

REPUBLIC OF SOUTH AFRICA

ELECTRONIC COMMUNICATIONS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)

[B – 2018]

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.

BILL

To amend the Electronic Communications Act, 2005, so as to provide for transformation of the sector through enforcement of broad-based black economic empowerment; to provide for lowering of cost of communications, reducing unjustified infrastructure duplications and encouraging further service based competition through a wireless open access network; to provide a new framework for rapid deployment of electronic communications facilities; to ~~provide for new approaches on scarce resources such as spectrum including the assignment of high demand spectrum on open access principles; to create a new framework for open access~~ refine the approach to the proper exploitation of spectrum; to provide for the regulation of international roaming including SADC roaming to ensure regulated roaming costs, quality of service and

transparency; to provide for regular market definition and review to ensure effective competition; to provide for improved quality of services including for persons with disabilities; to provide for consumer protection of different types of end-users and subscribers, including persons and institutions; to provide for enhanced co-operation between the National Consumer Commission and Authority as well as the Competition Commission and the Authority; 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 and section 1 of Act 1 of 2014

1. Section 1 of the Electronic Communications Act, 2005

(hereinafter referred to as the "principal Act"), is hereby amended by—

(a) the insertion after the definition of "Authority" of the following definition:

'B-BBEE ICT Sector Code' means the Broad-Based Black Economic Empowerment Information, Communications and Technology Sector Code, 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);;

(b) the substitution for the definition of "broadband" of the following definition: " **'broadband'** means an always available, multimedia capable connection with a minimum download speed and quality as determined periodically by the Authority;"; ~~connection with a minimum download speed and quality as determined every two years by the Minister responsible for Telecommunications and Postal Services by notice in the Gazette, following recommendations by the Authority;~~";

(c) the insertion after the definition of "Competition Act" of the following definition:

" **'Competition Commission'** means the Competition Commission established by section 19 of the Competition Act;";

~~(k)~~ the insertion after the definition of "free-to-air service" of the following definition:

~~" **'general open access principles'** means providing wholesale open access on terms that are effective, transparent and non-discriminatory;"~~;

~~(#)~~(d) the insertion after the definition of "harmful interference" of the following definition:

" **'high demand spectrum'** means spectrum where—

(a) the demand for access to the radio frequency spectrum resource exceeds supply; or

(b) radio frequency spectrum is fully assigned,

as determined by the Minister responsible for Telecommunications and

~~Postal Services, by notice in the Gazette, after consultation with the Authority;~~

~~(s)~~(e) the deletion of the definition of "ICT Charter";

~~(t)~~(f) the insertion after the definition of "multi-channel distribution service" of the following definition:

" **'National Consumer Commission'** means the National Consumer Commission established by section 85 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);";

~~(u)~~(g) the insertion after the definition of "person" of the following definition:

" **'persons with disabilities'** means persons with long-term physical, psychosocial, intellectual, neurological or sensory impairments which, in interaction with various barriers, hinder their full and effective use of electronic communications and broadcasting devices, services and technologies on an equal basis with others;";

~~(v)~~(h) the insertion after the definition of "radio frequency spectrum licence" of the following definitions:

'radio frequency spectrum sharing' means the simultaneous usage

of a specific radio frequency or radio frequency spectrum band ~~in a specific geographical area~~ by different radio frequency spectrum licensees in order to enhance the efficient use of spectrum, and "spectrum sharing" has a similar meaning;

'radio frequency spectrum trading' means the transfer, by a licensee, of ownership or control of the rights, in full or in part, held

under a radio frequency spectrum licence by way of a sale, lease or sub-letting to a third party, and "spectrum trading" has a similar meaning;";

~~(w)(i)~~ the insertion after the definition of "radio station" of the following definitions:-

~~" **'Rapid Deployment National Co-ordinating Centre'** means~~

~~the definition:~~

~~Centre established in terms of section 20A(2);~~

~~"**'Rapid Deployment Steering Committee'** means the Committee~~

~~established in terms of section 20A(3);"~~;

~~(x)(i)~~ the insertion after the definition of "retail" of the following definitions:

~~" **'SA Connect'** means the South Africa's National Broadband Policy,~~

~~2013, published in Government Gazette No. 37119 of 06 December~~

~~2013, under Government Notice No. 953;~~

~~'SADC' means Southern African Development Community;~~

~~'SADC Roaming decisions ' means the decisions agreed to by~~

~~SADC Ministers responsible for Telecommunications, Postal~~

~~Services and~~

~~ICTs in pursuit of the objectives of the Protocol on Transport,~~

~~Communications and Meteorology in the Southern African~~

~~Development Community Region, 1996, which Protocol was adopted~~

~~in terms of the Treaty of the Southern African Development~~

~~Community of 1992;~~

~~'sector-specific agencies' means the South African Maritime Safety~~

~~Authority and the Civil Aviation Authority;"~~;

(k) the insertion after the definition of "service licence" of the following

definition:

" **'SIP'** means a strategic integrated project designated in terms of section 8 of the Infrastructure Development Act, 2014 (Act No. 23 of 2014);"; and

~~(ee)(l)~~ (l) ~~the~~ The addition of the following definitions:

~~" **'wholesale open access'** means the sale, lease or otherwise making available an electronic communications network service or electronic communications facility by an electronic communications network service licensee on a wholesale basis on general open access principles, and, to the extent applicable, the additional wholesale open access principles provided in sections 19A(4)(b), 20H(2)(a)(ii), and 43(1A) and (1B);~~

'wireless open access network service' means an electronic communications network service ~~provided on a wholesale open access basis and on open access principles,~~ as contemplated in section 19A;

and

'wireless open access network service licensee' means a person to whom a wireless open access network service licence has been granted in terms of section 19 A; "

Amendment of section 2 of Act 36 of 2005, as amended by section 2 of Act 37 of 2007 and section 2 of Act 1 of 2014

2. Section 2 of the principal Act is hereby amended by—

(a) the insertion after paragraph (c) of the following ~~paragraphs~~paragraph

~~"(cA) redress the skewed access by a few to economic and scarce resources, such as radio frequency spectrum, to address the barriers to cases of market entry; failure;"~~

~~"(cB) promote service-based competition and avoid concentration and duplication of electronic communications infrastructure;~~

~~"(cC) promote an environment of wholesale open access to electronic communications networks on terms that are effective, transparent and non-discriminatory;~~

~~"(cD) redress market dominance and control;"~~

~~(q)~~ the substitution for paragraph (i) of the following paragraph:

~~"(i) encourage research, **[and]** development and innovation within the **[ICT sector]** electronic communications and broadcasting sectors;"~~ and

~~(*)~~(b) the substitution for paragraph (p) of the following paragraph:

~~"(p) develop and promote SMMEs and cooperatives, and market entry by SMMEs;"~~

Amendment of section 3 of Act 36 of 2005, as amended by section 1 of Act 37 of 2007 and section 3 of Act 1 of 2014

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

~~(b)~~ 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 underserved areas of the Republic;"~~

(a) the insertion in subsection (2) after paragraph (b) of the following paragraph:

"(bB) universal service and universal access obligations, having identified any access gaps;"

(b) the insertion in subsection (2) after paragraph (c) of the following paragraph:

"(cC) compliance with international obligations;"

~~(a)~~ the substitution in subsection (2) for paragraph (d) of the following paragraph:

~~"(d) **[guidelines for]** the radio frequency spectrum and the determination by the Authority of spectrum fees, including incentives, spectrum fee exemption and spectrum fee reductions that may apply; and"~~ and

(c) the substitution in subsection (2) for paragraph (e) of the following paragraph:

"(e) any other matter which may be necessary to give effect to ICT related national policy or for the application of this Act or the related legislation."

Amendment of section 5 of Act 36 of 2005, as amended by section 5 of Act 1 of 2014

4. Section 5 of the principal Act is hereby amended by the substitution in subsection (9) for paragraph (b) of the following paragraph:

"(b) promote broad-based black economic empowerment, including the empowerment of women and the youth and persons with disabilities, in accordance with the requirements of the **[ICT charter] B-BBEE ICT Sector Code.**"
~~ICT Sector Code.~~"

Amendment of section 8 of Act 36 of 2005, as amended by section 6 of Act 1 of 2014

5. Section 8 of the principal Act is hereby amended by—

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

~~"Such standard terms and conditions **[may include,] must, in the case of individual licences, and may, in the case of class licences, include, but are not limited to—**"~~

~~(i)(a)~~ the deletion in subsection (2)(d) of the word "and" at the end of subparagraph (iii), and the insertion after subparagraph (iii) of the following subparagraph:

"(iiiA) informing subscribers and end-users about the quality of service

~~standards targets~~ contemplated in section 69A; and";

~~(b)~~ 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 [subject to the provisions of Chapter 10].~~

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

~~prescribe additional terms and conditions in respect of the relevant universal service and universal access obligations on such designated licensees.";~~

~~(i)(b)~~ the insertion after subsection (4) of the following subsection:

"(4A) The Authority ~~must~~may review the regulations contemplated in subsection (4) ~~at least~~ every five years and the review must include an assessment of—

(a) the appropriateness of target levels set in universal service and universal access obligations;

~~universal access obligations;~~

~~(e)(b)~~ the timelines set for achieving such targets;

~~(f)(c)~~ the level of service to be provided; and

~~(g)(d)~~ mechanisms to enforce compliance, including reporting frameworks.";

and

~~(k)(c)~~ the addition of the following subsection:

~~"(6) The Authority must, by regulation, make provision may~~

~~prescribe regulations that promote and~~

~~for obligations applicable to electronic communications network service~~

~~licensees forencourage the rapid deployment of electronic communications~~

~~networks or facilities and must prescribe additional terms and"~~

~~conditions for such licences."~~

~~Amendment of section 9 of Act 36 of 2005, as amended by section 7 of Act 1 of 2014~~

~~Section 9 of the principal Act is hereby amended 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 30%, or such other conditions or higher percentage as **[may be]** prescribed under section 4(3)(k) of the ICASA Act;"~~

~~Amendment of section 10 of Act 36 of 2005, as amended by section 8 of Act 1 of 2014~~

~~6. Section 10 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph:~~

~~"(i) if the amendment relates to the rapid deployment of electronic communications networks or facilities, as contemplated in Chapter 4."~~

~~Amendment of section 13 of Act 36 of 2005, as amended by section 9 of Act 1 of 2014~~

~~6. Section 13 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:~~

~~"(5) The regulations contemplated in subsection (3) must be~~

~~made with due regard to the objectives of this Act, the related legislation~~

~~and, where applicable, any other relevant legislation."~~

Insertion of Chapter 3A in Act 36 of 2005

7.6. The following Chapter is hereby inserted in the principal Act after Chapter 3:

"CHAPTER 3A

LICENSING FRAMEWORK FOR WIRELESS OPEN ACCESS

NETWORK SERVICE

Licensing of wireless open access network service

19A. (1) The Authority must ~~ensure that~~prescribe regulations to facilitate the granting of a wireless open access network service licence and
athe assignment of radio frequency spectrum licence is issued to a

the wireless open access network service licensee. The applicant for a wireless open access network service licence —

- (a) must be a consortium of persons that participate voluntarily;
- (b) must comply with the empowerment requirements contemplated in the B-BBEE ICT Sector Code;

section 9(2)(b);

(f)(c) must include diversity of ownership and control to ensure meaningful participation of all entities involved;

(g)(d) must include effective participation by targeted groups, including women, youth and persons with disabilities;

(h)(e) may not be dominated or controlled by any single entity;

(i)(f) may not be a public entity under the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

(l) may not have members in the consortium that either separately or collectively possess a market share of more than 50% in electronic communication provide only wholesale services.

If any member of (2) The wireless open access network service licensee must be a separate legal entity from the members of the consortium applying.

(3) The Authority must, following an inquiry, issue an invitation to apply (ITA) for the wireless open access network service licence, in which it sets out the standard terms and conditions to be applied to the wireless open access network service licensee.

open access network service licence provides electronic communications

~~services, the Authority must require functional separation between such electronic communications services(4) The standard terms and the member's participation conditions referred to in the subsection (3) must include the nature and type of wireless open access network service licence, which must be provided by an independently operating business entity.~~

~~(1) — A wholesale open access agreement entered into between services that the wireless open access network service licensee and any member shall provide and the principles applicable to such services, and may include -~~

~~of the wireless open access network service licensee that provides electronic~~

~~(a) communications services, must be in accordance with any universal service and access obligations; and~~

~~the wholesale rates contemplated in subsection 4(b)(ii) and any wholesale open access requirements prescribed by the Authority to ensure non-discrimination.~~

~~(1) — Granting of incentives to the wireless open access network service licensee must —~~

~~() — except in case of technical inability, provide wholesale open access, upon request, to any other person licensed in terms of this Act and persons providing services pursuant to a licence exemption in accordance with the terms and conditions of a wholesale open access agreement entered into between the parties, in accordance with the general open access principles;~~

~~() — in addition to the requirement in paragraph (a), comply with the following wholesale open access principles on its electronic communications network:~~

~~() — Engage in active infrastructure sharing;~~

~~() — charge wholesale rates as prescribed by the Authority in terms of section 47; and~~

~~() — comply with specific network and population coverage targets.~~

~~(1) — The Minister responsible for Telecommunications and Postal Services must issue a policy direction to the Authority in terms of section 5(6), directing the Authority to issue an invitation to apply for the wireless open access network service licence and radio frequency spectrum licence.~~

~~(1) — The Authority must, in terms of section 9, issue an invitation to apply for the wireless open access network service licence and radio frequency spectrum licence.~~

~~(1) — The Authority must determine —~~

~~() — the terms and conditions, including universal service and access obligations; and~~

~~() — incentives, provided that any such as —~~

~~(1) reduced or waived spectrum fees;~~

~~(2) refraining, for a specific period, from prescribing the wholesale rates that can be charged by the wireless open access network~~

~~service licensee, notwithstanding incentives are subject to the provisions of subsection~~

~~(4)(b)(ii);~~

~~(iii)(b) which will apply to Chapter 10, and do not unduly, unfairly or~~

~~unreasonably benefit the wireless open access network service~~

~~licensee;~~

~~in accordance with policies or policy directions issued by the Minister~~

~~responsible for Telecommunications and Postal Services, if any.~~

(5) The Authority must—

(a) consider imposing regulatory remedies on the wireless open access network service licensee, to ensure effective service-based competition, and to avoid any anti-competitive effects; and

(b) perform strict regulatory oversight."

Substitution of heading to Chapter 4 of Act 36 of 2005

8.7. The following heading is hereby substituted for the heading to

Chapter 4 of the principal Act:

"RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND ELECTRONIC COMMUNICATIONS FACILITIES"

Substitution of section 20 of Act 36 of 2005, as amended by section 12 of Act

1 of 2014

9-8. The following section is hereby substituted for section 20 of the principal Act:

"Definitions and application

20. (1) In this Chapter, unless the context indicates otherwise—

'land' includes any property or premises, street, road, footpath, railway or waterway in the Republic of South Africa.

(2) The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), applies to information provided by electronic communications network service licensees under this Chapter, where the information was supplied in confidence by the licensee: Provided that, to the extent that the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) does not apply, any person receiving information provided by electronic communications network service licensees under this Chapter, must treat such information as confidential, where the information was supplied in confidence by the licensee, except as permitted in terms of this Act'.

Insertion of sections 20A to 20K in Act 36 of 2005

10-9. The following sections are hereby inserted in the principal Act after section 20:

"Role of Minister responsible for Telecommunications and Postal Services

20A. (1) The Minister responsible for Telecommunications and Postal Services must provide oversight over the implementation of this

Chapter and liaise with other Ministers responsible for matters affected by the rapid deployment of electronic communications networks and facilities.

~~(1)~~ (2) The Minister responsible for Telecommunications and

~~Postal Services must establish a Rapid Deployment National Co-ordinating Centre as a division within the Department of Telecommunications and Postal~~

~~Services.~~

~~(1) — The Minister responsible for Telecommunications and~~

~~Postal Services must establish a Rapid Deployment Steering Committee to theoversee consult with the Authority regarding the activities of the Rapid-Deployment National Co-ordinating CentreAuthority under Chapter 4.~~

~~(3) The Rapid Deployment Steering Committee consists of—~~

- ~~(a) the Director-General of the Department of Telecommunications and Postal Services or his or her delegate;~~
- ~~(b) no more than two representatives of the Authority, nominated by the Authority, that will serve as ex officio members;~~
- ~~(c) representatives of departments and other organs of state across all three spheres of government responsible for granting of approvals, authorisations, licences, permissions or exemptions to deploy electronic communications networks and facilities; and~~
- ~~(d) such other members as the Minister responsible for Telecommunications and Postal Services may determine.~~

Role of ~~Rapid Deployment National Co-ordinating Centre~~the Authority

20B. (1) ~~The Rapid Deployment National Co-ordinating Centre~~

Authority must support, promote and encourage the rapid deployment of electronic communications networks and facilities, including between and amongst electronic communications network service licensees, municipalities, relevant authorities and relevant SIPs.

~~(1)~~—~~(2)~~ The ~~Rapid Deployment National Co-ordinating Centre~~ Authority must co-operate with local municipalities to promote and encourage fast tracking of rights of way and way-leave approvals and provide guidance on application processes and application templates for rights of way and wayleaves.

~~(1)~~—~~(3)~~ The ~~Rapid Deployment National Co-ordinating Centre~~ Authority must—

(a) oversee the establishment of common wayleave application systems based on an understanding of common information requests across municipalities, including the automation thereof;

~~(b)~~ oversee the creation of a geographic information system database and mapping of all fibre deployments and other electronic communication network and facility deployments that have been installed, in co-operation with the Authority and

~~(d)~~(b) other stakeholders;

~~(e)~~(c) oversee the co-ordination of infrastructure rollout, including between and amongst electronic communications network service licensees and participate in other infrastructure co-ordination forums such as

SIPs;

~~(f)~~(d) oversee the engagement with relevant industry bodies dealing with

rapid deployment or any aspect thereof; and

~~(g)~~(e) provide advice to electronic communications network service licensees on the deployment of electronic communications networks and facilities on an expedited basis.

Role of Authority

20C. (1) The Authority must prescribe rapid deployment regulations, which must include—

(a) the structure of the geographic information system database contemplated in section 20B(3)(b), its security and the manner in which it can be accessed, ~~determined in consultation with the Rapid;~~

Deployment National Co-ordinating Centre;

~~(-)~~ obligations applicable to electronic communications network service licensees for the rapid deployment of electronic communications networks or facilities;

~~(b)~~ alternatives to new deployment of electronic communications networks and facilities, consistent with the terms of this Act, in order to promote and encourage the use of suitable existing electronic communications networks and facilities;

~~communications networks and facilities;~~

~~(c)~~ processes and procedures to enable a landowner to object to the Authority at least 14 days before the electronic communications network service licensee commence with the activity, if the proposed electronic communications network or facility will cause significant interference with the land;

~~()~~ high sites that are not technically feasible for access and use by an electronic communications network service licensee for the deployment of electronic communications networks and facilities that promote broadband;

~~(x)~~ (d) processes and procedures that enable single trenching for fibre in each geographic location where it is technically feasible to do so; and

~~(y)~~ (e) guidelines on reasonable access fees that may be charged by landholders to electronic communications network service licensees for deploying electronic communications networks or facilities that are intrusive.

(2) The regulations contemplated in subsection (1) must provide for procedures and processes for the Authority to resolve disputes that may arise between an electronic communications network service licensee and any landowner on an expedited basis, in order to satisfy the public interest in

the rapid rollout of electronic communications networks and electronic communications facilities.

(3) The Authority must ensure that electronic communications network service licensees—

(a) provide information on ~~existing and planned~~ deployed electronic communications

networks and facilities, ~~where such information is readily available,~~ including alterations or removal thereof, as contemplated in this Chapter, to the ~~Rapid Deployment National Co-~~

~~ordinating Centre Authority~~ for inclusion into the geographic information system database: Provided that information on existing electronic

communications networks and facilities must be provided within

12

months of the coming into operation of the Electronic Communications

~~Amendment Act, and that information on planned electronic;~~

~~communications networks and facilities, including alterations or~~

~~removal thereof, must be provided within 30 days of such planning,~~

~~alteration or removal;~~

~~(-) provide information on existing and planned electronic communications networks and facilities to the Authority;~~

(m)(b) ~~seek out~~ consider alternatives to new deployment of electronic

communications networks and facilities, notably through the

sharing or leasing of ~~existing facilities, and promote and~~

encourage the use of such alternatives among electronic communications services licensees;

existing facilities:

(g)(c) contribute to research and development on new deployment methods;

(f)(d) promote and encourage co-ordination activities, wherever appropriate, avoiding anti-competitive behaviour; and

(s)(e) advise landholders, in writing, of their right to recourse through the

Authority.

Right to enter and use property

20D. (1) Electronic communications network service licensees have the right to enter upon and use public and private land for the deployment of electronic communications networks and facilities, subject to subsection (5).

(2) Electronic communications network service licensees are entitled to select appropriate land and gain access to such land for the purposes of constructing, maintaining, altering or removing their electronic communications networks or facilities.

~~communications networks or facilities.~~

(3) Electronic communications network service licensees retain ownership of any electronic communications networks and facilities constructed.

(4) Property owners may not cause damage to electronic communications networks or facilities.

communications networks or facilities.

(5) An electronic communications network service licensee must, for the purposes of subsection (1)—

- (a) give 30 calendar ~~days~~' notice, in writing, of its proposed property access activity to an owner and, if applicable, occupier of the affected land, which must—
 - (i) specify the reasons for engaging in the activity;
 - (ii) specify the date of commencement of such activity;
 - (iii) outline the objection process to its plans; and
 - (iv) provide environmental, health and safety information, as may be applicable;
- (b) provide all information required by the application process, if any, and obtain a wayleave certificate from the relevant authority, noting that the exercise of rights by the electronic communications network service licensee is subject to by-laws that regulate the manner in which a licensee should exercise its powers, though the by-law may not require the municipality's consent;
- (c) exercise due care and diligence to minimise damage, which must include acting according to good engineering practice, and taking all reasonable steps to restore the property to its former state, including the repair of damages caused;

- (d) ensure the design, planning and installation of the electronic communications network or facility, follow best practice and comply with regulatory or industry standards;
- (e) take all reasonable steps to ensure the activity does not compromise or impede a public utility's ability to exercise its powers or perform its functions;
- (f) update the geographic information system database about the type and location of electronic communications networks and facilities deployed as contemplated in section 20C(3)(a); and

~~(g) uphold the principle of wholesale open access and infrastructure~~

~~(f)(g) sharing and seek out~~ consider alternatives to new deployment of electronic communications networks and facilities where it is practicable to do so in accordance with the rapid deployment regulations prescribed by the Authority, in order to use suitable existing electronic communications networks and facilities.

(6) A landowner may object to the Authority in the prescribed manner at least 14 days before the electronic communications network service licensee commence with the activity and only if the proposed electronic communication network or facility will cause significant interference with the land.

~~Access to high sites for radio-based systems~~

~~20E. (1) For the purpose of this section "high site" means any~~

structure or feature, constructed or natural, including buildings, whether used for public or private purposes, which is suitable for radio-based systems.

(1) — An electronic communications network service licensee may access and use any high site for the deployment of electronic communications networks and facilities that promote broadband, except for high sites that are not technically feasible for this purposes, as may be prescribed by the Authority.

(1) — An owner of a high site may not refuse access to an electronic communications network service licensee for the installation of electronic communications networks and facilities that promote broadband: Provided that such installation must be in accordance with any reasonable requirements of the owner.

Single trenching

20F. ~~The Authority must, in order to ensure promote and encourage~~
~~the use of~~ a single trench for fibre in each geographic location where it is
technically feasible to do so, prescribe the processes and procedures that
~~enable facilitate~~ a single trench for fibre under the rapid deployment
regulations.

Access to buildings

20G. Electronic communications network service licensees may
access any building with multiple tenants, whether used for public or private
purposes,—

- (a) to inspect the building to determine whether it is suitable for
deployment of electronic communications networks and facilities;
- (b) to deploy electronic communications networks and facilities for such
building or subscribers outside the building;
- (c) to maintain electronic communications networks and facilities located
in or on the building; or
- (d) to provide electronic communications services.

Adequately served

~~**20H.** (1) For the purposes of this section, 'adequately served'~~
~~means an electronic communications network that enables the provision of~~

~~electronic communications services, including voice services and broadband services at the quality and speeds provided in SA Connect or any subsequent amendment of such quality and speeds, and has already been deployed within premises, such as a gated complex, an office park, a shopping mall or a block of flats, by an electronic communications network service licensee (referred to in this section as the "access provider").~~

~~(1) (a) The access provider must, in respect of the adequately served premises—~~

~~(i) except in case of technical inability, provide wholesale open access, upon request, to any other person licensed in terms of this Act and persons providing services pursuant to a licence exemption, in accordance with the terms and conditions of a wholesale open access agreement entered into between the parties, in accordance with the general open access principles;~~

~~(ii) charge wholesale rates as prescribed by the Authority in terms of section 47; and~~

~~(iii) establish a co-location facility at a suitable point within the premises or such other suitable place as the Authority may determine, at which all access seeking licensees may install their own electronic communications facilities or equipment so as to interconnect with the electronic communications network of the access provider, or that the access seeking licensee may use those facilities of the access provider as would enable it to provide services, as requested.~~

~~(b) An occupant within the adequately served premises is not obliged to receive an electronic communications service from~~

the access provider and may select and receive a service from any electronic communications service provider of choice.

(1) — No electronic communications network or facility may be deployed in adequately served premises, except with the approval of the Authority.

(1) — The Authority must prescribe the procedure and criteria that will be used by the Authority to consider applications for approval, as contemplated in subsection (3), with due regard to the policy objective to promote service-based competition.

Emergency

20I. No entity may refuse access to any site or charge a fee for access to any site for the deployment of electronic communications network or facilities during a state of emergency, declared in terms of the State of Emergency Act, 1997 (Act No. 64 of 1997).

Application process or procedure

20J. (1) The ~~Rapid Deployment National Co-ordinating Centre Authority~~ must engage with departments and other organs of state across all three spheres of government responsible for the granting of approvals, authorisations, licences, permissions or exemptions to deploy electronic communications networks and facilities to promote and encourage that all applications and related processes for approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation required by the relevant laws, required for the deployment of

electronic communications networks and facilities ~~must~~should, in order to expedite the matter ~~and where practicable~~, run concurrently.

~~(1) — (2)~~ The ~~Rapid Deployment National Co-ordinating Centre Authority~~ must keep updated information on the application processes and minimum information requirements for an approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation required by the relevant laws, required for the deployment of electronic communications networks and facilities.

~~(1) — (3)~~ The ~~Rapid Deployment National Co-ordinating Centre Authority~~ must propose co-ordinated, efficient and streamlined processes for the granting of an approval, authorisation, licence, permission or exemption, in consultation with the relevant authorities, to ~~enable promote~~ ~~and encourage~~ rapid deployment of electronic communications networks and facilities.

~~(1) — (4)~~ The ~~Rapid Deployment National Co-ordinating Centre Authority~~ must consult with the relevant authorities to promote and encourage the alignment of the said processes.

~~(1) — (5)~~ The ~~Rapid Deployment National Co-ordinating Centre Authority~~ must promote and encourage consistency in the time taken by the relevant authorities to grant approvals for the deployment of electronic communications networks and facilities.

Fees, charges and levies

20K. (1) No access fee may be charged by landholders to electronic communications network service licensees for deploying electronic

communications networks or facilities in cases where the electronic communications networks or facilities are not intrusive, such as buried or overhead cabling, that does not constitute a cost to the landholder, or deprive the landholder of its own use of the land.

(2) (a) Reasonable access fees may be charged in cases where more intrusive electronic communications networks or facilities, such as masts, are erected on property.

(b) In such cases any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the landowner or exploit the electronic communications network service licensee.

(3) In the case of any dispute on access fees, the reasonableness of the access fees must be determined by the Authority on an expedited basis.

(4) A landholder is entitled to reasonable compensation agreed to between the landholder and the electronic communications network

service licensee, for any financial loss or damage, whether permanent or temporary, caused by an electronic communications network service

licensee entering and inspecting land, or installing, deploying or maintaining electronic communications networks or facilities.

(5) In the case of any dispute on compensation, the reasonableness of the compensation must be determined by the Authority on an expedited basis.

An electronic communications network service licensee may not continue to deploy electronic communications networks and facilities while awaiting the resolution of the dispute by the Authority."

Repeal of sections 21, 22 and 23 of Act 36 of 2005

11-10. Sections 21, 22 and 23 of the principal Act are hereby repealed.

Amendment of section 24 of Act 36 of 2005

12-11. Section 24 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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

- (b) the substitution for subsections (2) and (3) of the following subsections, respectively:

(2) The local authority or person to whom any such water, gas or electricity pipe belongs or by whom it is used is entitled, at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work.

(3) The licensee must pay all reasonable expenses incurred by any such local authority or person in connection with

any alteration [**or removal**] of water, gas or electricity pipes
under this
section or any supervision of work relating to such alteration."

Amendment of section 25 of Act 36 of 2005

13-12. Section 25 of the principal Act is hereby amended by—

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

"(1) If an electronic communications network service licensee finds it necessary to move any electronic communications facility, pipe, tunnel or tube constructed upon, in, over, along, across or under any land, railway, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the reasonable cost of the alteration or removal must be borne by that local authority or person."; and

~~removal must be borne by that local authority or person.~~"; and

~~(d)~~(b) the substitution for subsections (4), (5), (6), (7) and (8) of the following subsections, respectively:

"(4) If any deviation or alteration of an electronic communications network facility, pipe, tunnel or tube constructed and passing over any private property is desired on any ground other than those contemplated in subsection (1) or (2), the owner of the property_ must give the electronic communications network service licensee written notice of 28 days, of such deviation or alteration.

(5) The electronic communications network service licensee must decide whether or not the deviation or alteration contemplated in subsection (4) is possible, necessary or expedient.

(6) If the electronic communications network service licensee agrees to make the deviation or alteration as provided for in subsection ~~[(3)](4)~~, the cost of such deviation or alteration must be borne by the person at whose request the deviation or alteration is affected.

(7) If, in the opinion of the electronic communications network service licensee, the deviation or alteration contemplated in subsection (4) is justified, the licensee may bear the whole or any part of the said cost.

(8) Where a dispute arises between any owner of private property and an electronic communications network service licensee in respect of any decision made by an electronic communications network services licensee in terms of subsection (4), such dispute must be **[referred to the Complaints and Compliance Committee in accordance with section 17C of the ICASA Act]** resolved by the Authority on an expedited basis, as contemplated in ~~section 20C(2).~~
~~section 20C(2).~~

Amendment of section 27 of Act 36 of 2005

14.13. Section 27 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

Repeal of section 28 of Act 36 of 2005

15.14. Section 28 of the principal Act is hereby repealed.

Insertion of section 29A in Chapter 5 of Act 36 of 2005

16.15. The following section is hereby inserted in Chapter 5 of the principal Act before section 30:

Functions of Minister responsible for Telecommunications and Postal Services

In this Chapter, unless the context indicates otherwise—

"Minister" means the Minister responsible for Telecommunications and Postal Services

29A. The Minister is responsible for—

- (a) representing the Republic on radio frequency spectrum at international,

multi-lateral and bi-lateral level;

(b) representing the Republic at the ITU, including radio frequency spectrum planning, allocation, and international co-ordination of radio frequency spectrum use;

~~(d) issuing policies and policy directions in relation to radio frequency spectrum, subject to section 3;~~

~~(h) the development approval of the radio frequency plan, including the allocation of~~

~~(i)(c) spectrum for the exclusive use by national security services, as contemplated in section 34;~~

~~(l) the establishment of a National Radio Frequency Spectrum Planning Committee, as contemplated in section 34A;~~

~~(p)(d) co-ordination across Government, including sector-specific agencies;~~

~~(q)(e) co-ordination with the Minister responsible for Communications on issues relating to spectrum that has been allocated to the broadcasting services; and."~~

Amendment of section 30 of Act 36 of 2002, as amended by section 14 of Act 1 of 2014

19-16. ~~The following section is hereby substituted for section~~ Section 30(2) of the principal Act is hereby amended by the addition of the following paragraphs after paragraph (e):

~~"[Control] Administration of radio frequency spectrum~~

~~30. (1) In carrying out its functions under this Act and the related legislation, the Authority [controls, plans,] administers and manages the [use] assignment, [and] licensing, monitoring and enforcement of the radio frequency spectrum use [except as provided for in section 34].~~

~~(1) [In controlling, planning, administering, managing, licensing and assigning the use of the radio frequency spectrum, the] The Authority must, in the performance of the functions contemplated in subsection (1) —~~

~~(-) — 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 and ministerial policies and policy directions, as contemplated in section 3;~~

~~(-) — take into account modes of transmission and efficient utilisation of the radio frequency spectrum, including allowing shared use of radio~~

~~frequency spectrum when interference can be eliminated or reduced to acceptable levels as determined by the Authority, subject to section 31C;~~

- ~~(-) give high priority to applications for radio frequency spectrum where the applicant proposes to utilise digital electronic communications facilities for the provision of broadcasting services, electronic communications services, electronic communications network services, and other services licensed in terms of this Act or provided in terms of a licence exemption;~~
- ~~(-) do assignment planning **[plan]** for the conversion of analogue uses of the radio frequency spectrum to digital, including the migration to digital broadcasting **[in the Authority's preparation and modification of the radio frequency spectrum plan]; [and]**~~
- ~~(-) give due regard to the radio frequency spectrum allocated to security services[.];~~

~~(f)~~ (f) (i) perform monitoring and evaluation of radio frequency spectrum use and conduct periodic radio frequency spectrum audits based on the information contemplated in paragraph (i);

(ii) make available monitoring and evaluation and audit reports to the Minister; and

(iii) publish the audit results on the Authority's website;

(g) maintain a high quality and appropriately accessible ~~real-time~~ database of radio frequency spectrum assignments and any other information determined by the Authority, excluding assignments to security services, that includes ~~real-time~~ updates from sector-specific agency databases ~~as contemplated in section 34B;~~

(h) advise the Minister on areas for future research, development and ~~planning;~~

~~planning; and~~

~~(h)(i)~~ ensure that radio frequency spectrum licensees submit an annual report on its spectrum usage to the Authority and Minister that includes information on achievement of spectrum license obligations, as applicable, and such information as ~~reasonably~~ determined by the Authority, in consultation with the Minister; ~~and~~

~~(m)(i)~~ publish guidelines on the information contemplated in paragraph (i), including a procedure to allow licensees to submit a supplementary annual report to address concerns which the Authority may identify.

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

~~(1) — The Authority must investigate and resolve all instances of harmful interference to licensed services that are reported to it.~~

Amendment of section 31 of Act 36 of 2002, as amended by section 15 of Act 1 of 2014

~~20-17.~~ 20-17. Section 31 of the principal Act is hereby amended by—

~~(b)(a) the~~ The deletion of subsection (2A);

~~(e)(b) the substitution for subsection (3)~~ The insertion of the following
subsection: paragraphs after section 31(2)(b) –

~~"(3) — The Authority may, taking into account the objects~~

~~of the Act, prescribe procedures and criteria for radio frequency~~

~~spectrum licences contemplated in section 31E(4) and the amendment,~~

~~renewal, suspension, cancellation and withdrawal of radio frequency~~

~~spectrum licences.";~~

"(c) All annual radio frequency spectrum licences that have been issued as at the commencement of the Electronic Communications Amendment Act shall remain valid for the period for which the relevant service licence contemplated in paragraph (b) above is valid, and shall not expire or fall due for renewal before such period expires, provided that the annual licence fees payable in respect of such radio frequency spectrum licences remain payable as prescribed, and provided that upon renewal the Authority shall specify an appropriate multi-year term for each such spectrum licence, which term shall not be less than fifteen years.

(d) Where the term of a multi-year spectrum licence extends beyond the term of the licensee's individual licence, then that individual licence shall be extended until the end of the term of the multi-year spectrum licence".

~~(e)~~(c) deletion in subsection (4) of the word "or" at the end of paragraph (d), insertion of that word at the end of paragraph (e) and addition of the following paragraph:

"(f) if the Authority has approved an application for spectrum sharing, spectrum trading or spectrum refarming trading.";

~~(f)~~(d) the substitution for subsection (7) of the following subsection:

"(7) The Authority may, on its own initiative, take appropriate action to ensure compliance with the provisions of this Chapter and must develop and implement an effective monitoring and enforcement system, including adjudication of spectrum disputes.";

~~(g)~~(e) the substitution for subsection (8) of the following subsection:

"(8) Subject to subsection (9), the Authority may withdraw any radio frequency spectrum licence or assigned radio frequency spectrum when the licensee fails to ~~comply with section~~utilise the assigned radio frequency spectrum in accordance with the licence conditions applicable to such licence or fails to use the assigned radio frequency spectrum for a period of two years, referred ~~31A(6), to utilise the assigned radio frequency spectrum in accordance~~ ~~with the licence conditions applicable to such licence or fails to use the~~ assigned radio frequency spectrum for a period of two years, referred to as the 'use it or lose it' principle, provided that the Authority shall specify the required criteria for adequate use in the relevant spectrum licence.";

~~(h)~~(f) the insertion after subsection (8) of the following subsection:

"(8A) (a) The 'use it or lose it' principle contemplated

in subsection (8) does not apply to passive science services due to the nature of their operations which do not transmit signals frequently.

(b) The Minister may, upon recommendation by

the Authority, and upon good cause shown, exempt SMMEs and new entrants from the 'use it or lose it' principle contemplated in subsection

(7) for a period defined by notice in (8) means the Gazette.":

(a) licensee is required either to use the substitution for subsection (9) of the following subsection:

"(9) Before the Authority withdraws a relevant radio frequency spectrum licence or to trade or lease such 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 writing, to the notice (unless otherwise extended by the Authority) demonstrating its compliance, with section 31A(6) or that it is the approval of the Authority, within the relevant period.":

utilising the radio frequency spectrum in compliance with this Act and the licence conditions.": and

(g) the addition of the following subsection:

"(11) The Authority must develop an automated licensing system for radio frequency spectrum that is not high demand

radio frequency spectrum that may be linked to the ~~real-time~~ database contemplated in section 30(2)(g)."

Insertion of sections 31A, 31B, 31C, and 31D ~~and 31E~~ in Act 36 of 2005

24-18. The following sections are hereby inserted in the principal Act after section 31:

"Universal access and universal service obligations of radio frequency spectrum licences

31A. (1) — ~~In addition to any universal access and universal service~~

~~obligations contemplated in section 8(2)(g), the Authority must impose universal access and universal service obligations on existing and new radio frequency spectrum licencees, determined by the Authority.~~

~~(1) — The Authority must obtain the Minister's approval on the nature and form of all universal access and universal service obligations before they are imposed on any radio frequency spectrum licensees, as well as the approval of the Minister of Communications, if such radio frequency spectrum licensees are broadcasting service licensees, to ensure that the obligations are co-ordinated, relevant and aligned with national policy objectives and priorities.~~

Radio frequency spectrum licensees that were assigned radio frequency spectrum in similar radio frequency spectrum bands must have similar universal access and universal service obligations.

(2) Radio frequency spectrum licensees must report annually to the Authority on their compliance with their universal access and universal service obligations, which report the Authority must make publicly available.

(3) Universal access and universal service obligations must be specific, attainable and measurable and compliance must be evaluated by the Authority on an annual basis.

~~(1) The Authority may withdraw any radio frequency spectrum licence or assigned radio frequency spectrum when the licensee fails to comply with its universal access and universal service obligations.~~

Radio frequency spectrum trading

31B. (1) Radio frequency spectrum licensees may trade ~~licenced~~licensed spectrum, subject to approval from the Authority.

(2) The Authority must prescribe spectrum trading regulations, within 12 months of the commencement of this section, that include—

- (a) the spectrum trading application and notification processes; and
- (b) the criteria and conditions for spectrum trading.

(3) The criteria and conditions contemplated in subsection (2)(b) must include the following:

- (a) Competition may not be distorted by any spectrum trade or by the accumulation and hoarding of spectrum rights of use;
- (b) licence obligations will be passed on to the new user of the radio

frequency spectrum;

- (c) the current radio frequency spectrum licensee must have used the radio frequency spectrum in the year prior to the spectrum trade to ensure that the trade is not used to subvert the 'use it or lose it' principle;
- (d) the current and new radio frequency spectrum licensee must comply with all the relevant legislation; and
- (e) submission to the Authority of the particulars of the spectrum trade transaction, including the legal, technical and financial terms and conditions to ensure that the spectrum trade does not undermine policy objectives.

~~(1) — The Minister may issue policy directions to the Authority on spectrum trading and spectrum use rights in order to fulfil specific national objectives.~~

Radio frequency spectrum sharing

31C. (1) Radio frequency spectrum licensees may share ~~licenced~~ licensed spectrum, subject to—

- (a) approval from the Authority, in the case of high demand spectrum; and
- (b) notification to the Authority, in the case of non-high demand spectrum.

(2) The Authority may not approve spectrum sharing of high

demand spectrum if it will—

~~(a)~~ have a negative impact on competition;

~~(c)(a)~~ amount to spectrum trading; or

~~(d)(b)~~ compromise emergency services and other services that meet public interest goals.

(3) The Authority must prescribe spectrum sharing

regulations within 12 months of the commencement of this section that include—

(a) the spectrum sharing application and notification processes; and

(b) the criteria and conditions for spectrum sharing, including for sharing of sector-specific spectrum assigned to sector-specific agencies.

~~contemplated in section 34B.~~

Radio frequency spectrum refarming

~~**31D.** (1) Radio frequency spectrum licensees may refarm licenced spectrum, subject to approval from the Authority.~~

~~(2) The Authority may not approve spectrum refarming if it will have a negative impact on competition.~~

~~(2) Universal access and universal service obligations must be imposed on radio frequency spectrum licensees if other assigned spectrum in similar bands to the refarmed spectrum, carry universal access and universal service obligations, as contemplated in section 31A.~~

~~(2) — Spectrum fees must be imposed on radio frequency spectrum licensees for refarmed spectrum commensurate with other assigned spectrum in similar bands.~~

~~(2) — The Authority must prescribe spectrum refarming regulations within 12 months of the commencement of this section that include —~~

~~() — the spectrum refarming application process; and~~

| ~~() — the criteria and conditions for spectrum refarming.~~

High demand spectrum

31E31D. (1) The ~~Minister~~Authority must, within six months of the

~~commencement~~commencement of the Electronic Communications Amendm
entElectronic Communications Amendment Act, ..., and

and thereafter as required, determine, by notice in the *Gazette*, ~~after~~
~~consultation,~~—

with the Authority—

~~(d)~~(a) what constitutes high demand spectrum; and

~~(e)~~(b) which unassigned high demand spectrum ~~must~~should
be reserved for assignment to the wireless open
access network service licensee.

~~(1)~~—~~(2)~~ The assignment of high demand spectrum—

~~()~~—is subject to the principles of wholesale open access as contemplated
in Chapter 8; and

~~must shall~~ be ~~done on a non-exclusive basis,~~

subject to the provisions of the national radio frequency plan.

(3) The Authority must assign the spectrum contemplated in
subsection (1)(b) to the wireless open access network service licensee in
accordance with section 19A.

~~(1)~~—The Authority must issue radio frequency spectrum
licences for unassigned high demand spectrum not reserved for assignment
to the wireless open access network service licensee, as contemplated in

subsection (3), on condition that—

()—the radio frequency spectrum licensee provides immediate wholesale open access to its electronic communications networks or electronic

~~communications facilities in urban areas, to the wireless open access network service licensee;~~

~~(-) the radio frequency spectrum licensee procures a minimum of 30% capacity or such higher capacity as determined by the Authority, in the wireless open access network service contemplated in section 19A, for a period determined by the Authority; and~~

~~(-) universal access and universal service obligations contemplated in section 31A are imposed on the radio frequency spectrum licensee, and such obligations are complied with in rural and under-serviced areas before the assigned spectrum may be used by the licensee in other areas.~~

~~(1) The provisions of subsection (4)(a) and (b) only apply to unassigned high demand spectrum that is identified for International Mobile Telecommunications, not reserved for assignment to the wireless open access network service licensee.~~

~~(1) Radio frequency spectrum licences that include exclusively or individually assigned high demand spectrum on the date contemplated in subsection (1), may not be renewed on the same terms and conditions at the end of the licence term, to ensure compliance with section 31E(2).~~

~~(1) The Authority must, within 24 months before the expiry of radio frequency spectrum licences contemplated in subsection (6), conduct an inquiry, as contemplated in section 4B of the ICASA Act, and make recommendations to the Minister, at least six months before the expiry of the radio frequency spectrum licences contemplated in subsection (6), on the~~

~~terms and conditions that may apply to such radio frequency spectrum licences, as a condition for the renewal thereof, taking into account—~~

~~() policy;~~

~~() market developments;~~

~~() the promotion of competition; and~~

~~() the extent of availability of wholesale open access networks.~~

~~(1) Notwithstanding the provisions of section 3(3), the Minister must issue a policy direction to the Authority in terms of section 3(2) on the terms and conditions that must apply to such radio frequency spectrum licences, as a condition for the renewal thereof, at least three months before the expiry of such radio frequency spectrum licences."~~

Amendment of section 34 of Act 36 of 2005, as amended by section 16 of Act 1 of 2014

22.19. Section 34 of the principal Act is hereby amended by—

- (a) the deletion of subsection (1);
- (b) the deletion of subsection (4);
- (c) the addition in subsection (6) of the following paragraph:

"(g) determine the service allocation to be made in the national table of frequency allocations in cases where there are competing services in a particular radio frequency spectrum band, and where the decisions of an ITU World Radiocommunication Conference create divergent interests nationally."
~~the substitution, taking into account potential for cross border interference and the regional harmonisation of spectrum bands."~~

(d) the addition in subsection (7)(c) of the following ~~subsection~~paragraphs:

- ~~"(7) — In preparing the national radio frequency plan [as contemplated in subsection (4)], the [Authority] Minister must —~~
- ~~(-) — take into account the ITU's international spectrum 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;~~
- ~~(aA) — consult the Authority;~~
- ~~(-) — take into account existing uses of the radio frequency spectrum and any radio frequency band plans in existence or in the course of preparation; and~~
- ~~(-) — [consult with the Minister to] take into account —~~
- ~~(-) — [incorporate] the radio frequency spectrum allocated [by the Minister] for the exclusive use of the security services [into the national radio frequency plan];~~
- ~~(-) — [take account of] the government's current and planned uses of the radio frequency spectrum, including but not limited to, civil aviation, aeronautical services, public~~

~~protection and disaster relief services and scientific research; **[and]**~~

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

~~(xix)(iv)~~ ~~the priority of~~ access, availability and protection from harmful interference of frequencies for safety-of-life services; and

~~services; and~~

~~(xxiii)(v)~~ ensure the allocation and preservation of specific bands for broadcasting.";

(e) the insertion after subsection (7) of the following subsection:

"(7A) If the national radio frequency plan includes migration of existing users, the time period for migration ~~may~~ shall not exceed five years, unless ~~otherwise specified by the Minister~~ Authority determines that a longer period cannot reasonably be avoided, and the plan must indicate whether any licensee or another party is responsible for the migration costs."

~~(-)~~ ~~the deletion of subsections (8) to (15);~~

~~(-)~~ ~~the insertion after subsection (8) of the following subsection:~~

~~"(8A) The provisions of section 3(5) apply, with the~~

~~necessary changes, to the development or amendment of the national~~

~~radio frequency plan.";~~ and

~~(p)(f)~~ the substitution for subsection (16) of the following subsection:

"(16) The Authority ~~[may]~~ must, where the national radio frequency plan identifies radio frequency spectrum that is occupied and requires the migration of the users of such radio frequency spectrum to other radio frequency bands, migrate the users to such other radio frequency bands in accordance with the national radio frequency plan, and any migration plans developed by the Authority,

except where such migration involves governmental entities or organisations, in which case the Authority must—

~~such migration involves governmental entities or~~

~~organisations, in which case the Authority must—~~

~~(b)(a) [must]~~ **[refer the matter to the Minister; and]**

~~(e)(b)~~ **[may]** migrate the users **[after]** ~~in~~after consultation with the Minister."

Insertion of sections 34A and 34B

~~23-20.~~ The following sections are hereby inserted in the principal Act after section 34:

"National Radio Frequency Spectrum Planning Committee

34A. (1) The ~~Minister~~Authority must co-ordinate radio frequency spectrum

across government and sector-specific agencies ~~contemplated in section 34B.~~

(2) (a) The ~~Minister~~ Authority must establish a National Radio Frequency Spectrum Planning Committee that includes representation from relevant Government stakeholders.

~~(e)(b)~~ Members of the National Radio Frequency Spectrum Planning Committee must possess suitable qualifications, skills and experience in radio frequency spectrum management and planning.

~~(e)(c)~~ The purpose of the National Radio Frequency Spectrum Planning Committee is to ~~ensure~~ advise the Authority on fairness and equitable distribution of radio frequency spectrum.

~~(1) — The Department of Telecommunications and Postal Services must co-ordinate the work of the National Radio Frequency Spectrum Planning Committee.~~

~~Sector-specific agencies~~

- ~~34B. (1) — The sector-specific agencies must —~~
- ~~(-) — account to the Authority as determined by the Authority for the use of radio frequency spectrum assigned to such sector-specific agencies;~~
 - ~~(-) — assign the radio frequency spectrum contemplated in paragraph (a) and register users of radio frequency spectrum in such sector in accordance with regulations prescribed by the Authority;~~
 - ~~(-) — ensure availability and maintenance of quality information related to~~

radio frequency spectrum assignments and usage; and

~~() — maintain a database of radio frequency spectrum users in their respective sectors and ensure that such database enables real-time updating of the corresponding database of the Authority.~~

~~(1) — The Minister, the Authority and the sector-specific agencies must enter into a Memorandum of Understanding on matters relevant to the radio frequency spectrum contemplated in this section.~~

~~(1) — The Authority is required to develop a database with real-time updates, including that such database enables real-time updating by the corresponding databases of sector-specific agencies."~~

Amendment of section 36 of Act 36 of 2005, as amended by section 18 of Act 1 of 2014

24.21. Section 36 of the principal Act is hereby amended by the deletion in subsection (2) of the word "and" at the end of paragraph (c), insertion of that word at the end of paragraph (d) and addition of the following paragraph:

"(e) ensuring universal design requirements to make provision for persons with disabilities."

Insertion of Chapter 7A in Act 36 of 2005

25.22. The following Chapter is hereby inserted in the principal Act after Chapter 7:

"CHAPTER 7A

INTERNATIONAL ROAMING

International roaming regulations

42A. (1) The Authority must prescribe international **wholesale** roaming regulations, including SADC roaming regulations.

(2) (a) The regulations contemplated in subsection (1) must be **applicable to wholesale roaming services only and be** conditional on reciprocal terms and conditions being imposed on electronic communications

service providers of another country by such country or its National Regulatory Authority.

(b) Reciprocal terms and conditions contemplated in subparagraph (a) means that the electronic communications service provider of another country must offer similar ~~wholesale roaming~~ tariffs as those offered by the South African electronic communications service provider, ~~provided that the reciprocal wholesale roaming charges allow full cost recovery by the service provider in South Africa and that the charges do not distort competition in the market.~~

(3) (a) (i) When prescribing international ~~wholesale~~ roaming regulations, the Authority must take into consideration any policy direction that may be issued by the Minister responsible for Telecommunications and Postal Services:

(ii) When prescribing SADC ~~wholesale~~ roaming regulations, the Authority must take note of SADC Roaming decisions and must take into consideration any policy direction that may be issued by the Minister responsible for Telecommunications and Postal Services.

(b) ~~The regulations may include rate regulation for the provision of roaming services, including without limitation Any price controls on control measures may be imposed only in terms of Chapter 10.~~

~~wholesale and retail rates, as determined by the Authority.~~

(4) The Authority may—

- (a) obtain any information required for international roaming regulation from electronic communications service licensees;
- (b) share the information obtained in terms of paragraph (a) in anonymised and aggregated form with relevant national regulatory authorities of other countries such that the identity of the electronic communications service licensees is not able to be derived from such information; and
- (c) for purposes of SADC roaming regulations, share the information obtained in terms of paragraph (a) in anonymised and aggregated form with the Communications Regulators' Association of Southern Africa such that the identity of the electronic communications service licensees is not able to be derived from such information.

(5) The Authority may engage national regulatory authorities

of any other country in order to—

- (a) promote international roaming between the respective countries;
- ~~(c)~~(b) ensure promote reciprocity of the wholesale roaming terms and conditions applicable to electronic communications service providers of the respective countries, as contemplated in subsection (2); or
- ~~(d)~~ enter into a bi-lateral agreement to give effect to international roaming
- ~~(f)~~(c) and reciprocity, as contemplated in this section, despite any other provision in the underlying legislation."

Substitution of heading to Chapter 8 of Act 36 of 2005

1. — The following heading is hereby substituted for the heading to

Chapter 8 of the principal Act:

~~"[ELECTRONIC COMMUNICATIONS FACILITIES LEASING] WHOLESALE
OPEN ACCESS"~~

Substitution of heading of section 43 of Act 36 of 2005

1. — The following heading is hereby substituted for the heading of section

43 of the principal Act:

**"Obligation to [lease electronic communications facilities] provide
wholesale open access"**

**Amendment of section 43 of Act 36 of 2005, as amended by section 22 of Act 1
of 2014**

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

~~"(1) All electronic communications network service
licensees, except electronic communications network service licensees
that provide broadcasting signal distribution or multi-channel
distribution services, must provide wholesale open access, upon
request, to any other person licensed in terms of this Act and persons
providing services pursuant to a licence exemption in accordance with
the terms and conditions of a wholesale open access agreement
entered into between the parties, in accordance with the general open
access principles, except in case of technical inability."~~

~~() the insertion of the following subsections after subsection (1):~~

~~"(1A) An electronic communications network service
licensee that is determined a vertically integrated operator by the
Authority in the wholesale open access regulations must, in addition to
the requirement in subsection (1), do accounting separation.~~

~~(1B) An electronic communications network service
licensee that is determined a deemed entity by the Authority in the
wholesale open access regulations must, in addition to the requirement~~

~~in subsection (1), comply with the following wholesale open access principles on its electronic communications network:~~

~~() — Active infrastructure sharing;~~

~~() — wholesale rates as prescribed by the Authority in terms of section 47; and~~

~~() — specific network and population coverage targets.”;~~

~~() — the deletion of subsections (2), (3) and (4).~~

~~() — the substitution for subsections (5), (6) and (7) of the following subsections, respectively:~~

~~“(5) — In the case of unwillingness or technical inability of an electronic communications network service licensee to negotiate or agree on the terms and conditions of **[an electronic communications facilities leasing agreement]** a wholesale open access agreement,~~

~~either party may notify the Authority in writing and the Authority may —~~

~~() — impose terms and conditions consistent with this Chapter;~~

~~() — propose terms and conditions consistent with this Chapter —~~

~~which, subject to negotiations among the parties, **[must]** may be agreed to by the parties within such period as the Authority may specify; **[or]**~~

~~() — if no agreement is reached as contemplated in paragraph (b),~~

~~refer the dispute to the Complaints and Compliance Committee for resolution on an expedited basis in accordance with the procedures prescribed in terms of section 46[.]; or~~

~~() — in case of technical inability (other than environmental and technological inability), determine how to resolve technical inability that may include the apportionment of costs;~~

~~(1) — For the purposes of subsection (5), unless otherwise agreed in writing by the parties, a party is considered unwilling to negotiate or unable to agree if a **[facilities leasing agreement]** wholesale open access agreement is not concluded within the time frames prescribed.~~

~~(1) — The **[lease of electronic communications facilities]** wholesale open access provided by an electronic communications network service licensee in terms of subsection (1) must, unless otherwise requested by the **[leasing]** requesting party, be non-discriminatory as among comparable types of **[electronic communications facilities]** wholesale open access being [leased] provided 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 **[the comparable network services]** wholesale open access provided by such licensees to itself or an affiliate.";~~

~~() — the insertion of the following subsection after subsection (7):~~

~~"(7A) 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 Chapter."; and~~

~~() — the deletion of subsections (8), (8A) and (9).~~

Substitution of heading to section 44 of Act 36 of 2005

1. — The following heading is hereby substituted for the heading to section 44 of the principal Act:

~~"[Electronic communications facilities leasing] Wholesale open access regulations"~~

Amendment of section 44 of Act 36 of 2005, as amended by section 23 of Act 1 of 2014

1. — Section 44 of the principal Act is hereby amended by —

~~() — the substitution for subsection (1) of the following subsection:~~

~~"(1) — The Authority must prescribe wholesale open access regulations to facilitate wholesale open access to electronic communications networks and facilities within 18 months of the coming into operation of the Electronic Communications Amendment Act, ...;"~~

~~() — the deletion of subsection (2);~~

~~() — the substitution for subsection (3) of the following subsection:~~

~~"(3) — Matters which the wholesale open access regulations must address, include, but are not limited to —~~

~~() — wholesale open access agreement principles, including —~~

- ~~() reference offers containing model terms and conditions for the different wholesale open access categories contemplated in section 43;~~
- ~~() the timeframe and procedures for—~~
 - ~~(aa) the negotiation of wholesale open access agreements;~~
 - ~~(bb) the conclusion of wholesale open access agreements; and~~
 - ~~(cc) the technical implementation of the wholesale open access agreements;~~
- ~~() the definitions of the general open access principle terms, 'effectiveness', 'transparency' and 'non-discrimination', considering that 'effective access' refers to access to a high quality service, unbundled to a sufficient degree, that is easily obtained in reasonable locations using standardised interfaces;~~
- ~~() the implementation and enforcement of wholesale open access principles;~~
- ~~() a list of vertically integrated entities, including the criteria used to determine vertically integrated entities: Provided that only entities that are deemed entities as contemplated in paragraph (e), may be determined to be vertically integrated entities;~~
- ~~() accounting separation procedures for vertically integrated entities;~~
- ~~() determination of deemed entities;~~

- ~~() — the quality, performance and level of service to be provided, including time to repair or restore, performance, latency and availability;~~
- ~~() — wholesale rates, as contemplated in section 47;~~
- ~~() — the sharing of technical information including obligations imposed in respect of the disclosure of current and future electronic communications network planning activities;~~
- ~~() — contractual dispute resolution procedures;~~
- ~~() — billing and settlement procedures;~~
- ~~() — a list of essential facilities;~~
- ~~() — services associated with wholesale open access, such as support systems, collocation, fault reporting, supervision, functionality, unbundling, and co-operation in the event of faults;~~
- ~~() — access and security arrangements;~~
- ~~() — the framework for determining technical inability, as contemplated in section 43(1);~~
- ~~() — the requirement that an electronic communications network service licensee negotiate and enter into a wholesale open access agreement with an applicant for an individual licence;~~
- ~~() — the manner in which unbundled electronic communications facilities are to be made available;~~
- ~~() — any controls necessary to reduce competition concerns; and~~
- ~~() — any other matter necessary for the effective regulation of wholesale open access in accordance with this Act.;"~~
- ~~() — the insertion of the following subsection after subsection (3):~~

~~"(3A) For purposes of the determination of deemed entities, as contemplated in subsection (3), the Authority must—~~
~~() following the definition of markets, as contemplated in section 67(3A), determine in respect of infrastructure markets, which electronic communications network service licensee, if any, has significant market power in such market or has an electronic communications network that constitutes more than 25% of the total electronic communication infrastructure in such market, following which such electronic communications network service licensee is regarded as a deemed entity; or~~
~~() determine which electronic communications network service licensee, if any, controls an essential facility or a scarce resource, such as radio frequency spectrum that is identified for International Mobile Telecommunications, following which such electronic communications network service licensee is regarded as a deemed entity.";~~

~~() the substitution for subsection (4) of the following subsection:~~

~~"(4) Where the regulations require negotiations with an applicant in terms of subsection (3)(f), a reference in this Chapter to a licensee seeking to **[lease]** access electronic communications networks or facilities must be considered to include such applicant.";~~

and

~~() the deletion of subsections (5), (6) and (7).~~

Substitution of section 45 of Act 36 of 2005, as amended by section 24 of Act 1 of 2014

1.——The following section is hereby substituted for section 45 of the
principal Act:

"Filing of [electronic communications facilities leasing] wholesale open access agreements

45.——(1)——**[An electronic communications facilities leasing] A**
wholesale open access agreement must be in writing and must be submitted
to the Authority.

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

(3)——...

(3)——The Authority must, at the request of any person and on
payment of such fee as may be prescribed, furnish that person with a copy of
any **[electronic communications facilities leasing] wholesale open access**
agreement.

(3)——The Authority must review **[electronic communications**
facilities leasing] wholesale open access agreements submitted in terms of

~~subsection (1) to determine whether such agreements are consistent with the regulations prescribed.~~

~~(3) — Where the Authority determines that any term or condition of **[an electronic communications facilities leasing]** a wholesale open access agreement is not consistent with the regulations, the Authority must, in writing —~~

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

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

~~(3) — The parties must, upon reaching agreement and amending the non-complying terms and conditions of the **[electronic communications facilities leasing]** wholesale open access agreement, submit the amended agreement to the Authority for consideration and review.~~

~~(3) — The provisions of subsections (5) and (6) apply, with the necessary changes, to such consideration and review of the amended agreement by the Authority."~~

Substitution of section 46 of Act 36 of 2005

1. — The following section is hereby substituted for section 46 of the
principal Act:

"Notification of [electronic communications facilities leasing] wholesale open access agreement disputes

~~46. (1) A party to a dispute arising out of **[an electronic communications facilities leasing] a wholesale open access agreement** may notify the Authority, in writing, of the dispute and such dispute must be resolved, on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by the Authority.~~

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

~~(1) A decision by the Complaints and Compliance Committee concerning any dispute or a decision concerning a dispute contemplated in section 43(5)(c) is, in all respects, effective and binding on the parties to the **[electronic communications facilities leasing] wholesale open access agreement**, unless an order of a court of competent jurisdiction is granted against the decision."~~

Substitution of section 47 of Act 36 of 2005

~~1. The following section is hereby substituted for section 47 of the~~
principal Act:

~~"[Facilities leasing] Wholesale open access pricing principles~~

~~47. (1) The Authority [may] must prescribe [regulations establishing a framework for the establishment and implementation of] wholesale rates applicable to [specified types of electronic communication facilities and associated services taking into account the provisions of Chapter 10] deemed entities that must be cost-oriented.~~

~~(1) The Authority~~
~~() must ensure that any cost recovery mechanism or pricing methodology that is mandated, serves to promote efficiency and sustainable competition, and maximise consumer benefits; and~~
~~() may also take account of prices available in comparable competitive markets.~~

~~(1) The Authority must ensure that any cost recovery mechanism or pricing methodology is~~
~~() fair and reasonable; and~~
~~() non-discriminatory, unless there are pro-competitive or efficiency justifications that exist and the cost recovery mechanism or pricing methodology does not prevent or distort competition.~~

~~(1) The regulations must be reviewed at least every three years."~~

~~Amendment of section 67 of Act 36 of 2005, as amended by section 28 of Act 1 of 2014~~

~~1. Section 67 of the principal Act is hereby amended by—
() the insertion of the following subsections after subsection (3):~~

~~"(3A) (a) The Authority must, within 12 months of the coming into operation of the Electronic Communications Amendment Act ..., define all the relevant markets and market segments relevant to the broadcasting, and electronic communications sectors, by notice in the Gazette.~~

~~() The notice contemplated in paragraph (a) must set out a schedule in terms of which the Authority will conduct market reviews of the defined markets and market segments, prioritising those markets with the most significant impact on consumer pricing, quality of service and access by users to a choice of services and markets relevant to policy directions, issued by the Minister responsible for Telecommunications and Postal Services.~~

~~(3B) The Authority must, thereafter, at least every three years, review and update the market definitions and schedule in terms of which the Authority will conduct market reviews, by notice in the Gazette.~~

~~(3C) The Authority must give notice of its intention to define or review and update all the relevant markets and market segments in the Gazette and, in such notice, invite interested parties to~~

~~submit their written representations to the Authority within such period as may be specified in such notice."~~

~~(b) — the substitution for subsection (4) of the following subsection:~~

~~"(4) — The Authority must, when conducting a market review, prescribe regulations that must —~~

~~(a) — determine whether there is effective competition in such market or market segment;~~

~~(a) — determine which, if any, licensees have significant market power in such market or market segment where there is ineffective competition;~~

~~(a) — impose appropriate pro-competitive license conditions on those licensees having significant market power to remedy the market failure;~~

~~(a) — set out a schedule in terms of which the Authority will undertake periodic review of the market or market segment, taking into account subsection (8) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in such market or market segment; and~~

~~(a) — provide for monitoring and investigation of anti-competitive behavior in the market or market segment."~~

~~(b) — the substitution for subsection 4B of the following subsection:~~

~~"(4B) — Subject to section 4D of the ICASA Act, licensees or any other person 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."~~

~~(b) — the insertion of the following subsection after subsection (4B):~~

~~"(4C) — A market review under this Chapter must not take longer than 12 months.";~~

~~(b) — the substitution in subsection (7) for paragraph (a) of the following paragraph:~~

~~"(a) — obligations in respect of interconnection and **[facilities leasing]** wholesale open access, in addition to those provided for in Chapters 7 and 8 and any regulations made in terms thereof;"~~

~~(b) — the substitution for subsection (8) of the following subsection:~~

~~"(8) — Review of pro-competitive conditions:~~

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

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

~~(ii) — decide whether to modify the pro-competitive conditions set by reference to **[a market determination]** the previous market review[;].~~

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

~~(a) — Where, on the basis of such review, the Authority determines that the licensee to whom pro-competitive conditions apply continues to possess significant market power in that market or market segment, but due to changes in the competitive nature of such market or market segment, the pro-competitive conditions are no longer proportional in accordance with subsection (7), the Authority must modify the applicable pro-competitive conditions applied to that licensee to ensure proportionality.~~

~~(a) — Where, on the basis of such review, the Authority determines that the appropriate market or market segment have changed as contemplated in subsection (3A) or (3B), the Authority must revoke the applicable pro-competitive conditions applied to that licensee and conduct a market review of the changed market or market segment in accordance with the Schedule contemplated in subsection (3A).; and~~

~~(b) — the addition of the following subsection:~~

~~"(13) — The Authority must perform the market definition and market review proceedings under this Chapter, after consultation with the Competition Commission."~~

Insertion of section 67A in Act 36 of 2005

26-23. The following section is hereby inserted in the principal Act after section 67:

"Concurrent jurisdiction agreement between Authority and Competition

Commission

67A. (1) The Authority must enter into a concurrent jurisdiction agreement with the Competition Commission in terms of section 4(3A) of the ICASA Act and such agreement must be published in the Gazette.

(2) The concurrent jurisdiction agreement contemplated in subsection (1) must address all issues pursuant to the co-operation between the Authority and the Competition Commission, including—

- (a) mechanisms to facilitate consultation between the Authority and the Competition Commission;
- (b) the sharing of information between the two institutions; and
- (c) the management of complaints, mergers, market reviews, market definitions and other relevant matters conducted by the institutions.

Substitution of section 69 of Act 36 of 2005

27-24. The following section is hereby substituted for section 69 of the principal Act:

"Code of conduct, end-user and subscriber service charter

69. (1) The Authority must [**as soon as reasonably possible after the coming into force of this Act,**] prescribe regulations, ~~that must be reviewed every five years, setting out a code of conduct on consumer protection for licensees, subject to this Act and persons exempted from holding a licence in terms of section 6, to the extent such persons provide a service to the public.~~ reviewed at least every three years, setting out a code of conduct on

~~consumer protection for licensees, subject to this Act and persons exempted from holding a licence in terms of section 6, to the extent such persons provide a service to the public.~~

(1A) The code of conduct contemplated in subsection (1) must include, without limitation, provision for the protection of different types of end-users and subscribers including persons and institutions~~as well as, but shall not include~~ users of wholesale services.

(2) The Authority may develop different codes of conduct applicable to different types of services. All electronic communications network services licence and electronic communications service licensees must comply with the Code of Conduct for such services as prescribed.

(3) The Authority must~~[, as soon as reasonably possible after the coming into force of this Act,]~~ prescribe regulations, that ~~must~~may be reviewed at least every ~~three~~five years, setting out the minimum standards for ~~[and]~~ end-user and subscriber service charters.

(4) The Authority may develop different minimum standards for ~~[and]~~ end-user and subscriber service charters for different types of services.

(5) The matters which an end-user and subscriber service charter ~~[may]~~ must address, include, but are not limited to—

- (a) Where reasonably practicable, the provision of accurate, understandable and comparable information to end-users and subscribers regarding services, rates, and performance procedures, as specified by the Authority in regulations;
- (aA) standards of service that end-users and subscribers may expect;
- (b) provisioning and fault repair services;

- (c) the protection of private end-user and subscriber information;
- (d) end-user and subscriber charging, billing, collection and credit practices;
- (e) complaint procedures and the remedies that are available to address the matters at issue; and
- (f) any other matter of concern to end-users and subscribers.

provided that price control measures may be introduced only in terms of Chapter 10.

(6) Where an end-user or subscriber is not satisfied after utilising the complaint procedures set out in the regulations, his or her complaint may be submitted to the Authority in accordance with the provisions of section 17C of the ICASA Act.

(7) The Authority must enter into a concurrent jurisdiction agreement with the National Consumer Commission in terms of section 4(3A) of the ICASA Act, to ensure co-ordination of consumer protection within the ICT sector.

Insertion of section 69A to Act 36 of 2005

28-25. The following section is hereby inserted in the principal Act after section 69:

"Quality of service

69A. (1) The Authority must make regulations prescribing quality of service ~~standard~~targets for each category of licence, which ~~must~~may be reviewed ~~at~~ least every ~~three~~five years.

(2) The ~~standard~~targets contemplated in subsection (1) must include matters relating to—

- (a) broadband download and upload speeds and latency, together with

waiting time for installation and fault clearance;

~~(c)(b) the defined level of~~ technical quality such as call quality and success rates;

~~(e)(c)~~ timeframes for service installations;

~~(f)(d) requirements to ensure~~ reliability and robustness of services;

~~(h)(e) the required level of~~ customer service, including the handling and resolution of complaints and disputes;

~~(i)(f) minimum requirements~~ service levels to meet the needs of persons with disabilities; and

~~(j)(g) standards to ensure~~ quality of emergency services.

(3) Subject to subsection (2), the Authority must, in preparing quality of service ~~standard~~ targets, take account of guidelines issued by the ITU, as well as best practice in other jurisdictions.

(4) The Authority must promote public awareness of the quality of service ~~standard~~ targets.

(5) Licensees must publish information for end-users and subscribers on the quality of their services which information must also be supplied to the Authority.

(6) The Authority may prescribe the quality of service parameters to be measured, and the content, form and manner of information to be published by licensees.

(7) The Authority must monitor and evaluate the national broadband policy targets in SA Connect and compliance with broadband

~~quality of service standardstargets on an ongoing basis, and make recommendations.~~
~~to the Minister responsible for Telecommunications and Postal Services every~~
~~two years regarding the review of the national broadband policy targets, as~~
~~necessary."~~

Amendment of section 74 of Act 36 of 2005

29-26. Section 74 of the principal Act is hereby amended by the addition of the following subsection:

"(6) A person who fails to comply with a notice issued under section 67(4B) is guilty of an offence and liable, upon conviction, to a fine not exceeding R5 000 000."

Insertion of section 79C in Act 36 of 2005

30-27. The following section is hereby inserted in the principal Act after section 79B:

"Market performance report

79C. (1) The Authority must annually publish a market performance report in respect of the broadcasting, electronic transactions, postal and electronic communications sectors, which report must—

- (a) include assessment of affordability of services, accessibility to services, quality of service, impact on users of market trends, expected market trends and compliance by licensees with conditions and obligations set;

(b) consider the effects of convergence, including monitoring of the extent and impact of horizontal and vertical integration and bundling of services; and

(c) consider the impact of policy and legislation.

(2) Subject to section 4D of the ICASA Act, licensees must provide to the Authority any information specified by the Authority ~~in order that~~

~~reasonably required for~~ the Authority ~~may to~~ carry out its duties in terms of this section.

(3) The Authority must submit the market performance report to the Minister and Parliament within 30 days of publication."

Amendment of section 82 of Act 36 of 2005

31-28. Section 82 of the principal Act is hereby amended by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:

"The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic, including the needs of persons with disability and broadband, and after obtaining public participation to the greatest degree practicable, make recommendations to enable the Minister to determine what constitutes—".

Amendment of section 88 of Act 36 of 2005, as amended by section 41 of Act 1 of 2014

32-29. Section 88 of the principal Act is hereby amended by the addition of the following subsection:

"(4A) In exercising the powers contemplated in subsection (4), the Agency must consider the needs of persons with disabilities in assessing the access gap and setting universal service and access definitions and targets."

the Agency must consider the needs of persons with disabilities in assessing the access gap and setting universal service and access definitions and targets."

Amendment of section 94 of Act 36 of 2005

33-30. Section 94 of the principal Act is hereby amended by the addition of the following ~~subsections~~subsection:

"(2) ~~————~~ In the event of any conflict between the provisions of this Act and any regulations made in terms of this Act prior to the commencement of the Electronic Communications Amendment Act,....., the provisions of this Act prevail.

(3)(2) Any regulations made in terms of this Act prior to the commencement~~commencement~~ of the ~~Electronic Communications Amendmen~~Electronic Communications Amendment Act, that that are inconsistent with any provision of this Act, must be reviewed by the Authority within a period of 24 months from the date of commencement of the Electronic Communications Amendment Act,"

Electronic Communications Amendment Act,"

Amendment of section 95 of Act 36 of 2005, as amended by section 43 of Act 1 of 2014

34.31. Section 95 of the principal Act is hereby amended by the addition of the following subsection:

"(3) Any regulations made in terms of this Act prior to the commencement of the Electronic Communications Amendment Act,
remain in force until they are amended or repealed in terms of this Act."

35.32. The following amendments are hereby inserted in the Schedule to the principal Act after Act No. 63 of 1996:

SCHEDULE

No. and year of Act	Short Title	Extent of repeal or
Act No. 13 of 2000	Independent Communications Authority of South Africa Act, 2000	1. Amends section 1 by— (a) the insertion after the definition of "Broadcasting Act" of the following definition: <u>"B-BBEE ICT Sector Code"</u> <u>means the Broad-Based</u> <u>Black Economic</u> <u>Empowerment Information,</u> <u>Communications and</u> <u>Technology Sector Code, a</u>

~~2.—Amends section 4(3) by—
(a) the substitution for
paragraph (c) of the following
paragraph:
"(c) must **[control, plan,]** administer
and manage the **[use]** assignment
[and], licensing monitoring and
enforcement of the radio frequency
spectrum use in accordance with
bilateral agreements or international
treaties entered into by the Republic;";
and~~

(a) the substitution for paragraph (k)
of the following paragraph:
"(k) **[may]** must make

No. and year of Act	Short Title	Extent of repeal or
		to promote broad-based black economic empowerment <u>within 12 months of the promulgation of the Electronic</u>
		<p>3. Amends section 4 by the substitution for subsection (3A) of the following subsection:</p> <p>"(3A) The Authority, in exercising its powers and performing its duties—</p> <p>(a) must consider policy made, and policy directions issued, by the Minister in terms of this Act, the underlying statutes and any other applicable law; [and]</p> <p>(aA) must act in accordance with any policy or policy directions issued by —</p> <p>(-) the Minister responsible for Communications or the Minister responsible for Telecommunications and Postal Services in terms of sections 3(1)(e) or 3(2)(d) of the Electronic Communications Act; or</p> <p>(-) the Minister responsible for Telecommunications and Postal Services in terms of sections</p>

No. and year of Act	Short Title	Extent of repeal or
		by agreement with the authority or institution in question, <u>subject to</u>

Short title and commencement

1. (1) This Act is called the Electronic Communications Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) The President may fix different dates for the coming into operation of different sections of this Act.