

REPUBLIC OF SOUTH AFRICA

ELECTRONIC COMMUNICATIONS AMENDMENT BILL

*(As amended by the Portfolio Committee on Communications)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 38B—2007]

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BILL

To amend the Electronic Communications Act, 2005, so as to empower the Minister to issue an additional policy direction; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the current provisions of the Electronic Communications Act, 2005, do not explicitly provide for the facilitation of strategic interventions by government in the electronic communications sector in order to reduce the cost of access to information, communication and technology;

AND WHEREAS the state intends to expand the availability of access to information, communications and technology infrastructure on wholesale basis at cost orientated rates and services to operators in the Republic;

AND WHEREAS it is necessary to amend the Electronic Communications Act, 2005, in order to facilitate the efficient licensing of public entities,

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

Amendment of section 1 of Act 36 of 2005

1. Section 1 of the Electronic Communications Act, 2005 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “**public broadcasting service**” of the following definition: 5

“**‘public entity’** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”

Amendment of section 2 of Act 36 of 2005

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph: 10

“(d) encourage investment, including strategic infrastructure investment, and innovation in the communications sector;”

Amendment of section 3 of Act 36 of 2005

3. Section 3 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection: 15

“(1A) The Minister may, after having obtained Cabinet approval, issue a policy direction in order to—

- (a) initiate and facilitate intervention by Government to ensure strategic ICT infrastructure investment; and
- (b) provide for a framework for the licensing of a public entity by the Authority in terms of Chapter 3.” 20

Amendment of section 5 of Act 36 of 2005

4. Section 5 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) any electronic communications network service, broadcasting service or electronic communications service where a [state] public entity (directly or indirectly) holds an ownership interest of greater than twenty-five (25%) per cent of the share capital of the person providing such service; and”.

Short title and commencement

5. This Act is called the Electronic Communications Amendment Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTRONIC COMMUNICATIONS AMENDMENT BILL, 2007

1. OBJECT OF BILL

The object of the Electronic Communications Amendment Bill, 2007 is to amend the Electronic Communications Act, 2005 (the Act), so as to empower the Minister to issue a policy direction; and to provide for matters connected therewith.

The Bill seeks to provide an opportunity for Government to make strategic interventions on infrastructure investments whenever it deems necessary. In amending the Act Government will be able to address some of the significant challenges such as—

- reducing the cost to communicate by providing infrastructure at a wholesale rate to other operators;
- improving on government service delivery and supporting ASGISA;
- link Nepad broadband with Africa, Latin America and Europe;
- provide the much needed bandwidth for strategic projects and consumers in general.

The Bill will provide a forward looking legislative framework which facilitates government's intervention in the ICT sector in line with a developmental state.

2. AMENDMENT OF SECTION 1 OF THE ACT

Section 1 of the Act, is amended to provide for the insertion after the definition of "public broadcasting service" of the following definition:

“**public entity**” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No.1 of 1999).”.

3. AMENDMENT OF SECTION 3 OF THE ACT

Section 3 of the Act is amended by the addition of a subsection to give the Minister the authority to initiate and facilitate intervention by government to ensure strategic ICT infrastructure investment, and provide for a framework for the licensing of a public entity by the Authority.

4. INSTITUTIONS CONSULTED

- Department of Public Enterprises;
- Independent Communications Authority of South Africa (ICASA);
- Universal Service and Access Agency of South Africa (USAASA)
- National Electronic Media Institute of South Africa (NEMISA)
- Telkom;
- Neotel; and
- Vodacom.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Communications are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.