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# GENERAL NOTICE

## NOTICE 3382 OF 2003

## DEPARTMENT OF COMMUNICATIONS

## REQUEST FOR PUBLIC COMMENTS OR REPRESANTATIONS ON THE DRAFT CONVERGENCE BILL

The Department of Communications hereby requests interested persons to submit written comments or representations in relation to the draft Convergence Bill set out in the schedule. The comments or representations should reach the Department no later than **16h30 on the 3rd February 2004 or within 60 days of publication of this Notice**, and are to be forwarded to the Department marked as " Draft Convergence Bill" and may be e-mailed, faxed, posted, or hand delivered to:

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**DEPARTMENT OF COMMUNICATIONS**

# CONVERGENCE BILL

# CONVERGENCE BILL, 2004

## BILL

**To promote convergence in the broadcasting, telecommunication and broadcasting signal distribution sectors; to make new provision for the regulation of communication services; to provide for issuing of new licenses and new social obligations; to provide for the control of the radio frequency spectrum; and for that purpose to clarify and augment the powers of the Independent Communications Authority of South Africa; and to provide for matters incidental thereto.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:-

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## SCHEDULE

## CHAPTER 1

## INTRODUCTORY PROVISIONS

### 1. Definitions

In this Act, unless the context indicates otherwise–

**"access"** – means the selling, leasing or sharing of communication network facilities, to another person, for the purpose of providing communications services;

**"applications"** means any technological intervention by which value is added to a communication network service which includes the manipulation, storage, retrieval, distribution, creation and combination of the content, format or protocol for the purpose of making such content, format or protocol available to customers;

**"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);

**"broadband"** means a high capacity link between end user and access network suppliers, capable of supporting full motion, interactive video applications, based on the technology existing at the time;

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

**"communications applications service"** means a communications service provided by means of applications, including incidental and/or necessary services such as billing, data processing, customer care, directory enquiries, access to emergency services, compliance with statutory obligations, but that does not include communication content application services;

**"communications applications service licensee"** means a person licensed to provide a communications applications service in terms of this Act;

**"class licence"** means a licence issued to a class of persons for the provision of a communications service on standard terms and conditions and which is not an individual licence;

**"communications"** means the emission, transmission or reception , of sound, data, text, visual images, signals or a combination thereof, by means of wire, radio, optical, electromagnetic systems or any agency of a like nature;

**"communications network facility"** means any element that forms part of a communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with communications;

**"communications network"** means a combination of any communication network facility (used principally for or in connection with the provision of communication services, but does not include consumer equipment;

**"communications network service"** – means the provision of a communication service, including incidental and/or necessary services such as billing, data processing, customer care, directory enquiries, access to emergency services, compliance with statutory obligations, but that does not include communication application services and/or communication content application services;

**"communications network service licensee"** – means a person licenced to provide a network service in terms of this Act;

**"communications service"** means any service provided in terms of this Act for which a licence is required, or which the Authority has prescribed that it can be provided without a licence;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**"consumer"** means an end-user who uses publicly available communications services;

**"consumer equipment"** means an item of communications equipment which does not form part of a communication network or an application or a content application but is connected or intended to be connected to a communication network, application or content application, by means of which signals are initially emitted, transmitted or ultimately received.

**"content"** means any sound, text, still picture, moving picture or other audio-visual representation, sensory representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved and communicated electronically, but excludes content contained in private communications between consumers

**"communications content applications service"** means a communication application service which provides content to consumers by means of a communications service including traditional broadcast services, online publishing and information services

**"communications content service licensee"** means a person licenced to provide a communications content applications service in terms of this Act;

**"communications content service licence"** means a licence granted and issued by the Authority to a person to provide a content service;

**"Council"** means the Council referred to in section 5 of the ICASA Act;

**"customer"** – a person who receives a communications service under an agreement with or pursuant to terms and conditions established by the provider of a communications service;

**"facilities leasing"** – means the use by a licensee of the communications network facility belonging to another licensee, subject to commercial conditions agreed to between the parties for commercial purposes;

**"harmful interference"** means interference which seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with ITU Radio Regulations;

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

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

**"individual licence"** means a licence that is granted and issued to a specified person to provide a specified communications service and may include standard and additional terms and conditions to which the provision of the specified communications service shall be subject;

**"interconnection"** – means the physical and logical linking of public communications networks of two or more licensees to enable customers of one licensee to communicate with customer of the other licensee or to utilise services provided by another licensee;

**"interference"** means the effect of unwanted energy due to one or a combination of emissions, radiations , or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy;

**"licence exemption"** means an exemption granted by the Authority from the requirement to hold a class licence under this Act;

**"licensee"** - means a person who holds a licence in terms of this Act or issued under the related/underlying legislation and valid in terms of this Act;

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

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

**"prescribed"** means prescribed by regulation;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"radio"** means electromagnetic waves which are propagated in space without artificial guide and having frequencies of lower than 3000 GHz;

**"radiocommunication"** means communication by means of radio;

**"radio frequency band"** - means a specified range of frequencies for use by one or more radiocommunication services;

**"radio frequency spectrum"** means the portion of the spectrum of systems electromagnetic waves that is used as a transmission medium for wireless

**"related legislation"** means the Broadcasting Act, 1999 (Act 4 of 1999); the Independent Broadcasting Authority Act, 1993 (Act 153 of 1993); the Independent Communications Authority Act, 2000 (Act of 13 of 2000) and the Telecommunications Act, 1996 (Act 103 of 1996);

**"retail"** means the part of the licenced business which involves the sale or making available of communications services to consumers;

**"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 a communication service;

**"Table of radio frequency allocations"** means a table setting out the allocations of various radio frequency bands for use by one or more radio communication services under specified conditions;

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

**"this Act"** includes the regulations, determinations, policy directions and guidelines;

**"wholesale"** means the part of the licenced business which is not the retail business.

## 2. Object of Act

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

(1) promote and facilitate the convergence of telecommunications, broadcasting and broadcasting signal distribution;

(2) promote the universal provision of communication services and connectivity for all;

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

(4) ensure efficient, equitable and proper use of the frequency spectrum;

(5) promote competition within the communication sector;

(6) promote an environment of open, fair and equal access;

(7) promote the empowerment of historically disadvantaged persons;

(8) safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa;

(9) promote the growth and diversity of content services and access thereto;

(10) ensure security and privacy of content;

(11) encourage research and development;

(12) stimulate and promote the provision of broadband services;

(13) encourage the interworking and interoperability of systems and services;

(14) provide a clear allocation of roles and assignment of tasks between policy formulation, regulation and service provision;

(15) ensure that communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in South Africa;

(16) promote a broad range of content services in all official languages providing a diversity of news, views, information and entertainment to meet the content needs of all South Africans; and

(17) provide assistance and support towards human resource development.

## CHAPTER 2

## INDEPENDENT COMMUNICATIONS AUTHORITY

### 3. General Functions of Authority

(1) The Authority–

(a) must, subject to section 231 of the Constitution, act in a manner that is consistent with the obligations of the Republic under any applicable international agreement;

(b) is subject to the Public Finance Management Act;

(c) Must administer the statutory scheme for granting, renewing and amending licences;

(d) must manage the frequency spectrum in accordance with bilateral, multilateral or international regulations agreed to or adopted by the Republic;

(e) may make regulations consistent with the objects of this Act and of the related legislation;

(f) must design and implement licence conditions consistent with the objects of this Act and of the related legislation for different categories of licences;

(g) must approve technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;

(h) may inspect transmitters and other communications apparatus used by any person;

(i) may undertake inquiries on all matters within its jurisdiction;

(j) must assist the Government in preparing for international conferences convened by the International Telecommunications Union, and for that purpose may attend such conferences and, where applicable, implement any decisions adopted at such conferences.

(k) must submit an annual report to Parliament as provided for in the ICASA Act;

(l) must monitor the communications sector to ensure compliance with this Act, regulations and licence conditions

(m) may conduct research on all matters affecting communications in order to perform its regulatory role;

(n) may publish a proposed regulatory agenda for the ensuing three years;

(o) may make recommendations to the Minister on policy matters in line with the objects of this Act to promote development in the industry;

(p) must investigate and adjudicate complaints submitted in terms of this Act.

**4. Appointment of experts**

(1) The Council may appoint experts to assist the Council in the performance of its functions.

(2) The Authority must determine the terms and conditions of employment of, and the remuneration and allowances payable to, such experts.

**5. Inquiries by Authority**

(1) The Authority may, from time to time, conduct an inquiry into any matter which is of significant public interest, with regard to–

(a) the achievement of the objects of this Act or of the related legislation; or
(b) the performance of its functions in terms of this Act.

(2) The Authority must conduct an inquiry into any matter it is required in terms of this Act or the related legislation.

(3) The Authority may by notice in the *Gazette*, give notice of its intention to conduct an inquiry and such notice may invite interested persons to–

(a) submit written representations; and
(b) indicate, within the period specified in the notice, which may not be shorter than 30 days or longer than 60 days from the date of publication of the notice, whether they require an opportunity to make oral representations to the Authority.

(4) Written representations made pursuant to a notice referred to in subsection (3) must, subject to subsection (6) be open to inspection by interested parties during the normal office hours of the Authority at the Authority's premises.

(5) The Authority must, when so requested by any person and upon payment of the prescribed fee, provide a copy or an extract of any representations made.

(6) The Authority may, at the request of any person making written representations, determine that any document or information that is commercially sensitive or any other matter reasonably justifying confidentiality, may not be open to public inspection, if such document or information can be separated from the written representations or other documents in question.

(7) No such determination of confidentiality may be made in respect of documents or information that was or becomes, or as a matter of law must be, generally available to the public.

(8) The inquiry must, subject to subsection (13), be open to the public.

(9) The Authority may, for the purpose of any inquiry conducted in terms of this section–

(a) through a councillor, by notice in writing in the prescribed form, require from any person such particulars and information as may be reasonably necessary, material and relevant in connection with any such inquiry or hearing;
(b) by notice in writing in the prescribed form under the hand of a councillor, addressed and delivered by an authorised person or a sheriff to any person require such person, in relation to any such inquiry or hearing to–
    (i) appear before it at a time and place specified in such notice;
    (ii) make a statement; and
    (iii) submit to it all documents or objects in the possession or custody or under the control of any such person and which may be reasonably necessary, material and relevant in connection with that inquiry or hearing; and

(c) through the chairperson presiding at any such inquiry or hearing in which not less than three councillors are participating, after explaining applicable rights under the Constitution and this section, question any person referred to in paragraph (b) in connection with any matter which may be reasonably necessary, material and relevant in connection with that inquiry or hearing.

(10) Any person appearing before the Authority in terms of subsection (9)(b) and who is not employed by the State, is entitled to receive witness fees in an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the High Court.

(11)

(a) The chairperson presiding at the inquiry must determine the procedure at the inquiry.
(b) A person appearing in terms of subsection (9)(b) may have a legal representative or other adviser present.
(c) The Authority may inspect, and retain for such period as may be reasonable for the purposes of this Act, any document or object submitted to it.

(12) A person appearing before the Authority to make a statement or to produce any document or object is entitled to any privilege to which a person appearing as a witness in criminal proceedings before the High Court is entitled.

(13) The chairperson presiding at the inquiry may, in exceptional circumstances, after hearing the relevant representations from any party that is at the time present at and concerned with the inquiry, and having regard to–

(a) any reasonable apprehension of prejudice or harm to the person to be questioned; and
(b) the rights of reply and rebuttal of any person whose rights may be adversely affected, if it is in the interests of the achievement of the objects of the inquiry that any part of the inquiry be held behind closed doors, direct that–
(i) the public or any class thereof;
(ii) the representative of interested parties;
(iii) the legal representative of the person being questioned; or
(iv) the adviser to the person being questioned, may not be present.

(14) The nature of documents or objects referred to in subsection (9)(b)(iii) and the matter upon which information is sought must be mentioned in the notice concerned.

(15) The Authority must, within 180 days from the date of conclusion of the hearing–

(a) make a finding on the subject matter of the inquiry; and
(b) publish in the *Gazette*–
(i) a summary of its finding; and
(ii) the details of the place where and the time when the finding and the reasons for the finding can be obtained by the public.

**6. Regulations by Authority**

(1) The Authority may make regulations with regard to–

(a) any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation;
(b) any technical matter necessary or expedient for the regulation of communications activities;
(c) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act or the related legislation;
(d) 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, for the supply of copies, transcripts and reproductions in whatsoever form and the certification of copies;
  (iii) licences issued or considered to have been issued in terms of this Act or the related legislation;
  (iv) applications for and the issuing, amendments, renewals, transfers or other disposals of, licences or any interest in a licence;
(e) any matter which must or may be prescribed by regulation in terms of this Act or the related legislation in relation to the radio frequency spectrum and radio apparatus; and
(f) 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) categories of licences issued in terms of this Act or the related legislation, and

(b) categories of radio users, radio frequencies, frequency bands, licences, authorities or certificates, and

(c) areas.

(3) A regulation may declare any contravention of such regulation to be an offence. The Authority must, not less than one month before any regulation comes into effect, publish such regulation in the *Gazette,* together with a notice declaring the Authority's intention to make that regulation and inviting interested parties to make written representations on the regulation.

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

(5) The provisions of section 5 apply, with the necessary changes to such public hearings.

(6) 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, have been amended in consequence of comments or representations received pursuant to a notice issued thereunder; or

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

**7. Ministerial Policy Directions and Determinations**

(1) The Minister may direct the Authority to–

(a) undertake any special investigation and enquiry on any matter in its jurisdiction and to report to the Minister thereon;
(b) determine priorities for the development of communication services; and
(c) consider any matter within its jurisdiction reasonably placed before it by the Minister for urgent consideration.

(2) Any additional special investigation or inquiry contemplated in subsection (1) must be financed by monies appropriated to the Authority for that purpose.

(3) The Minister must, before directing the Authority as contemplated in subsection (1) consult the Authority.

(4) The Minister may from time to time, issue policy directions of general application on matters of national policy, consistent with the object of this Act and of the related legislation in relation to–

(a) the radio frequency spectrum, for the purposes of planning communications services;
(b) universal service 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;
(e) regulations on financial, revenue and expenditure controls; and
(f) the structure and timetable for the liberalisation of the network service providers market.

(5) No such policy direction may be issued–
(a) regarding the granting, amendment, transfer, renewal, suspension or revocation of a licence;
(b) if it interferes with the independence of the Authority.

(6) The Authority must, in performing its functions in terms of this Act, consider any policy direction issued by the Minister under subsection (4).
(7) The Minister may, before issuing a policy direction –

(a) consult the Authority;
(b) may cause the text of such directions to be published in the *Gazette* together with a notice in order to obtain the views of interested persons–
(i) declaring his or her intention to issue that policy direction; and
(ii) inviting interested persons to lodge written submissions in relation to the policy direction in the manner specified in such notice, within 30 (thirty) days from the date of the notice;

(c) refer the proposed direction for comment to the committees of Parliament appointed for the purpose of considering matters relating to the subject matter of this Act.

(8) The provisions of subsection (7) do not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (4) in consequence of commerce or representations reviewed by him or her pursuant to consultation, publication or reference in terms of that subsection.

(9) A policy direction issued under subsection (4) may be amended, withdrawn or substituted by the Minister.

(10) The provisions of this section apply, with the necessary changes, in relation to any such amendment, withdrawal or substitution.

(11) The Minister may issue a determination providing the following:

(a) Promotion of universal service and access of communication services to under served areas and under serviced groups,
(b) Mechanism to promote the participation of SMME's in the sector.

**8. Delegation of functions**

(1) The Council may, in writing, delegate any function of the Authority in terms of this Act to–
(i) any councillor;
(ii) any committee of the Council; or
(iii) the chief executive officer referred to in section 14(1)(a) of the ICASA Act.

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

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

(4) A delegation in terms of subsection (1) or (3) –

(a) is subject to such conditions as may be determined by the Council or chief executive officer, as the case may be; and
(b) may at any time be amended or revoked.

(5) The Council is not divested of any function which it may have delegated in terms of subsection (1) and may amend or rescind any decision made in terms of such a delegation.

(6) Despite the provisions of this section, a committee delegated with the power to grant, amend, revoke, transfer or renew a licence in terms of this Act, must report its decision to the Council before publishing the decision.

(7) The Minister may, subject to such conditions as he or she may determine, delegate any power conferred on him or her by this Act or by the related legislation, other than a power to be exercised by notice in the *Gazette,* to the Director-General or any other person in the service of the Department.

(8) The Minister is not divested of any power so delegated and may set aside or amend any decision of the Director-General or of any such person, except where any licence will be affected by the setting aside or amendment of the decision.

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

**9. Minutes of Council and its committees**

(1) The Authority and each of its committees must prepare and keep minutes of the proceedings of every meeting of the Council and of such a committee and circulate copies of such minutes to all councillors or members of such a committee, as the case may be.

(2) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Authority or of such a committee, by the person presiding at such meeting, are, in the absence of proof of error in the minutes–

(a) considered to be a true and correct record of the proceedings which they purport to minute; and
(b) prima facie evidence of–
(i) the proceedings of the meeting of the Authority or of such committee, as the case may be; and
(ii) the matters they purport to minute, in any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry.

**10. Confidentiality**

No–

(a) councillor;
(b) member of a committee of the Council;
(c) expert appointed in terms of section 4;
(d) member of the staff of the Authority;
(e) inspector appointed in terms of section 98 of the Telecommunications Act; or
(f) director or member of staff of the Agency established in terms of section 58 of the Telecommunications Act, may disclose any information in regard to any matter which may come to his or her knowledge in the performance of any function in terms of this Act or the related legislation or by virtue of the office held by him or her, except–

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

**11. Limitation of liability**

(a) The chairperson,
(b) A councillor,
(c) A member of a committee of the Council,
(d) An expert appointed in terms of this Act; or
(e) A member of the staff of the Authority, is not personally liable for any damage or loss suffered by any person in consequence of any act or thing which was performed or done or omitted in good faith in the course of the exercise or performance of any function in terms of this Act or the related legislation.

**12. Restriction on use of name or description implying connection with Authority**

No person may apply to any venture, undertaking, business, company or other association or body, whether corporate or incorporate, a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body and the Authority.

## CHAPTER 3

## LICENSING

**13. Type of Licences**

(1) The licences that may be issued by the Authority upon application are Individual and class licences.

(2) Individual licences may be issued for following categories of licences:

(a) Infrastructure Service Licence
(b) Communication Network Service Licence
(c) Communication Application Services

(3) Class licences may be issued for the following categories of licence:

(a) Communications Content Service
(b) Communications Applications Service

(4) No application for the Infrastructure Service Licences shall be made without an invitation to apply issued by the Minister and published in the Gazette.

(5) The Authority shall, after considering applications for Infrastructure Service Licences, make a recommendation to the Minister.

(6) The Minister may, after considering the recommendation in section 5 (a) Grant the licence and direct the Authority to issue the licence-

(a) Grant the licence with additional conditions.
(b) request further information and /or direct the Authority to reconsider

**14. Issuing of Communication Services Licence**

(1) The Authority may prescribe standard terms and conditions including the appropriate social obligations for each type of Communication Service Licence before issuing such a licence.

(2) In prescribing the standard terms and conditions for each type of communications service licence, the Authority must have regard to the empowerment of historically disadvantaged groups including women and the youth.

(3) The Authority must, in granting a Communication Services Licence–

(a) ensure that communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in South Africa; and

(b) promote the empowerment of historically disadvantaged groups including women and the youth.

**15. Licence Exemption**

The Authority may, from time to time, prescribe the type of communications service that may be provided without a licence.

**16. Prohibition of provision of service without licence**

(1) Subject to the provisions of this Act, no person may provide a communications service except under and in accordance with a service licence or exemption granted to that person in terms of this section.

(2) A person providing access to any communication facility must do so in accordance with the provisions of this Act.

**17. Application for individual licence**

(1) Any person may, subject to the provisions of this Act, apply for an individual

licence, in the prescribed manner.

(2) For the purposes of subsection (1), the Authority may prescribe the requirements for an individual licence.

(3) A non-refundable application fee, as prescribed, is payable to the Authority by the applicant, upon application.

(4) The Authority may prescribe the type of individual licence which may only be applied for in response to an invitation to apply, issued by the Authority.

(5) In the case of an application for a licence to provide a communications service referred to in subsection (1) or any other service prescribed for the purposes of this subsection the Authority–

(a) must give notice of the application in the *Gazette* and invite interested persons to lodge representations in relation to the application within the period mentioned in the notice;
(b) must in the same or in a subsequent notice, make known the percentage equity ownership held by persons from historically disadvantaged groups, especially women;
(c) may after the period for lodging representations in terms of paragraph (a) has passed, hold a hearing in respect of the application and other related matters.

(6) A hearing contemplated in subsection 5(c) is, subject to the provisions of section 5(13), open to the public.

(7) The Authority may require an applicant or an interested party who has lodged written representations in terms of subsection (5)(a) to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary in order to consider the application.

(8) The Authority may prescribe the period within which an application may be amended or varied.

(9) (a) Applications, representations and other documents relating to an application which are lodged with 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 lodged representations, determine that any document or information that is commercially sensitive or 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 paragraph, 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 contemplated in paragraph (c)(i), the applicant or person concerned may be allowed to withdraw the document or information in question.

(10) (a) A hearing contemplated in subsection (5) (c) is, subject to paragraph (b), open to the public.

(b) Before considering any document or information which the Authority has determined is not open for public inspection, the Authority may direct that the public or any member or category thereof may not be present at the hearing.

(c) The Authority must, before making such direction–

(i) notify those present of its intention to do so;

(ii) allow persons to object to such direction; and

(iii) give due consideration to any objection made.

**18. Issuing of individual licence**

(1) The Authority may, before issuing an individual licence and within a period determined by the Authority, invite written submissions in relation to the application.

(2) The Authority must, after considering–

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

(b) any written submissions referred to in subsection (1) in relation to the application, notify the applicant of its decision, the reasons for the decision and the licence conditions.

(3) Upon having reached a decision on any application, the Authority must, by notice in the *Gazette* and by written notice addressed to the applicant, make known the decision and the reasons for the decision.

(4) Whenever the Authority issues an individual licence, the authority–

(a) must do so on the standard terms and conditions applicable to the relevant category of licence, as prescribed; and

(b) may, in consultation with the applicant, impose such additional terms and conditions that are–

(i) appropriate to such licence;

(ii) consistent with the objects of the Act; and

(iii) similar to any additional terms and conditions of other licences of the same category.

(5) Despite subsection (3) (b), the Authority may impose on the applicant any other specific conditions resulting from undertakings made by the applicant in response to an invitation to apply for an individual licence, as additional licence terms and conditions.

**19. Amendment of individual licence**

(1) The provisions of sections 18(5) and 19(1) apply, with the necessary changes, to the amendment of an individual licence.

(2) The Authority may amend an individual licence in consultation with the licensee only–

(a) to make the conditions of the individual licence consistent with conditions being imposed generally in respect of all individual licences issued in the same category, for the purpose of ensuring fair competition between those licensees, provided that the amendment will not cause substantial prejudice to the licensee; or
(b) to the extent requested by the licensee.

**20. Renewal of individual licence**

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

(a) not longer than four years, the licensee must apply for a renewal not later than four months prior to the expiry date;
(b) longer than four years but not more than eight years, the licensee must apply for a renewal not later than one year prior to the expiry date;
(c) longer than eight years, the licensee must apply for a renewal not later than three years prior to the expiry date.

(2) The provisions of sections 18(5) and 19(1) apply, with the necessary changes, to the renewal of an individual licence.

(3) The Authority must, subject to subsection (7), make its decision on the application for renewal, in the case of a licence referred to in –

(a) **section 13(a)**, not later than one month prior to the expiry date of that licence;
(b) **section 13(b),** not later than three months prior to the expiry date of that licence;
(c) **section 13(c),** not later than two years prior to the expiry date of that licence.

(4) The prescribed fee for an application for renewal is payable upon the submission of the application.

(5) The Authority must renew the licence on no less favourable terms and conditions as were applicable during its preceding period of validity.

(6) The Authority may refuse to renew a licence only if the Authority determines that the licensee has failed to comply with –

(a) the terms and conditions of the licence;
(b) the provisions of this Act; or
(c) any regulation made by the Authority.

(7) If the Authority decides to refuse an application for a renewal of the licence, the Authority must–

(a) inform the licensee by written notice, as soon as practicable, of its decision and the reasons for the decision; and
(b) 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 section (7)(a), which time period must, in the case of a licence referred to in–
  (i) **section 13(a),** be two (2) months before the expiry date of that licence;
  (ii) **section 13(b),** be one hundred and twenty (120) days prior to the expiry date of that licence;
  (iii) **section 13(c),** be three (3) years prior to the expiry date of that licence.

(8) Despite anything to the contrary contained in this Act, a licence remains valid until such time as the Authority has made a decision on the application for renewal of a licence.

**21. Surrender of individual licence**

A licensee may, at any time, by written notice, surrender a licence to the Authority in accordance with the requirements set out in the licence.

**22. Transfer of individual licence or change of ownership**

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

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

(3) The Authority may by regulation restrict or control the ownership or control of a licence in order to –

(a) promote a diversity of views and opinions;
(b) promote the ownership and control of communications services by historically disadvantaged groups;
(c) promote competition in the communications sector.

(4) Regulations contemplated in subsection (2) must be made–

(a) with due regard to the objectives of this Act and other relevant legislation;
(b) after the Authority has conducted an enquiry in terms of section 5, which may include a market study.

**23. Suspension or cancellation of individual licence**

(1) The Authority may only suspend or cancel a licence granted under this Act under one or more of the following circumstances:

(a) where the licensee agrees in writing to such suspension or cancellation;
(b) in terms of a finding in section 70(2);
(c) where the licensee is placed in liquidation, whether voluntary or compulsory or is placed under judicial management, either provisionally or finally.

(2) The procedures set out in sections 18(5) and 19(1) apply with the necessary changes to the suspension or cancellation of a licence.

(3) The suspension or cancellation of a licence takes effect on the expiration of fourteen days from the date on which a written notice of suspension or cancellation is served on the licensee.

(4) Where the suspension or cancellation of a licence has taken effect, the Authority must, as soon as practicable, publish the suspension or cancellation in the *Gazette*.

(5) 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.

**24. Effect of suspension, cancellation, surrender or expiry of individual licence**

(1) Where the suspension or cancellation of an individual licence under section 24 or the surrender of an individual licence under section 22 has taken effect, or where an individual licence has expired, the licensee must immediately cease to provide any service in respect of which the licence was granted.

(2) Despite subsection (1), the Authority may, authorise the licensee in writing to continue providing any service for such duration as the Authority may specify in the authorisation for the purpose of winding up the licensee's affairs.

(3) Despite subsection (1), 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 21; and

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

## CHAPTER 4

## INFRASTRUCTURE NETWORK SERVICES

### 25. Application

(1) This chapter applies only to an individual Infrastructure Network Service Licensee. For the purposes of this chapter, 'licensee' means an individual Communications Network Service Licensee.

(2) A licensee must provide communication network services in accordance with this Chapter and the regulations contemplated in section 30.

### 26. Regulations

(1) The Authority must prescribe–

(a) the manner, form and period of notice to be given to any person or authority in connection with the provision by a licensee of services contemplated in this Chapter; and
(b) the procedure to be followed and consultations to be held with any affected person or authority and a licensee.

### 27. Entry upon and construction of lines across any lands

(1) A licensee may–

(a) enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway;
(b) construct or maintain a communications network or a communications network facility upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and
(c) alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

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

**28. Underground pipes for communications service purposes**

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

(2) The cost of the provision of the said conduit-pipe or other communication network 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.

**29. Pipes under streets**

(1) A licensee may, after reasonable notice in writing 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 communication network facilities under any such street, road or footpath;
(b) alter or remove any pipes, tunnels or tubes required for communication 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.

**30. Removal of communications network facilities**

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

(2) (a) Where any communications network facility passes over any private property and 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 line in such manner as will remove all obstacles to building operations.

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

(3) If any deviation or alteration of a 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 licensee must be given 28 days' written notice of such deviation or alteration.

(4) The licensee must decide whether or not the deviation or alteration is possible, necessary or expedient.

(5) If the 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.

(6) If, in the opinion of the licensee the deviation or alteration is justified, the licensee may bear the whole or any part of the said cost.

**31. Fences**

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

(a) erect and maintain gates in that fence; and
(b) provide duplicate keys for such gates, one of which duplicate keys must be handed to the owner or occupier of the land.

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

**32. Trees obstructing communications network facilities**

(1) Any tree or vegetation which in the opinion of a licensee–

(a) obstructs or interferes; or
(b) is likely to obstruct or interfere,

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

(i) State-owned land;
(ii) any road;
(iii) street; or
(iv) private land,

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

(2) In the event of failure to comply with any such notice envisaged in subsection (1), the licensee may cause the said tree or vegetation to be cut down or trimmed as the licensee may consider necessary.

(3) Where the communications service 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) and (3), due regard must be had to the environmental policy of the Republic.

**33. Height or depth of communications network facilities**

(1) (a) Aerial communications network 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 licensee must place communications network facilities, pipes, tunnels and tubes at the prescribed depth below the surface of the ground.

(3) If the owner of any private land proves to the satisfaction of a licensee that he or she is obstructed in the free use of his or her land by reason of the

insufficient height or depth of any communication network facility, pipe, tunnel or tube constructed by the licensee, the licensee may, subject to the provisions of sections 34, 35 and 37 take such steps as he or she may consider necessary for giving relief to that owner.

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

**34. 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 a licensee for the prevention of any of its communications network facilities or works being damaged by such construction;
(b) before commencing the construction of any such railways or works, give one months notice in writing to the licensee of his or her intention to commence the construction; and
(c) furnish the 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 licensee may require.

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

(b) if any of such communications network facilities or works are damaged by the construction, equipment or operation of any such railway or works, the 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 is liable to the licensee in damages.

## CHAPTER 5

## RADIO FREQUENCY SPECTRUM

### 35. Control of radio frequency spectrum

(1) The Authority controls, plans, administers, manages, licenses the use of the radio frequency spectrum, in a fair and equitable manner.

(2) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority must comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Republic.

(3) (a) The Authority must, in performing its functions in terms of subsection (1), ensure that in the use of the radio frequency bands, harmful interference is not caused to authorised users of the radio frequency spectrum.
(b) The Authority must investigate and resolve all instances of harmful interference.

### 36. Spectrum and station licences, certificates and authorities

(1) No person may transmit any signal by radio or use radio apparatus to receive any signal by radio, or do or permit to be done anything for which a licence, certificate or authority is required in terms of this section, except under and in accordance with–

(a) a licence conferring on the licensee the right to–
(i) use; or
(ii) cause any person in his or her employ or under his or her control to use,

a station for any prescribed purpose or to use any radio frequency or group of radio frequencies for any purpose and in the manner prescribed;

(b) a certificate of proficiency issued to any person who passes the examinations referred to in subsection (4) or who qualifies therefore under the radio regulations, to use a station for any prescribed purpose or to maintain a station in a category which may in terms of the radio regulations only be maintained by the holder of such a certificate;
(c) an authority issued to the holder of a certificate referred to in paragraph (b) and conferring on such holder the right to use any station which under–
(iii) the conditions of any licence issued under paragraph (a);
(iv) the radio regulations; or
(v) any other law, may only be used by the holder of such an authority.

(2) (a) Licences, certificates and authorities referred to in this section must be issued by the Authority.
(b) The procedures in relation to applications for such licences, certificates and authorities and the information to be supplied for the consideration of such applications must be as prescribed.

(3) A radio frequency spectrum or station licence is required in addition to any service licence contemplated **in chapter 3,** where the provision of the service or the use thereof entails the use of radiocommunication.

(5) The Authority may conduct examinations, or cause examinations to be conducted, to determine the proficiency of any person to use or maintain a station as contemplated in subsection 1(b).

(6) A licence, certificate or authority which was valid immediately before the date of commencement of this Act is considered to have been issued in terms of this section.

(7) The Authority may amend a frequency spectrum licence or station licence –
(a) to implement a change in the Table of frequency allocations or in the interest of orderly spectrum management, if the amendment will not cause substantial prejudice to the licensee;
(b) if requested by the licensee concerned.

(7) The Authority must prescribe the procedures in relation to the amendment, renewal or transfer of a frequency spectrum licence, certificate or authority contemplated in this section.

(8) Subsection (1) does not apply to a person who utilises radio –

(a) in the course of making due and proper use of a communications service, the provision of which is duly licenced in terms of this section and chapter 3, as a customer or consumer thereof;
(b) in the course of making due and proper use of a communications service, the provision of which is duly licensed in terms of this section and chapter 3, as part of his or her duties in the service of the State or a local authority, including any military, police or traffic force in instances of force majeure; or
(c) in accordance with the regulations contemplated in subsection (9).

(9) The Authority may prescribe-
(a) categories 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 licence, certificate or authority in terms of this section or a permit referred to section 49(1).

**37. Control or possession of radio apparatus**

(1) No person may posses any radio apparatus unless–

(a) he or she is in possession of a permit issued by the Authority in terms of this section or a radio frequency spectrum or station licence issued in terms of section 48(2) authorising such possession; or
(b) he or she is a supplier registered in terms of section 56 of the Telecommunications Act.

(2) The Authority must prescribe the procedure for obtaining a permit referred to in subsection (1).

(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 prevent the use of that radio apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose;
(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 until–
(a) its possession is authorised in terms of subsection (1) or (3)(a); or
(b) it is dealt with by a court in terms of section 102(2) of the Telecommunications Act.

## CHAPTER 6

## TECHNICAL EQUIPMENT AND STANDARDS

### 38. Type approval

(1) No person may use, supply, sell, offer for sale or lease or hire, any type of equipment or communications facility, including radio apparatus, in connection with communications, unless that type of equipment, communications facility or radio apparatus, has, subject to subsection (2), been approved by the Authority.
(2) The Authority may prescribe–
(a) types of equipment or communication facilities, the use of which does not require approval;
(b) circumstances, **which may include use for research and development,** under which the use of equipment or communications facilities does not require approval.

### 39. Technical standards for equipment and communication 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 communication facility, including radio apparatus.

(2) Any such standard must be aimed at–
   (a) protecting the integrity of the communications network;
   (b) ensuring the proper functioning of connected equipment or communication facilities;
   (c) avoiding radio or other interference with the communications network.

(3) (a) The regulations made in terms of subsection (1) may, for the purposes of this section, incorporate any technical standard by reference to–
      (i) the number, title and year of issue of the technical standard; or to other particulars by which it may be sufficiently identified,
      (ii) without publishing the text of the technical standard.

   (b) Any technical standard incorporated in the regulations as contemplated in paragraph (a) is, in so far as it is not contrary to the regulations, considered to be a regulation.
   (c) Whenever any technical standard is, at any time after its incorporation under paragraph (a), amended or substituted by a competent authority, 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 under paragraph (a); and
      (ii) amendment or substitution the text.
   (e) he text must be open to inspection 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.

   (g) Despite subsection (1), the provisions of section 31 of the Standards Act, 1993, do not apply to any incorporation of a technical standard or to any amendment or substitution of a technical standard under this subsection.

## CHAPTER 7

## ACCESS AND INTERCONNECTION

### 40. Access to communication network facilities

(1) A Communications Network Service Licensee must provide access to a communications network facility, upon written request, to a Communications

Network Service Licensee on reasonable terms and conditions which will not result in–

(a) undue preference or cause undue discrimination against any person or category of persons; or

(b) undue prejudice to either party.

(2) The Authority must prescribe and regularly review the list of types of communications network facility which are subject to subsection (1).

(3) The access to a communications network facility provided by a licensee ("the access provider") to the requesting licensee must, unless otherwise requested, be not less than the same technical standard and quality as the technical standard and quality provided by the access provider's network services.

**41. Resolution of access disputes**

(1) If a Communication Network Service Licensee unreasonably refuses a request made in terms of section 52(1), the affected party may notify the Authority of the refusal.

(2) The Authority must resolve any dispute that may arise as a result of the refusal to allow access in accordance with the procedure set out in section 67.

**42. Obligation to interconnect**

(1) A Communications Network Service Licensee must, on request, interconnect to any existing communications network for the purposes of delivery of any communications service, unless the Authority considers such request to be unreasonable.

(2) For the purposes of determining whether a request is reasonable the Authority must take into account whether the requested interconnection–

a) is technically and financially feasible; and

b) will promote the efficient use of the communications network.

**43. Interconnect Guidelines**

(1) The Authority must determine guidelines of good practice for interconnection.

(2) Interconnect guidelines must provide model terms and conditions for interconnection agreements.

(3) Matters which the interconnect guidelines may address include but are not limited to–

(a) the time frame and procedures for–

(i) negotiation of interconnection agreements;

(ii) the conclusion of interconnection agreements; and
(iii) the technical implementation of the agreement;

(b) the quality or level of service to be provided;
(c) the manner in which fees and charges payable for such interconnection must be determined;
(d) protection of intellectual property;
(e) provisioning of facilities to establish points of interconnection;
(f) sharing of technical information; and
(g) contractual dispute resolution procedures.

(4) The interconnect guidelines may provide for different terms and conditions for different network services.

**44. Registration of interconnection agreements**

(1) An interconnection agreement for the provision of communications network services must be in writing and be registered with the Authority.

(2) No interconnection agreement for the provision of communications network services is enforceable unless it has been registered.

**45. Notification of interconnection disputes**

(1) A party to a dispute over a request for interconnection in terms of section 54(1) or the timelines for the implementation of an interconnection agreement, may notify the Authority of the dispute.

(2) The Authority must resolve the dispute in accordance with the procedure set out in section 67 subject to the following:

(a) with respect to the period specified in **section 67(3)(b)(ii),** the period must be 14 days;
(b) with respect to the period specified in ***section 73(4)(a), the period must be 30 days; and***
(c) ***with respect to the period specified in section 73(5), the period must be 30 days.***

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

**46. Interconnect pricing principles**

Interconnection rates must be determined on the basis of the following principles:

(1) rates must be fair;

(2) rates must be related to costs; and

(3) rates must be structured and levels set to ensure reasonable rates of return so as to attract investment into the communications industry and **communications user industry**.

(4) The Authority may prescribe regulations establishing a framework of interconnect rates to be charged for specified classes of communications services.

(5) The regulations made under subsection (4) may include but are not limited to:

(a) regulations about the rates and changes in rates for specific services within the relevant market;
(b) regulations about the publication or disclosure of rates of rates for specific services within the relevant market; or
(c) rate control mechanisms applied to specified licensees for specific services within the relevant market.

## CHAPTER 8

## FACILITIES LEASING

### 47. Obligation to lease facilities

(1) A Communications Network Service Licensee must, on request, lease communication network facilities to any other Communications Network Service Licensee for the purposes of delivery of any communications service, unless the Authority considers such request to be unreasonable.

(2) The Authority must from time to time prescribe the list of communications network facilities, including international network facilities, to be leased.

(3) For the purposes of determining whether a request is reasonable the Authority must take into account whether the requested lease of facilities–

(a) is technically and financially feasible; and
(b) will promote the efficient use of the communications network.

### 48. Facilities Leasing Guidelines

(1) The Authority must determine guidelines of good practice for communication network facilities leasing.

(2) Facilities leasing guidelines must provide model terms and conditions for facilities leasing agreements.

(3) Matters which the facilities leasing guidelines may address include but are not limited to:
   (a) the time frame and procedures for–
      (i) negotiation of facilities leasing agreements;
      (ii) the conclusion of facilities leasing agreements; and
      (iii) the technical implementation of the agreement;
   (b) the quality or level of service to be provided;
   (c) the manner in which the structure of fees and charges for such facilities leasing must be determined;
   (d) sharing of technical information; and
   (e) contractual dispute resolution procedures.

(4) The facilities leasing guidelines may provide for different terms and conditions for the different communications network facilities listed.

**49. Registration of facilities leasing agreements**

(1) All facilities leasing agreements for the provision of listed communications network facilities must be in writing and be registered with the Authority.

(2) No facilities leasing agreement for the provision of listed communications network facilities is enforceable unless it has been registered.

**50. Notification of facilities leasing disputes**

(1) A party to a dispute over a request for facilities leasing referred to in section 59(1) or the timelines for implementation of a facilities leasing agreement may notify the Authority of the dispute.

(2) The Authority must resolve the dispute in accordance with the procedure set out in section 67 subject to the following:

   ***(i) with respect to the period specified in section 73(3)(b)(ii), the period must be 14 days;***
   ***(ii) with respect to the period specified in section 73(4)(a), the period must be 30 days; and***
   ***(iii) with respect to the period specified in section 73(5), the period must be 30 days.***

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

**51. Facilities leasing rates**

(1) Facilities leasing rates must be determined on the basis of the following principles:

   (a) rates must be fair;

(b) facilities leasing rates must be related to costs; and
(c) rates should be structured and levels set to ensure reasonable rates of return so as to attract investment into the communications industry and **communications user industry**.

**52. Rules regarding wholesale rates**

(1) The Authority may prescribe regulations establishing a framework of wholesale rates to be charged for specified classes of communications services.

(2) The regulations which may be made by the Authority under subsection (1) may include but are not limited to –

(a) regulations about the rates and changes in rates for specific services within the relevant market;
(b) regulations about the publication or disclosure of rates for specific services within the relevant market; or
(c) rate control mechanisms applied to specified licensees for specific services within the relevant market.

## CHAPTER 9

## MONITORING, COMPLAINTS AND DISPUTE RESOLUTION

**53. Establishment of Monitoring and Complaints Committee**

(1) The Authority must establish a Monitoring and Complaints Committee.

(2) The Chairperson of the Monitoring and Complaints Committee must be–

(a) a judge of the High Court of South Africa, whether on active service or not;
(b) an advocate or attorney with at least 10 years' appropriate experience; or
(c) a magistrate or retired magistrate with at least 10 years' appropriate experience.

**54. Functions of Monitoring and Complaints Committee**

(1) Subject to the provisions of sections 56 and 57 of the IBA Act, the Monitoring and Complaints Committee must–

(a) monitor compliance by licensees with the terms and conditions of their licences;
(b) monitor compliance by licensees with the provisions of this Act and the related legislation and regulations passed under the related legislation, applicable to them;
(c) investigate and adjudicate any complaint alleging that a licensee is–

(i) contravening the provisions of this Act or the related legislation, any regulation passed under the related legislation or any licence issued by the Authority; or

(ii) is failing to provide a communications service to any customer or consumer.

(2) The Monitoring and Complaints Committee must, in accordance with the provisions of sections 67 and 68, inquire into and adjudicate any alleged or suspected non-compliance with the terms and conditions of a licence or this Act or the related legislation.

**55. Hearings by Monitoring and Complaints Committee**

(1) An interested person who has reason to believe that a person is guilty of any non-compliance with the terms and conditions of a licence or this Act or the related legislation, may lodge a written complaint with the Monitoring and Complaints Committee within 30 days after the occurrence of the alleged or suspected non-compliance.

(2) If the Monitoring and Complaints Committee is of the view that the complaint entirely lacks merit it may dismiss the complaint.

(3) If the Monitoring and Complaints Committee is of the view that the complaint has merit it may, either–

(a) refer the complaint to the relevant industry representative body for resolution; or

(b) investigate and adjudicate the complaint itself, in which case it must–

(i) furnish the other party to the dispute with a copy of the complaint; and

(ii) request the other party to the dispute to respond to the complaint in full and in writing within 30 days from the date on which the licensee was notified of the complaint.

(4) Upon consideration of the written complaint and the response, if any, the Monitoring and Complaints Committee may conduct a hearing into the complaint.

(5) The provisions of section 5 apply with the necessary changes to a hearing to be conducted in terms of this section.

(6) The complainant and the respondent are entitled to legal representation at the hearing.

(7) (a) The Monitoring and Complaints Committee must keep a record of all complaints received by it and of all its proceedings, rulings and findings in relation to such complaints.

(b) The records referred to in paragraph (a) must be kept at the offices of the Authority and be open to inspection by interested parties during the normal office hours of the Authority.

(c) The Authority must, at the request of any interested party and on payment of such fee as may be prescribed, furnish him or her with a certified copy of or extract from such record.

**56. Findings by the Monitoring and Complaints Committee**

(1) The Monitoring and Complaints Committee must complete its investigations in terms of sections 66(1)(c) and 67(3)(b) and make a finding within 90 days of the hearing.

(2) If no hearing took place, the Monitoring and Complaints Committee must make a finding within 90 days of receiving the written response to the complaint referred to in section 67(3)(b)(ii).

(3) In making a finding the Monitoring and Complaints Committee must take account of the objects of this Act and of the related legislation.

**57. Recommendations of Monitoring and Complaints Committee**

(1) Upon having made a finding that a complaint is justified, the Monitoring and Complaints Committee must in writing make a recommendation to the Authority regarding which step in section 70 (2) must be taken against the licensee.

(2) The Monitoring and Complaints Committee must forward its finding, recommendations and the record of the proceedings to the Authority for appropriate action in terms of section 70.

(3) The Monitoring and Complaints Committee must when so forwarding its recommendations to the Authority, inform the licensee in writing.

**58. Powers of Authority in cases of non-compliance**

(1) After receipt of the finding and recommendations referred to in section 69(2) the Authority must before issuing an order take the following into account:

(a) the nature;
(b) consequences; and
(c) gravity of the non-compliance;
(d) the circumstances under which it occurred; and
(e) the recommendations of the Committee.

(2) The Authority may issue one or more of the following orders:
(a) direct the licensee to desist from any further contravention;
(b) direct the licensee to pay as a fine a prescribed amount;
(c) direct the licensee to take such remedial or other steps not in conflict with this Act or the related legislation as may be determined by the Committee;
(d) where the licensee has repeatedly been guilty of such non-compliance–

(i) prohibit a respondent who is a licensee from carrying on his or her service for a period not exceeding 30 days as the Committee may determine; or
(ii) amend or revoke his or her licence;

(e) If the non-compliance constitutes an offence, order that the findings and recommendations of the Committee be referred to the National Prosecuting Authority.

(3) The provisions of section 68 and subsections (1) to (3) apply with the necessary changes, in relation to any investigation instituted at its instance by the Committee with regard to any suspected non-compliance of the nature contemplated in section 66(1).

(4) Any order by the Authority, made in terms of subsection (2) is considered to be an order of the High Court and is final and binding on the parties, subject only to a review by the High Court in terms of the Promotion of Administrative Justice Act, 2000(Act No. 3 of 2000).

(5) A summary of the finding by the Committee and of the order of the Authority must be published in the *Gazette* and the full written finding and order must be available to the public at the offices of the Authority.

(6) The provisions of sections 65 to 70 do not preclude any person from bringing an action in any court.

## CHAPTER 10

## CONSUMER ISSUES

### 59. Matters for consumer code

(1) The Authority must after the coming into operation of this Act co-ordinate the establishment of an ad-hoc consumer code forum consisting of industry stakeholders and consumer interest groups to prepare and review a consumer code.

(2) Licensees must, if required in their licence, comply with the consumer code.

(3) The matters which the consumer code may address may include, but are not limited to –

(a) the provision of information to customers regarding services, rates, performance and consumer complaint procedures;
(b) the provisioning of and fault repair of services;
(c) the protection of consumer information;
(d) customer charging, billing, collection and credit practices; and
(e) any other matter of concern to consumers.

(4) The Authority must approve, and publish, the code in the *Gazette*.

(5) If the consumer code forum is unable to agree on the code for submission to the Authority, the Authority must through mediation or arbitration ensure finalisation of the code.

**60. Retail tariffs**

The Authority may prescribe the manner of determining retail tariffs which may be levied by a licensee in respect of the provision of communication services, only in respect of those markets where no or ineffective competition exists and to the extent required to reasonably protect consumer interests.

## CHAPTER 11

## GENERAL

**61. ICT's for government and other related services**

(1) 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.

(2) The center must also serve as the directory of contact using SMS and other related services.

(3) All services that are provided by government entities, shall be at no cost to the users.

**62. Competition matters**

(a) Subject to the provisions of this Act and of the related legislation, the Competition Act, 1998(Act No. 89 of 1998), applies to competition matters in the communications industry.

(b) The Authority is, for the purposes of the Competition Act, 1998, a regulatory authority defined in section 1 of that Act.

**63. Offences and penalties**

Any person who contravenes a provision of this Act is guilty of an offence and is liable on conviction to a fine not exceeding R500 000.00 or a further fine of R10 000.00 for every day or part thereof during which the offence is continued or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

## CHAPTER 12

## TRANSITIONAL PROVISIONS

### 64. Existing Licences

(1) Despite anything to the contrary contained in this Act, all existing licences, authorisations and certifications issued or considered to be issued in terms of the Telecommunications Act, the Broadcasting Act, the IBA Act, the Sentech Act, 1996(Act No. 63 of 1996) (in this chapter referred to as "licences") shall remain valid.

(2) (a) Despite section 17, any person who, immediately before the commencement of this Act, was lawfully entitled to provide a service without a licence, is considered to have permission to continue to provide such service, unless the Authority has prescribed the service to be a service that requires a licence in terms of this Act.

(b) Such person may continue to provide such service until the Authority has made a decision regarding his or her application for a licence.

(3) The Authority must convert the licences referred to in subsection (1), into the new licensing structure, within six months of commencement of this Act or such other time period as may be prescribed by the Authority.

(4) The licences must be converted on substantially similar but on no less favourable terms than those contained in the licences.

(5) This does not confer any additional benefits or rights to existing licensees beyond what has been stipulated in the current licence.

### 65. Existing regulations

The regulations made under section 119A of the Post Office Act, 1958, section 96 of the Telecommunications Act, section 40 of the Broadcasting Act, section 78 of the IBA Act, section 18 of the Radio Act, which were in force immediately prior to the commencement of the this Act, remain in force until amended or repealed in terms of this Act.

### 66. Licence conversion

(1) The Authority may convert upon application licences issued under the Broadcasting Act, the IBA Act and the Telecommunications Act, into categories of licences provided for in this Act.

(2) The Authority may prescribe different time periods during which the Authority may convert different types of licences but not later than six months after coming into operation of this Act.

(3) Additional licence rights may be applied for in accordance with the procedures set out in sections 18 and 19.

(4) Additional rights may be granted to licensees with commensurate licence obligations.

**67. Repeal and amendment of laws**

The laws referred to in the first column of Schedule1 are repealed or amended to the extent indicated in the third column.

**68. Short title and Commencement**

This Act is called the Convergence Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE 1**

| No. and year of Act | Short Title | Extent of repeal or amendment |
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| Act No. 13 of 2000 | Independent Communications Authority Act, 2000 | Amendment of section 15–<br>(a) by the substitution for subsections (1)and (3) of the following subsections:<br>"(1) The Authority is financed from monies derived from licence, administration, spectrum and numbering fees.<br>(3) The Authority must retain a maximum of fifty percent of all monies received in terms of subsection (1), the balance of which must be paid into the National Revenue Fund within 30 days of receipt of such revenue.<br>(b) by the insertion after subsection (3) of the |

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| | | following subsections:<br>(4) At the end of each financial year, the Authority must account to the National Treasury and Parliament for all monies received and must transfer any unspent monies to the National Revenue Fund.<br>(5) In the event that the monies received by the Authority in terms of subsections (1) and (3) are insufficient to meet the Authority's approved budget in any financial year, the Authority may, with the express approval of Parliament, retain such additional percentage of monies received in terms of subsection (1) required in order to meet the shortfall.<br>(6) The Council must, in the name of the Authority, open and maintain, with a bank registered as such in the Republic or with any other financial institution so registered and approved by the relevant Minister, an account, in which moneys received by the Authority as contemplated in subsection (1) must be deposited and from which payments to it or on its behalf must be made.<br>(7) The financial year of the Authority starts on 1 April of any year and ends on 31 March of the subsequent year. |
| Act No. 153 of 1993 | Independent Broadcasting Authority Act, 1993 | 1. The repeal of sections 13, 13A, 17, 21, 22(3)(b),27, 28, 28A, |

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| | | 47A, 47B, 62, 63, 64, 65 ,66, 68, 69, **70,** 75, 76, 77, 78, 81.<br><br>2. Amendment of section 1–<br><br>(a) by the deletion of the following definitions: **"broadcasting", "broadcasting services frequency bands", "broadcasting signal distribution", "broadcasting signal distribution licence", "broadcasting signal distribution licensee", "sound broadcasting service", "sound radio set"** and **"television broadcasting service"**<br><br>(b) by the substitution for the definition of **"broadcasting licence"** of the following definition: **"broadcasting licence"** "means an individual licence issued by the Authority to a person for the purpose of providing a broadcasting service, or regarded in terms of the IBA Act, the Broadcasting Act or the Convergence Act to have been so granted and issued, or a class licence to provide a broadcasting service".<br><br>(c) by the substitution for the definition of **"broadcasting service"** of the following definition: **"broadcasting service"** means any service which provides visual material or sound material for reception by the public, sections of the public or |

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| | | subscribers to such a service, and which service is conveyed by a transmission system consisting of the conveyance of signals by the use of electrical, magnetic or electro-magnetic energy, but which service does not include –<br><br>(i) a service which provides no more than data or text, whether with or without associated still images;<br><br>(ii) a service in which the provision of visual material or sound material is incidental to the provision of that service;<br><br>(iii) a service or a class of service which the Authority has prescribed as exempt from requiring a licence;"<br><br>(d) by the substitution for the definition of **"election"** of the following definition: **"election"** means "any election for the National Assembly, a provincial legislature or a Municipal Council".<br><br>(e) by the substitution for the definition of **"licensee"** of the following definition: **"licensee"** means "the holder of any licence granted and issued by the Authority or considered to have been |

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| | | so granted or so issued".<br><br>(f) by the insertion of the following definition: **"visual material"** means "visual images, whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures".<br><br>2. The substitution for section 39 of the following section:<br><br>**39. Prohibition on provision of broadcasting service without broadcasting licence**<br><br>"Subject to the provisions of this Act and the related legislation, a person may not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence to provide such service."<br><br>3. The amendment of section 45 by the deletion of subsections (1), (3) and (4).<br><br>4. The amendment of section 46 by the deletion of subsections (2) and (3).<br><br>5. The Amendment of section 53 by the deletion of subsection (7).<br><br>6. The substitution for section 54 of the following section: |

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| | | **54. Terms of broadcasting licences**<br><br>"The term of validity of a broadcasting licence –<br><br>(a) in the case of a public and a commercial broadcasting licence to provide visual material, shall be eight years;<br><br>(b) in the case of a public and a commercial broadcasting licence to provide sound material, shall be six years; and<br><br>(c) in the case of a community broadcasting licence, shall be four years;<br><br>whereafter such licence shall, subject to the provisions of this Chapter, be renewable for like periods."<br><br>7. Amendment of section 55–<br><br>(a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:<br><br>"(b) on demand of the **[Broadcasting]** Monitoring and Complaints Committee, produce to it any such recording for examination or reproduction;<br><br>(c) on demand of the **[Broadcasting]** Monitoring and Complaints Committee, produce to it any script or transcript of a |

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| | | programme after the broadcast thereof.<br><br>(b) by the substitution for subsection (2) of the following subsection:<br><br>"(2) Nothing in this Act shall be construed as requiring or authorizing the Authority or the **[Broadcasting]** Monitoring and Complaints Committee in the performance of its functions and duties, to view programmes prior to their being broadcast.<br><br>8. Amendment of section 57–<br><br>(a) by the substitution for subsections (2) and (3) of the following subsections:<br><br>"(2) The **[Broadcasting]** Monitoring and Complaints Committee shall adjudicate complaints concerning alleged breaches of the Code by broadcasting licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with the provisions of Chapter **[VIII]** 10 of the Convergence Act.<br><br>(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 |

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| | | licensee shall be dealt with in accordance with the applicable provisions of Chapter **[VIII]** 10 of the Convergence Act.<br><br>9. Amendment of section 59–<br><br>(a) by the substitution for the heading of the following heading: **"Broadcasting of party election on broadcasting services providing sound material"**<br><br>(b) by the substitution for the expression "sound broadcasting services" wherever it appears in section 59 of the expression "broadcasting licensee to provide sound material".<br><br>10. Amendment of section 60–<br><br>(a) by the substitution for the heading of the following heading: **"Political advertising on broadcasting services providing sound material"**<br><br>(b) by the substitution for the expression "sound broadcasting services" wherever it appears in section 60 of the expression "broadcasting licensee to provide sound material".<br><br>11. Amendment of section 66A–<br><br>(a) by the deletion of |

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| | | subsections (1) and (2);<br><br>(b) by the substitution in subsection (3)(a) to (c), for the expression "pay-television service" of the expression "a subscription broadcasting service".<br><br>(c) by the deletion of the expression "or television set" in subsection (5).<br><br>12. Amendment of section 67 by the substitution in subsection (2) for paragraph (c) of the following paragraph:<br><br>"(c) fails to comply with any order made by the Authority in terms of section **[66 (1) (a), (b), (c), (d) or (e),]** 70(2) or contravenes the provisions of section **[75]** 12; |
| Act No. 103 of 1996 | Telecommunications Act, 1996 | 1. The repeal of sections 5(4), 26, 27,43, 44, 45(1)and (2), 53, 70,74,75,76, 77, 91, 93, 95, 96, 100.<br><br>2. Amendment of section 101 by the substitution for paragraph (d) of the following paragraph:<br>"(d) fails to comply with any order made by the Authority in terms of section 70(2) of the Convergence Act". |
| Act No. 4 of 1999 | Broadcasting Act, 1999 | 1. Amendment of section 1–<br><br>(a) by the deletion of the following definitions:<br>**"broadcaster",** |

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| | | **"broadcasting", "broadcasting services frequency bands", "broadcasting signal distribution", "broadcasting signal distribution licence", "broadcasting signal distribution licensee", "common carrier", "multi-channel distribution service" "satellite broadcasting service", "sound broadcasting service", "sound radio set",** and **"television broadcasting service"**<br><br>(b) by the substitution for the definition of **"broadcasting licence"** of the following definition: **"broadcasting licence"** "means an individual licence issued by the Authority to a person for the purpose of providing a broadcasting service, or regarded in terms of the IBA Act, the Broadcasting Act or the Convergence Act to have been so granted and issued, or a class licence to provide a broadcasting service".<br><br>(c) by the substitution for the definition of **"broadcasting licence"** of the following definition: **"broadcasting licence"** "means an individual licence issued by the Authority to a person for the purpose of providing a broadcasting service, or regarded in terms of the IBA Act, the Broadcasting Act or the Convergence Act to have |

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| | | been so granted and issued, or a class licence to provide a broadcasting service".<br><br>(d) by the substitution for the definition of **"broadcasting service"** of the following definition: **"broadcasting service"** means any service which provides visual material or sound material for reception by the public, sections of the public or subscribers to such a service, and which service is conveyed by a transmission system consisting of the conveyance of signals by the use of electrical, magnetic or electro-magnetic energy, but which service does not include –<br><br>(i) a service which provides no more than data or text, whether with or without associated still images;<br><br>(ii) a service in which the provision of visual material or sound material is incidental to the provision of that service;<br><br>(iii) a service or a class of service which the Authority has prescribed as exempt from requiring a licence;"<br><br>(e) by the substitution for the definition of **"licensee"** of the following definition: **"licensee"** means "the |

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| | | holder of any licence granted and issued by the Authority or considered to have been so granted or so issued".<br><br>(f) by the insertion of the following definition: **"visual material"** means "visual images, whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures".<br><br>2. Amendment of section 5–<br><br>(a) by the substitution for the expression **"sound or television broadcasting service licence"** in subsection (1) of the expression **"a broadcasting service licence to provide visual material or sound material"**.<br><br>(b) by the deletion of subsection (2).<br><br>3. Amendment of section31 by the substitution for subsection (2) of the following subsection:<br><br>"(2) The Authority must as soon as reasonably possible conduct a licensing process for subscription broadcasting services".<br><br>4. The repeal of section 21. |

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| Act 63 of 1996 | Sentech Act, 1996 | 1. Amendment of section 1 by the deletion of the definition of "common carrier". |

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