

PROPOSED AMENDMENTS

ELECTRONIC COMMUNICATIONS AMENDMENT BILL

[B17A-2013]

CLAUSE 1

1. On page 3, in line 1, to omit "definition" and to substitute "definitions"
2. On page 3, after line 1, to insert:

" **'broad-based black economic empowerment'** has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);"
3. On page 3, after line 61, to insert:

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

"**'ICT Charter'** means the [Black Economic Empowerment Charter for the ICT sector] ICT Sector Charter, a sector code on broad-based black economic empowerment, issued in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);".
4. On page 4, in line 6, after "or" to insert "to use the radio frequency spectrum in terms of".
5. On page 4, from line 38, to omit "provide services that require the use of" and to substitute "use".

CLAUSE 2

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

CLAUSE 3

1. On page 5, after line 19, to insert:
 - (a) by the substitution in subsection (1), for paragraph (e) of the following paragraph:

“(e) guidelines for the determination by the Authority of licence fees and spectrum fees associated with the award of the licences contemplated in Chapter 3 and Chapter 5, including incentives that may apply to individual licences where the applicant makes binding commitments to construct electronic communications networks and provide electronic communications services in rural and under-serviced areas of the Republic;”.
2. On page 5, in line 54, to omit “calendar”

CLAUSE 4

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

CLAUSE 5

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

CLAUSE 6

1. On page 7, after line 6, to insert:

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

“(o) access to broadcasting, postal and electronic communications services for persons with disabilities”.

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

CLAUSE 7

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

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

CLAUSE 9

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

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

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

(c) by the addition of the following subsection:

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

CLAUSE 15¹

1. On page 9, from line 48, to omit paragraph (b).
2. On page 10, from line 1, to omit paragraph (c).

CLAUSE 20

1. On page 11, in line 41, to omit “subsections (5) and (6) of the following subsections, respectively” and to substitute “subsection (6) of the following subsection”.
2. On page 11, from line 43, to omit subsection (5).

CLAUSE 21

Clause rejected.

CLAUSE 23

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

¹ Clause 15 of the Bill makes provision for the amendment of section 31 of the Act by the insertion of section 31(2A) and amendment of section 31(3) to enable regulation of *inter alia* letting and sub-letting of radio frequency spectrum licences. In view of concerns raised that the amendment of section 31 can result in spectrum trading that is a policy matter that must be duly considered during the ICT Policy Review, it is proposed that the insertion of section 31(2A) and amendment of section 31(3) be omitted.

CLAUSE 24

1. On page 13, in line 3, to omit “subsections (5) and (6) of the following subsections, respectively” and to substitute “subsection (6) of the following subsection”.
2. On page 13, from line 4, to omit subsection (5).

CLAUSE 25

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

NEW CLAUSE²

1. That the following be a new clause:

Amendment of section 60 of Act 36 of 2005

27. Section 60 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Authority must prescribe regulations regarding the extent to which subscription broadcast services must carry and pay for, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee.”.

CLAUSE 27

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

“(3) A common carrier must—

² The Department previously proposed that a new clause be inserted into the Bill to amend section 60(3) to make provision for a ‘must carry and pay’ obligation. Following further consideration of the matter as directed by the PCC, the Department proposes that the amendment not be proceeded with to allow due consideration of it during the ICT Policy Review process

- (a) subject to its technological capacity to do so and to the provisions of paragraph (b), provide broadcasting signal distribution to broadcasting licensees upon their request and in accordance with the national radio frequency plan contemplated in section 34, on an equitable, reasonable, non-preferential and non-discriminatory basis;
- (b) in determining its tariffs, duly take into account the following:
 - (i) the different categories of broadcasting service **[licenses]** licences referred to in sections 49, 50 and 51; and
 - (ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate;
- (c) carry public broadcasting services, including educational, commercial and community services and shall be deemed an electronic communications network service licensee that provides signal distribution for public broadcasting services.".

CLAUSE 29

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

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 70 of Act 36 of 2005

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

"[People] Persons with disabilities

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

CLAUSE 33

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

CLAUSE 34

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

CLAUSE 39

1. On page 20, after line 36, to insert:
 - (c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

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

CLAUSE 41

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

NEW CLAUSE

1. That the following be a new clause:

“Amendment of law

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

NEW SCHEDULE

1. That the following be a new Schedule:

SCHEDULE

LAW AMENDED

(Section 47)

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