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**GOVERNMENT NOTICE**

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**DEPARTMENT OF COMMUNICATIONS****No. 829****29 August 2001****MEMORANDUM OF OBJECTS OF THE TELECOMMUNICATIONS ACT  
AMENDMENT BILL, 2001****1. PURPOSE**

The Telecommunications Act Amendment Bill, 2001 ("Bill") creates the legal framework for the South African telecommunications landscape following the end of Telkom's exclusivity period. The Bill updates the Telecommunications Act, 1996 ("Act") to bring it in line with technological, regulatory and industry developments over the past five years in South Africa and comparable international jurisdictions. The Bill includes a number of measures necessary to facilitate the IPO of Telkom.

The Bill contemplates, amongst other matters:

**1.1 Managed liberalisation** of the telecommunications industry through (a) the introduction in 2002 of the SNO (Second National Operator) in which a stake is reserved for Esi-tel and Transtel respectively and black economic empowerment; (b) the award in 2002 of an international and multimedia licence to Sentech; and (c) the introduction in 2005 of at least one service-based competitor to Telkom and the SNO. The SNO may use Telkom's facilities, subject to an agreement to share facilities between them, for a two-year period. At the end of this period the SNO may only use its own facilities and future service-based operators will have a choice between the facilities of Telkom and the SNO.

**1.2 Convergence and technological development** in the communications industry to be recognised through *inter alia* allowing Telkom and the SNO to use wireless technology in its operations and the award of a multimedia licence to Sentech. This licence will allow services such as video-on-demand, pay-per-view and internet over television.

**1.3 Stimulating SMME involvement** in the telecommunications industry and increasing teledensity in South Africa through the introduction of under serviced area licences in areas where teledensity is currently below five per cent (5%). In addition, the Universal Service Fund may be used to assist SMMEs in providing telecommunication infrastructure and service in these under serviced areas.

**1.4 Assignment of the 1800 MHz radio frequency spectrum and 3G licences** to Telkom, the SNO, Vodacom, MTN and the Cell C in an orderly and non – discriminatory manner.

**1.5 Restructuring of the universal service agency** and increasing the size of the Universal Service Fund. A seven-member board will provide oversight over the universal service agency. The mandate of the universal service agency is clarified to include the promotion of telecentres, internet in public schools, public further training and education institutions and public information terminals.

**1.6 Introducing an e-rate** to stimulate and facilitate internet usage by public schools and further training and education institutions. The e-rate will allow public schools a 50% discount on calls to access the internet as well as internet access charges.

**1.7 A set aside for persons from historically disadvantaged groups** in major telecommunication licences. In the evaluation of applications for major licences, ICASA may give preference for up to 30% (or such higher percentage as may be prescribed) of the equity held by persons from historically disadvantaged groups. In addition, in the award of licences ICASA must give due regard to applications which include women.

**1.8 Introducing number portability and carrier pre-selection.** The managed liberalisation of the telecommunications industry requires the introduction of number portability (in 2005) and carrier pre-selection (in 2005). ICASA will prescribe detailed regulations to facilitate this.

**1.9 Establishing 112 Emergency Centres** that will enable end users to be connected to appropriate emergency organisations through dialing "112". 112 Emergency Centres will be linked via a national radio network and may use state of the art technology.

**1.10 Miscellaneous matters** are also addressed in the Bill, such as (a) the introduction or clarification of certain definitions; (b) streamlining of the application process for licences; (c) details on the basis of the involvement of Esi-tel and Transtel in the SNO; (d) provision for additional methods for awarding licences; (e) the right of VANS operators to provide virtual private networks; (f) the right to renegotiate interconnection agreements that have been in place for longer than five years; (g) the repeal of the current cross-ownership regulation; and (h) the provision of directory services in a post-exclusivity environment (i) provision for the regulation of Maritime time Services by the Minister in consultation with the Minister of Transport (j) establishment of a telecommunications history and development museum.

## **2. CLAUSE-BY-CLAUSE ANALYSIS**

### **2.1 Definitions (section 1).** Definitions have been inserted to:

(a) facilitate the managed liberalisation of the telecommunications industry and to recognise that multiple operators will participate in the South African telecommunications industry following the expiration of Telkom's exclusivity in May 2002 (for example, the definitions of "carrier of carriers", "carrier pre-selection", "directories" and "directory enquiry service"; "number portability"; "resale"; "second national operator");

(b) recognise new types of licences or technological development (e.g., the definitions of "multimedia service"; "SMME"; "under serviced area licence"; "virtual private network", "fixed mobile service", "voice over internet protocol", "third generation services licence" and "1800MHz radio frequency spectrum licence");

(c) facilitate the grant of rights to certain entities (e.g., the definitions of “Esi-tel”; “Sentech” and “Transtel”); and

(d) facilitate ease of reference (e.g., the definitions of “international telecommunication service”; “local telecommunication services”; “national long distance telecommunication service”; “public switched telecommunication network”, “public switched telecommunication service”, “major licence”).

These definitions are also discussed below in the context of the clauses in which they appear.

**2.2 Objects of the Act (section 2).** A new section 2(r) has been inserted to recognise the convergence of the telecommunications, broadcasting and information services industries;

**2.3 Application of the Act (section 3)** In order to allow for the amendment and insertion of section 2 (r) and multi-media (to the extent that it applies to broadcasting, broadcasting signal distribution or broadcasting services frequency band) as an exception permitting application of this Act.

**2.4 Frequency Band Plans (section 29)** In order to shorten the application procedure to the Authority; the oral hearings have been excluded. This in effect brings the Bill in line with international practice.

**2.5 1800 and 3G licences (sections 30A and 30B).** A statutory mechanism has been created for the award of radio frequency spectrum and 3G licences to each of the two fixed line operators and three mobile operators. The Bill also provides for the regulation by the Authority of frequency usage.

**2.6 Liberalisation (sections 32A, 32B and 32C).** The Bill specifies the introduction of competition upon the expiration of Telkom’s exclusivity period in May 2002 by:

(a) the introduction in 2002 of the SNO in which a stake is reserved for Esi-tel, Transtel respectively and black economic empowerment;

(b) the introduction in 2005 of the TNO and additional licences, one which will be service based, subject to a feasibility study in which a stake is reserved for black economic empowerment

(b) the award in 2002 of an international and multimedia licence to Sentech; and

The SNO may use Telkom’s facilities, subject to an agreement between them, for a two-year period. At the end of this period the SNO may only use its own facilities and future service-based operators will have a choice between the facilities of Telkom and the SNO.

**2.7 Kinds of Licences (section 33).** The Bill expressly recognises “multimedia service” as a new licence category.



- 2.8 Licence applications (section 34).** In order to create a licence for the SNO and the TNO that “mirrors” that of Telkom, the Bill allows the Minister to invite applications for a combination of telecommunication licences.

The Bill provides for consultation between the Minister and ICASA on the applicable evaluation criteria prior to the publication of the invitation to apply for a major telecommunication licence.

Subject to the Promotion of Administrative Justice Act and in conformity with international best practice, the Bill streamlines the application process for telecommunication licences by reducing the number of oral hearings and focusing on written submissions by interested parties and applicants.

Based on practical difficulties experienced in recent application processes, the Bill simplifies the provisions relating to the confidentiality of information submitted to ICASA by prospective licencees.

- 2.9 Decision on applications (section 35).** In accordance with international practice, the Minister’s functions under this section have been clarified. The Bill confirms the presumed validity of licensing decisions pending litigation on such decisions.

Following a recommendation from the Authority, the Minister may accept, reject or alternatively request further information or clarification from the Authority in relation to a recommended Applicant. The main aim is to eliminate the previous limitations to the Minister’s ability to address the Authority’s recommendations to the extent of fully applying her mind.

The Bill provides that applications from women should receive due regard in the evaluation process and also that ICASA may give preference for up to 30% (or a higher prescribed percentage) of equity ownership applications held by persons from historically disadvantaged groups or women.

- 2.10 Licensing methods (section 35A).** The Bill empowers the Minister in the invitation to apply, to provide for alternative licensing methods. This includes auctions and/or bidding as alternatives to the so-called beauty contest method currently contemplated in the Act.
- 2.11 Public Switched Telecommunications Service (section 36A).** Provision is made for an extended elaboration to the definition of PSTS licence and the detail of services to be provided under the licence. The aim is also to ensure that there is parity between the services that Telkom presently provides in terms of its PSTS licence and those to be provided by the SNO.
- 2.12 Public Switched telecommunication Network (section 36B)** The definition of PSTN is extended to allow for examples of networks to be maintained and operated by the relevant PSTS and fixed – mobile service licencees.

- 2.13 MTN, Vodacom and Cell C licences confirmed (section 37).** In anticipation of the Telkom IPO, the Bill confirms the validity of MTN and Vodacom's licences until such time as they are granted their amended licences pursuant to section 37. Further, the content is confirmed and given legislative effect.
- 2.14 National Long Distance Telecommunication Service (section 38)** in anticipation of the end of Telkom's exclusivity, the terms of subsection 3 of this section are amended to allow the SNO to provide national long distance services.
- 2.15 Local Access Telecommunication Service (section 39)** in anticipation of the end of Telkom's exclusivity this section are amended to allow the SNO to provide local access telecommunications service.
- 2.16 Voice over internet protocol by SNO and under serviced area licencees (section 40).** For the avoidance of doubt, and consistent with the managed liberalisation of the telecommunications industry, the SNO and under serviced area licencees are entitled to provide voice over internet protocol services from 7 May 2002.
- 2.17 Under serviced area licences (section 40A).** The Bill seeks to stimulate SMME involvement in the telecommunications industry through the introduction of under serviced area licences in areas where teledensity is currently below (five per cent) 5%.
- 2.18 Virtual private networks, Edu – Net, MARS (section 41).** In line with technological development, the Bill provides that VANS licencees may operate virtual private networks without obtaining a private telecommunication network licence.

Subsection 10 empowers the Minister in consultation with the Minister of Education to establish an Education network (Edu – Net), to ensure access by public schools and further education and training institutions to the network.

Subsection 11 empowers the Minister in consultation with the Minister of Transport to establish a Maritime and Aeronautical Radio Services (MARS), to ensure South Africa fulfils its obligations in terms of the International Convention on Safety and Life at Sea (SOLAS) 1974/8 and Annexure 12 to the Convention on International Civil Aviation.

- 2.19 Interconnection (section 43).** The Bill gives parties to interconnection agreements the right to renegotiate the terms of their licences after five years. Without undermining legal certainty, this will ensure that no party is locked into an inefficient or unfair long-term interconnection arrangement - a situation that will ultimately prejudice consumer rights.
- 2.20 Facility sharing (section 44).** The Bill amends section 44 to be consistent with the two year period during which Telkom and the SNO may share infrastructure, whereafter these two facilities-based competitors may no longer share facilities.

The Bill provides the basis for ICASA to prescribe detailed provisions that will deal with resale during the two-year period and thereafter.

- 2.21 Price regulation (section 45).** In anticipation of the Telkom IPO, the Bill confirms the continued validity of Telkom's most recent price determination until such time as ICASA makes a new determination.

E-rate is introduced to stimulate and facilitate internet usage by public schools. The e-rate will allow public schools a 50% discount on calls to access the internet as well as internet access charges and any charges for receiving a signal via the internet.

- 2.22 Limitation on control of telecommunications services (section 53)** In response to industry and to promote the provisions of section 2 the Authority is obliged to provide regulations to promote consumer protection in the industry.

- 2.23 Telecommunications Mediation Committee (section 53A)** The Bill introduces the creation of a Telecommunications Mediation Committee comprised of three persons. The objective of the committee is to resolve disputes or disagreements between the Authority and any telecommunications operator or licensee. This allows for speedy resolution of disputes in line with the dynamic nature of the industry.

- 2.24 Universal service agency (sections 58).** In order to ensure greater accountability, the Bill provides that the Minister may appoint a seven-member board to provide oversight of and guidance to the Fund.

- 2.25 Universal service fund (sections 65 to 67).** The Bill seeks to minimise institutional overlap in the management of universal service by bringing the Agency directly under the control of the Minister, and eliminating the role of ICASA in relation to universal service.

The Bill expands the causes for which the Universal Service Fund may be used to include the facilitation of internet usage by public schools, the establishment of telecentres and public information terminals, and to assist under service area licencees in the provision of infrastructure in under serviced areas.

The Bill limits the maximum contribution of a licensee to the Universal Service Fund to 0.5% of its turnover. This measure will provide certainty to the telecommunications industry in relation to its future contributions.

In accordance with international practice, the Bill also provides that the Agency may award universal access projects by competitive tender to the bidder requesting the lowest subsidy for that particular project.

- 2.26 112 Emergency Centres (sections 78 to 81).** The Bill establishes 112 Emergency Centres that will enable all citizens to be connected to appropriate emergency organisations by dialing one number, "112". 112 Emergency Centres will be linked via a national radio network and will use state of the art technology.

The National Emergency Telephone Service Act of 1993 is repealed. Measures related to emergency telecommunications are consolidated in this Act.

- 2.27 Numbering plans (section 89)** 2005 is the set date for the introduction of number portability and ICASA has authority to prescribe detailed regulations to deal with this and related matters.
- 2.28 Carrier pre-selection (section 89A).** The Bill sets 2005 as the date for the introduction of carrier pre-selection and ICASA will prescribe detailed regulations to deal with this and related matters accordingly.
- 2.29 Directory services (section 89B).** ICASA is required to prescribe regulations appropriate for directory services in a post-exclusivity environment.
- 2.30 Regulations (section 96).** In recognition of ICASA's need to act swiftly in the fast changing telecommunications environment, the Bill reduces the public notice period for draft regulations to 30 days. The regulations will take account of the need for fair competition.
- 2.31 Museum (section 96A)** The Bill provides for the establishment of a telecommunications museum, which depicts the history and evolution of the telecommunications sector in South Africa. The Museum will become a national asset in terms of the National Heritage Resources Act No25 of 1999.

### **3. CONSULTATION**

All major stakeholders in the telecommunications industry participated in or contributed to the national policy colloquium in February 2001. In addition, the Department of Public Enterprises, the Department of Trade and Industry, the National Treasury and the Telkom IPO office have commented on the Bill. The Department of Communications will publish the Bill for public comment soon.

### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

The Bill has no direct financial implications for the State, but is expected to increase the State's proceeds from the Telkom IPO.

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