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REPUBLIEK VAN SUID-AFRIKA

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THE PRESIDENCY

No. 266 7 April 2014

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

Act No. 1 of 2014: Electronic Communications Amendment Act, 2014

DIE PRESIDENSIE

No. 266 7 April 2014

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

Wet No 1 van 2014: Wysigingswet op Elektroniese Kommunikasie, 2014

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 3 April 2014)

ACT

To amend the Electronic Communications Act, 2005, so as to insert, amend or delete certain definitions; to align the Act with broad-based black economic empowerment legislation; to refine provisions relating to licensing; to make further provision towards ensuring effective competition amongst persons licensed under the Act; to remove regulatory bottlenecks; to require the Minister of Communications to establish a council to advise the Minister on broadband policy and implementation; to make further provision for the discounted rate at which Internet services must be provided to schools, educational institutions and public health establishments; to authorise the Minister to require that certain information be submitted to the Minister; to make provision for the fiduciary duties of members of the Board of the Universal Service and Access Agency of South Africa; to provide afresh for the appointment and conditions of appointment of the chief executive officer of the Board; to make further provision for the utilisation of money in the Universal Service and Access Fund; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 36 of 2005, as amended by section 1 of Act 37 of 2007

1. Section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of ''affiliate'' of the following definition:

'' **'Advertising Standards Authority of South Africa'** means the entity which regulates the content of advertising, or any entity that replaces it but has the same functions;'';

(b) by the insertion after the definition of ''Agency'' of the following definitions:

'' **'allocation'**, in relation to a frequency band, means the entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space radio-communication services or radio astronomy service under specified conditions;

'assignment', in relation to a radio frequency or radio frequency channel, means authorisation given by the Authority for a radio station to use a radio frequency or radio frequency channel under specified conditions, and ''assign'' must be interpreted accordingly;'';

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
______	Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 3 April 2014)

WET

Tot wysiging van die Wet op Elektroniese Kommunikasie, 2005, ten einde sekere omskrywings in te voeg, te wysig of te skrap; die Wet in ooreenstemming te bring met wetgewing oor breëbasis- swart ekonomiese bemagtiging; bepalings met betrekking tot lisensiëring af te rond; verder voorsiening te maak om doeltreffende mededinging tussen persone wat kragtens hierdie Wet lisensies hou, te verseker; reguleringsknelpunte te verwyder; te vereis dat die Minister van Kommunikasie 'n raad instel om die Minister van raad te bedien oor breëbandbeleid en inwerkingstelling; verder voorsiening te maak vir die verdiskonteerde tarief waarteen Internetdienste aan skole, onderwysinstellings en openbare gesondheidsinstellings voorsien moet word; die Minister te magtig om te vereis dat sekere inligting aan die Minister voorgelê moet word; voorsiening te maak vir die vertrouenspligte van lede van die Raad van die Universele Diens-en-Toegangsagentskap van Suid-Afrika; opnuut voorsiening te maak vir die aanstelling en aanstellingsvoorwaardes van die hoof- uitvoerende beampte van die Raad; verder voorsiening te maak vir die benutting van geld in die Universele Diens-en-Toegangsfonds; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 36 van 2005, soos gewysig deur artikel 1 van Wet 37 van 2007

1. Artikel 1 van die Wet op Elektroniese Kommunikasie, 2005 (Wet No. 36 van 2005) (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die volgende omskrywings na die omskrywing van "bestaande lisensies" in te voeg:

" **'breëband'** 'n konneksie wat altyd beskikbaar is en multimedia kan hanteer met 'n minimum aflaaispoed soos by kennisgewing in die *Staatskoerant* deur die Minister bepaal;

'breëbasis- swart ekonomiese bemagtiging' dit wat in die 'Broad-Based Black Economic Empowerment Act, 2003' (Wet No. 53 van 2003), daaraan toegeskryf is;";

(b) deur die omskrywing van "dienshandves" deur die volgende omskrywing te vervang:

" **'dienshandves'** 'n dokument wat deur 'n lisensiehouer ontwikkel is na oorleg met sy personeel, intekenaars en eindgebruikers, wat die

(c) by the insertion after the definition of ''Authority'' of the following definitions:

'' **'broad-based black economic empowerment'** has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

'broadband' means an always available, multimedia capable connection with a minimum download speed as determined by the Minister by notice in the *Gazette*;'';

(d) by the substitution for the definition of ''broadcasting service radio frequency bands'' of the following definition:

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

(e) by the insertion after the definition of ''carrier pre-selection'' of the following definition:

'' **'CEO'** means the chief executive officer of the Agency appointed in terms of section 82A;'';

(f) by the substitution for the definition of ''common carrier'' of the following definition:

'' **'common carrier'** means **[a]** Sentech Limited, a state owned company established in terms of the Sentech Act, 1996 (Act No. 63 of 1996), and any other person licensed to provide an electronic communications network service who is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis;'';

(g) by the substitution for the definition of ''electronic communications facility'' of the following definition:

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

(a) wire, including wiring in multi-tenant buildings;
(b) cable (including undersea and land-based fibre optic cables);
(c) antenna;
(d) mast;
(e) satellite transponder;
(f) circuit;
(g) cable landing station;
(h) international gateway;
(i) earth station; **[and]**
(j) radio apparatus;
(k) exchange buildings;
(l) data centres; and
(m) carrier neutral hotels,

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

(i) collocation space;
(ii) monitoring equipment;
(iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and
(iv) associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities;'';

(h) by the substitution for the definition of ''electronic communications service licensee'' of the following definition:

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

(i) by the substitution for the definition of ''end-user'' of the following definition:

'' **'end-user'** means a subscriber and persons who use the services of a licensed service, or use a service pursuant to a licence exemption, referred to in Chapter 3;'';

standaarde van diens uiteensit wat intekenaars en eindgebruikers kan verwag, en is 'n instrument vir prestasiemeting en verantwoordbaarheid wat op intekenaardiensuitkomste en eindgebruikerdiensuitkomste fokus;'';

(c) deur die volgende omskrywing na die omskrywing van ''dienshandves'' in te voeg:

'' **'dienslisensie'** 'n lisensie wat die houer magtig om enige diens in Hoofstuk 3 beoog te lewer;'';

(d) deur die omskrywing van ''eindgebruiker'' deur die volgende omskrywing te vervang:

'' **'eindgebruiker'** 'n intekenaar en persone wat die dienste van **'n** gelisensieerde diens, of wat 'n diens in navolging van 'n lisensie-vrystelling, in Hoofstuk 3 bedoel, gebruik;'';

(e) deur die omskrywing van ''elektroniese kommunikasiedienslisensiehouer'' deur die volgende omskrywing te vervang:

'' **'elektroniese kommunikasiedienslisensiehouer'** 'n persoon aan wie 'n elektroniese kommunikasiedienstelisensie ingevolge artikel 5(2) of 5(4) toegestaan is;'';

(f) deur die omskrywing van ''elektroniese kommunikasiefasiliteit'' deur die volgende omskrywing te vervang:

'' **'elektroniese kommunikasiefasiliteit'** ook, maar is nie beperk nie tot, enige—

(a) draad, ook bedrading in geboue met verskillende bewoners;
(b) kabel (insluitend ondersese en landgebaseerde veseloptiese kabels);
(c) antenne;
(d) mas;
(e) satellietantwoordsender;
(f) kringbaan;
(g) kabellandstasie;
(h) internasionale poort;
(i) aardstasie; **[en]**
(j) radio apparaat;
(k) ruilgeboue;
(l) datasentrums; en
(m) draerneutrale hotelle,

of ander ding, wat gebruik kan word vir, of in verband met, elektroniese kommunikasie, insluitend waar van toepassing—

(i) plasingsruimte;
(ii) moniteertoerusting;
(iii) ruimte op of binne pale, kanale, kabelhouers, mangate, handvatsels en geleibuise; en
(iv) geassosieerde steunstelsels, substelsels en dienste, bykomstig by sodanige elektroniese kommunikasiefasiliteite of andersins nodig om verbinding te beheer van die verskillende elektroniese kommunikasiefasiliteite vir behoorlike funksionaliteit, beheer, integrasie en benutting van sodanige elektroniese kommunikasie-fasiliteite;'';

(g) deur die omskrywing van ''gemeenskaplike draer'' deur die volgende omskrywing te vervang:

'' **'gemeenskaplike draer' ['n]** Sentech Beperk, 'n maatskappy in staatsbesit by die Wet op Sentech, 1996 (Wet No. 63 van 1996), ingestel en enige ander persoon gelisensieer om 'n elektroniese kommunikasie-netwerkdiens te verskaf wat verplig is om seinverspreiding vir uitsaaidienste op 'n niediskriminerende en nie-eksklusiewe grondslag te verskaf;'';

(h) deur die omskrywing van ''geregistreerde politieke party'' te skrap;

(i) deur die volgende omskrywing na die omskrywing van ''geregistreerde politieke party'' in te voeg:

'' **'Gesagsliggaam vir Reklamestandaarde van Suid-Afrika'** die entiteit, of enige entiteit wat dit vervang maar dieselfde werksaamhede het, wat die inhoud van reklame reguleer;'';

(j) by the substitution for the definition of ''ICT Charter'' of the following definition:

'' **'ICT Charter'** means the **[Black Economic Empowerment Charter for the ICT sector]** ICT Sector Charter, a sector code on broad-based black economic empowerment, issued in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);''.

(k) by the substitution for the definition of ''ITU'' of the following definition:

'' **'ITU'** means International **[Telecommunications]** Telecommunication Union;'';

(l) by the substitution for the definition of ''licensee'' of the following definition:

'' **'licensee'** means a person issued with a licence to provide services in terms of Chapter 3 or to use the radio frequency spectrum in terms of Chapter 5 of this Act'';

(m) by the insertion after the definition of ''political advertisement'' of the following definition:

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

(a) any registered party defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998); or

(b) any alliance of such registered parties, as the case may be,

which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature, contemplated in the Constitution;'';

(n) by the substitution for the definition of ''radio frequency plan'' of the following definition:

'' **'radio frequency plan'** means **[a national plan]** the national radio frequency plan contemplated in section 34 that includes, but is not limited to—

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

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

(o) by the substitution for the definition of ''radio frequency spectrum'' of the following definition:

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

(p) by the substitution for the definition of ''radio frequency spectrum licence'' of the following definition:

'' **'radio frequency spectrum licence'** means a licence authorising the holder to use the radio frequency spectrum in terms of Chapter 5 of this Act;'';

(q) by the substitution for the definition of ''radio station'' of the following definition:

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

(r) by the deletion of the definition of ''registered political party'';

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(j) deur die volgende omskrywing na die omskrywing van "hierdie Wet" in te voeg:

" **'HUB'** die hoof- uitvoerende beampte van die Agentskap ingevolge artikel 82A aangestel;";

(k) deur die omskrywing van "IKT-handves" deur die volgende omskrywing te vervang:

" **'IKT-handves'** die Handves vir **[Swart Ekonomiese Bemagtiging vir]** die IKT-sektor, 'n sektorkode oor breëbasis- swart ekonomiese bemagtiging, uitgereik ingevolge die 'Broad-Based Black Economic Empowerment Act, 2003' (Wet No. 53 van 2003);";

(l) deur die omskrywing van "ITU" in die Engelse teks deur die volgende omskrywing te vervang:

" **'ITU'** International **[Telecommunications]** Telecommunication Union;";

(m) deur die omskrywing van "lisensiehouer" deur die volgende omskrywing te vervang:

" **'lisensiehouer'** 'n persoon aan wie 'n lisensie uitgereik is om dienste te verskaf ingevolge Hoofstuk 3 of om die rediofrekwensiespektrum ingevolge Hoofstuk 5 van hierdie Wet te gebruik;";

(n) deur die volgende omskrywing na die omskrywing van "politieke advertensie" in te voeg:

" **'politieke party'**, by die toepassing van Hoofstuk 9—

(a) enige geregistreerde party omskryf in artikel 1 van die Kieswet, 1998 (Wet No. 73 van 1998); of

(b) enige alliansie van sodanig geregistreerde partye, na gelang van die geval,

wat, vir die doel van enige bepaalde verskiesing, voor die aanvang van die tersaaklike verkiesingstydperk, sy lys kandidate vir die Nasionale Vergadering of enige ander wetgewer, in die Grondwet beoog, voorgelê het;";

(o) deur die omskrywing van "radiofrekwensieplan" deur die volgende omskrywing te vervang:

" **'radiofrekwensieplan' ['n nasionale plan]** die nasionale radiofrekwensieplan in artikel 34 beoog wat insluit maar nie beperk is nie tot—

(a) 'n tabel van **[frekwensietoewysings]** frekwensietoedelings vir alle bande onder 3 000 GHz, met inagneming van die ITU-tabel van **[toewysings]** toedelings, in soverre die Republiek tot sodanige **[toewysings]** toedelings ingestem of dit aanvaar het, wat aanwysings van sekere aanwendings kan insluit; en

(b) 'n plan, soos toepaslik, vir die verskuiwing van stelsels en toerusting van bestaande gebruikers binne bepaalde radiofrekwensiebande, insluitend radiofrekwensiebande vir sekuriteitsdienste, na verskillende frekwensiebande;";

(p) deur die omskrywing van "radiofrekwensiespektrum" deur die volgende omskrywing te vervang:

" **'radiofrekwensiespektrum'** die gedeelte van die elektromagnetiese spektrum wat gebruik word as 'n oorsendingsmedium vir elektroniese kommunikasie en uitsaai;";

(q) deur die omskrywing van "radiofrekwensiespektrumlisensie" deur die volgende omskrywing te vervang:

" **'radiofrekwensiespektrumlisensie'** 'n lisensie wat die houer magtig om die radiofrekwensiespektrum ingevolge Hoofstuk 5 van hierdie Wet te gebruik;";

(r) deur die omskrywing van "radiostasie" deur die volgende omskrywing te vervang:

" **'radiostasie'** een of meer senders of ontvangers of 'n kombinasie van senders en ontvangers, insluitend die bykomstige toerusting, wat op een plek nodig is om 'n elektroniese kommunikasiediens, uitsaaidiens of enige elektroniese kommunikasie wat deur die Owerheid gemagtig is, te dra;";

(s) by the substitution in the definition of ‘‘reseller’’ for paragraph *(a)* of the following paragraph:

‘‘*(a)* acquires, through lease or other commercial arrangement, **[by]** any electronic communications network service or electronic communications service; and’’;

(t) by the substitution for the definition of ‘‘service charter’’ of the following definition:

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

(u) by the insertion after the definition of ‘‘service charter’’ of the following definition :

‘‘ **‘service licence’** means a licence authorising the holder to provide any service contemplated in Chapter 3;’’; and

(v) by the substitution for the definition of ‘‘universal service’’ of the following definition:

‘‘ **‘universal service’** means the universal provision of electronic communications network services, electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14;’’.

Amendment of section 2 of Act 36 of 2005, as amended by section 2 of Act 37 of 2007

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph *(h)* of the following paragraph:

‘‘*(h)* promote **[the]** broad-based black economic empowerment **[of historically disadvantaged persons, including Black people]**, with particular attention to the needs of women, opportunities for youth and challenges for **[people]** persons with disabilities;’’.

Amendment of section 3 of Act 36 of 2005, as amended by section 3 of Act 37 of 2007

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution in subsection (1), for paragraph *(e)* of the following paragraph:

‘‘*(e)* guidelines for the determination by the Authority of licence fees and spectrum fees associated with the award of the licences contemplated in Chapter 3 and Chapter 5, including incentives that may apply to individual licences where the applicant makes binding commitments to construct electronic communications networks and provide electronic communications services in rural and under-serviced areas of the Republic;’’;

(b) by the substitution for subsection (2) of the following subsection:

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

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

(s) deur in die Engelse teks, in die omskrywing van ''reseller'' paragraaf *(a)* deur die volgende paragraaf te vervang:

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

(t) deur die volgende omskrywing na die omskrywing van ''televisie-uitsaaidiens'' in te voeg:

'' **'toedeling'**, in verband met 'n frekwensieband, die aantekening in die tabel van frekwensietoedelings van 'n gegewe frekwensieband vir die gebruik daarvan deur een of meer terrestriële of ruimte radiokommunikasiedienste of die radio-astronomiediens onder vermelde voorwaardes;

'toekenning' in verband met 'n radiofrekwensie of radiofrekwensiekanaal, 'n magtiging deur die Owerheid gegee vir 'n radiostasie om 'n radiofrekwensiekanaal kragtens vermelde voorwaardes te gebruik, en 'toeken' moet ooreenkomstig uitgelê word;'';

(u) deur die omskrywing van ''uitsaaidiensradiofrekwensiebande'' deur die volgende omskrywing te vervang:

'' **'uitsaaidiensradiofrekwensiebande'** daardie deel van die elektromagnetiese radiofrekwensiespektrum wat, met inagneming van die **[ITU-toewysingstabel]** ITU-toedelingstabel, deur die Owerheid toegewys is vir die gebruik van uitsaaidienste in soverre die Republiek tot sodanige toewysing ingestem het of dit aangeneem het;''; en

(v) deur die omskrywing van ''universele diens'' deur die volgende omskrywing te vervang:

'' **'universele diens'** die universele verskaffing van elektroniese kommunikasienetwerkdienste, elektroniese kommunikasiedienste en uitsaaidienste soos van tyd tot tyd ingevolge Hoofstuk 14 bepaal;''.

Wysiging van artikel 2 van Wet 36 van 2005, soos gewysig deur artikel 2 van Wet 37 van 2007

2. Artikel 2 van die Hoofwet word hierby gewysig deur paragraaf *(h)* deur die volgende paragraaf te vervang:

''*(h)* breëbasis- swart ekonomiese **[die]** bemagtiging **[van histories benadeelde persone, insluitend swart mense,]** te bevorder, met besondere aandag aan die behoeftes van vroue, geleenthede vir die jeug en uitdagings vir **[mense]** persone met gestremdhede;''.

Wysiging van artikel 3 van Wet 36 van 2005, soos gewysig deur artikel 3 van Wet 37 van 2007

3. Artikel 3 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(e)* in subartikel (1) deur die volgende paragraaf te vervang:

''*(e)* riglyne vir die bepaling deur die Owerheid van lisensiegelde en spektrumgelde verbonde aan die toestaan van die lisensies in Hoofstuk 3 en Hoofstuk 5 beoog, insluitend aansporings wat van toepassing kan wees op individuele lisensies waar die aansoeker bindende verbintenisse aangaan om elektroniese kommunikasienetwerke op te rig en elektroniese kommunikasiedienste in landelike en onderbediende gebiede van die Republiek te verskaf;'';

(b) deur subartikel (2) deur die volgende subartikel te vervang:

''(2) Die Minister kan behoudens subartikel (3) en (5) beleidsvoorskrifte aan die Owerheid, of behoudens subartikel (5) aan die Agentskap, uitreik in ooreenstemming met die oogmerke van hierdie Wet, van nasionale beleid en van die verwante wetgewing met betrekking tot—

(a) die onderneem van 'n ondersoek ingevolge artikel 4B van die OKOSA-wet oor enige aangeleentheid binne die Owerheid se jurisdiksie en die voorlegging van verslae aan die Minister ten opsigte van sodanige aangeleentheid;

(b) the determination of priorities for the development of electronic communications networks and electronic communications services or any other service contemplated in Chapter 3;
(c) the consideration of any matter within the Authority's or Agency's jurisdiction reasonably placed before it by the Minister for urgent consideration;
(d) guidelines for the determination by the Authority of spectrum fees; and
(e) any other matter which may be necessary for the application of this Act or the related legislation.'';

(c) by the substitution for subsection (4) of the following subsection:
''(4) The Authority or the Agency, as the case may be, in exercising its powers and performing its duties in terms of this Act and the related legislation must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2).'';

(d) by the substitution for subsection (5) of the following subsection:
''(5) When issuing a policy under subsection (1) or a policy direction under subsection (2) the Minister—
(a) must consult the Authority or the Agency, as the case may be; and
(b) must, in order to obtain the views of interested persons, publish the text of such policy or policy direction by notice in the *Gazette*—
(i) declaring his or her intention to issue the policy or policy direction;
(ii) inviting interested persons to submit written submissions in relation to the policy or policy direction in the manner specified in such notice in not less than 30 days from the date of the notice;
(c) must publish a final version of the policy or policy direction in the *Gazette*.''; and

(e) by the addition of the following subsection:
''(10) If it is reasonable and justifiable in the circumstances, as contemplated under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may depart from the time period specified in subsection (5)*(b)*(ii).''.

Amendment of section 4 of Act 36 of 2005

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
''(5) The Authority must, not less than 30 days prior to making regulations, inform the Minister in writing of its intention and **[the subject matter of the]** provide the Minister with a copy of the proposed regulations.''.

Amendment of section 5 of Act 36 of 2005, as amended by section 4 of Act 37 of 2007

5. Section 5 of the principal Act is hereby amended—
(a) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:
''*(b)* commercial broadcasting and public broadcasting of national and **[regional]** provincial scope whether provided free-to-air or by subscription;'';
(b) by the deletion in subsection (3) of paragraph *(d)*;
(c) by the substitution in subsection (5) for paragraph *(b)* of the following paragraph:
''*(b)* community broadcasting **[and]** or low power services whether provided free-to-air or by subscription;'';
(d) by the insertion in subsection (5) after paragraph *(b)* of the following paragraph:
''*(b*A*)* electronic communications services of district municipality or local municipal scope operated for commercial purposes;'';

(b) die bepaling van prioriteite vir die ontwikkeling van elektroniese kommunikasienetwerke en elektroniese kommunikasiedienste of enige ander diens in Hoofstuk 3 beoog;

(c) die oorweging van enige aangeleentheid binne die Owerheid of Agentskap se jurisdiksie wat redelikerwys deur die Minister aan hom voorgelê word vir dringende oorweging;

(d) riglyne vir die bepaling van spektrumgelde deur die Owerheid; en

(e) enige ander aangeleentheid wat nodig mag wees vir die toepassing van hierdie Wet of die verwante wetgewing.'';

(c) deur subartikel (4) deur die volgende subartikel te vervang:

''(4) Die Owerheid, of die Agentskap, na gelang van die geval, moet, by die uitoefening van sy bevoegdhede en die verrigting van sy pligte ingevolge hierdie Wet en die verwante wetgewing, beleide oorweeg wat die Minister ingevolge subartikel (1) gemaak het en beleidsvoorskrifte wat die Minister ingevolge subartikel (2) uitgereik het.'';

(d) deur subartikel (5) deur die volgende subartikel te vervang:

''(5) By die uitreiking van 'n beleid ingevolge subartikel (1) of 'n beleidsvoorskrif ingevolge subartikel (2) moet die Minister—

(a) die Owerheid of die Agentskap, na gelang van die geval, raadpleeg; en

(b) ten einde die menings van belanghebbende persone in te win, die teks van sodanige beleid of beleidsvoorskrif by kennisgewing in die *Staatskoerant* publiseer—

(i) waarin sy of haar voorneme om die beleid of beleidsvoorskrif uit te reik, verklaar word;

(ii) waarin belanghebbende persone versoek word om skriftelike voorleggings met betrekking tot die beleid of beleidsvoorskrif binne nie minder nie as 30 dae na die datum van die kennisgewing op die wyse in sodanige kennisgewing vermeld, voor te lê;

(c) 'n finale weergawe van die beleid of beleidsvoorskrif in die *Staatskoerant* publiseer.''; en

(e) deur die volgende subartikel by te voeg:

''(10) Indien dit onder die omstandighede redelik en regverdigbaar is, soos in die 'Promotion of Administrative Justice Act, 2000' (Wet No. 3 van 2000), beoog, kan die Minister afwyk van die tydperk in subartikel (5)*(b)*(ii) vermeld.''.

Wysiging van artikel 4 van Wet 36 van 2005

4. Artikel 4 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:

''(5) Die Owerheid moet nie minder nie as 30 dae voordat regulasies uitgevaardig word, die Minister skriftelik in kennis stel van sy voorneme en die **[onderwerp van die]** Minister voorsien van 'n afskrif van die voorgestelde regulasies.''.

Wysiging van artikel 5 van Wet 36 van 2005, soos gewysig deur artikel 4 van Wet 37 van 2007

5. Artikel 5 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(b)* kommersiële uitsaai en openbare uitsaai van nasionale en **[streekomvang]** provinsiale omvang, ongeag of dit vry-op-lug of deur subskripsie verskaf word;'';

(b) deur paragraaf *(d)* in subartikel (3) te skrap;

(c) deur paragraaf *(b)* in subartikel (5) deur die volgende paragraaf te vervang:

''*(b)* gemeenskapsuitsaai- **[en]** of laekragdienste, ongeag of dit vry-op-lug of deur intekening verskaf word;'';

(d) deur die volgende paragraaf na paragraaf *(b)* in subartikel (5) in te voeg:

''*(b*A*)* elektroniese kommunikasiedienste van distriksmunisipale of plaaslike munisipale omvang vir kommersiële doeleindes bedryf;'';

(e) by the substitution for subsection (6) of the following subsection:

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

(f) by the substitution in subsection (8) for paragraph *(b)* of the following paragraph:

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

(g) by the insertion after subsection (8) of the following subsection:

"(8A) Subsection (8) applies with the changes required by the context to any electronic communications service or network service that may be provided, electronic communications network that may be operated and any radio frequency spectrum that may be used, as contemplated in section 6."; and

(h) by the substitution in subsection (9) for paragraph *(b)* of the following paragraph:

"*(b)* promote **[the empowerment of historically disadvantaged persons]** broad-based black economic empowerment including the empowerment of women and the youth and **[people]** persons with disabilities, in accordance with the requirements of the ICT charter.".

Amendment of section 8 of Act 36 of 2005

6. Section 8 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"Such standard terms and conditions may **[take into account]** include, but are not limited to—";

(b) by the deletion in subsection (2) of the word "and" at the end of paragraph *(m)*, the addition of the expression "; and" at the end of paragraph *(n)* and the addition of the following paragraph:

"*(o)* access to broadcasting, postal and electronic communications services for persons with disabilities that include, but are not limited to, services designed to improve accessibility for persons with disabilities, such as videotext, subtitling, audio description and sign language.";

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

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

(4) The Authority may by regulation make provision for the designation of licensees to whom universal service and universal access obligations are to be applicable and may prescribe additional terms and conditions in respect of the relevant universal service and universal access obligations on such designated licensees."; and

(d) by the addition of the following subsection:

"(5) The Authority, in exercising its powers and performing its functions in terms of this section, as it relates to universal service and universal access, must exercise such powers and perform such functions after consultation with the Agency and must consider determinations made by the Minister in terms of section 82.".

Amendment of section 9 of Act 36 of 2005

7. Section 9 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than

(e) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) **[By die oorweging van die implementering van die bestuurde liberaliseringsbeleide kan die]** Die Owerheid kan net aansoeke om individuele elektroniese kommunikasienetwerkdienslisensies aanvaar en oorweeg ingevolge 'n beleidsvoorskrif deur die Minister ingevolge artikel 3 uitgereik.";

(f) deur paragraaf *(b)* in subartikel (8) deur die volgende paragraaf te vervang:

"*(b)* 'n regspersoon, kragtens die wette van die Republiek geregistreer is **[of sal wees]** en sy vernaamste plek van besigheid binne die Republiek geleë is **[of sal wees]**.";

(g) deur die volgende subartikel na subartikel (8) in te voeg:

"(8A) Subartikel (8) is met die veranderinge deur die samehang vereis van toepassing op enige elektroniese kommunikasiediens of -netwerkdiens wat voorsien kan word, elektroniese kommunikasie-netwerk wat bedryf kan word en enige radiofrekwensiespektrum wat gebruik kan word, soos beoog in artikel 6."; en

(h) deur paragraaf *(b)* in subartikel (9) deur die volgende paragraaf te vervang:

"*(b)* **[die bemagtiging van histories benadeelde persone]** breëbasis-swart ekonomiese bemagtiging, insluitend die bemagtiging van vroue en die jeug en **[mense]** persone met gestremdhede, bevorder ooreenkomstig die vereistes van die IKT-handves.".

Wysiging van artikel 8 van Wet 36 van 2005

6. Artikel 8 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Sodanige standaardbedinge en -voorwaardes kan **[in aanmerking neem]** insluit, maar is nie beperk nie tot—";

(b) deur in subartikel (2) die woord "en" aan die einde van paragraaf *(m)* te skrap, die uitdrukking "; en" aan die einde van paragraaf *(n)* by te voeg en die volgende paragraaf by te voeg:

"*(o)* toegang tot uitsaai-, pos- en elektroniese kommunikasiedienste vir persone met gestremdhede wat insluit, maar nie beperk is nie tot, dienste wat ontwerp is om toeganklikheid vir persone met gestremdhede te verbeter, soos videoteks, onderskrifte, oudiobeskrywing en gebaretaal.";

(c) deur subartikels (3) en (4) onderskeidelik deur die volgende subartikels te vervang:

"(3) Die Owerheid kan bykomende bedinge en voorwaardes voorskryf wat op enige individuele lisensie of klaslisensie toegepas kan word **[met inagneming van]** behoudens die bepalings van Hoofstuk 10.

(4) Die Owerheid kan by regulasie voorsiening maak vir die aanwysing van lisensiehouers op wie verpligtinge van universele diens en universele toegang van toepassing is en kan bykomende bedinge en voorwaardes voorskryf ten opsigte van die verpligtinge van toepaslike universele diens en universele toegang op die aangewese lisensiehouers."; en

(d) deur die volgende subartikel by te voeg:

"(5) Die Owerheid moet, by die uitoefening van sy bevoegdhede en die verrigting van sy werksaamhede, omdat sy bevoegdhede en werksaamhede ingevolge hierdie Wet op universele diens en universele toegang betrekking het, sodanige bevoegdhede en sodanige werksaamhede na oorleg met die Agentskap uitoefen en verrig en moet bepalings ingevolge artikel 82 deur die Minister gemaak, in ag neem.".

Wysiging van artikel 9 van Wet 36 van 2005

7. Artikel 9 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* in subartikel (2) deur die volgende paragraaf te vervang:

"*(b)* die persentasie van aandeeleienaarskap insluit wat gehou moet word deur persone van histories benadeelde groepe, wat minstens 30% moet wees of die ander voorwaardes of hoër persentasie wat

30%, or such other conditions or higher percentage as may be prescribed under section 4(3)*(k)* of the ICASA Act;''; and

(b) by the substitution in subsection (6) for paragraph *(b)* of the following paragraph:

''*(b)* may impose such additional terms and conditions as may be prescribed in terms of section 8(3) and make a designation contemplated in section 8(4).''.

Amendment of section 10 of Act 36 of 2005

8. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(h)* of the following paragraph:

''*(h)* if the amendment is **[in pursuance of and]** in accordance with **[the regulations made under]** Chapter 10 and any regulations that have been made under it.''.

Amendment of section 13 of Act 36 of 2005

9. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

''(1) An individual licence may not be let, sub-let, assigned, ceded or in any way transferred, and the control of an individual licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority.

(2) An application for permission to let, sub-let, assign, cede or in any way transfer an individual licence, or assign, cede or transfer control of an individual licence may be made to the Authority in the prescribed manner.'';

(b) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* promote the ownership and control of electronic communications services by historically disadvantaged groups and to promote broad-based black economic empowerment; or''; and

(c) by the addition of the following subsection:

''(6) The provisions of section 9(2) to (6) apply, with the necessary changes, to this section.''.

Amendment of section 16 of Act 36 of 2005

10. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

''(1) The Authority may, upon receipt of a written registration in the manner prescribed and satisfying the conditions provided for in section 5(8), **[grant]** issue a class licence, provided that the class licences obtained by one person do not collectively assume the scope or coverage of an individual licence.

(2) Registration for a class licence may be submitted **[at any time]** in the manner prescribed by the Authority.''; and

(b) by the substitution for subsection (6) of the following subsection:

''(6) No class licence may be ceded, let, sub-let or transferred without the prior written approval of the Authority, provided that if the Authority has not refused or denied the cession, let, sublet or transfer within 30 days after notice has been given to the Authority, approval shall be considered to have been given.''.

kragtens artikel 4(3)*(k)* van die OKOSA-wet voorgeskryf kan word;''; en

(b) deur paragraaf *(b)* in subartikel (6) deur die volgende paragraaf te vervang:

''*(b)* kan die Owerheid die bykomende bedinge en voorwaardes stel wat ingevolge artikel 8(3) voorgeskryf is en 'n aanwysing in artikel 8(4) beoog doen.''.

Wysiging van artikel 10 van Wet 36 van 2005

8. Artikel 10 van die Hoofwet word hierby gewysig deur paragraaf *(h)* in subartikel (1) deur die volgende paragraaf te vervang:

''*(h)* indien die wysiging **[ingevolge en]** ooreenkomstig **[die regulasies uitgevaardig kragtens]** Hoofstuk 10 is en enige regulasies wat daarby uitgevaardig is.''.

Wysiging van artikel 13 van Wet 36 van 2005

9. Artikel 13 van die Hoofwet word hierby gewysig—

(a) deur subartikels (1) en (2) onderskeidelik deur die volgende subartikels te vervang:

''(1) 'n Individuele lisensie mag nie sonder die skriftelike toestemming vooraf van die Owerheid aan enige ander persoon verhuur, onderverhuur, afgestaan, gesedeer of op enige wyse oorgedra word nie, en die beheer van 'n individuele lisensie mag nie toegeken, gesedeer of op enige wyse oorgedra word nie.

(2) 'n Aansoek om toestemming om 'n individuele lisensie te verhuur, te onderverhuur, af te staan, te sedeer of op enige wyse oor te dra, of om beheer van 'n individuele lisensie toe te ken, te sedeer of oor te dra kan op die voorgeskrewe wyse aan die Owerheid gerig word.'';

(b) deur paragraaf *(a)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(a)* die eienaarskap en beheer van elektroniese kommunikasiedienste deur histories benadeelde groepe te bevorder en om breëbasis-swart ekonomiese bemagtiging te bevorder; of''; en

(c) deur die volgende subartikel by te voeg:

''(6) Die bepalings van artikel 9(2) tot (6) is, met die nodige veranderinge, op hierdie artikel van toepassing.''.

Wysiging van artikel 16 van Wet 36 van 2005

10. Artikel 16 van die Hoofwet word hierby gewysig—

(a) deur subartikels (1) en (2) onderskeidelik deur die volgende subartikels te vervang:

''(1) Die Owerheid kan, by ontvangs van 'n skriftelike registrasie op die voorgeskrewe wyse en met voldoening aan die voorwaardes in artikel 5(8) bedoel, 'n klaslisensie **[toestaan]** uitreik, met dien verstande dat die klaslisensies deur enige persoon verkry gesamentlik nie die omvang of dekking van 'n individuele lisensie aanneem nie.

(2) Registrasie vir 'n klaslisensie kan **[te eniger tyd]** voorgelê word op die wyse deur die Owerheid voorgeskryf.''; en

(b) deur subartikel (6) deur die volgende subartikel te vervang:

''(6) Geen klaslisensie mag sonder die skriftelike goedkeuring vooraf van die Owerheid gesedeer, verhuur, onderverhuur of oorgedra word nie, met dien verstande dat indien die Owerheid nie binne 30 dae nadat kennis aan die Owerheid gegee is, geweier het om die sedering, verhuring, onderverhuring of oordrag te aanvaar nie, goedkeuring geag sal word gegee te wees.''.

Amendment of section 17 of Act 36 of 2005

11. Section 17 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) Subject to section 18, the Authority must, within **[sixty (60)]** thirty (30) days after receipt of a registration notice, **[grant]** issue the class licence and update its internal records by including **[the]**—

(a) the name of the accepted registrant;

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

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

(4) If the Authority delays the **[grant]** issue of a class licence beyond the **[sixty (60)]** thirty (30) day period, the Authority must give written notice of the delay and of the reasons for the delay, to the registrant.

(5) In any case where—

(a) the Authority fails to give notice of a delay to the registrant and fails to **[grant]** issue the class licence within the **[sixty (60)]** thirty (30) days as required in terms of subsection (4);

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

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

(d) the Authority has not **[declined to accept]** refused or denied the registration notice for the class licence in terms of section 18,

the class licence is considered to have been **[granted]** issued by the Authority on the **[61st]** 31st day after receipt of the registration notice by the Authority.".

Amendment of section 20 of Act 36 of 2005

12. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

"(3) The Authority must, within 18 months of the coming into operation of the Electronic Communications Amendment Act, 2014, prescribe how electronic communications network service licensees must exercise their rights and fulfil their obligations under this Chapter and may, within that period, in the prescribed manner, impose conditions and obligations on licensees in the exercise and fulfilment of such rights and obligations, having considered the policy and policy directions contemplated in section 21.".

Substitution of section 21 of Act 36 of 2005

13. The following section is hereby substituted for section 21 of the principal Act:

"**[Guidelines for rapid] Rapid deployment of electronic communications facilities**

21. (1) The Minister must, in consultation with the Minister of **[Provincial and Local Government]** Cooperative Governance and Traditional Affairs, the Minister of **[Land Affairs]** Rural Development and Land Reform, the Minister of Water and Environmental Affairs, the Authority and other relevant institutions, develop **[guidelines]** a policy and policy directions for the rapid deployment and provisioning of electronic communications facilities, following which the Authority must prescribe regulations.

(2) The **[guidelines]** regulations must provide procedures and processes for—

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

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

Wysiging van artikel 17 van Wet 36 van 2005

11. Artikel 17 van die Hoofwet word hierby gewysig deur subartikel (3), (4) en (5) onderskeidelik deur die volgende subartikels te vervang:

“(3) Behoudens artikel 18 moet die Owerheid binne **[sestig (60)]** dertig (30) dae na ontvangs van ’n registrasiekennisgewing die klaslisensie **[verleen]** uitreik en sy interne rekords bywerk deur **[die volgende]** in te sluit—

(a) die naam van die aanvaarde geregistreerde;

(b) die aard van die diens wat die geregistreerde beoog om te verskaf; en

(c) die lisensievoorwaardes van toepassing op die klaslisensie.

(4) Indien die Owerheid die **[verlening]** uitreiking van ’n klaslisensie langer as die tydperk van **[sestig (60)]** dertig (30) dae vertraag, moet die Owerheid skriftelik kennis van die vertraging en van die redes vir die vertraging aan die geregistreerde gee.

(5) In enige geval waar—

(a) die Owerheid versuim om kennis van ’n vertraging aan die geregistreerde te gee en versuim om die klaslisensie **[toe te staan]** uit te reik binne die **[sestig (60)]** dertig (30) dae soos ingevolge subartikel (4) vereis;

(b) die geregistreerde voldoen het aan die regulasies ingevolge artikel 5(7) voorgeskryf wat op klaslisensies van toepassing is;

(c) die geregistreerde voldoen aan die voorwaardes in artikel 5(8) bedoel; en

(d) die Owerheid nie **[geweier het om]** die registrasiekennisgewing vir die klaslisensie ingevolge artikel 18 **[te aanvaar]** geweier of afgekeur het nie,

word die klaslisensie geag deur die Owerheid **[verleen]** uitgereik te wees op die **[61ste]** 31ste dag na ontvangs van die registrasiekennisgewing deur die Owerheid.”.

Wysiging van artikel 20 van Wet 36 van 2005

12. Artikel 20 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

“(3) Die Owerheid moet, binne 18 maande na die inwerkingtreding van die Wysigingswet op Elektroniese Kommunikasie, 2014, voorskryf hoe elektroniese kommunikasienetwerkdienslisensiehouers hul regte moet uitoefen en verpligtinge kragtens hierdie Hoofstuk moet nakom en kan, in daardie tydperk, op die voorgeskrewe wyse, voorwaardes en beperkings aan lisensiehouers oplê vir die uitoefen en nakom van sodanige regte en verpligtinge, na oorweging van die beleid en beleidsvoorskrifte in artikel 21 beoog.”.

Vervanging van artikel 21 van Wet 36 van 2005

13. Artikel 21 van die Hoofwet word hierby deur die volgende artikel vervang:

“**[Riglyne vir vinnige] Vinnige ontplooiing van elektroniese kommunikasiefasiliteite**

21. (1) Die Minister moet, in oorleg met die Minister van **[Provinsiale en Plaaslike Regering]** Samewerkende Regering en Tradisionele Sake, die Minister van **[Grondsake]** Landelike Ontwikkeling en Grondsake, die Minister van Water en Omgewingsake, die Owerheid en ander tersaaklike instellings, **[riglyne]** ’n beleid en beleidsvoorskrifte ontwikkel vir die vinnige ontplooiing en verskaffing van elektroniese kommunikasiefasiliteite, waarna die Owerheid regulasies moet voorskryf.

(2) Die **[riglyne]** regulasies moet prosedures en prosesse verskaf vir—

(a) die verkryging van enige noodsaaklike permit, magtiging, goedkeuring of ander regeringsmagtiging, insluitend die kriteria wat nodig is om vir sodanige permit, magtiging, goedkeuring of ander regeringsmagtiging te kwalifiseer; en

(b) die beslegting van geskille wat tussen ’n elektroniese kommunikasienetwerkdienslisensiehouer en ’n grondeienaar ontstaan, ten einde die openbare belang by die vinnige verskaffing van elektroniese kommunikasienetwerke en elektroniese kommunikasiefasiliteite te bevredig.

(3) The policy and policy directions contemplated in subsection (1) must be made within twelve (12) months of the coming into operation of the Electronic Communications Amendment Act, 2014.''.

Amendment of section 30 of Act 36 of 2005

14. Section 30 of the principal Act is hereby amended by—

(a) the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

''In controlling, planning, administering, managing **[and]**, licensing and assigning the use of the radio frequency spectrum, the Authority must—''; and

(b) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

''*(a)* comply with the applicable standards and requirements of the ITU and its Radio Regulations, as agreed to or adopted by the Republic, as well as with the national radio frequency plan contemplated in section 34;''.

Amendment of section 31 of Act 36 of 2005

15. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

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

(b) A service licence is required in addition to any radio frequency spectrum licence where the provision of such service entails the use of radio frequency spectrum.'';

(b) by the insertion after subsection (2) of the following subsection:

''(2A) A radio frequency spectrum licence may not be assigned, ceded or in any way transferred, and the control of a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority.'';

(c) by the substitution for subsection (3) of the following subsection:

''(3) The Authority may, taking into account the objects of the Act, prescribe procedures and criteria for—

(a) **[awarding]** radio frequency spectrum licences **[for competing applications or]** in instances where there is insufficient spectrum available to accommodate demand;

(b) the amendment, transfer, transfer of control, renewal, suspension, cancellation and withdrawal of radio frequency spectrum licences; and

(c) permission to assign, cede, share or in any way transfer a radio frequency spectrum licence, or assign, cede or transfer control of a radio frequency spectrum licence as contemplated in subsection (2A).'';

(d) by the insertion after subsection (4) of the following subsection:

''(4A) The Authority must notify the licensee within 60 days of its decision with regard to an application for an amendment of a spectrum licence.''; and

(e) by the substitution for subsections (8), (9) and (10) of the following subsections, respectively:

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

(9) Before the Authority withdraws a radio frequency spectrum licence or assigned radio frequency spectrum in terms of subsection (8), it must give the licensee prior written notice of at least 30 days and the licensee must have 7 (seven) business days in which to respond in

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(3) Die beleid en beleidsvoorskrifte in subartikel (1) beoog moet binne twaalf (12) maande na die inwerkingtreding van die Wysigingswet op Elektroniese Kommunikasie, 2014, gemaak word.''.

Wysiging van artikel 30 van Wet 36 van 2005

14. Artikel 30 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

''By die beheer, beplanning, administrasie, bestuur **[en]**, lisensiëring en toekenning van die gebruik van die radiofrekwensiespektrum moet die Owerheid—''; en

(b) deur paragraaf *(a)* in subartikel (2) deur die volgende paragraaf te vervang:

''*(a)* voldoen aan die toepaslike standaarde en vereistes van die ITU en sy Radioregulasies, waartoe die Republiek ingestem het of wat hy aangeneem het, asook aan die nasionale radiofrekwensieplan in artikel 34 beoog;''.

Wysiging van artikel 31 van Wet 36 van 2005

15. Artikel 31 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

''(2) *(a)* 'n Radiofrekwensiespektrumlisensie word vereis benewens 'n dienslisensie in Hoofstuk 3 beoog, waar die verskaffing van sodanige diens die gebruik van die radiofrekwensiespektrum behels.

(b) 'n Dienslisensie word bykomend tot enige radiofrekwensiespektrumlisensie vereis waar die verskaffing van die diens die gebruik van radiofrekwensiespektrum behels.'';

(b) deur die volgende subartikel na subartikel (2) in te voeg:

''(2A) 'n Radiofrekwensiespektrumlisensie mag nie afgestaan, gesedeer of op enige wyse oorgedra word nie, en die beheer van 'n radiofrekwensie mag nie aan enige ander persoon gesedeer of op enige wyse oorgedra word sonder vooraf skriftelike toestemming van die Owerheid nie.'';

(c) deur subartikel (3) deur die volgende subartikel te vervang:

''(3) Die Owerheid kan, met inagneming van die oogmerke van hierdie Wet, prosedures en kriteria voorskryf vir—

(a) **[die toekenning van]** radiofrekwensiespektrumlisensies **[vir mededingende aansoeke of]** in gevalle waar daar ontoereikende spektrum beskikbaar is om die vraag te bevredig;

(b) die wysiging, oordrag, oordrag van beheer, hernuwing, opskorting, kansellasie, en intrekking van radiofrekwensiespektrumlisensies; en

(c) toestemming om 'n radiofrekwensiespektrumlisensie af te staan, te sedeer, te deel of op enige wyse oor te dra, of beheer van 'n radiofrekwensiespektrumlisensie af te staan, te sedeer of oor te dra soos in subartikel (2A) beoog.'';

(d) deur die volgende subartikel na subartikel (4) in te voeg:

''(4A) Die Owerheid moet die lisensiehouer binne 60 dae verwittig van sy besluit ten opsigte van 'n aansoek om wysiging van 'n spektrumlisensie.''; en

(e) deur subartikels (8), (9) en (10) onderskeidelik deur die volgende subartikels te vervang:

''(8) Behoudens subartikel (9) kan die Owerheid 'n radiofrekwensiespektrumlisensie of toegekende radiofrekwensiespektrum intrek wanneer die lisensiehouer versuim om die toegekende radiofrekwensiespektrum ooreenkomstig die lisensievoorwaardes wat op sodanige lisensie van toepassing is, te gebruik.

(9) Alvorens die Owerheid 'n radiofrekwensiespektrumlisensie of toegekende radiofrekwensiespektrum ingevolge subartikel (8) intrek, moet hy aan die lisensiehouer vooraf minstens 30 dae skriftelik kennis gee en die lisensiehouer moet 7 (sewe) werkdae hê waarin hy skriftelik op die kennisgewing kan antwoord (tensy andersins deur die Owerheid

writing to the notice (unless otherwise extended by the Authority) demonstrating that it is utilising the radio frequency spectrum in compliance with this Act and the licence conditions.

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

Amendment of section 34 of Act 36 of 2005

16. Section 34 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

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

(a) the international **[allotment]** allocation of radio frequency spectrum; **[and]**

(b) the international coordination of radio frequency spectrum usage; and

(c) the co-ordination and approval of any regional radio frequency spectrum plans applicable to the Republic,

in accordance with international treaties**[,]** and multinational and bilateral agreements entered into by the Republic.''; and

(b) by the substitution in subsection (7) for paragraph *(a)* of the following paragraph:

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

Amendment of section 35 of Act 36 of 2005

17. Section 35 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

Amendment of section 36 of Act 36 of 2005

18. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) The Authority may, subject to the provisions of the Standards Act, **[1993 (Act No. 29 of 1993]** 2008 (Act No. 8 of 2008), prescribe standards for the performance and operation of any equipment or electronic communication facility, including radio apparatus.''.

Amendment of section 37 of Act 36 of 2005

19. Section 37 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* is technically and **[financially]** economically feasible; and''; and

(b) by the substitution for subsection (6) of the following subsection:

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

verleng) om te toon dat hy die radiofrekwensiespektrum ooreenkomstig hierdie Wet en die lisensievoorwaardes gebruik.

(10) Die Owerheid moet, op grond van die skriftelike reaksie van die lisensiehouer, die lisensiehouer in kennis stel van sy besluit om die lisensie of toegekende radiofrekwensiespektrum in te trek al dan nie.''.

Wysiging van artikel 34 van Wet 36 van 2005

16. Artikel 34 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Die Minister, by die uitoefening van sy of haar werksaamhede, verteenwoordig die Republiek op internasionale forums, insluitend die ITU, ten opsigte van—

(a) die internasionale **[toewysing]** toedeling van radiofrekwensiespektrum; **[en]**

(b) die internasionale koördinering van radiofrekwensiespektrumgebruik; en

(c) die koördinasie en goedkeuring van enige radiofrekwensiespektrumplanne vir 'n streek van toepassing op die Republiek,

ooreenkomstig internasionale verdrae en multinasionale en bilaterale ooreenkomste wat die Republiek aangegaan het.''; en

(b) deur paragraaf *(a)* in subartikel (7) deur die volgende paragraaf te vervang:

''*(a)* die ITU se internasionale **[spektrumtoewysings]** spektrumtoedelings vir die gebruik van die radiofrekwensiespektrum in aanmerking neem in soverre **[ITU-toewysings]** ITU-toedelings deur die Republiek aanvaar is en die Republiek daartoe ingestem het, en behoorlik ag slaan op die verslae van kundiges op die gebied van spektrum- of radiofrekwensiebeplanning en op internasionaal aanvaarde metodes vir die opstel van sulke planne;''.

Wysiging van artikel 35 van Wet 36 van 2005

17. Artikel 35 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Geen persoon mag enige tipe elektroniese kommunikasietoerusting of elektroniese kommunikasiefasiliteit, insluitend radioapparaat, wat gebruik word of gebruik staan te word in verband met die lewering van elektroniese kommunikasie, besit, gebruik, verskaf, verkoop, aanbied vir verkoop of huur of verhuur nie tensy sodanige toerusting, elektroniese kommunikasiefasiliteit of radioapparaat behoudens subartikel (2) deur die Owerheid goedgekeur is.''.

Wysiging van artikel 36 van Wet 36 van 2005

18. Artikel 36 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Die Owerheid kan, behoudens die bepalings van die **[Wet op Standaarde, 1993 (Wet No. 29 van 1993)]** 'Standards Act, 2008' (Wet No. 8 van 2008), standaarde voorskryf vir die verrigting en bedryf van enige toerusting of elektroniese kommunikasiefasiliteit, insluitend radioapparaat.''.

Wysiging van artikel 37 van Wet 36 van 2005

19. Artikel 37 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(a)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(a)* tegnies en **[finansieel]** ekonomies doenlik is; en''; en

(b) deur subartikel (6) deur die volgende subartikel te vervang:

''(6) Die interkonneksie-ooreenkoms aangegaan deur 'n lisensiehouer ingevolge subartikel (1) moet, tensy anders versoek deur die party wat interkonneksie verlang, niediskriminerend wees soos tussen vergelykbare tipes interkonneksie en nie van 'n laer tegniese standaard en gehalte as die tegniese standaard en gehalte wat sodanige lisensiehouer aan homself of aan 'n geaffilieerde verskaf nie of op enige ander wyse diskriminerend in vergelyking met die vergelykbare

comparable network services provided by such licensee to itself or to an affiliate.''.

Amendment of section 38 of Act 36 of 2005

20. Section 38 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) *(a)* The Authority must prescribe regulations to facilitate the conclusion of interconnection agreements by stipulating interconnection agreement principles.

(b) The regulations may include any regulations referred to in **[section 39]** sections 39 and 41.'';

(b) by the substitution in subsection (3) for paragraph *(j)* of the following paragraph:

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

(c) by the substitution in subsection (3) for paragraph *(k)* of the following paragraph:

''*(k)* the requirement that a licensee negotiate and enter into an interconnection agreement with an applicant for an individual licence or registrant of a class licence; and''; and

(d) by the substitution for subsections (5) and (6) of the following subsections, respectively:

''(5) The interconnection regulations may include a framework for the exemption (in whole or in part) of licensees that have less than 25% market share from the obligation to interconnect under section 37(1).

(6) Where a licensee is exempt from the obligation to interconnect in terms of subsection (5) and such exempted licensee enters into an interconnection agreement with another exempted licensee, or a person providing services pursuant to a licence exemption, sections 37(6) and **[39(3) and (4)]** 39(2) do not apply to such an interconnection agreement.''.

Amendment of section 42 of Act 36 of 2005

21. Section 42 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

''The framework contemplated in subsection (1)*(b)* must **[be in force not later than 1 July 2006 and]** ensure that—''.

Amendment of section 43 of Act 36 of 2005

22. Section 43 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

''*(a)* is technically and **[financially]** economically feasible; and'';

(b) by the substitution for subsection (7) of the following subsection:

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

(c) by the insertion after subsection (8) of the following subsection:

''(8A) *(a)* Requests for leasing of essential facilities are deemed to promote efficient use of electronic communication networks and services.

netwerkdienste wat die lisensiehouers aan hulself of geaffilieerdes verskaf nie.''.

Wysiging van artikel 38 van Wet 36 van 2005

20. Artikel 38 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) *(a)* Die Owerheid moet regulasies voorskryf om die aangaan van interkonneksie-ooreenkomste te fasiliteer deur beginsels vir interkonneksie-ooreenkomste te bepaal.

(b) Die regulasies kan enige regulasies in **[artikel 39]** artikels 39 en 41 bedoel, insluit.'';

(b) deur paragraaf *(j)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(j)* die raamwerk vir die bepaling van tegniese en **[finansiële]** ekonomiese doenlikheid en die bevordering van doeltreffende gebruik van die elektroniese kommunikasienetwerke en verskaffing van dienste in artikel 37(3) beoog;'';

(c) deur paragraaf *(k)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(k)* die vereiste dat 'n lisensiehouer onderhandel oor en 'n interkonneksie-ooreenkoms aangaan met 'n aansoeker om 'n individuele lisensie of geregistreerde van 'n klaslisensie; en''; en

(d) deur subartikels (5) en (6) onderskeidelik deur die volgende subartikels te vervang:

''(5) Die interkonneksieregulasies kan 'n raamwerk insluit vir die vrystelling (in geheel of gedeeltelik) van lisensiehouers wat minder as 25% markaandeel het van die verpligting om kragtens artikel 37(1) te interkonnekteer.

(6) Waar 'n lisensiehouer ingevolge subartikel (5) vrygestel is van die verpligting om te interkonnekteer en sodanige vrygestelde lisensiehouer 'n interkonneksie-ooreenkoms aangaan met 'n ander vrygestelde lisensiehouer of 'n persoon wat dienste verskaf ingevolge 'n lisensievrystelling, is artikels 37(6) en **[39(3) en (4)]** 39(2) nie op so 'n interkonneksie-ooreenkoms van toepassing nie.''.

Wysiging van artikel 42 van Wet 36 van 2005

21. Artikel 42 van die Hoofwet word hierby gewysig deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

''Die raamwerk in subartikel (1)*(b)* beoog, moet **[van krag wees nie later nie as 1 Julie 2006 en moet]** verseker dat—''.

Wysiging van artikel 43 van Wet 36 van 2005

22. Artikel 43 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(a)* in subartikel (4) deur die volgende paragraaf te vervang:

''*(a)* tegnies en **[finansieel]** ekonomies doenlik is; en'';

(b) deur subartikel (7) deur die volgende subartikel te vervang:

''(7) Die verhuring van elektroniese kommunikasiefasiliteite deur 'n elektroniese kommunikasienetwerkdienslisensiehouer ingevolge subartikel (1) moet, tensy anders versoek deur die party wat verhuur, niediskriminerend wees soos tussen vergelykbare tipes elektroniese kommunikasiefasiliteite wat verhuur word en nie van 'n laer tegniese standaard en gehalte as die tegniese standaard en gehalte wat sodanige elektroniese kommunikasienetwerkdienslisensiehouer aan homself of aan 'n geaffilieerde verskaf nie of op enige ander wyse diskriminerend in vergelyking met vergelykbare netwerkdienste deur sodanige lisensiehouers aan hulself of geaffilieerdes verskaf nie.'';

(c) deur die volgende subartikel na subartikel (8) in te voeg:

''(8A) *(a)* Versoeke om verhuring van noodsaaklike fasiliteite word geag die doeltreffende gebruik van elektroniese kommunikasienetwerke en -dienste te bevorder.

(b) All electronic communications network services licensees receiving requests contemplated in paragraph *(a)* are required to agree on non-discriminatory terms and conditions of a facilities leasing agreement for those essential facilities within 20 days of receiving the request.

(c) If the electronic communications network licensee can prove that the request is not technically or economically feasible within the 20 day period the electronic communications network services licensee may refuse the request.

(d) If no agreement regarding the non-discriminatory terms and conditions contemplated in paragraph *(b)* can be reached, the Authority must impose terms and conditions consistent with this Chapter within 20 days of receiving notification of the failure to reach an agreement.''; and

(d) by the substitution for subsection (11) of the following subsection:

''(11) Any exclusivity provision contained in any agreement or other arrangement that is prohibited under subsection (10) is invalid from a date **[to be determined by the Minister after consultation with relevant parties]** one year after the commencement of the Electronic Communications Amendment Act, 2014.''.

Amendment of section 44 of Act 36 of 2005

23. Section 44 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph *(k)* of the following paragraph:

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

(b) by the substitution for subsections (5) and (6) of the following subsections, respectively:

''(5) The electronic communications facilities leasing regulations may include a framework for the exemption (in whole or in part) of electronic communications network service licensees that have less than 25% market share from the obligation to lease electronic communications facilities in terms of section 43(1).

(6) Where a licensee is exempt from the obligation to lease electronic communications facilities in terms of subsection (5) and such exempted licensee enters into **[a]** an electronic communications facilities leasing agreement with another exempted licensee, or a person providing services pursuant to a licence exemption, section 43(7) and section **[45(3) and (4)]** 45(2) and (7) do not apply to any such electronic communications facilities leasing agreement.''.

Amendment of section 45 of Act 36 of 2005

24. Section 45 of the principal Act is hereby amended by the deletion of subsection (3).

Substitution of section 55 of Act 36 of 2005

25. The following section is hereby substituted for section 55 of the principal Act:

''**Control over advertisements**

55. (1) All broadcasting service licensees must adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa and to any advertising regulations prescribed by the Authority in respect of scheduling of adverts, infomercials and programme sponsorships.

(b) Alle elektroniese kommunikasienetwerkdienslisensiehouers wat aansoeke in paragraaf *(a)* beoog ontvang, moet op niediskriminerende bedinge en voorwaardes van 'n verhuringsooreenkoms vir fasiliteite ooreenkom binne 20 dae na ontvangs van die versoek.

(c) Indien die elektroniese kommunikasienetwerklisensiehouer kan bewys dat die versoek nie binne die tydperk van 20 dae tegnies of ekonomies haalbaar is nie, kan die elektroniese kommunikasienetwerkdienslisensiehouer die versoek weier.

(d) Indien geen ooreenkoms betreffende die niediskriminerende bedinge en voorwaardes in paragraaf *(b)* beoog bereik kan word nie, moet die Owerheid bedinge en voorwaardes in ooreenstemming met hierdie Hoofstuk oplê binne 20 dae na ontvangs van kennisgewing van die onvermoë om 'n ooreenkoms te bereik.''; en

(d) deur subartikel (11) deur die volgende subartikel te vervang:

''(11) Enige eksklusiwiteitbepaling vervat in enige ooreenkoms of ander reëling wat kragtens subartikel (10) verbied word, is ongeldig met ingang van 'n datum **[wat die Minister na oorleg met tersaaklike partye bepaal]** een jaar na die inwerkingtreding van die Wysigingswet op Elektroniese Kommunikasie, 2014.''.

Wysiging van artikel 44 van Wet 36 van 2005

23. Artikel 44 van die Hoofwet word hierby gewysig—

(a) deur in paragraaf *(k)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(k)* die raamwerk vir die bepaling van tegniese en **[finansiële]** ekonomiese doenlikheid en die bevordering van die doeltreffende gebruik van elektroniese kommunikasienetwerke en die lewering van dienste in artikel 43(4) beoog;''; en

(b) deur subartikels (5) en (6) onderskeidelik deur die volgende subartikels te vervang:

''(5) Die verhuringsregulasies oor elektroniese kommunikasiefasiliteite kan elektroniese kommunikasienetwerkdienslisensiehouers (in geheel of gedeeltelik) wat minder as 25% van die markaandeel het vrystel van die verpligting om elektroniese kommunikasiefasiliteite ingevolge artikel 43(1) te verhuur.

(6) Waar 'n lisensiehouer vrygestel is van die verpligting om elektroniese kommunikasiefasiliteite ingevolge subartikel (5) te verhuur en sodanige vrygestelde lisensiehouer 'n huurooreenkoms vir elektroniese kommunikasiefasiliteite aangaan met 'n ander vrygestelde lisensiehouer of met 'n persoon wat dienste ingevolge 'n lisensievrystelling verskaf, is artikel 43(7) en artikel **[45(3) en (4)]** 45(2) en (7) nie op enige sodanige huurooreenkoms vir elektroniese kommunikasiefasiliteite van toepassing nie.''.

Wysiging van artikel 45 van Wet 36 van 2005

24. Artikel 45 van die Hoofwet word hierby gewysig deur subartikel (3) te skrap.

Vervanging van artikel 55 van Wet 36 van 2005

25. Artikel 55 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Beheer oor advertensies**

55. (1) Alle uitsaaidienslisensiehouers moet die Advertensiepraktykkode (in hierdie artikel die Kode genoem) nakom, soos van tyd tot tyd deur die Gesagsliggaam vir Reklamestandaarde van Suid-Afrika bepaal en toegepas word, en enige advertensieregulasies deur die Owerheid voorgeskryf ten opsigte van die skedulering van advertensies, inligtingsadvertensies en programborgskappe.

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

(3) Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority of South Africa, is found to have breached the Code or advertising regulations, such broadcasting licensee must be dealt with in accordance with applicable provisions of sections 17A to 17H of the ICASA Act.''.

Amendment of section 62 of Act 36 of 2005

26. Section 62 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) A common carrier must—

(a) subject to its technological capacity to do so and to the provisions of paragraph *(b)*, provide broadcasting signal distribution to broadcasting licensees upon their request and in accordance with the national radio frequency plan contemplated in section 34, on an equitable, reasonable, non-preferential and non-discriminatory basis;

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

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

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

(c) carry public broadcasting services, including educational, commercial and community services and shall be deemed an electronic communications network service licensee that provides signal distribution for public broadcasting services.''.

Amendment of section 65 of Act 36 of 2005

27. Section 65 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) No person may—

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

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

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

Amendment of section 67 of Act 36 of 2005

28. Section 67 of the principal Act is hereby amended—

(a) by the deletion of subsections (1), (2) and (3);

(b) by the substitution for subsection (4) of the following subsection:

''(4) The Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments**[, as applicable, that pro-competitive conditions may be imposed upon licensees having significant market power where the Authority determines such markets or market segments have]** and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is

(2) Die Klagtes- en Nakomingskomitee moet ooreenkomstig artikel 17C van die OKOSA-wet beslis oor klagtes rakende beweerde oortredings van die Kode deur uitsaaidienslisensiehouers wat nie lede van die Gesagsliggaam vir Reklamestandaarde van Suid-Afrika is nie, asook klagtes rakende beweerde oortredings van die advertensieregulasies.

(3) Waar bevind is dat 'n uitsaaidienslisensiehouer, ongeag of hy of sy 'n lid van die Gesagsliggaam vir Reklamestandaarde van Suid-Afrika is al dan nie, die Kode of advertensieregulasies oortree het, moet daar ooreenkomstig die toepaslike bepalings van artikels 17A tot 17H van die OKOSA-wet met sodanige uitsaaidienslisensiehouer gehandel word.''.

Wysiging van artikel 62 van Wet 36 van 2005

26. Artikel 62 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

''(3) 'n Gemeenskaplike draer moet—

(a) behoudens sy tegnologiese vermoë om dit te doen en die bepalings van paragraaf *(b)*, uitsaaiseinverspreiding aan uitsaaidienslisensiehouers op hulle versoek en ooreenkomstig die nasionale radiofrekwensieplan in artikel 34 beoog verskaf, op 'n billike, redelike, nievoorkeur- en niediskriminerende basis;

(b) by die bepaling van tariewe, die volgende behoorlik in ag neem:

(i) die verskillende kategorieë uitsaaidienslisensies in artikels 49, 50 en 51 bedoel; en

(ii) die aard en tegniese parameters van die diens wat aan elke uitsaailisensiehouer verskaf word ten einde te verseker dat die verskillende tariewe geskik is vir en eweredig is met die verskillende uitsaaidienste waarop dit betrekking het;

(c) openbare uitsaaidienste dra, insluitend opvoedkundige, kommersiële en gemeenskapsdienste en word geag die elektroniese kommunikasienetwerkdienslisensiehouer te wees wat seinverspreiding vir openbare uitsaaidienste verskaf.''.

Wysiging van artikel 65 van Wet 36 van 2005

27. Artikel 65 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Geen persoon mag—

(a) regstreeks of onregstreeks beheer oor meer as een kommersiële uitsaaidienslisensie in die kommersiële televisie-uitsaaidiens uitoefen nie; of

(b) 'n direkteur wees van 'n maatskappy wat, of van twee of meer maatskappye wat saam, in 'n posisie is om beheer oor meer as een kommersiële uitsaaidienslisensie in die kommersiële televisie-uitsaaidiens uit te oefen nie; of

(c) in 'n posisie wees om beheer uit te oefen oor 'n kommersiële uitsaaidienslisensie in die kommersiële televisie-uitsaaidiens en 'n direkteur wees van enige maatskappy wat in 'n posisie is om beheer oor enige ander kommersiële uitsaaidienslisensie in die kommersiële televisie-uitsaaidiens uit te oefen nie.''.

Wysiging van artikel 67 van Wet 36 van 2005

28. Artikel 67 van die Hoofwet word hierby gewysig—

(a) deur subartikels (1), (2) en (3) te skrap;

(b) deur subartikel (4) deur die volgende subartikel te vervang:

''(4) Die Owerheid moet, na 'n ondersoek, regulasies voorskryf wat die betrokke markte en marksegmente**[, soos toepaslik,]** omskryf en **[bepaal dat pro-mededingingsvoorwaardes aan lisensiehouers met 'n beduidende markkrag opgelê kan word waar die Owerheid bepaal dat sodanige markte of marksegmente]** gepaste en voldoende pro-mededingingslisensievoorwaardes aan lisensiehouers oplê waar daar ondoeltreffende mededinging is en indien enige lisensiehouer

ineffective competition, and if any licensee has significant market power in such markets or market segments. The regulations must, among other things—

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

(b) **[set out the methodology to be used to determine the effectiveness of]** determine whether there is effective competition in **[such]** those relevant markets **[or]** and market segments**[, taking into account subsection (8)]**;

(c) **[set out the pro-competitive measures the Authority may impose in order to remedy the perceived market failure in the]** determine which, if any, licensees have significant market power in those markets **[or]** and market segments **[found to have]** where there is ineffective competition **[taking into account subsection (7)]**;

(d) **[declare licensees in the relevant market or market segments, as applicable, that have significant market power, as determined in accordance with subsection (6), and the]** impose appropriate pro-competitive licence conditions **[applicable to each such licensee]** on those licensees having significant market power to remedy the market failure;

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

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

(c) by the insertion after subsection (4) of the following subsections:

''(4A) When determining whether there is effective competition in markets and market segments, the Authority must consider, among other things—

(a) the non-transitory (structural, legal, and regulatory) entry barriers to the applicable markets or market segments; and

(b) the dynamic character and functioning of the markets or market segments, including an assessment of relative market share of the various licensees or providers of exempt services in the markets or market segments, and a forward looking assessment of the relative market power of the licensees in the markets or market segments.

(4B) Subject to section 4D of the ICASA Act, licensees must provide to the Authority any information specified by the Authority in order that the Authority may carry out its duties in terms of this section.'';

(d) by the substitution for subsection (5) of the following subsection:

''(5) A licensee has significant market power **[with regard to the relevant]** in a market or market segment **[where the Authority finds that the particular individual licensee or class]** if that licensee—

(a) is dominant;

(b) has control of an essential **[facilities]** facility; or

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

(e) by the deletion of subsection (6);

(f) by the substitution for subsection (7) of the following subsection:

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

(a) obligations in respect of interconnection and facilities leasing in addition to those provided for in Chapters 7 and 8 and any regulations made in terms thereof;

beduidende markkrag in sodanige markte of marksegmente het. Die regulasies moet onder andere—

(a) **[die klein- of groothandelmarkte]** tersaaklike groot- of kleinhandelmarkte of marksegmente omskryf **[en identifiseer waar hy voornemens is om pro-mededingingsmaatreëls te tref in gevalle waar daar bevind word dat sodanige markte ondoeltreffende mededinging het]**;

(b) **[die metodologie uiteensit wat gebruik moet word om die doeltreffendheid van]** bepaal of daar doeltreffende mededinging in **[sodanige]** daardie tersaaklike markte **[of]** en marksegmente **[te bepaal, met inagneming van subartikel (8)]** is;

(c) **[die pro-mededingingsmaatreëls uiteensit wat die Owerheid kan tref ten einde die vermeende markmislukking reg te stel in die]** bepaal watter, indien enige, lisensiehouers beduidende markkrag het in daardie markte **[of]** en marksegmente waar daar **[bevind is dat daar]** ondoeltreffende mededinging is**[, met inagneming van subartikel (7)]**;

(d) **[lisensiehouers in die betrokke mark of marksegment, soos toepaslik, verklaar wat beduidende markkrag het, soos bepaal ooreenkomstig subartikel (6), en die pro-mededingings-voorwaardes van toepassing op elke sodanige lisensiehouer]** gepaste pro-mededingslisensievoorwaardes oplê aan daardie lisensiehouers wat beduidende markkrag het om die markmislukking reg te stel;

(e) 'n skedule uiteensit ingevolge waarvan die Owerheid periodieke hersienings van die markte en marksegmente moet doen, met inagneming van subartikel (9) en die bepaling ten opsigte van die doeltreffendheid van mededinging en die toepassing van pro-mededingingsmaatreëls in daardie markte; en

(f) voorsiening maak vir die monitering en ondersoek van teenmededingingsgedrag in die betrokke mark en marksegmente.'';

(c) deur die volgende subartikels na subartikel (4) in te voeg:

''(4A) Wanneer bepaal word of daar doeltreffende mededinging in markte en marksegmente is, moet die Owerheid, onder andere—

(a) die niekortstondige (strukturele, wetlike en regulatoriese) toegangshindernisse tot die toepaslike markte of marksegmente in ag neem; en

(b) die dinamiese karakter en funksionering van die markte of marksegmente, met inbegrip van 'n beoordeling van die relatiewe markaandeel van die verskeie lisensiehouers of verskaffers van vrygestelde dienste in die markte of marksegmente, en 'n vooruitskouende beoordeling van die relatiewe markkrag van die lisensiehouers in die markte of marksegmente in ag neem.

(4B) Behoudens artikel 4D van die OKOSA-wet, moet lisensiehouers die Owerheid voorsien van enige inligting deur die Owerheid vermeld sodat die Owerheid sy pligte ingevolge hierdie artikel kan uitvoer.'';

(d) deur subartikel (5) deur die volgende subartikel te vervang:

''(5) 'n Lisensiehouer het beduidende markkrag **[met betrekking tot die betrokke]** in 'n mark of marksegment **[waar die Owerheid bevind dat die bepaalde individuele lisensiehouer of klaslisensiehouer]** indien daardie lisensiehouer—

(a) dominant is;

(b) oor 'n noodsaaklike **[fasiliteite]** fasiliteit beheer uitoefen; of

(c) 'n vertikale verhouding het wat die Owerheid bepaal mededinging **[in die mark of marksegment wat op die bepaalde kategorie lisensie van toepassing is,]** kan benadeel.'';

(e) deur subartikel (6) te skrap;

(f) deur subartikel (7) deur die volgende subartikel te vervang:

''(7) Pro-mededingslisensiebedinge en -voorwaardes sluit in, maar is nie beperk nie tot—

(a) verpligtinge ten opsigte van interkonneksie en fasiliteiteverhuring bykomend tot die verpligtinge waarvoor in Hoofstukke 7 en 8

(b) penalties for failure to abide by the pro-competitive licence conditions;
(c) obligations to publish any information specified by the Authority in the manner specified by it;
(d) obligations to maintain separate accounting for any services specified by the Authority;
(e) obligations to maintain structural separation for the provision of any services specified by the Authority;
(f) rate regulation for the provision of specified services, including without limitation price controls on wholesale and retail rates as determined by the Authority, and matters relating to the recovery of costs;
(g) obligations relating to accounts, records and other documents to be kept, provided to the Authority, and published;
(h) obligations concerning the amount and type of premium, sports and South African programming for broadcasting; and
(i) distribution, access and reselling obligations for broadcasters.''.

Amendment of section 68 of Act 36 of 2005

29. Section 68 of the principal Act is hereby amended by the substitution in subsection (1)*(b)* for the words preceding subparagraph (i) of the following words:

''measures to ensure that number portability is introduced **[in 2005 or soon thereafter, as far as is practicably possible]**, including—''.

Amendment of section 70 of Act 36 of 2005

30. The following section is hereby substituted for section 70 of the principal Act:

''**[People] Persons with disabilities**

70. The Authority must prescribe regulations setting out a code on **[people]** persons with disabilities that will be applicable to all categories of licences.''.

Amendment of section 72 of Act 36 of 2005

31. Section 72 of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

''(6) The Authority must allocate a four-digit number through which the public can access government directory, information and related services at the centre free of charge.''; and

(b) by the substitution for subsection (7) of the following subsection:

''(7) **[The cost of providing the government directory information service]** Electronic communications service and electronic communications network service licensees that carry communications to the centre may not levy any charge on the caller for placing calls to the centre since such costs must be borne by the licensee.''.

Insertion of section 72A in Act 36 of 2005

32. The following section is hereby inserted in the principal Act, after section 72:

''**National Broadband Council**

72A. (1) The Minister must establish a National Broadband Council to perform the functions referred to in subsection (3) having regard to the provisions of any other national law on the development of infrastructure.

voorsiening gemaak word en enige regulasies ingevolge daarvan uitgevaardig;

(b) strawwe vir versuim om aan die pro-mededingingslisensievoorwaardes te voldoen;

(c) verpligtinge om enige inligting deur die Owerheid vermeld, op die wyse wat hy vermeld, te publiseer;

(d) verpligtinge om aparte aanspreeklikheid te behou vir enige dienste deur die Owerheid vermeld;

(e) verpligtinge om strukturele skeiding te behou vir die verskaffing van enige dienste deur die Owerheid vermeld;

(f) tariefregulering vir die verskaffing van vermelde dienste, asook sonder beperkingsprysbeheer op groot- en kleinhandeltariewe, soos deur die Owerheid bepaal, en aangeleenthede wat op die herwinning van kostes betrekking het;

(g) verpligtinge met betrekking tot rekeninge, rekords en ander dokumente wat bygehou, aan die Owerheid verstrek en gepubliseer moet word;

(h) verpligtinge met betrekking tot die hoeveelheid en tipe premium-, sport- en Suid-Afrikaanse programme wat uitgesaai moet word; en

(i) verspreiding, toegang en herverkoopverpligtinge vir uitsaaiers.''.

Wysiging van artikel 68 van Wet 36 van 2005

29. Artikel 68 van die Hoofwet word hierby gewysig deur in subartikel (1)*(b)* die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

''maatreëls voorskryf om te verseker dat nommerdraagbaarheid **[in 2005 of gou daarna]** ingevoer word, insluitend **[sover prakties moontlik]**—''.

Wysiging van artikel 70 van Wet 36 van 2005

30. Artikel 70 van die Hoofwet word hierby deur die volgende artikel vervang:

''**[Mense] Persone met gestremdhede**

70. Die Owerheid moet regulasies voorskryf wat 'n kode oor **[mense]** persone met gestremdhede uiteensit, wat op alle kategorieë lisensies van toepassing sal wees.''.

Wysiging van artikel 72 van Wet 36 van 2005

31. Artikel 72 van die Hoofwet word hierby gewysig—

(a) deur subartikel (6) deur die volgende subartikel te vervang:

''(6) Die Owerheid moet 'n viersyfernommer toewys waardeur die publiek gratis toegang tot **[regeringsgidsinligtingsdienste]** regeringsgids-, inligtings- en verwante dienste by die sentrum kan kry.''; en

(b) deur subartikel (7) deur die volgende subartikel te vervang:

''(7) **[Die koste om die regeringsgidsinligtingsdiens te verskaf, moet]** Elektroniese kommunikasiediens- en elektroniese kommunikasienetwerkdienslisensiehouers wat kommunikasie na die sentrum dra, mag nie enige gelde hef aan die oproeper vir die maak van oproepe na die sentrum nie aangesien sodanige koste deur die lisensiehouer gedra moet word.''.

Invoeging van artikel 72A in Wet 36 van 2005

32. Die volgende artikel word hierby na artikel 72 in die Hoofwet ingevoeg:

''**Nasionale Breëbandraad**

72A. (1) Die Minister moet 'n Nasionale Breëbandraad instel om die werksaamhede in subartikel (3) bedoel te verrig, met inagneming van die bepalings van enige ander nasionale wet oor die ontwikkeling van infrastruktuur.

(2) The terms and conditions of appointment of members who may be from the public and private sector, including allowances, composition and meetings applicable to the Council by virtue of its appointment in terms of subsection (1), must be as determined by the Minister.

(3) The Council must report to and advise the Minister on broadband policy and implementation and must, where required to do so by the Minister, perform the following functions:

(a) Coordinate overall broadband implementation by government at national, provincial and local government levels;
(b) facilitate the monitoring and measurement of broadband penetration in South Africa;
(c) develop a broadband implementation plan that supports the Broadband Policy for South Africa which plan must include, without limitation, skills development, research and development of broadband priority areas;
(d) advise the Minister and the Minister of Finance on government investment in electronic communications facilities and networks that contribute to broadband at national, provincial and local government level to avoid unnecessary duplication;
(e) recommend measures to increase uptake and usage of broadband as well as enhance public awareness on the benefits of broadband; and
(f) annually survey and evaluate the status of broadband penetration in the Republic including, without limitation, household broadband penetration and electronic communications network connectivity to municipalities and broadband providers.''.

Substitution of section 73 of Act 36 of 2005

33. The following section is hereby substituted for section 73 of the principal Act:

''**E-rate**

73. (1) Internet services, provided to all public health establishments defined in the National Health Act, 2003 (Act No. 61 of 2003), all public and independent schools as defined in the South African Schools Act, 1996 (Act No. 84 of 1996), all public and private colleges and all public and private further education and training institutions **[as defined in]** established, declared or registered in terms of the Further Education and Training Colleges Act, **[1998 (Act No. 98 of 1998)]** 2006 (Act No. 16 of 2006), and all public and private higher education institutions defined in the Higher Education Act, 1997 (Act No. 101 of 1997), must be provided at a minimum discounted rate of 50% off the total charge levied by the electronic communications service licensee providing Internet services to such institutions.

(2) The discount is applicable **[of]** to the total charge levied by the electronic communications service licensee which includes but is not limited to the following:

(a) Any connectivity charges for access to the Internet;
(b) charges for any **[equipment]** electronic communications facilities used for or in association with connectivity to the Internet; and
(c) **[all calls made to an Internet Service Provider]** all call charges for access to the Internet.

(3) Where the electronic communications service licensee, who provides Internet services to the institutions and schools as contemplated in subsection (1), obtains its electronic communications facilities for the provision of Internet services from **[a]** an electronic communications network service licensee, the licensee is entitled to a minimum of 50% off

(2) Die bedinge en voorwaardes van aanstelling van lede wat uit die openbare en privaatsektor mag kom, met inbegrip van toelaes, samestelling en vergaderings van toepassing op die Raad uit hoofde van die Raad se aanstelling ingevolge subartikel (1), moet wees soos die Minister bepaal het.

(3) Die Raad moet aan die Minister verslag doen en moet die Minister van raad bedien oor breëbandbeleid en inwerkingstelling en moet, waar die Minister dit vereis, die volgende werksaamhede verrig:

(a) Algehele breëband-inwerkingstelling deur die staat op nasionale, provinsiale en plaaslike regeringsvlakke koördineer;
(b) die monitering en meting van breëbandpenetrasie in Suid-Afrika bewerkstellig;
(c) ’n breëband-inwerkingstellingsplan ontwikkel wat die Breëband-beleid vir Suid-Afrika ondersteun, welke plan, sonder beperking, vaardigheidsontwikkeling, navorsing en ontwikkeling van breëbandprioriteitsgebiede moet insluit;
(d) die Minister en die Minister van Finansies van raad bedien oor regeringsbelegging in elektroniese kommunikasiefasiliteite en -netwerke wat bydra tot breëband op nasionale, provinsiale en plaaslike regeringsvlakke om onnodige duplisering te vermy;
(e) maatreëls aanbeveel om opname en gebruik van breëband te vergroot asook om openbare bewustheid oor die voordele van breëband te verbeter; en
(f) jaarliks ’n opname te doen oor die status van penetrasie van breëband in die Republiek en dit te evalueer, met inbegrip van, sonder beperking, huishoudelike breëbandpenetrasie en elektroniese kommunikasienetwerk-konnektiwiteit aan munisipaliteite en breëbandverskaffers.’’.

Vervanging van artikel 73 van Wet 36 van 2005

33. Artikel 73 van die Hoofwet word hierby deur die volgende artikel vervang:

‘‘**E-tarief**

73. (1) Internetdienste, wat gelewer word aan alle openbare gesondheidsinstellings in die ‘National Health Act, 2003’ (Wet No. 61 van 2003), omskryf alle openbare en onafhanklike skole soos omskryf in die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996), alle openbare en private kolleges en alle openbare en private instellings vir verdere onderwys en opleiding **[soos omskryf in]** verklaar of geregistreer ingevolge die **[Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998)]** ‘Further Education and Training Colleges Act, 2006’ (Wet No. 16 van 2006), en alle openbare en private instellings vir hoër onderwys omskryf in die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), moet gelewer word teen ’n minimum verdiskonteerde tarief van 50% van die totale koste wat gehef word deur die **[lisensiehouer]** elektroniese kommunikasiedienslisensiehouer wat internetdienste aan sulke instellings lewer.

(2) Die diskonto is van toepassing op die totale koste wat gehef word deur die **[lisensiehouer]** elektroniese kommunikasiedienslisensiehouer, wat die volgende insluit maar nie daartoe beperk is nie:

(a) Enige konnektiwiteitsgelde vir toegang tot die Internet;
(b) heffings vir enige **[toerusting]** elektroniese kommunikasiefasiliteite wat gebruik word vir of saam met konnektiwiteit tot die Internet; en
(c) alle **[oproepe wat na ’n internetdiensverskaffer gemaak word]** oproepkostes vir toegang tot die Internet.

(3) Waar die **[lisensiehouer]** elektroniese kommunikasiedienslisensiehouer, wat internetdienste verskaf aan die instellings en skole in subartikel (1) beoog, sy elektroniese kommunikasiefasiliteite vir die lewering van internetdienste van ’n elektroniese kommunikasienetwerkdienslisensiehouer verkry, is die lisensiehouer geregtig op ’n minimum van 50% afslag van die **[kleinhandelstarief]**

the **[retail]** wholesale rate charged to it by the electronic communications network service licensee for the facilities in question, which discount shall be passed on to the schools and other institutions mentioned in subsection (1).

(4) The implementation of this section must be in the manner prescribed.

[(5) The Minister may, in consultation with the Minister responsible for Education, declare categories of independent schools or private further education and training institutions to be entitled to the discount mentioned in subsection (1).]

(6) The Agency may pay the charge contemplated in subsection (1) on behalf of any school or other institution contemplated in subsection (1), in which event the Agency is entitled to the discount mentioned in subsection (1).''.

Insertion of sections 79A and 79B in Act 36 of 2005

34. The following sections are hereby inserted in the principal Act, after section 79:

''**Limitation of liability**

79A. No person in the employ of a 112 Emergency Centre, including the State, shall be liable for any damage or loss suffered by any person in consequence of any act which in good faith was performed or omitted in the performance of any function in terms of this Act.

Provision of information

79B. (1) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Minister may, in writing, require the Authority or the Agency, or any other person to provide, within a reasonable time or on a regular basis, any data, information or documents to the Minister that are required for the purposes of the performance of the functions of the Minister.

(2) A notice under subsection (1) may also indicate the manner in which the information must be furnished and, if required, how the information must be verified.

(3) When information is requested by the Minister the relevant person may request the Minister to treat specific information as confidential, and for that purpose section 4D of the ICASA Act applies with the changes required by the context.''.

Amendment of section 80 of Act 36 of 2005

35. Section 80 of the principal Act is hereby amended by the addition of the following subsection:

''(4) The Agency is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).''.

Insertion of section 81A in Act 36 of 2005

36. The following section is hereby inserted in the principal Act, after section 81:

''**Fiduciary duties of Board members, and removal and dissolution**

81A. In addition to any other applicable law relating to the fiduciary duties of members of a board, the following shall apply to members of the Board:

(a) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest.

groothandeltarief wat die elektroniese kommunikasienetwerkdienslisensiehouer hom vir die betrokke fasiliteite laat betaal, welke diskonto aan die skole en ander instellings in subartikel (1) genoem, deurgegee moet word.

(4) Die implementering van hierdie artikel moet op die voorgeskrewe wyse geskied.

[(5) Die Minister kan, in oorleg met die Minister verantwoordelik vir Onderwys, kategorieë van onafhanklike skole of private instellings vir verdere onderwys en opleiding verklaar wat geregtig is op die diskonto in subartikel (1) bedoel.]

(6) Die Agentskap kan die tarief in subartikel (1) beoog namens enige skool of ander instelling in subartikel (1) beoog, betaal, in welke geval die Agentskap geregtig is op die diskonto in subartikel (1) genoem.''.

Invoeging van artikels 79A en 79B in Wet 36 van 2005

34. Die volgende artikels word hierby na artikel 79 in die Hoofwet ingevoeg:

''**Beperking van aanspreeklikheid**

79A. Geen persoon in diens van 'n 112-Noodsentrum, met inbegrip van die Staat, is aanspreeklik vir enige skade of verlies deur enige persoon gelei as gevolg van enige handeling wat in goeie trou verrig is of uitgelaat is in die verrigting van enige werksaamheid ingevolge hierdie Wet nie.

Verstrekking van inligting

79B. (1) Behoudens die Wet op Toegang tot Inligting, 2000 (Wet No. 2 van 2000), kan die Minister skriftelik vereis dat die Owerheid of die Agentskap, of enige ander persoon, binne 'n redelike tyd of op 'n gereelde grondslag, enige data, inligting of dokumente aan die Minister voorlê wat vir die doeleindes van die verrigting van die Minister se werksaamhede benodig word.

(2) 'n Kennisgewing kragtens subartikel (1) kan ook die wyse waarop die inligting verstrek moet word aandui en, indien nodig, hoe die inligting geverifieer moet word.

(3) Wanneer die Minister inligting aanvra kan die tersaaklike party versoek dat die Minister sekere inligting as vertroulik hanteer, en vir daardie doeleinde is artikel 4D van die OKOSA-wet, met die veranderinge deur die samehang vereis, van toepassing.''.

Wysiging van artikel 80 van Wet 36 van 2005

35. Artikel 80 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

''(4) Die Agentskap is onderhewig aan die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).''.

Invoeging van artikel 81A in Wet 36 van 2005

36. Die volgende artikel word hierby na artikel 81 in die Hoofwet ingevoeg:

''**Vertrouenspligte van raadslede, en ontheffing en ontbinding**

81A. Bykomend tot enige ander toepaslike wetsbepaling wat betrekking het op die vertrouenspligte van lede van 'n raad, is die volgende op lede van die Raad van toepassing:

(a) 'n Lid van die Raad mag nie teenwoordig wees by, of deelneem aan, die bespreking van of neem van 'n besluit oor enige aangeleentheid voor die Raad waarin daardie lid of sy of haar familielid, sakevennoot of medewerker 'n direkte of indirekte belang het nie.

(b) A member of the Board or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the Board or his or her family member, business partner or associate has a direct or indirect interest, may not—
   (i) offer goods or services to the Agency or conclude any business with the Agency; or
   (ii) make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member.

(c) A member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
   (i) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
   (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
   (iii) regularly attend Board meetings;
   (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
   (v) exercise due diligence in the performance of his or her functions as a member;
   (vi) comply with any internal code of conduct that the Agency may establish for Board members;
   (vii) not engage in any activity that may undermine the integrity of the Agency;
   (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member; and
   (ix) treat any confidential matters relating to the Agency, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Agency or as required as part of that person's official functions as a member of the Board.''.

Amendment of section 82 of Act 36 of 2005

37. Section 82 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what constitutes—
   (i) universal access **[by all areas and communities in the Republic to electronic communications services and electronic communications network services]**; and
   (ii) **[the universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks, including any elements or attributes thereof]** universal service.''.

(b) 'n Lid van die Raad of sy of haar familielid, sakevennoot of medewerker, of 'n organisasie of onderneming waarin 'n lid van die Raad of sy of haar familielid, sakevennoot of medewerker 'n direkte of indirekte belang het, mag nie—
(i) goedere of dienste aan die Agentskap bied of enige besigheid met die Agentskap doen nie; of
(ii) onbehoorlike gebruik maak, op enige wyse hoegenaamd, van die posisie van 'n Raadslid of van enige inligting deur 'n Raadslid verkry uit hoofde van sy of haar posisie as Raadslid nie.

(c) 'n Lid van die Raad moet sy of haar werksaamhede te alle tye met die uiterste goeie trou, eerlikheid en integriteit, sorg en toewyding verrig en moet ter bevordering van sy of haar werksaamhede, sonder om die omvang daarvan te beperk—
(i) redelike stappe doen om homself of haarself op hoogte te stel oor die Agentskap, die Agentskap se sake en aktiwiteite en die omstandighede waaronder hy werksaam is;
(ii) redelike stappe doen, deur die prosesse van die Raad, om voldoende inligting en advies te bekom oor alle aangeleenthede waaroor die Raad moet besin, sodat hy of sy pligsgetroue en ingeligte besluite kan neem;
(iii) gereeld Raadsvergaderings bywoon;
(iv) aktief en onafhanklik eie oordeel uitoefen ten opsigte van alle aangeleenthede waaroor die Raad moet besluit;
(v) behoorlike sorg uitoefen in die verrigting van sy of haar werksaamhede as 'n lid;
(vi) by enige interne gedragskode hou wat die Agentskap vir lede van die Raad mag instel;
(vii) nie by enige aktiwiteit betrokke raak wat die integriteit van die Agentskap kan ondermyn nie;
(viii) nie onbehoorlike gebruik maak van sy of haar posisie as 'n lid van die Raad of van inligting wat uit hoofde van sy of haar posisie as 'n lid bekom is nie; en
(ix) enige vertroulike aangeleenthede betreffende die Agentskap, wat in sy of haar hoedanigheid as 'n lid van die Raad bekom is, as streng vertroulik hanteer en dit nie aan enigiemand bekend maak sonder die magtiging van die Agentskap of soos vereis as deel van daardie persoon se amptelike werksaamhede as lid van die Raad nie.''.

Wysiging van artikel 82 van Wet 36 van 2005

37. Artikel 82 van die Hoofwet word hierby gewysig deur paragraaf *(a)* in subartikel (3) deur die volgende paragraaf te vervang:

''*(a)* Die Agentskap moet van tyd tot tyd, met behoorlike inagneming van heersende omstandighede en houdings in die Republiek en na verkryging van die grootste doenlike mate van openbare deelname, aanbevelings maak om die Minister in staat te stel om te bepaal wat behels—
(i) universele toegang **[deur alle gebiede en gemeenskappe in die Republiek tot elektroniese kommunikasiedienste en elektroniese kommunikasienetwerkdienste]**; en
(ii) **[die universele verskaffing aan alle persone in die Republiek van elektroniese kommunikasiedienste en toegang tot elektroniese kommunikasienetwerke, insluitend enige elemente of eienskappe daarvan]** universele diens.''.

38

Insertion of sections 82A to 82E in Act 36 of 2005

38. (1) The following sections are hereby inserted in the principal Act, after section 82:

"**Appointment of chief executive officer**

82A. (1) The Board must, with the approval of the Minister, appoint a CEO to ensure that the Agency meets its objectives.

(2) The Board must invite applications for the post of CEO by publishing advertisements in the media.

(3) A person appointed as CEO must—

(a) have the qualifications or experience relevant to the functions of the Agency; and

(b) not be disqualified due to any action contemplated in section 81A(1)*(b)*.

Conditions of appointment of CEO

82B. (1) The appointment of the CEO is subject to the conclusion of an annual performance agreement with the Agency.

(2) The CEO is appointed for a term not exceeding five years and may, subject to the approval of the Minister, be reappointed for one additional term not exceeding five years.

(3) The CEO holds office on terms and conditions determined by the Board, with the concurrence of the Minister.

(4) The CEO is a member of the Board by virtue of his or her office.

(5) The CEO is entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance.

(6) The CEO is accountable to the Board.

Termination of employment of CEO

82C. (1) The Board must, with the concurrence of the Minister and subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and applicable labour legislation, terminate the employment of the CEO—

(a) for misconduct; or

(b) for failing to perform the duties connected with that office diligently.

(2) The Board may suspend the services of the CEO pending the finding of any misconduct proceedings against him or her, during which period the CEO is also suspended as member of the Board.

(3) The CEO must vacate the office if he or she becomes disqualified from membership of the Board due to any action contemplated in section 81A(1)*(b)*.

(4) The CEO may resign on written notice of at least 30 days to the chairperson of the Board.

Acting chief executive officer

82D. (1) The Board may in writing appoint any senior employee of the Agency to act as CEO when the holder of that office—

(a) is temporarily unable to perform the duties connected with that office;

(b) has been suspended from office; or

(c) has vacated or been removed from that office and a new CEO has not yet been appointed.

(2) An acting chief executive officer may exercise all the powers and must perform all the duties of the CEO, as the case may be.

Invoeging van artikels 82A tot 82E in Wet 36 van 2005

38. (1) Die volgende artikels word hierby na artikel 82 in die Hoofwet ingevoeg:

‘‘**Aanstelling van hoof- uitvoerende beampte**

82A. (1) Die Raad moet, met die goedkeuring van die Minister, ’n HUB aanstel om te verseker dat die Agentskap sy doelwitte bereik.

(2) Die Raad moet aansoeke om die pos van HUB nooi deur advertensies in die media te publiseer.

(3) ’n Persoon as HUB aangestel moet—

(a) die kwalifikasies of ervaring van toepassing op die Agentskap hê; en

(b) nie as gevolg van enige handeling in artikel 81A(1)*(b)* bedoel, onbevoeg wees nie.

Aanstellingsvoorwaardes van HUB

82B. (1) Die aanstelling van die HUB is onderhewig aan die sluiting van ’n jaarlikse prestasie-ooreenkoms met die Agentskap.

(2) Die HUB word vir ’n termyn van hoogstens vyf jaar aangestel en kan, behoudens die Minister se goedkeuring, vir een bykomende termyn van hoogstens vyf jaar heraangestel word.

(3) Die HUB beklee sy of haar amp volgens bepalings en voorwaardes neergelê deur die Raad, met die instemming van die Minister.

(4) Die HUB is ’n lid van die Raad uit hoofde van sy of haar amp.

(5) Die HUB is geregtig op ’n vergoedingspakket deur die Raad bepaal met die instemming van die Minister en die Minister van Finansies.

(6) Die HUB is teenoor die Raad verantwoordbaar.

Diensbeëindiging van HUB

82C. (1) Die Raad moet, met die goedkeuring van die Minister en behoudens die ‘Promotion of Administrative Justice Act, 2000’ (Wet No. 3 van 2000), en toepaslike arbeidswetgewing, die diens van die HUB beëindig—

(a) weens wangedrag; of

(b) weens versuim om die pligte wat op daardie amp betrekking het, toegewyd te verrig.

(2) Die Raad kan die dienste van die HUB opskort hangende die uitkoms van enige geregtelike stappe teen hom of haar weens wangedrag, en in daardie tydperk is die HUB ook as uitvoerende lid van die Raad geskors.

(3) Die HUB moet die amp ontruim indien hy of sy weens enige handeling in artikel 81A(1)*(b)* beoog vir lidmaatskap van die Raad onbevoeg word.

(4) Die HUB kan bedank deur minstens 30 dae skriftelik aan die voorsitter van die Raad kennis te gee.

Waarnemende hoof- uitvoerende beampte

82D. (1) Die Raad kan enige senior werknemer van die Agentskap skriftelik aanstel om as HUB waar te neem wanneer die bekleër van daardie amp—

(a) tydelik nie in staat is om die pligte wat met daardie amp gepaard gaan te verrig nie;

(b) uit die amp geskors is; of

(c) daardie amp ontruim het of daaruit onthef is en ’n nuwe HUB nog nie aangestel is nie.

(2) ’n Waarnemende hoof- uitvoerende beampte mag al die bevoegdhede van die HUB uitoefen en moet al die pligte van die HUB verrig, na gelang van die geval.

Delegation and assignment by CEO

82E. (1) The CEO may delegate any of his or her powers and assign any of his or her duties to an employee of the Agency.

(2) Any delegation or assignment contemplated in subsection (1)—

(a) may be made subject to such conditions as the Board may determine;

(b) must be communicated to the delegatee or assignee in writing;

(c) may be amended or withdrawn in writing by the CEO; and

(d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), the CEO is not divested of any power or duty so delegated or assigned.''.

(2) *(a)* Any reference in any other law to the CEO referred to in section 83 of the principal Act prior to the insertion of sections 82A by subsection (1) of this section, must be construed as a reference to the CEO referred to in the said section 82A.

(b) Anything done by the CEO prior to the commencement of this section in the administration of any law, must be regarded to have been done by the CEO referred to in section 82A.

(c) The person who held office as CEO immediately prior to the commencement of this section, must be regarded to have been appointed as the CEO under section 82A of the principal Act as inserted by subsection (1) of this section.

Amendment of section 83 of Act 36 of 2005

39. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) The Agency is under the direction and control of the CEO **[appointed by the Board]**.'';

(b) by the deletion of subsections (2) and (4);

(c) by the substitution in subsection (8) for paragraph *(a)* of the following paragraph:

''(a) promote the empowerment of historically disadvantaged persons, including women, the youth and **[people]** persons with disabilities; and'';

(d) by the substitution for subsections (9) and (10) of the following subsections, respectively:

''(9) The **[CEO and other]** staff of the Agency must be appointed on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively, of development planning, community development, social sciences, economics, electronic communications and publicity.

(10) A person may not be appointed or continue in office as **[CEO or other]** a member of the staff of the Agency if he or she becomes unfit to hold the office or becomes incapacitated.'';

(e) by the deletion of subsection (11); and

(f) by the substitution for subsections (12) and (13) of the following subsections, respectively:

''(12) The **[CEO and other employees]** members of the staff of the Agency hold office on such conditions as to remuneration and otherwise**[—**

***(a)* in the case of the CEO, as the Minister may determine with the concurrence of the Minister of Finance;**

***(b)* in the case of other employees,]** as the CEO may determine with the concurrence of the Minister and the Minister of Finance.

(13) Different periods and conditions may be determined under **[subsections (11) or]** subsection (12) in respect of different **[employees]** members of the staff of the Agency.''.

Delegering en opdragte deur HUB

82E. (1) Die HUB kan enige van sy of haar bevoegdhede delegeer en enige van sy of haar pligte opdra aan 'n werknemer van die Agentskap.

(2) Enige delegering of opdrag in subartikel (1) beoog—

(a) kan aan die voorwaardes wat die Raad bepaal onderhewig gemaak word;
(b) moet skriftelik aan die gedelegeerde of ontvanger van die opdrag oorgedra word;
(c) kan skriftelik deur die HUB gewysig of ingetrek word; en
(d) belet nie die houer van die amp wat die delegering of opdrag gemaak het daarvan om daardie bevoegdheid uit te oefen of daardie plig te verrig nie.

(3) Ondanks 'n delegering of opdrag in subartikel (1) beoog, is die HUB nie ontdaan van enige bevoegdheid of plig aldus gedelegeer of opgedra nie.".

(2) *(a)* Enige verwysing in enige ander wetsbepaling na die HUB in artikel 83 van die Hoofwet bedoel voor die invoeging van artikel 82A deur subartikel (1) van hierdie artikel, moet uitgelê word as 'n verwysing na die HUB in die genoemde artikel 82A bedoel.

(b) Enigiets voor die inwerkingtreding van hierdie artikel deur die HUB gedoen in die administrasie van enige wetsbepaling, moet geag word deur die HUB in artikel 82A bedoel gedoen te gewees het.

(c) Die persoon wat onmiddellik voor die inwerkingtreding van hierdie artikel die amp van HUB beklee het, moet geag word kragtens artikel 82A van die Hoofwet soos deur artikel (1) van hierdie artikel ingevoeg, aangestel te gewees het.

Wysiging van artikel 83 van Wet 36 van 2005

39. Artikel 83 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Agentskap staan onder leiding en beheer van die HUB**[, wat deur die Raad aangestel word]**.";

(b) deur subartikels (2) en (4) te skrap;

(c) deur paragraaf *(a)* in subartikel (8) deur die volgende paragraaf te vervang:

"*(a)* die bemagtiging van histories benadeelde persone, **[insluitend]** met inbegrip van vroue, die jeug en persone met gestremdhede, bevorder; en";

(d) deur subartikels (9) en (10) onderskeidelik deur die volgende subartikels te vervang:

"(9) Die **[HUB en ander]** personeel van die Agentskap moet aangestel word op grond van hulle kwalifikasies, kundigheid of ondervinding op die gebiede van, gesamentlik beskou, ontwikkelingsbeplanning, gemeenskapsontwikkeling, sosiale wetenskappe, ekonomie, elektroniese kommunikasie en publisiteit.

(10) 'n Persoon mag nie aangestel word of aanbly in die pos van **[HUB of ander]** 'n lid van die personeel van die Agentskap nie indien hy of sy ongeskik word om die pos te beklee of onbekwaam raak.";

(e) deur subartikel (11) te skrap; en

(f) deur subartikels (12) en (13) onderskeidelik deur die volgende subartikels te vervang:

"(12) Die **[HUB en ander werknemers]** personeellede van die Agentskap beklee hulle ampte op die voorwaardes rakende besoldiging en andersins**[—**

***(a)* in die geval van die HUB, wat die Minister met die instemming van die Minister van Finansies bepaal; en**

***(b)* in die geval van die ander werknemers,]** wat die HUB met die instemming van die Minister en die Minister van Finansies bepaal.

(13) Verskillende tydperke en voorwaardes kan kragtens subartikel **[(11) of]** (12) ten opsigte van verskillende **[werknemers]** personeellede van die Agentskap bepaal word.".

Amendment of section 87 of Act 36 of 2005

40. Section 87 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) All money received, the amounts of which in terms of subsection (1) must be credited to to the Universal Service and Access Fund in the books of the Agency, must be paid into the National Revenue Fund established by section **[185]** 213 of the Constitution.".

Amendment of section 88 of Act 36 of 2005

41. Section 88 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the following paragraphs, respectively:

"*(a)* for the assistance of needy persons towards the cost of the provision to, or the use by, them of broadcasting, electronic communications network services and electronic communications services;

(b) subject to subsection (2), to any **[broadcasting service licensee and]** electronic communications network service licensee for the purpose of financing the construction or extension of electronic communications networks in underserviced areas as prescribed;";

(b) by the deletion in subsection (1) of paragraph *(c)*;

(c) by the substitution in subsection (1)*(d)* for the words preceding subparagraph (i) of the following words:

"to schools and **[further education and training institutions]** colleges as defined in or established, declared or registered in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), and the Further Education and Training Colleges Act, **[1998 (Act No. 98 of 1998)]** 2006 (Act No. 16 of 2006), respectively, for the procurement of broadcasting and electronic communications services and access to electronic communications networks: Provided that—";

(d) by the deletion in subsection (1)*(d)* of subparagraph (i);

(e) by the substitution in subsection (1)*(d)*(ii) for the words preceding item *(aa)* of the following words:

"in the case of independent schools and **[independent further education and training institutions]** private colleges—";

(f) by the substitution in subsection (1) for paragraph *(e)* of the following paragraph:

"*(e)* for the establishment and operation of **[broadcasting services and for the establishment and operation]** community centres, including training of and the payment of allowances to personnel of centres, where access can be obtained to electronic communications **[networks]** network services, electronic communications services and broadcasting services.";

(g) by the addition to subsection (1) of the following paragraph:

"*(f)* as may be prescribed by regulation by the Minister, with the concurrence of the Minister of Finance.";

(h) by the insertion after subsection (1) of the following subsection:

"(1A) The Agency must at least every two years, after obtaining public participation, determine by notice in the *Gazette*, for the purposes of payments referred to in subsection (1), the manner in which applications must be made and the manner in which subsidies will be paid."; and

(i) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) The Authority must at least **[bi-annually]** every two years review and update, the prescribed definition of under-serviced area and the list of designated under-serviced areas eligible for construction payments from the Universal Service and Access Fund.

(4) **[The Minister may]** The Agency must at least every two years, after obtaining public participation, make recommendations to enable the Minister to determine by notice in the *Gazette*, for the purposes of

Wysiging van artikel 87 van Wet 36 van 2005

40. Artikel 87 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Alle geld ontvang, waarmee die Universele Diens-en-Toegangsfonds gekrediteer moet word in die Agentskap se boeke, moet gestort word in die Nasionale Inkomstefonds by artikel **[185]** 213 van die Grondwet ingestel.".

Wysiging van artikel 88 van Wet 36 van 2005

41. Artikel 88 van die Hoofwet word hierby gewysig—

(a) deur paragrawe *(a)* en *(b)* in subartikel (1) onderskeidelik deur die volgende paragrawe te vervang:

"*(a)* vir bystand aan behoeftige persone vir die koste van die verskaffing aan of die gebruik deur hulle van uitsaai-, elektroniese kommunikasienetwerkdienste en elektroniese kommunikasiedienste;

(b) behoudens subartikel (2), aan 'n **[uitsaaidienslisensiehouer en]** elektroniese kommunikasienetwerkdienslisensiehouer vir die doel van die finansiering van die oprigting of uitbreiding van elektroniese kommunikasienetwerke in onderbediende gebiede soos voorgeskryf;";

(b) deur paragraaf *(c)* in subartikel (1) te skrap;

(c) deur in subartikel (1)*(d)* die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"aan skole en **[instelling vir verdere onderwys en opleiding]** kolleges soos omskryf in of ingestel, verklaar of geregistreer ingevolge onderskeidelik die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996), en die **[Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998)]** 'Further Education and Training Colleges Act, 2006' (Wet No. 16 van 2006), vir die verkryging van uitsaai- en elektroniese kommunikasiedienste en toegang tot elektroniese kommunikasienetwerke: Met dien verstande dat—";

(d) deur subparagraaf (i) in subartikel (1)*(d)* te skrap;

(e) deur in subartikel (1)*(d)*(ii) die woorde wat item *(aa)* voorafgaan deur die volgende woorde te vervang:

"in die geval van onafhanklike skole **[en onafhanklike instellings vir verdere onderwys en opleiding]** private kolleges—";

(f) deur paragraaf *(e)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(e)* vir die instelling en bedryf van **[uitsaaidienste en vir die instelling en bedryf]** gemeenskapsentrums, insluitend opleiding van en die betaling van toelaes aan personeel van sentrums waar toegang tot elektroniese **[kommunikasienetwerke]** kommunikasienetwerkdienste, elektroniese kommunikasiedienste en uitsaaidienste verkry kan word.";

(g) deur die volgende paragraaf by subartikel (1) te voeg:

"*(f)* soos by regulasie deur die Minister voorgeskryf kan word, met die instemming van die Minister van Finansies.";

(h) deur die volgende subartikel na subartikel (1) in te voeg:

"(1A) Die Agentskap moet ten minste elke twee jaar, na verkryging van openbare deelname, by kennisgewing in die *Staatskoerant* vir die doeleindes van betalings in subartikel (1) bedoel, die wyse waarop aansoeke gedoen moet word en die wyse waarop subsidies betaal sal word, bepaal."; en

(i) deur subartikels (3) en (4) onderskeidelik deur die volgende subartikels te vervang:

"(3) Die Owerheid moet die voorgeskrewe omskrywing van onderbediende gebied en die lys van aangewese onderbediende gebiede wat vir oprigtingbetalings uit die Universele Diens-en-Toegangsfonds in aanmerking kom, minstens **[halfjaarliks]** elke twee jaar hersien en bywerk.

(4) **[Die Minister kan]** Die Agentskap moet ten minste elke twee jaar, na verkryging van openbare deelname, aanbevelings doen om die Minister in staat te stel om by kennisgewing in die *Staatskoerant*, vir

payments referred to in subsection (1)*(a)***[, by notice in the *Gazette* determine]—**

(a) types of needy persons to whom assistance may be given;

(b) the persons who must apply for assistance **[and the manner in which such applications must be made]**; and

(c) **[the manner in which and]** persons to whom subsidies may be paid.''.

Amendment of section 89 of Act 36 of 2005

42. Section 89 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) Subject to subsection (3), every holder of a licence granted or considered to have been granted in terms of Chapter 3, except holders of community broadcasting service licences, must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions of the licensee's licensed activity to the Universal Service and Access Fund.'';

(b) by the addition of the following subsection:

''(4) The Agency must collect all money that is due and payable to the Universal Service and Access Fund from the Authority.''.

Amendment of section 95 of Act 36 of 2005

43. Section 95 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

'' (1) **[Within twenty-four months of the coming into force of this Act, the]** The Authority may, if the Authority considers it necessary, repeal or amend the regulations made under—

(a) section 119A of the Post Office Act, 1958 (Act No. 44 of 1958);

(b) the Telecommunications Act;

(c) the Broadcasting Act;

(d) the IBA Act;

(e) the Radio Act, 1952 (Act No. 3 of 1952); and

(f) the Sentech Act,

which were in force immediately prior to the commencement of **[this Act]** the Electronic Communications Amendment Act, 2014.''.

Amendment of Arrangement of Sections

44. The Arrangement of Sections which occur before section 1 of the principal Act is hereby amended—

(a) by the substitution for item 21 of the following item:

''**21. [Guidelines for rapid]** Rapid deployment of electronic communications facilities'';

(b) by the insertion after item 72 of the following item:

''**72A.** National Broadband Council'';

(c) by the insertion after item 79 of the following items:

''**79A.** Limitation of liability

79B. Provision of information'';

(d) by the insertion after item 81 of the following item:

''**81A.** Fiduciary duties of Board members, and removal and dissolution''; and

(e) by the insertion after item 82 of the following items:

''**82A.** Appointment of chief executive officer

82B. Conditions of appointment of CEO

82C. Termination of employment of CEO

82D. Acting chief executive officer

82E. Delegation and assignment by CEO''.

doeleindes van betalings in subartikel (1)*(a)* bedoel**[, by kennisgewing in die *Staatskoerant*]—**

(a) tipes behoeftige persone bepaal aan wie bystand verleen kan word;
(b) die persone bepaal wat vir bystand aansoek moet doen **[en die wyse waarop sulke aansoeke gedoen moet word]**; en
(c) **[die wyse waarop en die]** persone aan wie subsidies betaal kan word, bepaal.''.

Wysiging van artikel 89 van Wet 36 van 2005

42. Artikel 89 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Behoudens subartikel (2) moet elke houer van 'n lisensie wat ingevolge Hoofstuk 3 toegestaan is of geag word toegestaan te gewees het, behalwe houers van gemeenskapsuitsaaidienslisensies benewens enige ander gelde in hierdie Wet of die verwante wetgewing beoog, die voorgeskrewe jaarlikse bydraes van die lisensiehouer se gelisensieerde bedrywigheid aan die Universele Diens-en-Toegangsfonds betaal.'';

(b) deur die volgende subartikel by te voeg:

''(4) Die Agentskap moet alle geld insamel wat verskuldig en betaalbaar is aan die Universele Diens-en-Toegangsfonds van die Owerheid verhaal.''.

Wysiging van artikel 95 van Wet 36 van 2005

43. Artikel 95 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) **[Binne vier en twintig maande na die inwerkingtreding van hierdie Wet kan die]** Die Owerheid kan, indien die Owerheid dit nodig ag, die regulasies uitgevaardig kragtens—

(a) artikel 119A van die Poskantoorwet, 1958 (Wet No. 44 van 1958);
(b) die Telekommunikasiewet;
(c) die Uitsaaiwet;
(d) die OUO-wet;
(e) die Radiowet, 1952 (Wet No. 3 van 1952); en
(f) die Sentech-wet,

wat van krag was onmiddellik voor die inwerkingtreding van **[hierdie Wet]** die Wysigingswet op Elektroniese Kommunikasie, 2014, herroep of wysig.''.

Wysiging van Indeling van Artikels

44. Die Indeling van Artikels wat voor artikel 1 van die Hoofwet voorkom, word hierby gewysig—

(a) deur item 21 deur die volgende item te vervang:

''**21.** **[Riglyne vir vinnige]** Vinnige ontplooiing van elektroniese kommunikasiefasiliteite'';

(b) deur die volgende item na item 72 in te voeg:

''**72A.** Nasionale Breëbandraad'';

(c) deur die volgende items na item 79 in te voeg:

''**79A.** Beperking van aanspreeklikheid
79B. Verstrekking van inligting'';

(d) deur die volgende item na item 81 in te voeg:

''**81A.** Vertrouenspligte van raadslede, en ontheffing en ontbinding''; en

(e) deur die volgende items na item 82 in te voeg:

''**82A.** Aanstelling van hoof- uitvoerende beampte
82B. Aanstellingsvoorwaardes van HUB
82C. Diensbeëindiging van HUB
82D. Waarnemende hoof- uitvoerende beampte
82E. Delegering en opdragte deur HUB''.

Amendment of law

45. The law referred to in the first column of the Schedule is hereby amended to the extent indicated in the third column thereof.

Short title and commencement

46. (1) This Act is called the Electronic Communications Amendment Act, 2014, and comes into operation on a date determined by the Minister of Communications by notice in the *Gazette*.

(2) Different dates may be so determined in respect of different sections of this Act.

Wysiging van wet

45. Die wet in die eerste kolom van die Bylae bedoel word hierby gewysig tot die mate in die derde kolom daarvan aangedui.

Kort titel en inwerkingtreding

46. (1) Hierdie Wet heet die Wysigingswet op Elektroniese Kommunikasie, 2014, en tree in werking op 'n datum deur die Minister van Kommunikasie by kennisgewing in die *Staatskoerant* bepaal.

(2) Verskillende datums kan ook aldus bepaal word ten opsigte van verskillende artikels van hierdie Wet.

SCHEDULE

LAW AMENDED

(Section 45)

Act No. and Year	Short Title	Extent of Amendment
Act No. 4 of 1999	Broadcasting Act, 1999	**1.** Amendment of section 1 by the substitution for the definition of ''common carrier'' of the following definition: '' **'common carrier' [means a service for broadcasting signal distribution as provided by Sentech Limited, established in terms of the Sentech Act, 1996]** has the meaning assigned to it in the Electronic Communications Act, 2005 (Act No. 36 of 2005);''

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BYLAE

WET GEWYSIG

(Artikel 45)

Wet No. en Jaar	Kort titel	Omvang van wysiging
Wet No. 4 van 1999	Uitsaaiwet, 1999	**1.** Artikel 1 word gewysig deur die omskrywing van ‘‘gemeenskaplike draer’’ deur die volgende omskrywing te vervang: ‘‘ **‘gemeenskaplike draer’ [’n diens vir uitsaaiseinverspreiding soos voorsien deur Sentech Beperk, ingestel ingevolge die Sentechwet, 1996]** dit wat ingevolge die Wet op Elektroniese Kommunikasie, 2005 (Wet No. 36 van 2005), daaraan toegeskryf is;’’.