronic communications network service or electronic communications service acquired;

(ii) are packaged, bundled or otherwise re-grouped to form new or varied service offerings;

(iii) are combined, linked or used in connection with electronic communications networks or electronic communications facilities owned by the reseller; or

(iv) add value to such electronic communications network services or electronic communications services,

and "resale" is construed accordingly;

"**retail**" means the sale, lease or otherwise making available of services offered by licensees to subscribers;

"**security services**" means the security services of the Republic established in terms of Chapter 11 of the Constitution;

"**Sentech Act**" means the Sentech Act, 1996 (Act No. 63 of 1996);

"**service charter**" means a document, developed by a licensee after consultation with its staff, subscribers and end-users which sets out the standards of service subscribers can expect and is a performance measurement and accountability tool that focuses on subscriber service outcomes;

"**SMME**" means a small enterprise defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

"**SMS**" means short messaging service whereby text is sent over an electronic communications network;

"**sound broadcasting service**" means a broadcasting service consisting of the transmission of audio signals and the reproducing of the signals in the form of sounds, but not also in the form of images or other visible signs or signals;

"**subscriber**" means a person who lawfully accesses, uses or receives a retail service of a licensee referred to in Chapter 3 for a fee or the retail services of a person providing a service pursuant to a licence exemption;

"**subscriber equipment**" means any device which is used by a subscriber to access, use or receive the services of a licensee referred to in Chapter 3 or the services of a person providing a service pursuant to a licence exemption, including without limitation, a telephone, regardless of technology such as IP (internet protocol) phones, mobile phones, publicly available phones; a handset, a computing device such as a personal digital assistant or a personal computer; a device for receiving a sound radio broadcasting service and a television; or other device or equipment, and any associated software;

"**subscription broadcasting service**" means a broadcasting service provided to a subscriber upon payment of a fee;

"**Telecommunications Act**" means the Telecommunications Act, 1996 (Act No. 103 of 1996);

"**television broadcasting service**" means a broadcasting service consisting of the transmission of visual images or other visible signals with or without accompanying sounds, where the visual images are such that their sequences are seen as moving pictures;

"**transition period**" means the period or periods, referred to in Chapter 15 for, among other things, converting the existing licences to the licensing structure set out in this Act;

"**this Act**" includes the Schedule, regulations, orders, determinations and guidelines;

"**under-serviced area**" means the geographically identified areas defined by the Authority in accordance with this Act;

"**universal access**" means universal access to electronic communications network services, electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14;

"**universal service**" means the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14;

"**vertical relationship**" means vertical relationship as defined in section 1 of the Competition Act;

"**wholesale**" means the sale, lease or otherwise making available an electronic communications network service or an electronic communications service by an electronic communications network service licensee or an electronic communications service licensee, to another licensee or person providing a service pursuant to a licence exemption.

2. Object of Act

The primary object of this Act is to provide for the regulation of electronic communications in the Republic in the public interest and for that purpose to—

(a) promote and facilitate the convergence of telecommunications, broadcasting, information technologies and other services contemplated in this Act;

(b) promote and facilitate the development of interoperable and interconnected electronic networks, the provision of the services contemplated in the Act and to create a technologically neutral licencing framework;

(c) promote the universal provision of electronic communications networks and electronic communications services and connectivity for all;

(d) encourage investment and innovation in the communications sector;

(e) ensure efficient use of the radio frequency spectrum;

(f) promote competition within the ICT sector;

(g) promote an environment of open, fair and non-discriminatory access to broadcasting services, electronic communication networks and to electronic communications services;

(h) promote the empowerment of historically disadvantaged persons, including Black people, with particular attention to the needs of women, opportunities for youth and challenges for people with disabilities;

(i) encourage research and development within the ICT sector;

(j) provide a clear allocation of roles and assignment of tasks between policy formulation and regulation within the ICT sector;

(k) ensure that broadcasting services and electronic communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in the Republic;

(l) provide assistance and support towards human resource development within the ICT sector;

(m) ensure the provision of a variety of quality electronic communications services at reasonable prices;

(n) promote the interests of consumers with regard to the price, quality and the variety of electronic communications services;

(o) subject to the provisions of this Act, promote, facilitate and harmonise the achievement of the objects of the related legislation;

(p) develop and promote SMMEs and cooperatives;

(q) ensure information security and network reliability;

(r) promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public;

(s) ensure that broadcasting services, viewed collectively—

(i) promote the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all language and cultural groups and provide entertainment, education and information;

(ii) provide for regular—

(aa) news services;

(bb) actuality programmes on matters of public interest;

(cc) programmes on political issues of public interest; and

(dd) programmes on matters of international, national, regional and local significance;

(iii) cater for a broad range of services and specifically for the programming needs of children, women, the youth and the disabled;

(t) protect the integrity and viability of public broadcasting services;

(u) ensure that, in the provision of public broadcasting services—

(i) the needs of language, cultural and religious groups;

(ii) the needs of the constituent regions of the Republic and local communities; and

(iii) the need for educational programmes, are duly taken into account;

(v) ensure that commercial and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;

(w) ensure that broadcasting services are effectively controlled by South Africans;

(x) provide access to broadcasting signal distribution for broadcasting and encourage the development of multi-channel distribution systems in the broadcasting framework;

(y) refrain from undue interference in the commercial activities of licencees while taking into account the electronic communication needs of the public;

(z) promote stability in the ICT sector.

Chapter 2
Policy and regulations

3. Ministerial policies and policy directions

(1) The Minister may make policies on matters of national policy applicable to the ICT sector, consistent with the objects of this Act and of the related legislation in relation to—

(a) the radio frequency spectrum;

(b) universal service and access policy;

(c) the Republic's obligations and undertakings under bilateral, multilateral or international treaties and conventions, including technical standards and frequency matters;

(d) the application of new technologies pertaining to electronic communications services, broadcasting services and electronic communications network services;

(e) guidelines for the determination by the Authority of licence fees associated with the award of the licences contemplated in Chapter 3, including incentives that may apply to individual licences where the applicant makes binding commitments to construct electronic communications networks and provide electronic communications services in rural and under-serviced areas of the Republic;

(f) the promotion of universal service and electronic communications services in under-serviced areas;

(g) mechanisms to promote the participation of SMME's in the ICT sector;

(h) the control, direction and role of state-owned enterprises subject to the Broadcasting Act and the Companies Act, 1973 (Act No. 61 of 1973); and

(i) any other policy which may be necessary for the application of this Act or the related legislation.

(2) The Minister may, subject to subsections (3) and (5), issue to the Authority policy directions consistent with the objects of this Act and of the related legislation in relation to—

(a) the undertaking of an inquiry in terms of section 4B of the ICASA Act on any matter within the Authority's jurisdiction and the submission of reports to the Minister in respect of such matter;

(b) the determination of priorities for the development of electronic communications networks and electronic communications services or any other service contemplated in Chapter 3;

(c) the consideration of any matter within the Authority's jurisdiction reasonably placed before it by the Minister for urgent consideration.

(3) No policy made by the Minister in terms of subsection (1) or policy direction issued by the Minister in terms of subsection (2) may be made or issued regarding the granting, amendment, transfer, renewal, suspension or revocation of a licence, except as permitted in terms of this Act.

(4) The Authority, in exercising its powers and performing its duties in terms of this Act and the related legislation must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2).

(5) When issuing a policy direction under subsection (2) the Minister—

(a) must consult the Authority; and

(b) must, in order to obtain the views of interested persons, publish the text of such policy direction by notice in the *Gazette*—

(i) declaring his or her intention to issue the policy direction;

(ii) inviting interested persons to submit written submissions in relation to the policy direction in the manner specified in such notice in not less than 30 days from the date of the notice;

(c) must publish a final version of the policy direction in the *Gazette*.

(6) The provisions of subsection (5) do not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (2) as a result of representations received and reviewed by him or her after consultation or publication in terms of subsection (5).

(7) Subject to subsection (8), a policy direction issued under subsection (2) may be amended, withdrawn or substituted by the Minister.

(8) Except in the case of an amendment contemplated in subsection (6), the provisions of subsection (3) and (5) apply, with the necessary changes, in relation to any such amendment or substitution of a policy direction under subsection (7).

(9) The Authority may make recommendations to the Minister on policy matters in accordance with the objects of this Act.

4. Regulations by Authority

(1) The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation. Without derogating from the generality of this subsection, the Authority may make regulations with regard to—

(a) any technical matter necessary or expedient for the regulation of the services identified in Chapter 3;

(b) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation;

(c) the payment to the Authority of charges and fees in respect of—

(i) the supply by the Authority of facilities for the inspection, examination or copying of material under the control of the Authority;

(ii) the transcription of material from one medium to another;

(iii) the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies;

(iv) the granting of licences in terms of this Act or the related legislation;

(v) applications for and the grant, amendment, renewal, transfer or disposal of licences or any interest in a licence in terms of this Act or the related legislation; and

(d) generally, the control of the radio frequency spectrum, radio activities and the use of radio apparatus.

(2) Different regulations may be made in respect of different—

(a) licences granted in terms of this Act; and

(b) uses of radio frequency spectrum.

(3) Any regulation made by the Authority in terms of subsection (1) may declare a contravention of that regulation to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention taking into account section 17H of the ICASA Act.

(4) The Authority must, not less than thirty (30) days before any regulation is made, publish such regulation in the *Gazette*, together with a notice—

(a) declaring the Authority's intention to make that regulation; and

(b) inviting interested parties to make written representations on the regulation.

(5) The Authority must, not less than 30 days prior to making regulations, inform the Minister in writing of its intention and the subject matter of the regulations.

(6) The Authority may conduct public hearings in respect of a draft regulation.

(7) The provisions of subsection (4) do not apply with regard to—

(a) any regulation made by the Authority which, after the provisions of that subsection have been complied with, has been amended after receipt of comments or representations received in terms of a notice issued under that subsection; or

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

Chapter 3
Licensing framework

5. Licensing

(1) The Authority may, in accordance with this Chapter and the regulations prescribed hereunder, grant individual and class licences.

(2) The Authority may, upon application and due consideration in the prescribed manner, grant individual licences for the following:

(a) subject to subsection (6), electronic communications network services;

(b) broadcasting services; and

(c) electronic communications services.

(3) Electronic communications network services, broadcasting services and electronic communications services that require an individual licence, include, but are not limited to—

(a) electronic communications networks of provincial and national scope operated for commercial purposes;

(b) commercial broadcasting and public broadcasting of national and regional scope whether provided free-to-air or by subscription;

(c) electronic communications services consisting of voice telephony utilising numbers from the national numbering plan;

(d) any electronic communications network service, broadcasting service or electronic communications service where a state entity (directly or indirectly) holds an ownership interest of greater than twenty-five (25%) percent of the share capital of the person providing such service; and

(e) such other services as may be prescribed that the Authority finds have significant impact on socio-economic development.

(4) The Authority may, upon registration in the prescribed manner, grant class licences for the following:

(a) electronic communications network services;

(b) broadcasting services; and

(c) electronic communications services.

(5) Electronic communications network services, broadcasting services and electronic communications services that require a class licence, include, but are not limited to—

(a) electronic communications networks of district municipality or local municipal scope operated for commercial purposes;

(b) community broadcasting and low power services whether provided free-to-air or by subscription;

(c) such other services as may be prescribed, that the Authority finds do not have significant impact on socio-economic development.

(6) In consideration of the implementation of the managed liberalisation policies, the Authority may only accept and consider applications for individual electronic communications network services licences in terms of a policy direction issued by the Minister in terms of section 3.

(7) The Authority must prescribe regulations—

(a) setting out—

(i) the process and procedures for applying for or registering, amending, transfering and renewing one or more of the licences specified in subsections (2) and (4);

(ii) the documentation that applicants or registrants in the case of class licences, must include with their applications or registrations;

(iii) the licence fees applicable to the licences specified in subsections (2) and (4), taking into account any policy or policy directions issued by the Minister in terms of section 3; and

(iv) the terms and conditions for granting special temporary authorisations for testing purposes, demonstrations and research and development; and

(b) on any matter relating to the licensing process.

(8) When applying for a licence an applicant or registrant must demonstrate that the applicant or registrant or the person to be awarded the licence, in the case of—

(a) a natural person, is a citizen of the Republic; or

(b) a juristic person, is, or will be, registered under the laws of the Republic and has or will have its principal place of business located within the Republic.

(9) The Authority must, in granting a licence—

(a) ensure that electronic communications network services, broadcasting services and electronic communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in the Republic; and

(b) promote the empowerment of historically disadvantaged persons including women and the youth and people with disabilities, in accordance with the requirements of the ICT charter.

(10) Individual licences—

(a) may be issued for a period not exceeding twenty (20) years unless a shorter period is requested by the applicant or determined by the Authority at the time such applicant applies for the licence; and

(b) may be renewed in accordance with the provisions of this Act.

(11) Licences granted by the Authority in terms of this section are effective and valid on the date specified in the licence unless a stay or equivalent order of a court of competent jurisdiction, is granted.

(12) A licence confers on the holder the privileges and subjects him or her to the obligations provided for in this Act and specified in the licence.

6. Licence exemption

(1) Subject to subsection (2), the Authority may prescribe the—

(a) type of electronic communications services that may be provided;

(b) type of electronic communications networks that may be operated;

(c) type of electronic communications network services that may be provided; and

(d) radio frequency spectrum that may be used, without a licence.

(2) The electronic communications services, electronic communications networks, electronic communications network services and radio frequency spectrum contemplated in subsection (1) may include, but are not limited to—

(a) electronic communications services provided on a not-for-profit basis;

(b) electronic communications services that are provided by resellers;

(c) private electronic communications networks used principally for or integrally related to the internal operations of the network owner. Except that where the private electronic communications networks' additional capacity is resold, the Authority may prescribe terms and conditions for such resale;

(d) small electronic communications networks such as local area networks;

(e) uses of the radio frequency spectrum that were permitted without a licence prior to the coming into force of this Act and uses of the radio frequency spectrum that the Authority

finds would not cause harmful interference with radio frequency spectrum licensees such as low power uses; and

(f) such other services considered to be exempted, as may be prescribed by the Authority.

(3) Any regulations prescribed by the Authority in terms of this section may contain terms and conditions applicable to the exempted electronic communications services, electronic communications networks, electronic communications network services and radio frequency spectrum use and declare contravention of the regulation an offence, subject to section 17H of the ICASA Act.

7. Prohibition of provision of service without licence

Except for services exempted in terms of section 6, no person may provide any service without a licence.

8. Terms and conditions for licences

(1) The Authority must prescribe standard terms and conditions to be applied to individual licences and class licences. The terms and conditions may vary according to the different types of individual licences and, according to different types of class licenses.

(2) Such standard terms and conditions may take into account—

(a) whether the service is intended for the public generally or a limited group, such as the provision of electronic communications network services or electronic communications services to other licensees contemplated under this Act;

(b) the licence area of the authorised service;

(c) the duration of the licence;

(d) the protection of the interests of the subscribers and end-users, including, but not limited to —

(i) the handling and resolution of complaints and disputes;

(ii) the provision of appropriate remedies and redress in respect of such complaints and disputes;

(iii) the transparency of information about services, tariffs and the rights of subscribers; and

(iv) any other matter the Authority determines to be necessary in order to achieve the effective protection of subscribers;

(e) the public interest in ensuring service interoperability, non-discrimination and open access, interconnection and facilities leasing;

(f) the public interest in securing the efficient functioning of electronic communications networks including but not limited to preventing or restricting harmful interference within the radio frequency spectrum;

(g) any universal access and universal service obligations;

(h) the public interest in the provision, availability and use, in the event of a disaster, of electronic communications networks and electronic communications services;

(i) the public interest in ensuring the protection of public health for the prevention or avoidance of the exposure of natural persons to electromagnetic fields created in connection with the operation of electronic communications networks and the provision of broadcasting and electronic communications services;

(j) the international obligations of the Republic, including compliance with relevant international standards adopted by the Republic;

(k) the public interest in ensuring the distribution of broadcasting services;

(l) the public interest in facilitating the dissemination and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all language and cultural groups and provide entertainment, education, news and information;

(m) the public interest in facilitating and maintaining a competitive electronic communications environment and in regulating and controlling anti-competitive practices; and

(n) the efficient use of the radio frequency spectrum and migration to digital use of such radio frequency spectrum.

(3) The Authority may prescribe additional terms and conditions that may be applied to any individual licence or class licence taking into account the provisions of Chapter 10.

(4) The Authority may by regulation make provision for the designation of licensees to whom universal service and universal access obligations are to be applicable.

9. Application for and granting of individual licences

(1) Any person may, upon invitation by the Authority, subject to the provisions of this Act, apply for an individual licence in the prescribed manner.

(2) The Authority must give notice of the application in the *Gazette* and—

(a) invite interested persons to apply and submit written representations in relation to the application within the period mentioned in the notice;

(b) include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30%, or such higher percentage as may be prescribed;

(c) set out the proposed licence conditions that will apply to the licence; and

(d) give interested persons an opportunity to submit written responses to any representations submitted in terms of paragraph (a);

(e) may conduct a public hearing in relation to any application for an individual licence;

(3) The Authority may require an applicant or an interested party who has submitted written representations in terms of subsection (2)(a) to furnish the Authority, within the period specified by the Authority, with such further information as may be reasonably necessary in order to consider the application.

(4) (a) Applications, representations, responses and other documents relating to an application which are submitted to the Authority are, subject to this subsection, open to public inspection during the normal office hours of the Authority.

(b) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with copies of documents requested by such person.

(c) (i) The Authority may, at the request of an applicant or person who has submitted representations or responses, decide that—

(aa) any document or information that is commercially sensitive; or

(bb) any other matter reasonably justifying confidentiality, is not open to public inspection, if such document or information can be separated from the application, representations or other documents in question.

(ii) for the purposes of this subsection, commercially sensitive document, information or other matter reasonably justifying confidentiality, excludes documents or information that should, as a matter of law be generally available to the public.

(d) If the Authority refuses a request referred to in paragraph (c)(i), the applicant or person concerned may withdraw the document or information in question.

(5) The Authority must, after considering—

(a) any application for an individual licence made in terms of this Act; and

(b) any written representations made in terms of subsection (2) in relation to the application,

notify the applicant of its decision, the reasons for that decision and any licence conditions applicable and publish such information in the *Gazette*.

(6) Whenever the Authority grants an individual licence, the Authority—

(a) must do so on standard terms and conditions applicable to the type of licence, as prescribed in terms of section 8; and

(b) may impose such additional terms and conditions as may be prescribed in terms of section 8 (3).

(7) Despite subsection (6), the Authority may impose on the applicant any other specific terms and conditions resulting from undertakings made by the applicant.

10. Amendment of individual licence

(1) The Authority may amend an individual licence after consultation with the licensee—

(a) to make the terms and conditions of the individual licence consistent with the terms and conditions being imposed generally in respect of all individual licences of the same type;

(b) for the purpose of ensuring fair competition between licencees;

(c) to the extent requested by the licensee provided it will not militate against orderly frequency management and will not prejudice the interests of other licencees;

(d) to the extent necessitated by technological change or in the interest of ordely frequency management;

(e) in accordance with a decision made by the Authority in terms of section 17E of the ICASA Act following a finding and recommendation by the Complaints and Compliance Committee;

(f) where the Authority is satisfied that the amendment is necessary to ensure the achievement of the objectives of this Act;

(g) if the amendment relates to universal access or universal service and is necessary, in the opinion of the Authority, as a result of—

(i) changed circumstances in the market; or

(ii) lack of electronic communications network services, broadcasting services, or electronic communications services in specifically identified areas of the Republic.

(h) if the amendment is in pursuance of and in accordance with the regulations made under Chapter 10.

(2) The provisions of section 9 (2) to (6) apply, with the necessary changes, to the amendment of an individual licence.

11. Renewal of individual licence

(1) A licensee may, subject to the conditions of his or her individual licence, apply for the renewal of his or her individual licence in the manner prescribed by the Authority.

(2) The regulations prescribed by the Authority in terms of subsection (1) must specify, among other things, the form and content of applications for renewal and the time period for applying for renewal.

(3) Except as provided in this section, the provisions of section 9 (2) to (6) apply, with the necessary changes, to the renewal of an individual licence.

(4) Except for applications contemplated in subsection (9), the Authority must, subject to subsection (8), make its decision on the application for renewal prior to the expiration of the date specified in the licence.

(5) The Authority may prescribe any fees applicable to the renewal of an individual licence.

(6) Subject to subsection (7), the Authority must renew the individual licence on no less favourable terms and conditions as were applicable during its preceding period of validity except where the amendments meet the requirements set out in section 10.

(7) Subject to subsection (12), the Authority may refuse to renew a licence or may renew the licence on less favourable terms and conditions than those that were applicable during the preceding period of validity or renew the licence with terms and conditions that are not applicable to similar licences if the Authority determines that the licensee has materially and repeatedly failed to comply with—

(a) the terms and conditions of the licence;

(b) the provisions of this Act or of the related legislation; or

(c) any regulation made by the Authority.

(8) If the Authority refuses an application for renewal of the individual licence or renews the licence on less favourable terms and conditions, the Authority—

(a) must, as soon as practicable, inform the licensee by written notice, of its decision and the reasons for the decision;

(b) must provide the licensee with a reasonable opportunity to make written submissions to the Authority within a time period specified in the notice referred to in paragraph (a);

(c) may, upon receipt of the written submission from the licensee, review its decision to refuse the application for renewal;

(d) must notify the licensee of its decision after reviewing the application.

(9) The Authority may on good cause shown by the applicant, accept for filing, an application for renewal that is not submitted within the time period prescribed by the Authority in terms of subsection (2).

(10) An individual licence remains valid until such time as the Authority has made a decision on an application for renewal of such individual licence.

(11) Where the Authority grants renewal of the individual licence, such licence becomes effective on the date specified by the Authority unless a stay or equivalent order of a court of competent jurisdiction is granted.

(12) Where the Authority refuses the renewal of an individual licence, such refusal becomes effective, on the date specified in the notice given by the Authority to the licensee in terms of subsection (8)(d), unless a stay or equivalent order of a court of competent jurisdiction is granted.

12. Surrender of individual licence

A licensee may, at any time, by written notice, surrender an individual licence to the Authority in accordance with the requirements set out in the individual licence or in the manner prescribed by the Authority.

13. Transfer of individual licences or change of ownership

(1) An individual licence may not be assigned, ceded or transferred to any other person without the prior written permission of the Authority.

(2) An application for permission to assign, cede or transfer an individual licence may be made to the Authority in the prescribed manner.

(3) The Authority may by regulation, set a limit on, or restrict, the ownership or control of an individual licence, in order to—

(a) promote the ownership and control of electronic communications services by historically disadvantaged groups; or

(b) promote competition in the ICT sector.

(4) The Authority may, subject to Chapter 9, by regulation, set a limit on, or restrict, the ownership or control of an individual licence for broadcasting services in order to promote a diversity of views and opinions.

(5) Regulations contemplated in subsection (3) and (4) must be made—

(a) with due regard to the objectives of this Act, the related legislation and where applicable, any other relevant legislation; and

(b) after the Authority has conducted an inquiry in terms of section 4B of the ICASA Act, which may include, but is not limited to, a market study.

14. Suspension or cancellation of individual licence

(1) The Authority may suspend or cancel an individual licence granted in terms of this Act—

(a) where the licensee agrees in writing to such suspension or cancellation;

(b) in accordance with a decision made by the Authority in terms of section 17E of the ICASA Act; or

(c) where the licensee is placed in liquidation, whether voluntary or compulsory or is placed under judicial management, either provisionally or finally.

(2) The suspension or cancellation of an individual licence takes effect on the date set forth in a written notice of suspension or cancellation served on the licensee by the Authority.

(3) Once the suspension or cancellation of an individual licence has taken effect, the Authority must, as soon as practicable, publish the suspension or cancellation in the *Gazette*.

(4) A delay or failure to publish the notice of suspension or cancellation in the *Gazette*, does not in any manner affect the validity of the suspension or cancellation.

15. Effect of suspension, cancellation, surrender or expiry of individual licence

(1) Once—

(a) the suspension or cancellation of an individual licence under section 14 has taken effect;

(b) the surrender of an individual licence under section 12 has taken effect; or

(c) an individual licence has expired,

the licensee must immediately cease to provide any service in respect of which the licence was granted, unless such suspension or cancellation is stayed or an equivalent order of a court of competent jurisdiction is granted.

(2) Despite subsection (1), the Authority may authorise the licensee, in writing, to continue providing any service or any part thereof in respect of which the licence was granted, for such duration as the Authority may specify in the authorisation, for the purpose of winding up the licensee's affairs and protecting subscribers to such services.

(3) Despite subsection (1) and subject to section 11, a licensee, whose individual licence has expired, is entitled to continue providing a service as if the licence has not expired upon proof being submitted to the Authority that—

(a) the licensee has applied for the renewal of the licence in accordance with section 11; and

(b) such application is pending determination by the Authority.

16. Class licence

(1) The Authority may, upon receipt of a written registration in the manner prescribed and satisfying the conditions provided for in section 5 (8), grant a class licence.

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

(3) The Authority must maintain a register of all class licensees containing the information set out in subsection (5).

(4) The register must be available to the public.

(5) The Authority must at least once annually update and publish the list of class licensees in the *Gazette*, indicating for each class—

(a) the names and contact details of all registered licensees;

(b) the nature of the services provided; and

(c) the applicable licence terms and conditions.

(6) No class licence may be ceded or transferred without the prior written approval of the Authority.

17. Registration for class licence

(1) A person who intends to operate under a class licence must, in the manner prescribed, submit a registration notice in writing to the Authority.

(2) The registrant must pay to the Authority the registration fee prescribed by the Authority.

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

(a) the name of the accepted registrant;

(b) the nature of the service that the registrant proposes to provide; and

(c) the licence conditions applicable to the class licence.

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

(5) In any case where—

(a) the Authority fails to give notice of a delay to the registrant and fails to grant the class licence within the sixty (60) days as required in terms of subsection (4);

(b) the registrant has complied with the regulations prescribed in terms of section 5 (7) applicable to class licenses;

(c) the registrant satisfies the conditions provided for in section 5 (8); and

(d) the Authority has not declined to accept the registration notice for the class licence in terms of section 18,

the class licence is considered to have been granted by the Authority on the 61st day after receipt of the registration notice by the Authority.

(6) During the term of a class licence the licensee must ensure that the information contained in the register referred to in section 16 (3), remains accurate by filing and updating such information where—

(a) the licensee surrenders its class licence and ceases to provide the electronic communications network services, electronic communications services or broadcasting services licensed pursuant to such class licence; or

(b) the information contained in the register referred to in section 16 (3) is no longer accurate.

18. Refusal of registration for class licence

(1) The Authority may refuse to accept a registration for a class licence if—

(a) the registration does not contain the information prescribed by the Authority;

(b) the person is in contravention of this Act or the related legislation in relation to other licences that such person may hold; or

(c) the registration contains false or misleading information or misrepresentations of fact.

(2) Where a registration is refused, the Authority must, within sixty (60) days of receipt of the registration, send to the registrant, a written notice—

(a) stating the reasons for the refusal; and

(b) providing the registrant with an opportunity to correct and resubmit the registration.

19. Renewal of class licence

(1) All class licenses must have a term of validity not exceeding 10 (ten) years, unless specified to the contrary by the Authority.

(2) Class licensees seeking to renew their class licenses must, in writing and not less than six months prior to the expiration of their class licence, notify the Authority of their intention to continue to provide the services.

(3) The renewal notice contemplated in subsection (2) must be submitted to the Authority in the manner prescribed as contemplated in section 5 (7).

(4) Within sixty (60) days of the receipt of the written notice submitted in accordance with subsection (2), the Authority must update the register of class licences referred to in section 16 (3) to reflect the renewed licences.

(5) Where the Authority fails to update the register referred to in section 16 (3), the class licence is considered to have been renewed on the 61st day following receipt by the Authority of the class licensee's written notice.

Chapter 4
Electronic communications networks and electronic communications facilities

20. Application

(1) This chapter applies only to electronic communications network service licensees.

(2) An electronic communications network service licensee must perform its obligations in terms of this Chapter and in accordance with the regulations prescribed by the Authority.

21. Guidelines for rapid deployment of electronic communications facilities

(1) The Minister must, in consultation with the Minister of Provincial and Local Government, the Minister of Land Affairs, the Minister of Environmental Affairs, the Authority and other relevant institutions, develop guidelines for the rapid deployment and provisioning of electronic communications facilities.

(2) The guidelines must provide procedures and processes for—

(a) obtaining any necessary permit, authorisation, approval or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval or other governmental authority; and

(b) resolving disputes that may arise between an electronic communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.

22. Entry upon and construction of lines across land and waterways

(1) An electronic communications network service licensee may—

(a) enter upon any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic;

(b) construct and maintain an electronic communications network or electronic communications facilities upon, under, over, along or across any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway of the Republic; and

(c) alter or remove its electronic communications network or electronic communications facilities, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

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

23. Underground pipes for purposes of electronic communications network service

(1) If any local authority and an electronic communications network service licensee agree that the provision of the electricity supply and electronic communications network services to a particular area must be provided by means of an 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, provide a conduit pipe or other facility for the installation of an underground electronic communications facility from a point of connection on the street boundary to a building on those premises, in accordance with the requirements of the electronic communications network services licensee.

(2) The cost of the provision of the said conduit pipe or other facility—

(a) is payable to the local authority in question; and

(b) is, for the purpose of any law, considered 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.

24. Pipes under streets

(1) A electronic communications network service licensee may, after providing thirty (30) days prior written notice to the local authority or person owning or responsible for the care and maintenance of any street, road or footpath—

(a) construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for electronic communications network facilities under any such street, road or footpath;

(b) alter or remove any pipes, tunnels or tubes required for electronic communications network facilities under any such street, road or footpath and may for such purposes break or open up any street, road or footpath; and

(c) alter the position of any pipe, not being a sewer drain or main, for the supply of water, gas or electricity.

(2) The local authority or person to whom any such pipe belongs or by whom it is used is 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.

(3) The licensee must 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.

25. Removal of electronic communications network facilities

(1) If an electronic communications network service licensee finds it necessary to move any electronic communications facility, pipe, tunnel or tube 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 must be borne by that local authority or person.

(2) Where any electronic communications network facility passes over any private property or interferes with any building about to be erected on that property, the licensee must, on receiving satisfactory proof that a building is actually to be erected, deviate or alter the positioning of the electronic communications facility in such manner as to remove all obstacles to building operations.

(3) The owner of the property must, in writing, give notice that any such deviation or alteration is required to the electronic communications network service licensee, not less than 28 days before the alteration or deviation is to be effected.

(4) If any deviation or alteration of an electronic communications network facility, pipe, tunnel or tube constructed and passing over any private property is desired on any ground other than those contemplated in subsection (2), the owner of the property must give the electronic communications network service licensee written notice of 28 days, of such deviation or alteration.

(5) The electronic communications network service licensee must decide whether or not the deviation or alteration is possible, necessary or expedient.

(6) If the electronic communications network service licensee agrees to make the deviation or alteration as provided for in subsection (3), the cost of such deviation or alteration must be borne by the person at whose request the deviation or alteration is effected.

(7) If, in the opinion of the electronic communications network service licensee the deviation or alteration is justified, the licensee may bear the whole or any part of the said cost.

(8) Where a dispute arises between any owner of private property and a electronic communications network service licensee in respect of any decision made by a electronic communications network services licensee in terms of subsection (4), such dispute must be referred to the Complaints and Compliance Committee in accordance with section 17C of the ICASA Act.

26. Fences

(1) If any fence erected or to be erected on land over which an electronic communications network facility, pipe, tunnel or tube is constructed or is to be constructed by an electronic communications network service licensee renders or would render entry to that land impossible or inconvenient, the electronic communications network service licensee may at its own expense—

(a) erect and maintain gates in that fence; and

(b) provide duplicate keys for such gates, one set of which must be handed to the owner or occupier of the land.

(2) Any person intending to erect any such fence must give the electronic communications network service licensee notice in writing of not less than six weeks of his or her intention to erect such fence.

27. Trees obstructing electronic communications network facilities

(1) Any tree or vegetation which in the opinion of an electronic communications network service licensee—

(a) obstructs or interferes; or

(b) is likely to obstruct or interfere,

with the working or maintenance of any of the electronic communications network services licensees' electronic communications network or electronic communications facilities, pipes, tunnels or tubes, whether growing upon—

(i) State-owned land;

(ii) any road; or

(iii) private land,

must, after reasonable notice to the owner or occupier of the land, be cut down or trimmed by the authority responsible for the care and the management of such State-owned land, road or private land, in accordance with its requirements or by the owner or occupier of such private land, as the case may be, at the expense of the electronic communications network service licensee.

(2) In the event of failure to comply with a notice referred to in subsection (1)(b), the electronic communications network service licensee may cause the said tree or vegetation to be cut down or trimmed as the electronic communications network service licensee may consider necessary.

(3) Where the electronic communications network or electronic communications facility is actually interfered with or endangered by any such tree or vegetation, the licensee may remove such tree or vegetation without any such notice.

(4) In taking any action in terms of subsections (1), (2) or (3), due regard must be had to the environmental law of the Republic.

28. Height or depth of electronic communications network facilities

(1) (a) Aerial electronic communications networks or electronic communications facilities along any railway or public or private street, road, footpath or land must be at the prescribed height above the surface of the ground.

(b) The electronic communications network service licensee must place electronic communications networks and electronic communications facilities, pipes, tunnels and tubes at the prescribed depth below the surface of the ground.

(2) If the owner of any private land proves to the satisfaction of an electronic communications network service licensee that he or she is obstructed in the free use of his or her land because of the insufficient height or depth of any electronic communications network or electronic communications facility, pipe, tunnel or tube constructed by the electronic communications network service licensee, the electronic communications network service licensee may, subject to the provisions of sections 22 and 25, take such steps as he or she may consider 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 laws of the Republic.

29. Electrical works

(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, must—

(a) conform to the requirements of an electronic communications network service licensee for the prevention of damage to any of its electronic communications network and electronic communications facilities or works by such construction;

(b) before commencing the construction of any such railway or works, give 30 days prior written notice to the electronic communications network service licensee of his or her intention to commence the construction; and

(c) furnish the electronic communications network service licensee with—

(i) a plan of the proposed railway or works;

(ii) particulars showing the manner and position in which the railway or works are intended to be constructed, executed and carried on; and

(iii) such further information related to the proposed railway or works as the electronic communications network service licensee may require.

(2) If—

(a) it appears to the electronic communications network service licensee that the construction, equipment or operation of any such railway or works is likely to damage any of its electronic communications facilities or works; or

(b) any such electronic communications facilities or works are damaged by the construction, equipment or operation of any such railway or works,

the electronic communications network service licensee must give reasonable notice of its requirements to the person concerned.

(3) Any person who, after receiving the notice referred to in subsection (2), proceeds with or causes to be proceeded with any such construction, equipment or operation in contravention of the said requirements, may be liable to the electronic communications network service licensee for damages sustained by the electronic communications network service licensee as a result of a contravention of subsection (1).

Chapter 5
Radio frequency spectrum

30. Control of radio frequency spectrum

(1) In carrying out its functions under this Act and the related legislation, the Authority controls, plans, administers and manages the use and licensing of the radio frequency spectrum except as provided for in section 34.

(2) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority must—

(a) comply with the applicable standards and requirements of the ITU and its Radio Regulations, as agreed to or adopted by the Republic;

(b) take into account modes of transmission and efficient utilisation of the radio frequency spectrum, including allowing shared use of radio frequency spectrum when interference can be eliminated or reduced to acceptable levels as determined by the Authority;

(c) give high priority to applications for radio frequency spectrum where the applicant proposes to utilise digital electronic communications facilities for the provision of broadcasting services, electronic communications services, electronic communications network services, and other services licensed in terms of this Act or provided in terms of a licence exemption;

(d) plan for the conversion of analogue uses of the radio frequency spectrum to digital, including the migration to digital broadcasting in the Authority's preparation and modification of the radio frequency spectrum plan; and

(e) give due regard to the radio frequency spectrum allocated to security services.

(3) The Authority must, in performing its functions in terms of subsection (1), ensure that in the use of the radio frequency spectrum harmful interference to authorised or licensed users of the radio frequency spectrum is eliminated or reduced to the extent reasonably possible.

(4) The Authority must investigate and resolve all instances of harmful interference to licensed services that are reported to it.

31. Radio frequency spectrum licence

(1) Subject to subsections (5) and (6), no person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence granted by the Authority to such person in terms of this Act.

(2) A radio frequency spectrum licence is required in addition to any service licence contemplated in Chapter 3, where the provision of such service entails the use of radio frequency spectrum.

(3) The Authority may, taking into account the objects of the Act, prescribe procedures and criteria for awarding radio frequency spectrum licences for competing applications or instances where there is insufficient spectrum available to accomodate demand.

(4) The Authority may amend a radio frequency spectrum licence—

(a) to implement a change in the radio frequency plan;

(b) in the interest of orderly radio frequency spectrum management;

(c) to effect the migration of licensees in accordance with a revised radio frequency plan or the transition from analogue to digital broadcasting;

(d) if requested by the licensee concerned to the extent that the request is fair and does not prejudice other licensees; or

(e) with the agreement of the licensee.

(5) Subsection (1) does not apply to a person who utilises radio frequency spectrum—

(a) in the course of making due and proper use, as a subscriber, of an electronic communications service or electronic communications network service, the provision of which is licensed in terms of Chapter 3 or as a recipient of a service subject to a licence exemption;

(b) in the course of making due and proper use of an electronic communications service, the provision of which is licensed in terms of Chapter 3 as part of his or her duties in the service of the State or a local authority, including any military force, police service or traffic authority, in instances of force majeure; or

(c) in accordance with the regulations contemplated in subsection (6).

(6) The Authority may prescribe—

(a) types of radio apparatus the use or possession of which; or

(b) the circumstances in which the use or possession of radio apparatus, does not require a radio frequency spectrum licence, including, but not limited to radio frequency spectrum allocated for use in respect of radio astronomy and other scientific uses of radio frequency spectrum that have been coordinated and agreed to by the Authority.

(7) The Authority may, on its own initiative, take appropriate action to ensure compliance with the provisions of this Chapter.

(8) Subject to subsection (9), the Authority may withdraw any radio frequency spectrum licence when the licensee fails to utilise the allocated radio frequency spectrum in accordance with the licence conditions applicable to such licence.

(9) Before the Authority withdraws a radio frequency spectrum licence in terms of subsection (8), it must give the licensee prior written notice of at least 30 days and the licensee must have 7 (seven) business days in which to respond in writing to the notice (unless otherwise extended by the Authority) demonstrating that it is utilising the radio frequency spectrum in compliance with this Act and the licence conditions.

(10) The Authority, based on the written response of the licensee, must notify the licensee of its decision to withdraw or not to withdraw the licence.

32. Control of possession of radio apparatus

(1) No person may possess any radio apparatus unless he or she is—

(a) in possession of a radio frequency spectrum licence granted in terms of this Chapter; or

(b) exempted as prescribed in terms of section 31 (6).

(2) The Authority may, subject to this Act, the related legislation and other applicable law, enter onto property for purposes of inspecting radio apparatus in accordance with subsection (3).

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

(a) seal or alter such apparatus or any part thereof in order to—

(i) prevent the use of that radio apparatus for the purpose of transmission or reception; and

(ii) grant 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; or

(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) must be held by the Authority at the cost of the person from whom it was seized until—

(a) its possession is authorised in terms of section 31; or

(b) the matter is dealt with by a court of law.

33. Frequency co-ordination

(1) Holders of a radio frequency spectrum licence must, in good faith, co-ordinate their respective frequency usage with other such licensees to—

(a) avoid harmful interference among radio frequency spectrum licensees;

(b) ensure efficient use of any applicable frequency band; and

(c) allow for the provision of cost-efficient services.

(2) Where radio frequency spectrum licensees are unable or unwilling to co-ordinate in good faith in terms of subsection (1), the Authority must intervene and resolve the dispute.

(3) The Authority must prescribe regulations governing the co-ordination contemplated in subsection (1), which may include a process for the resolution of disputes among radio frequency spectrum licensees on an expedited basis.

34. Radio frequency plan

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

(a) the international allotment of radio frequency spectrum; and

(b) the international coordination of radio frequency spectrum usage,

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

(2) The Minister must approve the national radio frequency plan developed by the Authority, which must set out the specific frequency bands designated for use by particular types of services, taking into account the radio frequency spectrum bands allocated to the security services.

(3) The Authority must assign radio frequencies consistent with the national radio frequency plan for the use of radio frequency spectrum by licence holders and other services that may be provided pursuant to a licence exemption.

(4) The Authority must, within 12 months of the coming into force of this Act, prepare the national radio frequency plan or make appropriate modification to any existing radio frequency plan to bring it into conformity with this Act.

(5) The national radio frequency plan must be updated and amended when necessary in order to keep the plan current. When updating and amending this plan due regard must be given to the current and future usage of the radio frequency spectrum.

(6) The national radio frequency plan must—

(a) designate the radio frequency bands to be used for particular types of services;

(b) ensure 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 the radio frequency spectrum;

(d) aim at protecting radio frequency spectrum licensees from harmful interference;

(e) provide for flexibility and the rapid and efficient introduction of new technologies;

(f) aim at providing opportunities for the introduction of the widest range of services and the maximum number of users thereof as is practically feasible.

(7) In preparing the national radio frequency plan as contemplated in subsection (4), the Authority must—

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

(b) take into account existing uses of the radio frequency spectrum and any radio frequency band plans in existence or in the course of preparation; and

(c) consult with the Minister to—

(i) incorporate the radio frequency spectrum allocated by the Minister for the exclusive use of the security services into the national radio frequency plan;

(ii) take account of the government's current and planned uses of the radio frequency spectrum, including but not limited to, civil aviation, aeronautical services and scientific research; and

(iii) co-ordinate a plan for migration of existing users, as applicable, to make available radio frequency spectrum to satisfy the requirements of subsection (2) and the objects of this Act and of the related legislation.

(8) The Authority must give notice of its intention to prepare a national radio frequency plan in the *Gazette* 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.

(9) The Authority may, after the period referred to in subsection (8) has passed, hold a hearing in respect of the proposed national radio frequency plan.

(10) After the hearing, if any, and after due consideration of any written representations received in response to the notice mentioned in subsection (8) or tendered at the hearing, the Authority must forward the national radio frequency plan to the Minister for approval.

(11) The Minister must, within 30 days of receipt of the national radio frequency plan, either approve the plan, at which time the plan must become effective, or notify the Authority that further consultation is required.

(12) Upon approval of the national radio frequency plan by the Minister, the Authority must publish the plan in the *Gazette*.

(13) Any radio frequency plan approved in terms of this section and all the comments, representations and other documents received in response to the notice contemplated in subsection (8) or tendered at the hearing must be—

(a) kept at the offices of the Authority; and

(b) open for public inspection by interested persons during the normal office hours of the Authority.

(14) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of the radio frequency plan.

(15) The provisions of subsections (6) to (14) apply, with the necessary changes, in relation to any amendment made by the Authority to the radio frequency plan.

(16) The Authority may, where the national radio frequency plan identifies radio frequency spectrum that is occupied and requires the migration of the users of such radio frequency spectrum to other radio frequency bands, migrate the users to such other radio frequency bands in accordance with the national radio frequency plan, except where such migration involves governmental entities or organisations, in which case the Authority—

(a) must refer the matter to the Minister; and

(b) may migrate the users after consultation with the Minister.

Chapter 6
Technical equipment and standards

35. Approval of type

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

(2) The Authority may prescribe—

(a) the types of equipment, electronic communications facilities and radio apparatus, the use of which does not require approval where such equipment, electronic communications facilities and radio apparatus has been approved for use by the European Telecommunications Standards Associations or other competent standards body where the equipment complies with type approval standards prescribed by the Authority; and

(b) circumstances under which the use of equipment, electronic communications facilities, radio apparatus and subscriber equipment does not require approval, including uses for research and development, demonstrations of prototypes and testing.

36. Technical standards for equipment and electronic communications facilities

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

(2) Any such standard must be aimed at—

(a) protecting the integrity of the electronic communications network;

(b) ensuring the proper functioning of connected equipment or electronic communications facilities;

(c) ensuring interoperability, interconnectability and harmonisation; and

(d) avoiding harmful interference with the electronic communications network.

(3) (a) The regulations made in terms of subsection (1) may, for the purposes of this section and without publishing the text of the technical standard, incorporate any technical standard by reference to—

(i) the number, title and year of issue of the technical standard; or

(ii) other particulars by which the particular standard can be identified.

(b) Any technical standard incorporated as contemplated in paragraph (a) is considered to be a regulation to the extent that the technical standard is not contrary to the regulations.

(c) Whenever any technical standard is, at any time after its incorporation in terms of paragraph (a), amended or substituted by a competent national body, the regulation in terms of which such technical standard was incorporated in the regulations must, unless otherwise stated therein, be considered to refer to such technical standard as so amended or substituted, as the case may be.

(d) The Authority must keep the text of each—

(i) technical standard incorporated in the regulations in terms of paragraph (a); and

(ii) amendment or substitution of the text.

(e) The text of each incorporated technical standard must be open to inspection by the public during the normal office hours of the Authority.

(f) The Authority may, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy of the text.

Chapter 7
Interconnection

37. Obligation to interconnect

(1) Subject to section 38, any person licensed in terms of Chapter 3 must, on request, interconnect to any other person licensed in terms of this Act and persons providing service pursuant to a licence exemption in accordance with the terms and conditions of an interconnection agreement entered into between the parties, unless such request is unreasonable.

(2) Where the reasonableness of any request to interconnect is disputed, the person requesting interconnection may notify the Authority in accordance with the regulations prescribed in terms of section 38 and the Authority must, within 14 days of receiving the request, or such longer period as is reasonably necessary in the circumstances, determine the reasonableness of the request.

(3) For the purposes of subsection (1) a request is reasonable where the Authority determines that the requested interconnection—

(a) is technically and financially feasible; and

(b) will promote the efficient use of electronic communications networks and services.

(4) In the case of unwillingness or inability of a licensee to negotiate or agree on the terms and conditions of interconnection, either party may notify the Authority in writing and the Authority may—

(a) impose terms and conditions for interconnection consistent with this Chapter;

(b) propose terms and conditions consistent with this Chapter which, subject to negotiations among the parties, must be agreed to by the parties within such period as the Authority may specify; or

(c) refer the dispute to the Complaints and Compliance Committee for resolution on an expedited basis in accordance with the procedures prescribed in terms of section 38.

(5) For purposes of subsection (4), unless otherwise agreed in writing by the parties, a party is considered unwilling to negotiate or unable to agree if an interconnection agreement is not concluded within the time frames prescribed.

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

38. Interconnection regulations

(1) The Authority must prescribe regulations to facilitate the conclusion of interconnection agreements by stipulating interconnection agreement principles. The regulations may include any regulations referred to in section 39.

(2) Interconnection regulations and interconnection agreement principles must provide for a framework which may include a reference interconnection offer containing model terms and conditions for interconnection.

(3) The interconnection regulations and interconnection agreement principles may include, but are not limited to matters relating to—

(a) the time frame and procedure for—

(i) the negotiation of interconnection agreements;

(ii) the conclusion of an interconnection agreement; and

(iii) the technical implementation of the interconnection agreement;

(b) the quality, performance and level of service to be provided;

(c) subject to and in accordance with section 41, interconnection pricing principles;

(d) the provision of electronic communications facilities to establish points of interconnection;

(e) the sharing of technical information, including obligations imposed in respect of the disclosure of current and future electronic communications network planning activities;

(f) contractual dispute-resolution procedures;

(g) billing and settlement procedures;

(h) interconnection services such as support systems, calling line identification, signalling services, supervision, functionality, unbundling of interconnection services, fault reporting, co-operation in the event of faults and collocation;

(i) access and security arrangements;

(j) the framework for determining technical and financial feasibility and promotion of efficient use of the electronic communications networks and provision of services contemplated in section 37 (3);

(k) the requirement that a licensee negotiate and enter into an interconnection agreement with an applicant for an individual licence; and

(l) the manner in which interconnection services are to be unbundled and made separately available by licensees.

(4) Where the regulations require negotiations with an applicant as contemplated in subsection (3) (k), reference in this Chapter to a licensee seeking to interconnect must be considered to include a reference to an applicant.

(5) The interconnection regulations may exempt (in whole or in part) licensees from the obligation to interconnect under section 37 (1) where the Authority has not found such licensees to have significant market power in the relevant market or market segment in terms of Chapter 10.

(6) Where a licensee is exempt from the obligation to interconnect in terms of subsection (5) and such exempted licensee enters into an interconnection agreement with another exempted licensee, or a person providing services pursuant to a licence exemption, sections 37 (6) and 39 (3) and (4) do not apply to such an interconnection agreement.

39. Filing of interconnection agreements

(1) An interconnection agreement must be in writing and must be submitted to the Authority.

(2) An interconnection agreement becomes effective and enforceable upon filing with the Authority in the prescribed manner, unless—

(a) an order of a court of competent jurisdiction is granted against such agreement; or

(b) the Authority provides the parties with written notice of non-compliance in terms of subsection (5).

(3) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish that person with a copy of any interconnection agreement and the rates and charges contained in such agreement.

(4) The Authority must review an interconnection agreement submitted in terms of subsection (1) to determine whether the agreement is consistent with the regulations prescribed.

(5) Where the Authority determines that any term or condition of an interconnection agreement is not consistent with the regulations, the Authority must in writing—

(a) notify the parties of the non-complying terms and conditions; and

(b) direct the parties to agree on new terms and conditions consistent with the regulations.

(6) The parties must, upon reaching agreement and amending the non-complying terms and conditions of the interconnection agreement, submit the amended agreement to the Authority for consideration and review.

(7) The provisions of subsections (4) and (5) apply, with the necessary changes, to the consideration and review of the amended agreement by the Authority.

40. Notification of interconnection disputes

(1) A party to a dispute arising under an interconnection agreement that has been filed with the Authority may notify the Complaints and Compliance Committee in writing of the dispute and such dispute must be resolved, on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by the Authority.

(2) A party who is seeking to exercise his or her rights under subsection (1) may, at any time, withdraw the notice in writing.

(3) A decision by the Complaints and Compliance Committee concerning any dispute or a decision concerning a dispute contemplated in section 37 (4) (c) is, in all respects, effective and binding on the parties to the interconnection agreement unless an order of a court of competent jurisdiction is granted against the decision.

41. Interconnection pricing principles

The Authority may prescribe regulations establishing a framework of wholesale interconnection rates to be charged for interconnection services or for specified types of interconnection and associated interconnection services taking into account the provisions of Chapter 10.

42. Carrier pre-selection

(1) The Authority must make regulations—

(a) defining the electronic communications services subject to carrier preselection; and

(b) establishing a framework in terms of which—

(i) subscribers to an electronic communications service can access the electronic communications services of another electronic communications service licensee; and

(ii) electronic communications network service licensees must make the necessary electronic communications facilities available for the implementation and proper functioning of carrier pre-selection.

(2) The framework contemplated in subsection (1)(b) must be in force not later than 1 July 2006 and ensure that—

(a) electronic communications network service licensees implement, operate and maintain the necessary electronic communications facilities to successfully implement carrier pre-selection—

(i) in an efficient manner;

(ii) without undue delay; and

(iii) without discrimination; and

(b) electronic communications service licensees honour subscriber requests to access the electronic communications services of another electronic communications service licensee on non-discriminatory terms and without delay.

Chapter 8
Electronic communications facilities leasing

43. Obligation to lease electronic communications facilities

(1) Subject to section 44 (5) and (6), an electronic communications network service licensee must, on request, lease electronic communications facilities to any other person licensed in terms of this Act and persons providing services pursuant to a licence exemption in accordance with the terms and conditions of an electronic communications facilities leasing agreement entered into between the parties, unless such request is unreasonable.

(2) Where the reasonableness of any request to lease electronic communications facilities is disputed, the party requesting to lease such electronic communications facilities may notify the Authority in accordance with the regulations prescribed in terms of section 44.

(3) The Authority must, within 14 days of receiving the request, or such longer period as is reasonably necessary in the circumstances, determine the reasonableness of the request.

(4) For purposes of subsection (1), a request is reasonable where the Authority determines that the requested lease of electronic communications facilities—

(a) is technically and financially feasible; and

(b) will promote the efficient use of electronic communication networks and services.

(5) In the case of unwillingness or inability of an electronic communications network service licensee to negotiate or agree on the terms and conditions of an electronic communications facilities leasing agreement, either party may notify the Authority in writing and the Authority may—

(a) impose terms and conditions consistent with this Chapter;

(b) propose terms and conditions consistent with this Chapter which, subject to negotiations among the parties, must be agreed to by the parties within such period as the Authority may specify; or

(c) refer the dispute to the Complaints and Compliance Committee for resolution on an expedited basis in accordance with the procedures prescribed in terms of section 46.

(6) For the purposes of subsection (5), unless otherwise agreed in writing by the parties, a party is considered unwilling to negotiate or unable to agree if a facilities leasing agreement is not concluded within the time frames prescribed.

(7) The lease of electronic communications facilities by an electronic communications network service licensee in terms of subsection (1) must, unless otherwise requested by the leasing party, be non-discriminatory as among comparable types of electronic communications facilities being leased and not be of a lower technical standard and quality than the technical standard and quality provided by such electronic communications network service licensee to itself or to an affiliate.

(8) The Authority must prescribe a list of essential facilities including but not limited to—

(a) electronic communications facilities, including without limitation local loops, sub-loops and associated electronic communications facilities for accessing subscribers and provisioning services;

(b) electronic communications facilities connected to international electronic communications facilities such as submarine cables and satellite earth stations; and

(c) any other such facilities,

required to be leased by an electronic communications network service licensee in terms of subsection (1).

(9) The Authority must review the list of electronic communications facilities at least once every 36 (thirty six) months and, where the Authority finds market conditions warrant it, make modifications to such list after undertaking an inquiry in accordance with section 4B of the ICASA Act.

(10) An electronic communications network service licensee may not enter into any agreement or other arrangement with any person for access to, or use of, any international electronic communications facilities, including submarine cables and satellites, that—

(a) contains an exclusivity provision;

(b) contains provisions that create undue barriers to access to and use of such international communication facilities; or

(c) otherwise restricts any party to such agreement or other arrangement from—

(i) leasing;

(ii) selling; or

(iii) otherwise entering into an agreement with any licensee under this Act or person providing services pursuant to a licence exemption for access to, and use of, such international electronic communications facilities.

(11) Any exclusivity provision contained in any agreement or other arrangement that is prohibited under subsection (10) is invalid from a date to be determined by the Minister after consultation with relevant parties.

44. Electronic communications facilities leasing regulations

(1) The Authority must prescribe regulations to facilitate the conclusion of electronic communications facilities leasing agreements by stipulating electronic communications facilities leasing agreement principles and such regulations may include the regulations referred to in section 47.

(2) Electronic communications facilities leasing regulations and electronic communications facilities leasing agreement principles must provide for a framework which may include a reference

electronic communications facilities leasing offer containing model terms and conditions for electronic communications facilities listed in section 43 (8).

(3) Matters which the electronic communications facilities leasing regulations may address include but are not limited to—

(a) the time frame and procedures for—

(i) the negotiation of electronic communications facilities leasing agreements;

(ii) the conclusion of electronic communications facilities leasing agreements; and

(iii) the technical implementation of the electronic communications facilities leasing agreements;

(b) the quality, performance and level of service to be provided, including time to repair or restore, performance, latency and availability;

(c) subject to and in accordance with section 47, wholesale electronic communications facilities leasing rates and the manner in which the structure of fees and charges for such electronic communications facilities leasing must be determined;

(d) the sharing of technical information including obligations imposed in respect of the disclosure of current and future electronic communications network planning activities;

(e) contractual dispute resolution procedures;

(f) billing and settlement procedures;

(g) the list of electronic communications facilities contemplated in section 43 (8) as reviewed and modified as contemplated in section 43 (9);

(h) services associated with leasing electronic communications facilities such as support systems, collocation, fault reporting, supervision, functionality, unbundling, and co-operation in the event of fault;

(i) access and security arrangements;

(j) the framework in accordance with which an electronic communications network service licensee may refuse a request to lease electronic communications facilities due to such electronic communications network service licensees' planned expansion of its electronic communications network;

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

(l) the requirement that an electronic communications network service licensee negotiate and enter into an electronic communications facilities leasing agreement with an applicant for an individual licence; and

(m) the manner in which unbundled electronic communications facilities are to be made available.

(4) Where the regulations require negotiations with an applicant in terms of subsection (3)(l), a reference in this Chapter to a licensee seeking to lease electronic communications facilities must be considered to include such applicant.

(5) The electronic communications facilities leasing regulations may exempt (in whole or in part) electronic communications network service licensees from the obligation to lease electronic communications facilities in terms of section 43 (1) where the Authority has not found, in terms of Chapter 10, such electronic communications network service licensees to have significant market power in the relevant market or market segment.

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

(7) Despite a finding of significant market power, for purposes of promoting investment in new fibre electronic communications networks, the Authority may exempt an electronic communications network service licensee from the obligation to lease fibre loops and sub-loops serving residential premises if the electronic communications network service licensee meets the following requirements:

(a) The new fibre loops and sub-loops, as applicable, have been, or will be, constructed and placed in operation after the coming into force of this Act;

(b) the new fibre loops and sub-loops, as applicable, are, or will be—

(i) constructed in, and serve, a geographic area that, at the time of construction, is not then served by the electronic communications network service licensee and such electronic communications network service licensee has no obligation to serve such geographic area; or

(ii) constructed in, and serve, a geographic area that, at the time of construction, is then served by the electronic communications network service licensee and such electronic communications network service licensee maintains and continues to support its existing electronic communications facilities in the geographic area and to make such existing electronic communications facilities available for lease in accordance with the obligations under this Chapter and electronic communications facilities leasing regulations; and

(c) the electronic communications network service licensee has not entered into any exclusive arrangement with the owner of the property, local authority or any other person or persons exercising control over the geographic area or parts thereof barring or impeding the construction of competing electronic communications networks in the geographic area.

45. Filing of electronic communications facilities leasing agreements

(1) An electronic communications facilities leasing agreement must be in writing and must be submitted to the Authority.

(2) Electronic communications facilities leasing agreements are effective and enforceable upon being filed with the Authority in the prescribed manner unless an order of a court of competent jurisdiction is granted against such agreement or the Authority provides the parties with written notice of non-compliance in terms of subsection (6).

(3) The Authority must publish electronic communications facilities leasing agreements submitted in terms of subsection (1).

(4) The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish that person with a copy of any electronic communications facilities leasing agreement.

(5) The Authority must review electronic communications facilities leasing agreements submitted in terms of subsection (1) to determine whether such agreements are consistent with the regulations prescribed.

(6) Where the Authority determines that any term or condition of an electronic communications facilities leasing agreement is not consistent with the regulations, the Authority must in writing—

(a) notify the parties of the non-complying terms and conditions; and

(b) direct the parties to agree on new terms and conditions consistent with the regulations.

(7) The parties must, upon reaching agreement and amending the non-complying terms and conditions of the electronic communications facilities leasing agreement, submit the amended agreement to the Authority for consideration and review.

(8) The provisions of subsections (5) and (6) apply, with the necessary changes, to such consideration and review of the amended agreement by the Authority.

46. Notification of electronic communications facilities leasing agreement disputes

(1) A party to a dispute arising out of an electronic communications facilities leasing agreement may notify the Authority in writing of the dispute and such dispute must be resolved, on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by the Authority.

(2) A party who notifies the Authority of a dispute in terms of subsection (1) may, at any time, withdraw the notice in writing.

(3) A decision by the Complaints and Compliance Committee concerning any dispute or a decision concerning a dispute contemplated in section 43 (5) (c) is, in all respects, effective and binding on the parties to the electronic communications facilities leasing agreement unless an order of a court of competent jurisdiction is granted against the decision.

47. Facilities leasing pricing principles

The Authority may prescribe regulations establishing a framework for the establishment and implementation of wholesale rates applicable to specified types of electronic communication facilities and associated services taking into account the provisions of Chapter 10.

Chapter 9
Broadcasting services

48. Application

This chapter applies only to broadcasting service licensees.

49. Public broadcasting service licences

In considering the grant of a new public broadcasting service licence the Authority must, with due regard to the objects and principles enunciated in section 2, among others, take into account the following:

(a) The demand for the proposed broadcasting service within the proposed licenced area;

(b) The need for the proposed broadcasting service within such area, having regard to broadcasting services already existing in that area; and

(c) The technical quality of the proposed broadcasting service in regard to developments in broadcasting technology.

50. Community broadcasting service licences

In considering the grant of a new community broadcasting service licence the Authority must, with due regard to the objects and principles enunciated in section 2, among others, take into account whether—

(a) the applicant is fully controlled by a non-profit entity and carried on or is to be carried on for non-profit purposes;

(b) the applicant intends to serve the interests of the relevant community;

(c) as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support must be measured according to such criteria as may be prescribed;

(d) the applicant intends to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and

(e) the applicant has never been convicted of an offence in terms of this Act or the related legislation.

51. Commercial broadcasting service licences

In considering the grant of a new commercial broadcasting service licence the Authority must, with due regard to the objects and principles enunciated in section 2, among others take into account the following:

(a) The demand for the proposed broadcasting service within the proposed licence area;

(b) The need for the proposed broadcasting service within such licence area, having regard to the broadcasting services already existing in that area;

(c) The expected technical quality of the proposed broadcasting service, having regard to developments in broadcasting technology;

(d) The capability, expertise and experience of the applicant;

(e) The financial means and business record of the applicant;

(f) The business record of persons in a position to control the operations of the licensee, either in an individual capacity or directly or indirectly in relation to management or corporate structure;

(g) The applicant's record and the record of those persons referred to in paragraph (f), in relation to situations requiring trust and candour;

(h) Whether the applicant is precluded, in terms of section 64 from holding a broadcasting service licence; and

(i) Whether either the applicant or persons referred to paragraph (j) have been convicted of an offence in terms of this Act or the related legislation.

52. Prohibition on granting of broadcasting service licence to party-political entities

No broadcasting service licence may be granted to any party, movement, organisation, body or alliance which is of a party-political nature.

53. Record of programmes broadcast by broadcasting service licensees

(1) A broadcasting service licensee must—

(a) on demand by the Authority, produce to the Authority any recording of every programme broadcast in the course of his or her broadcasting service for examination or reproduction, within 60 days from the date of broadcast;

(b) on demand of the Complaints and Compliance Committee, produce to the Complaints and Compliance Committee any script or transcript of a programme after the broadcast of the programme.

(2) Nothing in this Act may be construed as requiring or authorising the Authority or the Complaints and Compliance Committee, in the performance of its functions, to view programmes prior to their being broadcast.

54. Code of conduct for broadcasting service licensees

(1) The Authority must, as soon as reasonably possible after the coming into effect of this Act and subject to this Act, review existing regulations, and prescribe regulations setting out a code of conduct for broadcasting service licensees.

(2) Subject to the provisions of subsection (3), all broadcasting service licensees must adhere to the code of conduct for broadcasting service licensees as prescribed.

(3) The provisions of subsection (2) do not apply to a broadcasting service licensee who is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

55. Control over advertisements

(1) All broadcasting service licensees must adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa.

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

(3) Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority, is found to have breached the Code, such broadcasting licensee must be dealt with in accordance with applicable provisions of the ICASA Act.

56. Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

A party election broadcast and a political advertisement must not be broadcast on any broadcasting service except during an election period and then only if, and to the extent authorised by the provisions of sections 57 and 58.

57. Broadcasting of party election broadcasts on public broadcasting services

(1) Subject to the provisions of this section, a public broadcasting service licensee must permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.

(2) The Authority must determine the time to be made available to political parties for the purposes of subsection (1), including the duration and scheduling of party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question.

(3) The Authority must consult with the relevant public broadcasting service licensee and all the political parties prior to making any determination in terms of subsection (2).

(4) In making any determination in terms of subsection (2), the Authority may impose such conditions on a public broadcasting service licensee with respect to party election broadcasts as it considers necessary, having due regard to the fundamental principle that all political parties are to be treated equitably.

(5) A party election broadcast may not contain any material which may reasonably be anticipated to expose the broadcasting service licensee to legal liability if such material were to be broadcast.

(6) A party election broadcast must conform to a technical quality acceptable to the Authority.

(7) No party election broadcast may be broadcast later than 48 hours prior to the commencement of the polling period.

(8) A commercial or community broadcasting service licensee is not required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section applies, with the necessary changes.

58. Political advertising on broadcasting services

(1) A broadcasting service licensee is not required to broadcast a political advertisement, but if he or she elects to do so, he or she must afford all other political parties, should they so request, a like opportunity.

(2) A broadcasting service licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorised representative.

(3) In making advertising time available to political parties, no broadcasting service licensee may discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(4) A political advertisement may not contain any material which may reasonably be anticipated to expose the broadcasting service licensee to legal liability if such material were to be broadcast.

(5) A political advertisement must conform to a technical quality acceptable to the Authority.

(6) No political advertisement may be broadcast later than 48 hours prior to the commencement of the polling period.

(7) This section is subject to the provisions of any law relating to the expenditure of political parties during an election period.

59. Equitable treatment of political parties by broadcasting service licensees during election period

(1) If, during an election period, the coverage of any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting services licensee concerned must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service—

(a) without such party having been afforded an opportunity to respond thereto in such programme; or

(b) without the view of such political party having been reflected therein, the broadcasting services licensee concerned must afford such party a reasonable opportunity to respond to the criticism.

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting services licensee intends broadcasting a programme in which a particular political party is criticised, the licensee must ensure that the political party in question is given a reasonable opportunity to—

(a) respond thereto in the same programme; or

(b) respond thereto as soon as is reasonably practicable thereafter.

(4) Subsection (3) does not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 57 and any political advertisement in the circumstances contemplated in section 58.

60. Restriction on subscription broadcasting services

(1) Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time, by the Authority, after consultation with the Minister and the Minister of Sport and in accordance with the regulations prescribed by the Authority.

(2) In the event of a dispute arising concerning subsection (1), any party may notify the Authority of the dispute in writing and such dispute must be resolved on an expedited basis by the Authority in accordance with the regulations prescribed by the Authority.

(3) The Authority must prescribe regulations regarding the extent to which subscription broadcast services must carry, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee.

(4) Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue.

61. Preservation of South African programming

(1) The Authority may prescribe regulations applicable to broadcasting service licensees regarding the commissioning of independently produced South African programming.

(2) For purposes of this section—

(a) "local television content" means a television programme, excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements, which is produced—

(i) by a broadcasting service licensee;

(ii) by a person who is a citizen of, and permanently resident in, the Republic;

(iii) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;

(iv) in a co-production in which persons referred to in subparagraphs (i), (ii) or (iii) have at least a fifty percent financial interest;

(v) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently resident in, the Republic; or

(vi) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;

(b) "independent television production" means a production of local television content—

(i) by a person not directly or indirectly employed by any broadcasting service licensee; or

(ii) by a person who is not controlled by or is not in control of any broadcasting service licensee; and

(c) a musical work broadcast by a broadcasting service licensee qualifies as "South African music" if such work complies with at least two of the following criteria, namely—

(i) if the lyrics (if any) were written by a South African citizen;

(ii) if the music was written by a South African citizen;

(iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;

(iv) if the musical work consists of a live performance which is—

(aa) recorded wholly in the Republic; or

(bb) performed wholly in the Republic and broadcast live in the Republic.

(3) The Authority may, in respect of the television broadcasting service licence, impose and specify in that licence, such conditions, as prescribed, regarding local television content and independent television production, which without derogating from the generality of the foregoing, may include any conditions requiring the broadcasting service licensee—

(a) to annually expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of its gross revenue, on programmes which have local television content;

(b) to allocate a specified minimum percentage of its total broadcasting time to television programmes which have local television content;

(c) in the case where the broadcasting service licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes which have been produced in the relevant region or locality; and

(d) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b) or (c), whichever is applicable, to a prescribed diversity of television programmes which are independent television productions.

(4) The Authority may, in relation to a sound broadcasting service, prescribe conditions in terms of which the broadcasting service licensee is required to broadcast a specified minimum percentage of musical works which qualify as South African music.

(5) in prescribing any amount or percentage in terms of subsections (3) or (4), the Authority may prescribe the application thereof with regard to—

(a) any of the categories of broadcasting service licence referred to in sections 49, 50 and 51;

(b) defined viewing and listening times, where applicable;

(c) various categories of television programmes, where applicable; and

(d) the period within which the broadcasting service licensee must comply with the provisions of this section.

62. Broadcasting signal distribution objectives

(1) Where an electronic communications network service licensee provides broadcasting signal distribution or multi-channel distribution services, such provider must, subject to the general terms and conditions of its licence as determined by the Authority—

(a) give priority to the carriage of South African broadcasting channels, which includes local programming where the Authority considers it appropriate;

(b) provide universal access for all South Africans to broadcasting services;

(c) provide a diversity of type of broadcasting services;

(d) be open, interoperable and harmonised with the Southern African region, and be able to meet international distribution standards.

(2) An electronic communications network service licensee that provides broadcasting signal distribution or multi-channel distribution services must—

(a) comply with the provisions of this Act and the frequency plan of the Authority;

(b) provide broadcasting signal distribution only to a broadcasting service provided under an appropriate and valid broadcasting licence; and

(c) take due cognisance of the environmental impact of his or her operational activities and comply with all applicable laws relating to the protection of the environment.

(3) A common carrier must—

(a) subject to its technological capacity to do so and to the provisions of paragraph (b), provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis;

(b) in determining its tariffs, duly take into account the following:

(i) the different categories of broadcasting service licenses referred to in sections 49, 50 and 51; and

(ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate;

(c) carry public broadcasting services, including educational, commercial and community services.

63. Self provisioning by broadcasting service licensees

(1) Broadcasting service licensees may self provide their broadcasting signal distribution upon obtaining an electronic communications network services licence.

(2) A broadcasting service licensee may also provide any electronic communications service upon obtaining an electronic communications services licence.

(3) A broadcasting service licensee may not provide a broadcasting service utilising any portion of the radio frequency spectrum without first obtaining a radio frequency spectrum licence in terms of this Act.

64. Limitations on foreign control of commercial broadcasting services

(1) A foreigner may not, whether directly or indirectly—

(a) exercise control over a commercial broadcasting licensee; or

(b) have a financial interest or an interest either in voting shares or paid-up capital in a commercial broadcasting licensee, exceeding twenty (20) percent.

(2) Not more than twenty (20) percent of the directors of a commercial broadcasting licensee may be foreigners.

65. Limitations on control of commercial broadcasting services

(1) No person may—

(a) directly or indirectly exercise control over more than one commercial broadcasting service licence in the television broadcasting service; or

(b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one commercial broadcasting service licence in the television broadcasting service; or

(c) be in a position to exercise control over a commercial broadcasting service licence in the television broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service license in the television broadcasting service.

(2) No person may—

(a) be in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting service;

(b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting service;

(c) be in a position to exercise control over two commercial broadcasting service licences in the FM sound broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting licence in the FM sound broadcasting service.

(3) A person referred to in subsection (2) must not be in a position to control two commercial broadcasting service licences in the FM sound broadcasting service, which either have the same licence areas or substantially overlapping licence areas.

(4) No person may—

(a) be in a position to exercise control over more than two commercial broadcasting service licences in the AM sound broadcasting service;

(b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial broadcasting service licences in the AM sound broadcasting services; or

(c) be in a position to exercise control over two commercial broadcasting service licences in the AM sound broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting service licence in the AM sound broadcasting service.

(5) No person referred to in subsection (4) may be in a position to control two commercial broadcasting service licences in the AM sound broadcasting service, which either have the same licence areas or substantially overlapping licence areas.

(6) The Authority may, on application by any person, on good cause shown and without departing from the objects and principles enunciated in section 2, exempt such person from the provisions of subsections (1) to (5).

(7) The Authority may, whenever the Authority considers it necessary in view of the developments in broadcasting technology or for the purposes of advancing the objects and principles enunciated in section 2, institute and conduct a public inquiry and make recommendations to the Minister regarding the amendment of any of the provisions of subsections (1) to (6).

(8) The recommendations contemplated in subsection (7) must be tabled in the National Assembly by the Minister within 14 days of receipt thereof, if the National Assembly is then in session, or if the National Assembly is not in session, within 14 days after the commencement of its next ensuing session.

66. Limitations on cross-media control of commercial broadcasting services

(1) Cross-media control of broadcasting services must be subject to such limitations as may from time to time be determined by the National Assembly acting on the recommendation of the Authority, after consultation with the Minister, in accordance with the provisions of the Constitution.

(2) No person who controls a newspaper, may acquire or retain financial control of a commercial broadcasting service licence in both the television broadcasting service and sound broadcasting service.

(3) No person who is in a position to control a newspaper may be in a position to control a commercial broadcasting service licence, either in the television broadcasting service or sound broadcasting service, in an area where the newspaper has an average ABC circulation of twenty (20%) percent of the total newspaper readership in the area, if the licence area of the commercial broadcasting service licence overlaps substantially with the said circulation area of the newspaper.

(4) In this section "Substantial overlap" means an overlap by fifty (50%) percent or more.

(5) A twenty (20%) percent shareholding in a commercial broadcasting service licence, in either the television broadcasting service or sound broadcasting service, is considered as constituting control.

(6) The Authority may, on good cause shown and without departing from the objects and principles enunciated in section 2, exempt affected persons from any of the limitations provided for in this section.

(7) The Authority may, whenever the Authority considers it necessary in view of the developments in broadcasting technology or for the purposes of advancing the objects and principles enunciated in section 2, institute and conduct a public inquiry and make recommendations to the Minister regarding amendment of any of the provisions of subsections (1) to (6).

(8) The recommendations contemplated in subsection (7) must be tabled in the National Assembly by the Minister within 14 days of receipt thereof if the National Assembly is then in session, or if the National Assembly is not in session, within 14 days after the commencement of its next ensuing session.

(9) A determination made in terms of subsection (1), whether or not pursuant to an inquiry by the Authority, is not applicable to, and is not enforceable against, any broadcasting service licensee to which such determination relates for the duration of the term of the licence valid at the time such determination is made, but becomes applicable to, and enforceable against, such a broadcasting service licensee only upon the renewal of its licence upon the expiration of such term.

Chapter 10
Competition matters

67. Competition matters

(1) Where the Authority determines that the holder of a licence under this Act or a person providing a service pursuant to a licence exemption has engaged in an act or intends to engage in any act that is likely to substantially prevent or lessen competition by, among other things,—

(a) giving an undue preference to; or

(b) causing undue discrimination against,

any other licensee or person providing a service pursuant to a licence exemption, the Authority may direct the licensee, by written notice, to cease or refrain from engaging in such act.

(2) The Authority must prescribe regulations—

(a) setting out what actions in terms of subsection (1) would be considered by the Authority as giving undue preference to or causing undue discrimination against another licensee or person providing a service pursuant to a licence exemption;

(b) detailing procedures for complaints and the monitoring and investigation of such actions that ensure the protection of the interests of consumers;

(c) indicating the penalties that may be imposed for failure to comply with a written notice to cease or refrain from taking such actions as prescribed in terms of subsection (2) (a).

(3) The regulations prescribed in terms of subsection (2) must specify that—

(a) the Authority may refrain in whole or in part from the exercise of any power or the performance of any function under subsection (1) where the Authority finds, as a question of fact, that to refrain would be consistent with South African electronic communications and broadcasting policy objectives contained in section 2;

(b) no ruling may be made unless, as a question fact, the Authority is satisfied that the service or class of services in question, is or will be subject to competition sufficient to protect the interests of users; and

(c) the Authority must not make a ruling if the Authority finds, as a question of fact, that to refrain would be likely to impair the establishment or continuance of a competitive market for that service or class of service.

(4) The Authority must prescribe regulations defining the relevant markets and market segments, as applicable, that pro-competitive conditions may be imposed upon licensees having significant market power where the Authority determines such markets or market segments have ineffective competition. The regulations must, among other things—

(a) define and identify the retail or wholesale markets or market segments in which it intends to impose pro-competitive measures in cases where such markets are found to have ineffective competition;

(b) set out the methodology to be used to determine the effectiveness of competition in such markets or market segments, taking into account subsection (8);

(c) set out the pro-competitive measures the Authority may impose in order to remedy the perceived market failure in the markets or market segments found to have ineffective competition taking into account subsection (7);

(d) declare licensees in the relevant market or market segments, as applicable, that have significant market power, as determined in accordance with subsection (6), and the pro-competitive conditions applicable to each such licensee;

(e) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments, taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and

(f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments.

(5) A licensee has significant market power with regard to the relevant market or market segment where the Authority finds that the particular individual licensee or class licensee—

(a) is dominant;

(b) has control of essential facilities; or

(c) has a vertical relationship that the Authority determines could harm competition in the market or market segments applicable to the particular category of licence.

(6) The methodology contemplated in subsection (4) (b) must include but is not limited to an assessment of the following:

(a) When defining the relevant market or market segments the Authority must consider the non-transitory (structural, legal, or regulatory) entry barriers to the applicable markets or market segments and the dynamic character and functioning of the subject markets or market segments;

(b) When conducting an analysis of the effectiveness of competition in the relevant markets or market segments the Authority must take the following factors, among others, into account:

(i) An assessment of relative market share of the various licensees in the defined markets or market segments; and

(ii) A forward looking assessment of the market power of each of the market participants over a reasonable period in terms of, amongst others:

(aa) actual and potential existence of competitors;

(bb) the level, trends of concentration, and history of collusion, in the market;

(cc) the overall size of each of the market participants;

(dd) control of essential facilities;

(ee) technological advantages or superiority of a given market participant;

(ff) the degree of countervailing power in the market;

(gg) easy or privileged access to capital markets and financial resources;

(hh) the dynamic characteristics of the market, including growth, innovation, and products and services diversification;

(ii) economies of scale and scope;

(jj) the nature and extent of vertical integration;

(kk) the ease of entry into the market, including market and regulatory barriers to entry.

(7) Pro-competitive terms and conditions may include but are not limited to—

(a) an obligation to act fairly and reasonably in the way in which the licensee responds to requests for access, provisioning of services, interconnection and facilities leasing;

(b) a requirement that the obligations contained in the licence terms and pro-competitive conditions must be complied with within the periods and at the times required by or under such terms and conditions, failing which a penalty may be imposed;

(c) a prohibition against discriminating in relation to matters connected with access, provisioning of services, interconnection and facilities leasing;

(d) an obligation requiring the licensee to publish, in such manner as the Authority may direct, all such information for the purpose of ensuring transparency in relation to—

(i) access, interconnection and facilities leasing; or

(ii) the provision of electronic communications network services, electronic communications services or any other service offered by the licensee applicable to the relevant market or market segments at issue;

(e) an obligation to publish, in such manner as the Authority may direct, the terms and conditions for—

(i) access, interconnection and facilities leasing; or

(ii) the provision of electronic communications network services, electronic communications services or any other service offered by the licensee applicable to the relevant market or market segments at issue which may take the form of a reference offer;

(f) an obligation to maintain a separation for accounting purposes between different matters relating to—

(i) access, interconnection and facilities leasing;

(ii) the provision of electronic communications network services, electronic communications services or any other service offered by the licensee applicable to the relevant market or market segments at issue; and

(iii) retail and wholesale prices;

(g) a requirement relating to the accounting methods to be used in maintaining the separation of accounts referred to in paragraph (f);

(h) such price controls, including requirements relating to the provision of wholesale and retail prices in relation to matters connected with the provision of—

(i) access, interconnection and facilities leasing; or

(ii) electronic communications network services, electronic communications services or any other service offered by the licensee applicable to the relevant market or market segments at issue;

(i) matters relating to the recovery of costs and cost orientation and with regard to broadcasting services, the appropriate amount of South African programming, including—

(i) music content;

(ii) news and information programmes; and

(iii) where appropriate, programming of local or regional significance;

(j) matters relating to the accounts, records and other documents to be kept and made available for inspection by the Authority.

(8) Review of pro-competitive conditions:

(a) Where the Authority undertakes a review of the pro-competitive conditions imposed upon one or more licensees under this subsection, the Authority must—

(i) review the market determinations made on the basis of earlier analysis; and

(ii) decide whether to modify the pro-competitive conditions set by reference to a market determination;

(b) Where, on the basis of a review under this subsection, the Authority determines that a licensee to whom any pro-competitive conditions apply is no longer a licensee possessing significant market power in that market or market segment, the Authority must revoke the applicable pro-competitive conditions applied to that licensee by reference to the previous market determination based on earlier analysis;

(c) Where, on the basis of such review, the Authority determines that the licensee to whom pro-competitive conditions apply continues to possess significant market power in that market or market segment, but due to changes in the competitive nature of such market or market

segment the pro-competitive conditions are no longer proportional in accordance with subsection (7), the Authority must modify the applicable pro-competitive conditions applied to that licensee to ensure proportionality.

(9) Subject to the provisions of this Act, the Competition Act applies to competition matters in the electronic communications industry.

(10) The Authority is, for the purposes of the Competition Act, a regulatory authority defined in section 1 of that Act.

(11) The Authority may ask for and receive from the Competition Commission, assistance or advice on relevant proceedings of the Authority, including proceedings under this Chapter.

(12) The Competition Commission may ask for and receive from the Authority, assistance or advice on relevant proceedings of the Competition Commission.

Chapter 11
Numbering

68. Numbering plans and number portability

(1) The Authority must make regulations prescribing—

(a) a numbering plan which must be amended and updated as the Authority considers necessary —

(i) for efficient use and allocation of numbers; and

(ii) to accommodate the varied protocols used and services provided by licensees under this Act; and

(b) measures to ensure that number portability is introduced in 2005 or soon thereafter, as far as is practicably possible, including—

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

(ii) cost allocation and cost recovery among licensees.

(2) A numbering plan must consist of a scheme of identification so as to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended.

(3) Subject to subsection (7), the Authority must, in preparing a numbering plan, take account of existing numbering plans or schemes.

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

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

(6) Every individual electronic communications service licensee and individual electronic communications network service licensee, as applicable, must submit information on all numbers, including numbers of pre-paid subscribers allocated in terms of its licence, to the Authority.

(7) The regulations made in terms of subsection (1) must include matters relating to—

(a) the fees licensees must pay for the allocation of numbers to recover administration costs;

(b) the conditions under which a licensee may be required to surrender unused numbers to the Authority for reallocation;

(c) the allocation of responsibility between electronic communications service licensees and electronic communications network service licensees for the implementation of the numbering plan and number portability to—

(i) ensure effective functionality;

(ii) ensure access and routing within electronic communications networks; and

(iii) allow licensees to assign numbers to subscribers and transfer numbers when subscribers change services in an efficient manner without unreasonable delay or disruption of service;

(d) the protection for consumers including disclosure of consumer rights relating to—

(i) numbers and number portability; and

(ii) the process and procedures to be followed for resolving subscriber complaints and affording subscribers remedies in the form of discounts and credits when the electronic communications network service licensee or electronic communications services licensee fails to meet its obligations under this section; and

(e) a framework, including a schedule for transforming the numbering plan to a non-geographic numbering system taking into account similar non-geographic numbering plans adopted in other jurisdictions and implementation of electronic numbering, allowing the inter-operation between telephone numbers and the Internet domain name system.

Chapter 12
Consumer issues

69. Code of conduct, end-user and subscriber service charter

(1) The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out a code of conduct for licensees subject to this Act and persons exempted from holding a licence in terms of section 6 to the extent such persons provide a service to the public.

(2) The Authority may develop different codes of conduct applicable to different types of services. All electronic communications network services licence and electronic communications service licensees must comply with the Code of Conduct for such services as prescribed.

(3) The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out the minimum standards for and end-user and subscriber service charters.

(4) The Authority may develop different minimum standards for and end-user and subscriber service charters for different types of services.

(5) The matters which an end-user and subscriber service charter may address include, but are not limited to—

(a) the provision of information to end-users and subscribers regarding services, rates, and performance procedures;

(b) provisioning and fault repair services;

(c) the protection of private end-user and subscriber information;

(d) end-user and subscriber charging, billing, collection and credit practices;

(e) complaint procedures and the remedies that are available to address the matters at issue; and

(f) any other matter of concern to end-users and subscribers.

(6) Where an end-user or subscriber is not satisfied after utilising the complaint procedures set out in the regulations, his or her complaint may be submitted to the Authority in accordance with the provisions of section 17C of the ICASA Act.

70. People with disabilities

The Authority must prescribe regulations setting out a code on people with disabilities that will be applicable to all categories of licences.

71. Consumer advisory panel

(1) The Authority must establish a consumer advisory panel that will advise the Authority on matters relating to consumer issues in the Republic.

(2) The constitution of the consumer advisory panel must be as prescribed.

Chapter 13
General

72. Establishment of Electronic Communications and ICT Museum, information communication technology for government and other related services

(1) The Director-General must establish and manage a museum that depicts the evolution and the history of the communications and information communication technology sectors in South Africa.

(2) The museum and its contents are part of the national estate as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

(3) The contents of the museum housed in the Telkom Museum on Telecommunication History must be transferred to the museum established in terms of subsection (1).

(4) The Minister must, after consultation with the cabinet member responsible for government communications, establish a centre for government departments and entities to communicate with the public to ensure efficiency in administrative services.

(5) The centre must also serve as the directory of contact using SMS and other related services.

(6) The Authority must allocate a four-digit number through which the public can access government directory information services free of charge.

(7) The cost of providing the government directory information service must be borne by the licensee.

73. E-rate

(1) Internet services, provided to all public schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), and all public further education and training institutions as defined in the Further Education and Training Act, 1998 (Act No. 98 of 1998), must be provided at a minimum discounted rate of 50% off the total charge levied by the licensee providing Internet services to such institutions.

(2) The discount is applicable of the total charge levied by the licensee which includes but is not limited to the following:

(a) Any connectivity charges for access to the Internet;

(b) charges for any equipment used for or in association with connectivity to the Internet; and

(c) all calls made to an Internet Service Provider.

(3) Where the licensee, who provides Internet services to the institutions as contemplated in subsection (1), obtains its electronic communications facilities for the provision of Internet services from a electronic communications network service licensee, the licensee is entitled to a minimum of 50% off the retail rate charged to it by the electronic communications network service licensee for the facilities in question.

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

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

74. Offences and penalties

(1) Any natural person, juristic person or licensee who contravenes or fails to comply with any licence condition contained in the licence, is guilty of an offence and is liable on conviction to the penalties set out in subsection (2).

(2) Any natural person, juristic person or licensee who contravenes or fails to materially comply with any specific terms and conditions contained in the licence relating to construction or placing into service of electronic communications facilities or electronic communications networks, is guilty of an offence and upon conviction, such natural person, juristic person or licensee must outsource—

(a) the construction; or

(b) placing into service,

of the electronic communications facilities or electronic communications networks, or parts thereof, that are the subject of the contravention or failure to comply, by entering into one or more agreements with a third-party engaging such person to build or operate the electronic communications facilities or electronic communications networks in accordance with the specific terms and conditions contained in the licence.

(3) The agreements contemplated in subsection (2) are subject to the following:

(a) The natural person, juristic person or licensee must enter into the outsource agreement within (90) ninety days of a finding of a contravention or failure to comply with the terms and conditions of the licensee; and

(b) The particular electronic communications facilities or electronic communications networks must be constructed and placed in operation as soon as practicable after conclusion of the outsource agreement subject to oversight and review by the Authority.

(4) In the case of unwillingness or inability of the licensee to negotiate or agree on the terms and conditions of the outsource agreement, within the period specified in subsection (3)(a), the Authority may—

(a) impose terms and conditions consistent with the specific terms and conditions contained in the licence, this Act and the related legislation, as applicable; or

(b) propose terms and conditions, which, subject to negotiations among the parties, must be agreed to by the parties within the period specified in subsection (3)(a).

(5) The construction or placing into service of the electronic communications facilities or electronic communications networks, or parts thereof, contemplated in subsection (2) may be undertaken by—

(a) the third-party outsource contractor under the authority of the licence held by the natural person, juristic person or licensee that is a party to the outsource agreement; or

(b) in terms of an individual or class licence held by the third-party outsource contractor, provided, that the natural person, juristic person or licensee must remain liable under its

licence and the outsource agreement must be subject to the terms and conditions of such licence, this Act and the related legislation, as applicable.

75. Directory services

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

(a) the protection of personal data;

(b) the protection of privacy;

(c) language preferences;

(d) the prevention of fraud;

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

(f) the provision of assistance to security services or other public safety officials;

(g) related charges;

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

(i) the availability of a directory; and

(j) such other related matters as the Authority may determine.

76. Establishment of public emergency communications centres

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

(2) A 112 Emergency Centre is a service by means of which a subscriber has the ability to contact an emergency centre by dialling the numerals 112 in order to request an emergency service.

(3) Emergency Centres must be accountable to the Minister.

(4) Electronic communications network service licensees and electronic communications service licensees must—

(a) carry communications to 112 Emergency Centres and from 112 Emergency Centres to emergency organisations; and

(b) make automatic number identity, such as caller line identity, and automatic location identity available to 112 Emergency Centres.

(5) The obligation imposed on licensees in terms of subsection (4) (b) supersedes any request by a subscriber to withhold their identity or location, which may be permitted under any applicable law or licence condition.

(6) Licensees are exempted from liability for all claims arising out of acts done in meeting their obligation under subsection (4) (b).

(7) The Authority may make regulations to—

(a) ensure the implementation of sections 76, 77 and 78; and

(b) extend the obligations under subsection (4) to other holders of class and individual licences.

(8) Where the Authority extends the obligations under subsection (4) to other licensees the provisions of sections 76, 77 and 78 apply to such licensees.

77. Duties of 112 Emergency Centres and licensees

(1) Emergency Centres must transmit a request for an emergency service to an emergency organisation.

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

(3) The cost of transporting any communications, including automatic number identity and automatic location identity, to and from 112 Emergency Centres to any emergency organisation must be borne by the licensee.

78. National public emergency number

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

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

(3) No person may call the national emergency telecommunication number 112 for any purpose other than to request an emergency service.

79. Standards, capabilities and operating procedures of 112 Emergency Centres

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

(2) The Minister may, from time to time, by notice in the *Gazette* direct 112 Emergency Centres to develop and apply common technical standards and standard operating procedures.

(3) Emergency Centres may, subject to the provisions of Chapter 3, establish their own radio networks, if such networks are used exclusively to communicate calls and SMS to 112 Emergency Centres or emergency organisations.

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

Chapter 14
Universal Service and Access Agency of South Africa

80. Continued existence of Universal Service Agency

(1) Despite the repeal of the Telecommunications Act by this Act, the Universal Service Agency established in terms of section 58(1) of the Telecommunications Act continues to exist as a juristic person in terms of this Act and will henceforth be called the Universal Service and Access Agency of South Africa.

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

(3) A board appointed by the Minister in terms of section 58(2) of the Telecommunications Act is considered to have been appointed in terms of this Act.

81. Functions of Board

(1) The Agency's board must exercise the powers conferred, and perform the duties imposed, upon it in accordance with any policy direction issued by the Minister.

(2) The board must—

(a) represent the Agency before the Minister and the Authority;

(b) oversee the functions of the Agency;

(c) prepare and update a strategic plan for the Agency at least once every three years to be used by the Agency in exercising its powers and carrying out its functions;

(d) approve the annual report referred to in section 86 prior to submission to the Minister;

(e) approve the statement of estimated income and expenditures and any adjusted statements referred to in section 84 prior to submission to the Minister;

(f) approve the Chief Executive Officer's (CEO's) recommendations referred to in section 83 (3) (b);

(g) oversee the accounts of the Agency referred to in sections 84, 85 and 91; and

(h) take such other decisions as may be requested by the CEO of the Agency in terms of this Chapter.

82. Functions of Agency

(1) The Agency must—

(a) strive to promote the goal of universal access and 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; and

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

(2) For purposes of subsection (1) (b) (ii), reference to telecommunication services in relation to development projects and programmes contemplated in section 3 (a) of the Reconstruction and Development Programme Fund Act, 1994, must be regarded as reference to electronic communications network services under this Act.

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

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

(ii) the universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks, including any elements or attributes thereof.

(b) Such a determination—

(i) must be published in the *Gazette*; and

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

(4) The Agency—

(a) may undertake such investigations into matters relating to its functions as it may consider necessary;

(b) must conduct research into and keep abreast of developments in the Republic and elsewhere on information communication technology, electronic communications services and electronic communications facilities;

(c) must continually survey and evaluate the extent to which universal access and service have been achieved;

(d) may issue information from time to time on the provision of electronic communications services and electronic communications networks in the Republic and access thereto;

(e) must, when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to universal access and universal service;

(f) must, when so requested by the Authority, advise the Authority on any matter relating to universal access and universal service;

(g) must continually evaluate the effectiveness of this Act and things done in terms thereof towards the achievement of the goal of universal access and universal service;

(h) may liaise, consult and co-operate with any person or authority;

(i) may appoint experts and other consultants on such conditions as the Agency may determine.

(5) The Agency must manage the Universal Service and Access Fund in accordance with the provisions of this Chapter.

83. CEO and staff of Agency

(1) The Agency is under the direction and control of the CEO appointed by the Board.

(2) The CEO—

(a) must be a suitably qualified and experienced person;

(b) is subject to the direction and oversight of the board in the performance of all financial and administrative functions as well as other work as may arise from the performance of the Agency's functions under this Act; and

(c) must exercise any powers delegated to him or her by the board.

(3) Without derogating from his or her general powers, duties and functions as set forth in this section, the CEO must—

(a) approve of expenditures from the universal service and access fund;

(b) conduct competitive tenders in terms of section 90 and make recommendations to the board.

(4) The CEO must enter into a performance agreement with the Board. The perfomance agreement must, amongst other things—

(a) set appropriate key performance indicators; and

(b) set measurable perfomance targets.

(5) The CEO must employ a staff, including senior management and such other persons as may be necessary to assist him or her with the performance of the functions of the Agency.

(6) The staff of the Agency is accountable to and must enter into a performance agreement with the CEO.

(7) The CEO must manage and direct the activities of the Agency.

(8) The CEO must, in the selection of the staff of the Agency—

(a) promote the empowerment of historically disadvantaged persons, including women, the youth and people with disabilities;

(b) subject to paragraph (a), apply equal opportunity employment practices.

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

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

(11) The CEO of the Agency must be appointed for such period not exceeding five years as may be determined when he or she is appointed.

(12) The CEO and other employees of the Agency hold office on such conditions as to remuneration and otherwise—

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

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

(13) Different periods and conditions may be determined under subsections (11) or (12) in respect of different employees.

84. Financing of Agency

(1) The operating and capital costs of the Agency must be financed from money appropriated by Parliament from time to time for that purpose.

(2) The Agency must utilise any money contemplated in subsection (1) in accordance with the statement of estimated income and expenditure referred to in subsection (3).

(3) The Agency—

(a) must 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 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.

85. Banking account

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

86. Annual and other reports

(1) The Agency must submit to the Minister—

(a) 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

(b) a report in regard to the functions, affairs and activities of the Agency, annually and as soon as is reasonably practicable after the end of each period of 12 months ending on 31 March, in respect of such period.

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

(a) information regarding progress towards achieving the goal of universal service; and

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

(3) The Minister must 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.

87. Continued existence and control of Universal Service Fund

(1) Despite the repeal of the Telecommunications Act by this Act, the Universal Service Fund established in terms of section 65(1) of the Telecommunications Act continues to exist in terms of this Act and will henceforth be called the Universal Service and Access Fund, and the Agency must keep account of the Fund in its books and credit the Fund with—

(a) universal service contributions referred to in section 89; and

(b) money accruing to the Universal Service and Access Fund from any other source.

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

(3) Subsidies paid from the Universal Service and Access Fund in terms of section 88 must be financed from money appropriated by Parliament for that purpose.

(4) The Universal Service and Access Fund must be administered by the Agency subject to the control and in accordance with the instructions of the Minister.

88. Application of money in Universal Service and Access Fund

(1) The money in the Universal Service and Access Fund must be utilised exclusively for the payment of subsidies—

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

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

(c) to public schools and public further education and training institutions as defined in the South African Schools Acts, 1996 (Act No. 84 of 1996), and the Further Education and Training Act, 1998 (Act No. 98 of 1998), respectively, for the procurement of broadcasting and electronic communications services and access to electronic communications networks;

(d) to schools and further education and training institutions as defined in the South African Schools Acts, 1996 (Act No. 84 of 1996), and the Further Education and Training Act, 1998 (Act No. 98 of 1998), respectively, for the procurement of broadcasting and electronic communications services and access to electronic communications networks: Provided that —

(i) in the case of public schools, they are recognised by their provincial Departments of Education as falling into the lowest three quintiles for socio-economic redress in terms of the National Norms and Standards for School Funding (1998); and

(ii) in the case of independent schools and independent further education and training institutions—

(aa) they are registered with the Commissioner for Inland Revenue as public benefit organisations in terms of section 10(1)(cN) of the Income Tax Act, 1962 (Act No. 58 of 1962); and

(bb) they are registered with their provincial Departments of Education or the National Department of Education (as the case may be) for the receipt of state subsidies;

(e) for the establishment and operation of broadcasting services and for the establishment and operation, including training of and the payment of allowances to personnel of centres where access can be obtained to electronic communications networks.

(2) The Authority must, by regulation, for purposes of subsection (1) (b), define under-serviced areas.

(3) The Authority must at least bi-annually review and update, the prescribed definition of under-serviced area and the list of designated under-serviced areas eligible for construction payments from the Universal Service and Access Fund.

(4) The Minister may, for the purposes of payments referred to in subsection (1) (a), by notice in the *Gazette* determine—

(a) types of needy persons to whom assistance may be given;

(b) the persons who must apply for assistance and the manner in which such applications must be made;

(c) the manner in which and persons to whom subsidies may be paid.

89. Contributions to Universal Service and Access Fund

(1) Subject to subsection (3), every holder of a licence granted or considered to have been granted in terms of Chapter 3 must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions of the licensee's licensed activity to the Universal Service and Access Fund.

(2) The Authority must prescribe—

(a) the basis and manner of determination of such contributions, which must not exceed 1 per cent of the licensee's annual turnover or such other percentage of the licensee's annual turnover as may be determined by the Minister after consultation with the affected parties, by notice in the *Gazette*; and

(b) the dates when such contributions become payable and the manner in which they may be paid.

(3) Broadcasting service licensees contributing to the Media Development and Diversity Agency ("MDDA") must have their annual MDDA contribution set off against their prescribed annual contribution to the Universal Service and Access Fund.

90. Competitive tender for universal service and access projects

(1) The Agency must provide incentives to electronic communications network service licensees to construct, operate and maintain electronic communications networks in under-serviced areas through the award of project grants.

(2) The Agency must, in consultation with the Authority—

(a) publish a notice in the *Gazette* stating its intention to award one or more project grants and invite interested electronic communications network service licensees to submit proposals;

(b) identify the targeted under-serviced area or under-serviced areas where project grants will be awarded and determine—

(i) the time and place for submitting proposals;

(ii) the scope of the projects which may vary according to the needs of the targeted under-serviced area or under-serviced areas;

(iii) the criteria for evaluating proposals;

(iv) the projected cost of the proposed project; and

(v) such other matters as may be helpful in securing qualified proposals.

(3) The criteria for evaluating proposals may take into consideration—

(a) the objects of this Act set out in section 2;

(b) the scope of the electronic communications network service licensee's proposal, including the electronic communications network proposed for construction in the under-serviced area and the technologies proposed;

(c) any electronic communications services the electronic communications network service licensee proposes to offer in terms of its electronic communications network service licence and, as applicable, any electronic communications service licence or other licence held by the electronic communications network service licensee;

(d) the terms and conditions relating to any proposed services, including wholesale and retail pricing, taking into account the lack of competitive electronic communications networks and services in the targeted underserviced area; and

(e) such other matters as the Agency, in consultation with the Authority, finds appropriate for the targeted under-serviced area.

(4) The subsidy for project grants must be paid out of the Universal Service and Access Fund.

(5) The Agency must supervise the execution of projects awarded under subsection (1).

91. Accounts of Universal Service and Access Fund

(1) The Agency must—

(a) cause full records to be kept of the transactions of the Universal Service and Access 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—

(i) the income and expenditure of the Fund during the preceding financial year; and

(ii) a balance sheet showing the assets and liabilities of the Fund as at the end of that year.

(2) The accounts and balance sheet of the Fund must be audited by the Auditor-General.

(3) As soon as possible after the accounts and balance sheet for any year have been audited, the Agency must submit a copy of the accounts and balance sheet to the Minister.

(4) The Minister must table a copy of the audited accounts and balance sheet in Parliament—

(a) within 30 days after they have 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.

(5) For the purposes of this section, "financial year" means the period extending from 1 April in any year to 31 March in the next succeeding year.

Chapter 15
Transitional provisions

92. Existing licences

(1) All licences granted, issued or considered to have been granted or issued in terms of the Telecommunications Act, the Broadcasting Act or the IBA Act, (in this chapter collectively referred to as "existing licences") remain valid under this Act until converted by the Authority in terms of this Chapter.

(2) Any person who, immediately before the commencement of this Act, lawfully provided any service or used the radio frequency spectrum in terms of the Telecommunications Act, the Broadcasting Act or the IBA Act without a licence, is considered to have a licence exemption in terms of section 6 to continue to provide such service or use the radio frequency spectrum, unless notified in writing by the Authority that such service or the use of the radio frequency spectrum requires a licence in terms of this Act.

(3) Where sections of the related legislation and the IBA Act did not apply to broadcasting services pending a recommendation by the Authority, the equivalent sections in this Act will not apply to such services until the recommendation has been adopted in the National Assembly.

(4) Where the Authority notifies a person that a license is required in terms of subsection (2), the notification must provide the terms and schedule in terms of which a licence will be issued.

(5) Any person, who immediately before the commencement of this Act, lawfully provided any service or used the radio frequency spectrum in terms of the Telecommunications Act, Broadcasting Act or IBA Act without a licence is considered to have permission to continue to provide such a service on the same conditions and terms, or use the frequency spectrum on the same conditions and terms without a licence until such time as the Authority lias granted or refused a licence application.

(6) Existing licences referred to in subsection (1) must be converted by the Authority in terms of this Chapter within 24 months from the commencement date of this Act or such extension period, which must not exceed an additional 6 months, from the expiry of the 24 month period.

(7) Any current applications, process, recommendations and regulations pending before the Authority or the Minister upon the coming into force of this Act must be considered to have been submitted in accordance with the provisions of this Act and must be considered in terms of the relevant sections of this Act.

93. Licence conversion

(1) Subject to subsection (4), the Authority must convert existing licences by granting one or more new licences that comply with this Act on no less favourable terms.

(2) Despite sections 5 (10) and 19 (1), all licenses converted in accordance with this Chapter retain their original term of validity unless otherwise specified by the Authority.

(3) Within 30 days of the commencement of this Act, the Authority must, by notice in the *Gazette*, publish a schedule, subject to section 92 (4), in terms of which the Authority plans to undertake the existing licence conversion process. The notice must—

(a) identify the holders of existing licences and the nature of the existing licence and those services that are exempted as provided for in section 6;

(b) subject to section 92 (4), set out a time frame for such conversion, including but not limited to the expected time frame for granting new licences under this Act;

(c) set out the form and content, including the information that must be provided to the Authority by the holders of existing licences to assist the Authority in the conversion process;

(d) set out the process the Authority plans to undertake in converting such existing licences; and

(e) confirm the rights of the applicants to participate in such process.

(4) The following framework must be used by the Authority for converting existing licences and issuing new licences:

(a) Where an existing licence authorises the holder of such licence to both provide services and operate electronic communications facilities or networks, the Authority must issue to that licence holder—

(i) a licence relating to the electronic communications services or broadcasting services, if applicable, that coincide with the services authorised in the existing licence;

(ii) a separate licence relating to any radio frequency spectrum authorised in the existing licence; and

(iii) a separate licence relating to the electronic communications network services,

consistent with the licence types set out in Chapter 3.

(b) As part of the conversion process, the Authority may grant rights and impose obligations on the licensee, in order to ensure that the existing licenses comply with this Act, including the continuation of any obligations imposed upon existing licensees by virtue of a previous determination. Such obligations remain in force until such time as the Authority completes a review in terms of section 67 (8).

(5) Upon conversion of any existing licence through the process of granting a new licence or exemption of any service in terms of section 6—

(a) such new licence or exempted service, as applicable, is governed by the provisions of this Act; and

(b) the existing licence is considered to have been surrendered and has no further force or effect.

(6) All holders of existing licences must comply with the terms of the notice for converting their licences published by the Authority in terms of subsection (3), including—

(a) supplying the Authority with any information requested; and

(b) participating in any process set out by the Authority for converting the applicable licences to meet the deadline for converting existing licences set out in section 92 (6).

(7) The Authority may not grant or include in any licence converted in terms of this Chapter any monopoly or exclusionary rights in any network or service contemplated by this Act or the related legislation.

(8) Any monopoly or exclusive rights existing by virtue of the related legislation, the IBA Act, the Sentech Act or the Telecommunications Act is null and void, but radio frequency spectrum that is assigned by the Authority to a licence holder is not considered a monopoly or exclusionary rights under this subsection.

(9) No existing licensee may have any claim against the Authority or any other person asserting such monopoly or exclusionary rights.

(10) During the transition period, existing licences are considered to be—

(a) individual licences for the provision of electronic communications network services, broadcasting services, or electronic communications services, as applicable; and

(b) for the use of the radio frequency spectrum granted by the Authority in terms of this Act.

(11) Despite section 8, existing licences remain subject to all terms and conditions associated with such licences that are not inconsistent with this Act until such licences are converted and re-issued in terms of this Chapter.

94. Conflicts

In the event of any conflict between the provisions of this Act, the related legislation or any other law relating to the regulation of broadcasting or electronic communications, the provisions of this Act prevail.

95. Existing regulations

(1) Within twenty-four months of the coming into force of this Act, the Authority may, if the Authority considers it necessary, repeal or amend the regulations made under—

(a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);

(b) the Telecommunications Act;

(c) the Broadcasting Act;

(d) the IBA Act;

(e) the Radio Act, 1952 (Act No. 3 of 1952); and

(f) the Sentech Act,

which were in force immediately prior to the commencement of this Act.

(2) The regulations referred to in subsection (1) remain in force until they are amended or repealed in terms of this Act.

96. Application of Act

This Act binds the State.

97. Repeal and amendment of laws

The laws referred to in the first column of the Schedule are repealed or amended to the extent indicated in the third column.

98. Short title and commencement

This Act is called the Electronic Communications Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 153 of 1993	Independent Broadcasting Authority Act, 1993	The whole
Act No. 103 of 1996	Telecommunications Act, 1996	The whole
Act No. 4 of 1999	Broadcasting Act, 1999	1. Repeal of sections 4, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 40(1)(a), (b) and (2). 2. Amendment of section 1— a) by the substitution for the words "IBA Act" and "telecommunications", wherever they occur of the words "Electronic Communications Act" and "electronic communications" respectively; b) by the substitution for the word "radio" in the definition of "broadcasting" of the words: "radio frequency spectrum"; c) by the substitution for the words "means of telecommunication" for the word " electronic communications network"; d) by the substitution for the definition of "broadcasting service" of the following definition: "broadcasting service" means "broadcasting service" as defined in the Electronic

Communications Act;

e) by the substitution for the word "a telecommunication process" in the definition of "broadcasting signal distribution" of the word "electronic communications";

f) by the deletion of the following definitions: "broadcasting signal distribution licensee"; "IBA Act"; "telecommunications";

g) by the insertion of the following definitions:

"**Electronic Communications Act**" means the Electronic Communications Act, 2005;

"**electronic communications**" means "electronic communications" as defined in the Electronic Communications Act;

"**electronic communications service**" means electronic communications service as defined in the Electronic

		Communications Act; "**electronic communications service licensee**" means electronic communications licensee as defined in the Electronic Com-munications Act;
		h) by the substitution for the definition of "broadcasting signal distribution licence" of the following definition: "**broadcasting signal distribution licence**" means a electronic com-munications service licence where the holder of the electronic com-munications service licence provides a broadcasting signal distribution service;";
		(i) by the substitution for the definition of "radio" of the following definition: "**radio**" means

		radio as defined in the Electronic Communications Act.
		3. Amendment of section 3 by the substitution in subsection (5)(f) for the word "IBA Act" of the word "Electronic Communications Act".
		4. Amendment of section 5 by the substitution in subsection (3) for the words "IBA Act" of the words "Electronic Communications Act".
		5. Amendment of section 21— (a) by the substitution in subsection(1) for the words "IBA Act or the Telecommunications Act, 1996 (Act No. 103 of 1996)" of the words "Electronic Communications Act"; (b) by the substitution in subsection(2) for the words "IBA Act" of the word "Electronic Communications Act".
		6. Amendment of section 22 by the substitution for the words "IBA Act" of the words "Electronic Communications Act".
		7. Substitution for section 42 of the following section: "**42. Application of Act** (1) The Electronic Communica-tions Act

			applies in relation to this Act, the ICASA Act, the Sentech Act and any other legislation applicable to broadcasting or electronic communica-tions.
			(2) In the event of a conflict between the provisions of this Act and any other law relating to broadcasting or elec-tronic communications, the provisions of the Electronic Communications Act prevail.".
		8.	Amendment of the long title by the deletion of the words "to establish the frequency spectrum

		directorate in the department".
Act 63 of 1996	Sentech Act, 1996	1. Amendment of section 1— (a) by the substitution for the definition of "broadcasting licensee" of the following definition: "**broadcasting service licensee**" means broadcasting service licensee as defined in section 1 of the Electronic Communications Act; (b) by the substitution for definition of "broadcasting signal distribution" of the following definition: "**broadcasting signal distribution**" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed,

to any broadcast target area, by means of an electronic communications process and multi-channel distribution;

(c) by the insertion of the following definitions:

(i) "**Broadcasting Act**" means the Broadcasting Act, 1999 (Act No. 4 of 1999);

(ii) "**Electronic Communications Act**" means the Electronic Communications Act, 2005;

(iii) "**ICASA Act**" means the Independent Communications Authority of South Africa Act, 2000 (Act

No. 13 of 2000);

(iv) "**related legislation**" means the Broadcasting Act, Electronic Communications Act and the ICASA Act;

(d) by the deletion of the definition of "**Independent Broadcasting Authority Act**";

2. Substitution for section 5 of the following section:

"**5. Main object and business of Company**

The main object and business of the Company shall be to provide electronic communications services and electronic communications network services in accordance with the Electronic Communications Act.

3. Insertion of the following section after section 8:

"**8A. Application of Electronic**

		Communications Act (1) The Electronic Communications Act shall apply in relation to this Act, the Broadcasting Act and the ICASA Act and any other legislation applicable to broadcasting or electronic communications. (2) In the event of any conflict between the provisions of the Electronic Communications Act or any other law relating to the regulation of broadcasting or electronic communications the provisions of the

		Electronic Communi-cations Act shall prevail. 4. The repeal of section 9.
Act 70 of 2002	Regulation of Interception of Communications and Provision of Communication-related In-formation Act, 2002	1. Amendment of section 1— (a) by the substitution for the words "Telecommunications Act" wherever they occur of the words "Electronic Communications Act". (b) by the substitution for the definition of "internet service provider" of the following definition: "**internet service provider**" means any person who provides access to, or any other service related to, the Internet to another person, whether or not such access or service is provided under and in accordance with an **[telecommunication]** electronic communication service licence issued to the first-

		mentioned person under **[Chapter V of the Telecommunications Act]** Chapter 3 of the Electronic Communications Act;
		(c) by the substitution for the definition of "telecommunication service" of the following definition: "**electronic communications service**" means electronic communications service as defined in the Electronic Communications Act;
		(d) by the substitution for the definition of "telecommunication service provider" of the following definition: "**electronic communication service provider**" means any — (a) person who provides an electronic communication service under and

			in accordance with a electronic communication service licence issued to such person under Chapter 3 of the Electronic Communications Act, and includes any person who provides —
			(i) a local access communication service, public pay-telephone service, value-added network service or private electronic communication network as defined in the Electronic Commu-

nications Act; or

(ii) any other electronic communi-cation service licensed or deemed to be licensed or ex-empted from being licensed as such in terms of the Electronic Communications Act; and

(b) Internet service provider;

(e) by the substitution for the definition of "telecommunications system" of the following definition:

"**electronic communication system**" means any system or series of electronic communica-tion facilities or radio, optical or other electromagnetic

apparatus or any similar technical system used for the purpose of electronic communication, whether or not such electronic communi-cation is subject to re-arrangement, composition or other processes by any means in the course of their transmission or emission or reception;

(f) by the insertion of the following definition after the definition of "Directorate":

"**Electronic Communications Act**" means the Electronic Com-munications Act, 2005.

2. Section 11 is amended by the substitution for that section of the following section:

Monitoring of signal and radio frequency spectrum for purposes of managing radio

		frequency spectrum.— Any person appointed as an inspector in terms of section **[98]** 17F of the **[Telecommunications]** Independent Communications Authority of South Africa Act and who is lawfully engaged in performing the functions of the Authority relating to the management of the radio frequency spectrum, as contemplated in section **[28(1)]** 30(1) of the Electronic Communications Act **[of that Act]**, may, in the ordinary course of the performance of those functions, monitor a signal or radio frequency spectrum relating to an indirect communication which is transmitted over radio, where it is reasonably necessary for that employee to monitor that signal or radio frequency spectrum for purposes of identifying, isolating or preventing an unauthorised or interfering use of such a signal or frequency or of a transmission.

		3. Sections 30 and 32 are amended by the substitution for the words "Telecommunications Act" of the words "Electronic Communications Act"
		4. Section 56 is amended by the substitution for that section of the following section: **Revoking of licence to provide electronic communication service,-** The Cabinet member responsible for communications, after consultation with the Authority, may, in the case of a second or subsequent conviction of an **[telecommunication]** electronic communication service provider of an offence referred to in section 51 (3) (a) (ii) and notwith-standing the imposition of any penalty prescribed by section 51 (3) (b), revoke the licence issued to the **[telecommunication]** electronic communication service provider concerned under **[Chapter V of the Telecommunications Act]** Chapter 3 of the Electronic Communications Act, to provide an **[telecommunica-**

		tion] electronic communications service.