

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**ELECTRONIC
COMMUNICATIONS
AMENDMENT BILL**

[B 17—2013]

(As agreed to by the Portfolio Committee on Communications (National Assembly))

[B 17A—2013]

ISBN 978-1-77597-142-9

No. of copies printed 800

AMENDMENTS AGREED TO
 ELECTRONIC COMMUNICATIONS AMENDMENT BILL
 [B 17—2013]

CLAUSE 1

1. On page 3, in line 1, to omit the second “definition” and to substitute “definitions”
2. On page 3, after line 1, to insert:

“ **‘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);”
3. On page 3, after line 61, to insert:

(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);”
4. On page 4, in line 6, after “or” to insert “to use the radio frequency spectrum in terms of”.
5. On page 4, from line 12, to omit paragraph (b) and to substitute:

(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;”;
6. On page 4, from line 39, to omit “provide services that require the use of” and to substitute “use”.

CLAUSE 2

1. On page 5, in line 16, to omit “people” and to substitute “**[people] persons**”.

CLAUSE 3

1. On page 5, after line 19, to insert:

(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-served areas of the Republic;”.

2. On page 5, in line 54, to omit “calendar”.

CLAUSE 4

1. On page 6, from line 8, to omit paragraph (a).
2. On page 6, in line 13, to omit “calendar”.

CLAUSE 5

1. On page 6, in line 54, to omit “people” and to substitute “[**people** persons]”.

CLAUSE 6

1. On page 7, after line 6, to insert:
 - (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.”
2. On page 7, in line 9, to omit “[**prescribe**] impose” and to substitute “prescribe”.
3. On page 7, in line 14, to omit “impose” and to substitute “prescribe”.
4. On page 7, in line 21, after “Agency” to insert “and must consider determinations made by the Minister in terms of section 82”.

CLAUSE 7

1. On page 7, from line 32 to omit paragraph (b) and to substitute:

“(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).”

CLAUSE 9

1. On page 7, in line 53, to omit paragraph (b) and to substitute:
 - (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.”.

CLAUSE 15

1. On page 9, in line 49, to omit “let, sub-let,”.
2. On page 10, in line 10, to omit “let, sub-let,”.
3. On page 10, in line 21, to omit “allocated” and to substitute “assigned”.
4. On page 10 in line 25, to omit “allocated” and to substitute “assigned”.
5. On page 10, in line 33, to omit “allocated” and to substitute “assigned”.

CLAUSE 20

1. On page 11, after line 35, to insert:
 - (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);”.

2. On page 11, from line 43, to omit subsection (5) and to substitute:

“(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).”.

CLAUSE 21

Clause rejected.

CLAUSE 23

1. On page 12, in line 38, to omit “ten” and to substitute “20”.
2. On page 12, in line 40, to omit “ten” and to substitute “20”.
3. On page 12, in line 46, to omit “5 (five)” and to substitute “20”.
4. On page 12, in line 52, to omit “three years” and to substitute “one year”.

CLAUSE 24

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

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.”.

CLAUSE 25

1. On page 13, from line 19, to omit paragraph (b).

CLAUSE 27

1. On page 13, from line 51, to omit subsection (3) and to substitute:

“(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.”.

CLAUSE 29

1. On page 14, in line 38, to omit “[**defining the**] determining” and to substitute “defining the”.

NEW CLAUSE

1. That the following be a new clause:

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.”.

CLAUSE 33

1. On page 17, in line 4, after “to” to insert “all public health establishments defined in the National Health Act, 2003 (Act No. 61 of 2003),”.
2. On page 17, in line 27, to omit “retail” and to substitute “[**retail**] wholesale”.

CLAUSE 34

1. On page 17, in line 47, to omit “The” and to substitute “Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the”.

CLAUSE 39

1. On page 20, after line 36, to insert:
 - (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;”.

CLAUSE 41

1. On page 21, in line 46, after “prescribed” to insert “by regulation”.

CLAUSE 42

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

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.”.

NEW CLAUSE

1. That the following be a new clause:

“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.”.

CLAUSE 45

1. On page 22, in line 52, after “Minister” to insert “of Communications”.

AMENDMENT OF LONG TITLE

1. On page 2, from the third line, to omit “to decrease turn-around times for consultative processes;”.
2. On page 2, in the ninth line, to omit “schools and other educational institutions” and to substitute “schools, educational institutions and public health establishments”.

NEW SCHEDULE

1. That the following be a new Schedule:

SCHEDULE**LAW AMENDED**

(Section 45)

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