

SOUTHERN AFRICAN TRANSPORT AND COMMUNICATIONS (SATCC)

**TELECOMMUNICATION
BILL
MODEL
FOR
SADC**

18TH JUNE 1998

DECISION OF SATCC COMMITTEE OF MINISTER

The Model Telecommunications Bill has been prepared in conjunction with the Telecommunications Policies for SADC in pursuance of the provisions of Article 10.2, Chapter 10 of the Protocol on Transport, Communications and Meteorology. The article requires SADC Member States to develop a common regional telecommunications policy in order to achieve the objective of developing national telecommunication networks for the provision of reliable and affordable telecommunications services.

The Bill and the Policies were developed through a number of meetings of experts and stakeholders and discussed and endorsed by the relevant SATCC structures. During their annual meeting held in Swaziland on 26 June 1998 the SATCC Committee of Ministers made the following decisions regarding the two documents:

- approved the Telecommunication Policies for SADC as a common policy guideline for adoption and implementation at national level;
- approved the Model Telecommunications Bill as a guideline in respect of national legislation for implementing the policies referred to above;
- urged Member States to expeditiously adopt and implement the Policies and the Model Telecommunications Bill in the interest of early regional integration and economic development;
- urged Member States to establish and submit to the SATCC-TU, by 31 December 1998, their respective time schedules for the national adoption and implementation of the Policies and Model Telecommunications Bill; and
- directed SATCC-TU to monitor the implementation of the Policies and Model Telecommunications Bill and to report to the Committee of Ministers.

ARRANGEMENT OF SECTIONS

Preamble

PART 1 CITATION, INTERPRETATION AND POWERS OF THE MINISTER

Section

1. Short Title and Commencement Date
2. Interpretation
3. Policies

Part II Establishment of the Regulatory Authority, its Powers and Constitution, Qualifications

4. Establishment of the Authority
5. Establishment of guidelines
6. Powers of Authority
7. Members of the Authority
8. Appointment of Chief Executive
9. Disqualification for appointment as a member of the Board
10. Vacation of office of a member of the Board
11. Removal from Office
12. Resignation of member
13. Suspension
14. Filling of Vacancies
15. Remuneration
16. Funds of the Authority
17. Annual Budget
18. Annual report of activities
19. Appointment of Auditors and Audit report

Part III General Powers and Duties of the Authority:

20. General powers of Authority
21. General functions
22. Indemnity

Part IV Meetings and Proceedings of the Authority

23. Meetings of the Board
24. Declaration of interest
25. Signification of Document
26. Penalty

Part V - Licensing of Telecommunication Services Providers

27. Classes of providers of services
28. Licensing of providers
29. Delisting of licences
30. Records of licensing
31. Regulations governing licensing
32. Services under licence
33. Control of transfer and assignment of licences
34. Refusal of transfer of licences
35. Review of agreements entered into by service providers

Part VI - Duties of Public Telecommunications Service Providers

36. Timely provision of service
37. Agreements for inter connection
38. Submission of inter connection disputes to Authority
39. Submission of agreements governing external inter connections
40. Restriction of resales
41. Rates and tariffs
42. Tariffs rates and charges
43. Accuracy of record of tariff
44. Restriction against changes to tariffs
45. Costing information
46. Accounting procedure
47. Reporting requirements
48. Restriction of access to information
49. Universal access

Part VII – Additional Powers and Responsibilities of the Authority

50. Equipment Standard
51. Type approval and inspection

Part VIII – Management of the use of the Radio Frequency Spectrum

52. Frequency management
53. Grant of licences
54. Competitive bidding for licences

Part IX - Access to and Use of Public and Private Property

55. Access to and use of public property
56. Use of private property

Part X - Offences, Penalties and Enforcements

57. Offences and penalties
58. Production of books and records

- 59. Inquiries and investigations
- 60. Powers of enforcement
- 61. Settlement of disputes

Part XI - Restructuring of the Incumbent National Operator

- 62. National operator
- 63. Transitional provisions
- 64. Repeals and savings

A Bill
entitled

An Act to provide for the restructuring and the development of telecommunications, establish an autonomous and independent regulatory authority, license the providers of telecommunication services and for matters incidental thereto and connected therewith.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of

PART I

CITATION , INTERPRETATION AND POWERS OF THE MINISTER

Short Title and
Commencement
Date

1. This Act may be cited as the Telecommunications Act, 199- and shall come into force and effect on (or on such date as the Minister may by notice in the gazette appoint).

Interpretation

2. In this Act unless the context indicates otherwise:-

“allocation” means the apportionment of segments of the radio frequency spectrum among various uses and radio-based services;

“appointing authority” includes the Head of State, Minister or any other person or body vested with powers to make appointments;

“assignment” means the designation to an individual licensee of specific radio frequencies for use in providing a particular service;

“Authority, agency, commission” means the telecommunication regulatory authority established under section 4 of this Act;

“Board” means the Board of the Authority;

“competitive services” means any telecommunication services that are or may be provided by two or more persons;

“customer” means a person who receives and pays for a telecommunication service over a period of time under an

agreement with or pursuant to terms and conditions established by the service provider with approval of the Authority;

“Customer Premises Equipment or “CPE” or Terminal Equipment” includes equipment employed on the premises of a customer of a public telecommunication service or private telecommunication service to originate, route, or terminate telecommunication. CPE includes telephone handsets (whether for wireless or wireline communications), fax machines, computer modems and associated hardware and internal wiring to the customer’s premises (property on which the customer has installed the CPE);

“domestic telecommunication services” means telecommunication services provided within the [Name of the Country];

“exclusive services” means any telecommunication services that are provided or may be provided by one person over the whole country or by two or more persons in specific areas of the country;

“incumbent national operator” or **“incumbent”** means the national telecommunication enterprise;

“information” includes signs, signals, writings, pictures, sounds or other information of any nature which constitutes the content transmitted by telecommunication;

“international telecommunication services” means telecommunication services provided between the [Name of the Country] and any other country;

“licence” means an authorisation granted by the Authority for the provision of telecommunication services or for the use of the radio frequency spectrum;

“licensee” means a person that holds a valid licence duly granted by the Authority;

“member” means a member of the Board;

“Minister” or **“Ministry”** means, unless otherwise specified, the Minister or Ministry responsible for telecommunication matters within the Government;

“network” means an integrated system of facilities which comprise the facilities used to provide one or more telecommunication services;

“operator” means a person that operates telecommunication facilities;

“person” means any individual, partnership, association, joint venture, trust or corporation;

“private line service” means offering of telecommunication services in which certain telecommunication facilities or an agreed upon amount of capacity between or among fixed points is reserved for the exclusive use of a particular customer for an agreed upon period of time, for which the customer compensates the provider based on the total amount of capacity leased rather than the customer’s actual usage of that capacity. Private line service may be offered as a private telecommunication service or as a public telecommunication service;

“private telecommunication service” means telecommunication services provided exclusively, for transmission and reception by one person or its employees or among persons under common ownership or control or their employees;

“public telecommunication network” means a fully interconnected and integrated system of telecommunication consisting of various means of transmission and switching, utilised to provide telecommunication services to the general public;

“public telecommunication services” means telecommunication services provided to the general public or to a class of persons so as to be generally available;

“radio frequencies” or **“radio frequency spectrum”** means frequencies or spectrum of naturally propagated electromagnetic waves in the range 3 kilohertz to 300 gigahertz which are utilised for transmission and reception of telecommunication signals;

“resale” means the offering to users or customers for profit of telecommunication services obtained from another telecommunication service provider;

“telecommunication” means any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user’s choosing;

“telecommunication equipment” means equipment (including hardware and software) used in the provision of telecommunication;

“transfer date” means the date designated by the Minister when assets, liabilities and employees are transferred from the incumbent national operator to a successor company;

3. The Minister shall establish overall policies for the telecommunication sector.

PART II

ESTABLISHMENT OF THE REGULATORY AUTHORITY, ITS POWERS AND CONSTITUTION, QUALIFICATIONS

Establishment of
the
Authority

4. There is hereby established an autonomous and independent Regulatory Authority (hereinafter referred to as “the Authority”) which shall be a body corporate with a common seal, capable of suing and being sued and subject to the provisions of this Act, of performing such acts as bodies corporate may, by law perform.

Establishment of
guidelines

5. The Minister may after consultation with the Authority establish in writing general policy guidelines, which shall be published in the government gazette, for the Authority.

Powers of
Authority
are

6. The Authority may perform all such acts and do all such things as reasonably necessary, ancillary, incidental or supplementary to the performance of any of its functions.

Members of the
Authority

7. (1) The powers and functions of the Authority shall be exercised and performed by a Board consisting of not less than three and not more than five members appointed by the appointing authority through a competitive and transparent selection procedure.
- (2) The appointing authority shall appoint a Chairperson [or Chief Executive] of the Authority.
- (3) Subject to the provisions of this Act, a member shall hold office for a term not exceeding five years and shall be eligible for re-appointment upon the expiry of his/her term of office, provided that the initial appointment to the Authority upon its establishment shall be for terms of two, three and five years respectively.
- (4) Members shall in discharging their functions have regard to fairness, openness or transparency and accountability to the general public.
- (5) The appointing authority shall in appointing members of the Board -
- (a) have regard to a broad representation of the whole population;

- (b) appoint persons who collectively have knowledge or qualifications or experience in the fields of economics, accountancy, telecommunication technology, engineering, public policy, business practice, finance or law or any other relevant experience.

Appointment
of Chief
Executive

- 8. Where the Chief Executive Officer is not the executive chairperson of the Board the appointing authority shall appoint the Chief Executive Officer through a competitive transparent procedure on the recommendation of the Board.

Disqualification for
appointment as a
member of the
Board

- 9. No person shall be appointed to the Board or hold office as a member or remain a member -
 - (a) who has in terms of any law in force in any country -
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged;
 - (ii) made an assignment to or arrangement or composition with his/her creditors which has not been rescinded or set aside;
 - (b) who has been convicted of a criminal offence of which dishonesty is an element thereof;
 - (c) who holds or has an interest in a licence issued under this Act;
 - (d) whose spouse holds or has an interest in a licence issued under this Act.

Vacation of office
of a member of
the Board

- 10. A member shall vacate his/her office and his/her office shall become vacant -
 - (a) if he becomes disqualified in terms of the provisions of this Act;
 - (b) if he is adjudged bankrupt or declared insolvent;
 - (c) if he is absent from three consecutive meetings of the Board without excuse;
 - (d) upon his death;

- (e) upon termination of his services in accordance with the provisions of this Act;
- (f) upon dismissal;
- (g) upon conviction of a criminal offence of which dishonesty is an element thereof or is sentenced to imprisonment for six months or more without the option of a fine;
- (h) if he becomes mentally or physically incapable of performing his duties as a member;
- (i) if a member or spouse acquires an interest in a licence or becomes a holder of a licence.

Removal from
Office

11. (1) A member may be removed from office for misconduct.
- (2) Where the appointing authority becomes aware of a misconduct of a member, it shall appoint a tribunal, headed by a judge or person qualified to hold judicial office to investigate the alleged misconduct.
- (3) The appointing authority shall act in accordance with the recommendations of the tribunal.

Resignation
of member

- 12 (1) A member may resign from his office by giving notice of not less than three months to the appointing authority.
- (2) The appointing authority shall appoint a member to serve the unexpired term of office of the resigning member.

Suspension

13. The appointing authority shall, in writing, suspend from office a member against whom an investigation by a tribunal has been set up or criminal proceedings instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed.

Filling of
Vacancies

14. Where a vacancy occurs in the membership of the Board either due to the death, resignation or removal from office of a member, the Minister shall appoint a person to take the place of the member who has died, resigned or been removed, for the length of period that would otherwise have been served had such member not died, resigned, or been removed.

Remuneration

15. (1) A member shall be paid such remuneration, allowances and such travelling expenses incurred in connection with his service on the Board as the Minister shall determine.

- (2) The remuneration of a member shall not be reduced during his/her tenure of office.
- Funds of the Authority 16. (1). The Authority's funds shall consist of -
- (a) such monies as may be appropriated by the Parliament;
 - (b) such fees as the Authority may impose for services provided under this Act;
 - (c) such fees as the Authority may impose for licences issued under this Act;
 - (d) such other fees or monies as the Authority may by virtue of this Act raise or impose;
 - (e) fines and other monetary sanctions imposed by the Authority under this Act;
 - (f) contributions or endowments from any other source; or
 - (g) loans.
- (2) The Authority shall use the funds raised under this Act to meet [the cost of its operation] its budget and shall use any surplus accrued for the development of telecommunications.
- (3) (a) The funds of the Authority shall be administered through a bank account approved by the Minister.
- (b) The Authority shall issue policies and procedural rules necessary to administer the funds with approval of the Minister responsible for finance.
- Annual Budget 17. The Authority shall, not less than two months before the beginning of its financial year, submit a budget for its annual operations to the Minister.
- Annual report of activities 18. (1) The Authority shall within six months after the end of the fiscal year or such longer period as the Minister may approve submit a comprehensive report on its operations to the Minister (or the Parliamentary Select Committee).
- (2) The Minister shall cause a copy of the report within thirty days of its receipt together with the auditor's report and the audited accounts to be laid before the National Assembly [or

Parliamentary Select Committee on Finance] as provided under this Act [specify a Section/Accounts & Audit Section].

Appointment of
Auditors and
Audit report

19.
end

- (1) The Authority shall within a period of six months after the end of the fiscal year cause an audit of its accounts.
- (2) The Authority shall appoint qualified external auditors to audit its accounts.

PART III

GENERAL POWERS AND DUTIES OF THE AUTHORITY

General powers
of Authority

20. The Authority may without limiting its powers -
- (a) issue administrative orders, rules and regulations necessary for implementing this Act;
 - (b) appoint, promote, remove and discipline staff;
 - (c) make rules, regulations and orders for the administrative operations of the Authority;
 - (d) have powers of delegation of its authority, which shall not extend to licensing;
 - (e) establish its own internal organisation, including creation of bureaux, divisions and offices as it may deem necessary for the exercise of its powers;
 - (f) grant, amend and revoke licences;
 - (g) oversee the administration of numbering schemes;
 - (h) manage the use of the radio frequency spectrum and satellite orbital locations;
 - (i) set technical standards and procedures to monitor adherence to such standards;
 - (j) contract for services of consultants and advisors as may be necessary and prudent to the conduct of the business of the Authority.

General
functions

21. (1) The Authority shall promote, develop and supervise the provision of efficient local, national, regional and international telecommunication services in [name of country].
- (2) The Authority shall, without limiting the generality of the provisions of this Act -
- (a) take all reasonable steps to promote network development, universal service and access to telecommunication services;

- (b) take all reasonable steps to ensure the efficient and effective use of the radio frequency spectrum;
- (c) promote the range and quality of telecommunication services and other consumer interests;
- (d) promote efficient management and human resource development within the industry;
- (e) promote private ownership of telecommunication operations;
- (f) promote sustainable and fair competition between telecommunication service providers;
- (g) collect and disseminate information for use by industry, consumers and prospective investors;
- (h) take reasonable steps to promote telecommunication services that will satisfy reasonable demands of least advantaged members of the communities for the provision of services such as emergency services, public call box services and directory information services;
- (i) establish advisory committees composed of individuals with appropriate expertise to fairly represent the views and interests of users, consumers and operators and to advise the Authority on specific or technical questions. Such advisory committees shall be appointed and conduct their business according to rules as the Authority may issue.

Indemnity 22. No member or officer of the Authority shall be liable for any damages in respect of any act or omission or thing done by the member or officer in good faith in the execution of the duties or exercise of the powers under this Act.

PART IV

MEETINGS AND PROCEEDINGS OF THE AUTHORITY

Meetings
of the
Board

23. (1) The Board shall, subject to the provisions of this Act, regulate its own procedure.
- (2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions, provided that the Board shall meet at least once a quarter.

...

- (3) The meetings of the Board shall be held at such places, times and days as it may determine.
- (4) The meetings of the Board shall be called by the Chairperson and the Chairperson shall call a special meeting of the Board on receipt of a written request of not less than half of the members of the Board for such a special meeting.
- (5) Half of the members of the Board shall form a quorum.
- (6) The decision of the Board shall be by majority vote and in any meeting of the Board where there is a tie in any voting on any issue the Chairperson shall have both a deliberative and casting vote.
- (7) The Chairperson shall preside at any meeting of the Board, and in his absence any member of the Board elected from their number shall preside and be chairperson for the purposes of that meeting.
- (8) The minutes of each meeting of the Board shall be properly recorded, kept and shall be confirmed at a subsequent meeting.
- (9) The proceedings of the Board shall not be invalidated by reason of any vacancy in its membership.

Declaration
of interest

24. If at any meeting of the Board a member is aware or becomes aware that a matter which affects a member or its spouse beneficially, directly or indirectly is to be discussed or under discussion, the member shall forthwith declare his/her interest or the interest of his/her spouse in the matter, and the Board may, if it considers it appropriate, require such member to recuse himself/herself from deliberations on that matter.

Signification of
Documents

25. All documents made by and all decisions of the Board may be signified under the hand of the Chairperson of the Board or any member or senior officer of the Authority generally or specially authorised in that behalf.

Penalty
shall

26. Any member who fails to comply with the provisions of Section 24 be guilty of an offence and shall be liable upon conviction to a fine of --.

PART V
LICENSING OF TELECOMMUNICATION SERVICES PROVIDERS

Classes of providers
of services

27. The Authority shall from time to time prescribe classes of telecommunication services which may be offered on domestic or international bases and such classes shall include public telecommunication and private telecommunication services.

Licensing of

- providers 28. The Authority shall license such private and public telecommunication services providers as market conditions warrant.
- Delisting of licences 29. The Authority may from time to time determine that a class of licensed services shall in future be provided without prior approval or licensing and shall base such determination of unlicensed class of service if it reaches a conclusion that no harm to either a service provider or consumers shall be occasioned by such determination or decision; following such determination such services shall be deemed an “unlicensed service” even if not so classed by the Authority.
- Records of licensing 30. The records of meetings held to determine grant of licences shall be made available to members of the public on payment of a fee that may be prescribed by the Authority.
- Regulations governing licensing 31. The Authority shall make or establish regulations and procedures that govern the grant of licences and may impose conditions on licences.
- Services under licence 32 (1) Each licence that is granted by the Authority shall describe the services that the licensee shall provide.
- (2) Services which a licensee may provide are, but not limited to, the following services -
- (a) exchange services;
 - (b) domestic long distance services;
 - (c) international public switched voice services;
 - (d) domestic and international telex and telegraph services.
- Control of transfer and assignment of licences 33. No licensee may transfer or assign or sell a licence granted to it under this Act or cede control in the operations of the licence or merge with another person or licensee without prior approval in writing of the Authority.
- Refusal of transfer of

licences

34. The Authority may refuse a cession, sale or assignation of a licence or a merger or takeover of a licence holder when the Authority determines that the objects of this Act may be frustrated.

Review of
agreements entered
into by service
providers

35. (1) Any agreement between licence holders shall be submitted to the Authority for approval and the Authority may review any agreements entered into by licensees to ensure compliance with this Act.
- (4) Any licensee who fails to disclose and submit the existence of an agreement which is likely to affect competition or objects of this Act shall be guilty of an offence and liable to a fine of -----.

PART VI

DUTIES OF PUBLIC TELECOMMUNICATION SERVICE PROVIDERS

Timely provision
of service

36

- (1) When required all licensees and those providing services for which a licence is not required shall furnish telecommunication services upon reasonable request, and all practices and charges with respect thereto shall be reasonable and non discriminatory.
- (2) The Authority may require any licensee after affording the licensee an opportunity to be heard to provide adequate telecommunication facilities for efficient performance of its duties under this Act.
- (3) Where required by the Authority, all public telecommunication services licensees shall -

- (a) establish physical connections with other public telecommunication services providers;
- (b) share networking signaling and data bases with providers of value added services for the transport and termination of telecommunication and information;
- (c) establish and provide the facilities and arrangements in respect of paragraphs (a) and (b);
- (d) establish reasonable charges for rates of service and division of charges for the facilities and arrangements referred to in paragraphs (a) and (b).

Agreements for interconnection 37

- (1) Public telecommunication service providers shall enter into agreements governing the interconnection of their facilities, sharing of infrastructure, local number facilities, and other inter networking and other facilities which the Authority may deem to be in the public interest, as well with providers of value added services, on reasonable and non discriminatory terms.
- (2) Copies of such agreements together with a summary of their principal terms shall be submitted to the Authority; which the Authority shall publish in the government gazette.
- (3) Where public telecommunication service providers fail to agree on terms and conditions of interconnection within a reasonable time/period (which may be prescribed) one or both may request that the Authority establish binding tariffs and the terms and conditions of interconnection.

Submission of inter connection disputes to Authority 38.

- (1) Any disagreements or disputes over interconnection charges terms and practices of public telecommunication service providers shall be submitted to the Authority for resolution.
- (2) In resolving such disputes or disagreement the Authority shall be guided by the following principles -
 - (a) the terms and practices for interconnection arrangements must not discriminate (unjustifiably) between users of interconnection arrangements and similarly situated users;
 - (b) charges for interconnection services and facilities must reflect the public telecommunication service licensee's costs defined as the incremental cost, and may include allowance for a reasonable return on capital investment;

- (c) differences in charges between different users may only be justified based on cost differences directly attributable to providing interconnection for those users.

Submission of agreements governing external inter connections

- 39. (1) Any agreement between a local and foreign public telecommunication service licensee shall be submitted to the Authority for approval or modification to any terms, including accounting rates and settlement arrangements, agreed upon by the parties; but such an agreement shall not be effective until approval or modification by the Authority.
- (2) Public telecommunication service licensees shall comply with international and bilateral arrangements relating to or governing such arrangements as well as any rules prescribed by the Authority concerning such arrangements.
- (4) In approving or modifying international interconnection arrangements the Authority shall take into account exclusionary and discriminatory practices of foreign telecommunication service licensees or providers and authorities and ensure that local telecommunication service licensees are not subjected to unreasonable terms or discrimination by non local licensees or service providers or foreign authorities.

Restriction of resale

- 40. It shall be an offence by a public telecommunication service licensee to restrict the resale of its services, unless the licence provides otherwise.

Rates and charges

- 41. (1) The Authority may regulate the rates and charges of all public telecommunication service licensees provided that no licensee shall be required to offer services under rates or charges that do not permit it to recover its incremental cost of providing such service plus a reasonable return on capital investment.
- (2) A public telecommunication services licensee shall not offer services unless it has prior to offering such services filed its tariff and rates with the Authority and shall not make changes in rates or charges or other terms of the services after applicable tariffs have been filed with the Authority.

- (1) A public telecommunication services licensee shall submit proposals in writing to the Authority of the tariffs, rates and charges it intends to apply for the use of its system and facilities.
- (2) Tariffs shall contain all relevant information concerning rates, charges for services, including deposits, non recurring charges, monthly charges as well as terms and conditions applicable to the provision of services including rights and remedies available to consumers in the event of unauthorised charges or other disputes or claims over billing or provision of services.
- (3) Tariffs proposed by the licensee shall be effective thirty days after filing with the Authority unless within the thirty day period the Authority issues a counter proposal or notice of modification to the licensee.
- (4) Notice of any such filing shall be published by the Authority for public information and to allow consumers to comment on the reasonableness of the tariffs.
- (5) Any failure to make a counter proposal or to approve the proposed tariffs shall entitle the licensee making the proposal to impose the tariff proposed and the Authority shall be deemed to have approved the proposed tariff and shall publish it in the government gazette.
- (6) Where the Authority and a licensee fail to reach an agreement on the proposed tariff and counter proposal, a licensee may appeal to a tribunal of three persons appointed by the Chief Justice.
- (7) The Chairperson of the tribunal shall be a judge of the High Court or a person qualified to be appointed as a judge of the High Court.
- (8) The tribunal shall make its decision within thirty days of lodgement of the appeal.
- (9) Any licensee who fails to lodge an appeal of the decision of the Authority within sixty days of his/her submission of tariff proposal to the Authority shall be deemed to have abandoned his/her tariff proposal and accepted the counter proposal of the Authority which the Authority shall be entitled to publish as the approved tariff submitted by the licensee.
- (10) All tariff proposals approved in terms of this Act shall come into force and effect from the date of such approval.

(11) A licensed public telecommunication service provider shall make its tariffs available to the public.

Accuracy of
record of tariff

43. (1) Every public telecommunication service provider shall keep an accurate record of its tariffs which shall be filed with the Authority.

(2) No increases in the rates or charges for all the services required to be offered under a tariff shall be made which exceed the tariff filed with the Authority.

Restriction
against changes
to tariff

44. No licensed public telecommunication service provider shall charge or offer tariff rates or charges that are below the true cost [in accordance with accepted guidelines for accounting principles established for the industry] for providing such a service.

Costing
information

45. Tariff filings shall be accompanied by all accounting and costing information as the Authority shall require.

Accounting
procedure

46. The Authority shall prescribe reasonable accounting procedures for the costs of operations which procedures shall be followed and implemented by all public telecommunication service providers.

Reporting
requirements

47. (1) Any person who provides public telecommunication service shall file with the Authority his/her annual reports and any occasional reports that he/she may issue from time to time.

(2) The Authority may require all or any class of public telecommunication service providers in filing annual and occasional reports to include in such reports -

(a) the amount of capital stock issued;

(b) the amount and privileges of each class of stock;

(c) the amounts paid for each class of stock and the manner of payment for the same;

(d) the dividends paid;

(e) any surplus capital;

(f) the debts of the company and interest payable thereon;

(g) the names and addresses of the holders of stock of one per cent or above;

(h) the names and addresses of directors and officers and salaries and compensation paid to each;

(i) the earnings and expenses from all sources and complete statements of the financial operations.

(3) The Authority may require any public telecommunication service provider to file with the Authority copies of any contract or agreement entered into with other public or private telecommunication service providers or any persons including resellers.

(4) Any person who fails to file any document required to be filed with the Authority in terms of this section shall be guilty of an offence and liable on conviction to a fine of -----.

(5) Where any person treats any information as a trade secret or any financial, commercial, scientific or technical information as confidential such person may in submitting the information to the Authority designate the information as confidential.

(6) Any member, employee or agent of the Authority who discloses the contents of any document submitted to the Authority in terms of the provisions of this section under cover of confidentiality or which is confidential shall be guilty of an offence and be liable to a fine of -----.

Access restriction
and denial

48. (1) The Authority may, for the purposes of preserving confidentiality, reasonably deny or restrict access to any documents or information requested by any person f

(2) Except to the extent that reports and any documents filed with the Authority under this Act contain confidential information, such reports and documents shall be open to the public and may be made available to members of the public on payment of a fee and may be inspected by interested persons during the normal business hours of the Authority.

Universal
access

49. (1) The Authority shall develop annual objectives for services to be provided with the purpose of ensuring that the public telecommunication service, in particular basic telephone service, is accessible to the widest number of users.

(2) The Authority may establish a fund into which providers of telecommunication services (public and private) shall pay any fees the Authority may prescribe as universal access development fees.

OR

- (2) The Authority may make it a condition of a grant of a licence that every provider of public telecommunication services shall establish a universal access fund the proceeds of which shall solely be used with the Authority's approval for the development and expansion of its telecommunication service infrastructure in areas where there are no services and to provide access to widest users including those with disabilities.

PART VII

ADDITIONAL POWERS AND RESPONSIBILITIES OF THE AUTHORITY

- | | | |
|---------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equipment
Standard | 50. | The Authority may establish technical standards applicable to telecommunication equipment and CPE to ensure against harm to telecommunication networks or services or to public health, safety or the environment. |
| Type approval
And inspection | 51. | <p>(1) The Authority may prescribe regulations specifying the types of telecommunication equipment (hereinafter referred to as "type approval") which may be used for providing a telecommunication service for operating or connecting to a telecommunication system or for terminal equipment.</p> <p>(2) No person who provides a telecommunication service or supplies telecommunication equipment shall use or supply as</p> |

the case may be any telecommunication equipment which does not comply with technical standards prescribed by the Authority.

- (3) The Authority may by regulations type approve any telecommunication equipment by reference to a type approval used in another country.
- (4) The Chief Executive shall appoint and authorise in writing any staff member or agent to enter and carry out any inspection or investigation permitted under this Act.
- (5) The inspector or agent of the Authority appointed to carry out any inspection or investigation permitted under this Act may without notice enter the premises and carry out his inspection or investigation without notice and may take or seize any document or information he may require from any person under inspection or investigation.
- (6) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of

PART VIII

MANAGEMENT OF THE USE OF THE RADIO FREQUENCY SPECTRUM

Frequency
management

52. (1)

The Authority, in managing the use of the radio frequency spectrum, including spectrum and orbital locations used by satellite services, shall -

- (a) establish, in conjunction with all major stakeholders, including the sound and television broadcasting industries, a national frequency allocation table which may be revised from time to time according to circumstances;
- (b) assign, using the necessary coordination procedures, frequencies or groups of frequencies for use by licensees

of telecommunication services and other radio-based systems;

- (c) monitor the use of the spectrum for purposes of eliminating harmful interference, frequency allocation planning and frequency assignment and for making spectrum-occupancy related information available to industry and consumers;
 - (d) make and publish regulations necessary for the management of the use of the spectrum and in making regulations the Authority shall take into account socio-economic imbalances;
 - (e) prescribe tariffs for the use of the radio frequency spectrum;
 - (f) in the allocation and assignment of frequencies give due regard to the requirements of safety and emergency services;
 - (g) where necessary, specify compatibility standards for the interworking of radio frequency equipment and ensure that the standards are adhered to;
 - (h) represent the country in international fora on matters regarding spectrum management.
- (2) In carrying out its functions under sub-section (1) the Authority shall -
- (a) take into account international agreements and conventions;
 - (b) manage the spectrum in accordance with policies as prescribed by the Minister and in a manner which ensures the effective and efficient use of the spectrum.
- (3) The Authority shall allocate and assign radio frequency spectrum to -
- (a) commercial and other telecommunication and sound and television broadcasting operations;
 - (b) government departments or organs;
 - (c) private and amateur wireless operations licensees
- (4) The Authority, in exercising its powers under this section, shall give due regard to the frequency allocation plans adopted in other countries in the region.

Grant of
licences

53. (1) The Authority may grant licences to utilise radio frequencies in accordance with the radio frequency allocation table.
- (2) Applications for licences to utilise radio frequencies shall include such facts as the Authority may by regulation prescribe as to character, financial, legal and technical qualifications of the applicant to construct and operate a facility utilising radio frequencies.
- (3) The Authority may require an applicant to provide updated or supplemental information during the pendency of an application, at any time during the licence term and upon application for renewal of the licence.
- (4) The Authority may impose reasonable terms, conditions of technical nature or restrictions on radio frequency licences necessary to ensure that the operations of licensees meet the purposes of this Act.
- (5) The Authority shall not undertake any measures that may adversely affect safety and emergency radio services.
- (6) The Authority may prescribe reporting and inspection procedures that seek to verify substantial compliance with the provisions of this Act.

Competitive bidding
for licences

54. (1) The Authority may, for the purpose of assigning radio frequency spectrum, use competitive bidding procedures if it determines that it would be in the public interest where-
- (a) a licence is to be granted to a new applicant; or
- (b) competing and mutually exclusive applications have been filed by qualified applicants.
- (2) The Authority shall prescribe rules and procedures which shall ensure that only bona fide bidders participate in bidding.

PART IX

ACCESS TO AND USE OF PUBLIC AND PRIVATE PROPERTY

Access to and use of

public property 55.

- (1) Subject to the provisions of this section, a public telecommunication service provider may, for the purposes of providing telecommunication services to the public, enter upon any public property, and construct and maintain thereon or alter or remove a telecommunication facility, provided in doing so it does not interfere unduly with the use and enjoyment of such public property.
- (2) Prior to constructing or installing any telecommunication facility or public property, a public provider shall obtain approval of the relevant authority having jurisdiction for entry, construction or installation of a telecommunication facility and such approval shall not be unreasonably denied.

- (3) Where approval is denied or terms and conditions of approval are not acceptable where no authority is charged with authorising such use, a telecommunication service provider shall appeal to the Minister whose decision shall be final.
- (4) The Authority shall establish procedures [and guidelines] for approval to use public property and may establish guidelines for the use of public property including existing conduits, towers and other structures as may be in existence.
- (5) Any authority charged with responsibility to approve the use of public property shall in considering applications to use public property take into account the following factors -
 - (a) the efficient and economic use of public resources;
 - (b) the security of officials and the records located on such property and operations that take place on such property;
 - (c) public safety and convenience;
 - (d) the economic, social and aesthetic benefits of the proposed land use;
 - (e) compliance with applicable environmental laws and policies.
- (6) For the purposes of this section, public property includes a road, street, road reserve, building, any railway, footpath, water way and land reserved for public purposes.

Use of private
property

56. (1) Where the acquisition of any private property or an interest in any private property by a public telecommunication service provider is reasonably required for the purposes of providing telecommunication services to the public and no reasonable alternatives to such acquisition exist, the provider shall -
- (a) provide notice of the proposed acquisition to the owner of the property and other property owners who reasonably could be expected to be affected by the proposed acquisition, and seek their written comments on the proposed acquisition;
 - (b) obtain the consent of the property owner to the acquisition or use of such property.
- (2) In the absence of such consent or on failure to agree to terms of purchase, the public telecommunication service provider may apply to the relevant authority having jurisdiction over

such private property to cause such authority to undertake the proposed acquisition under applicable expropriation laws.

- (3) Where there is no relevant authority charged with undertaking such acquisition of private property, the Authority shall undertake the proposed acquisition.
- (4) The public telecommunication service provider shall indemnify the relevant authority against all the costs of acquisition of the property under expropriation laws including amounts payable to the owner of the property to be acquired.

PART X

OFFENCES, PENALTIES AND ENFORCEMENTS

Offences
and
penalties

57

(1) No person shall operate a telecommunication service without licence as required under this Act.

(2) Any person who -

- (a) makes abusive, threatening or obscene calls;
- (b) obtains a telecommunication service with intent to avoid payment of applicable charges for such service;

- (c) uses a telecommunication service required to be licensed, knowing it to be unlicensed;
- (d) provides without being licensed telecommunication services required to be licensed;
- (e) intentionally modifies or interferes with the contents of any message sent by means of a telecommunication service;
- (f) engages in interception or tracing of telecommunication operations or messages unless authorised by the Authority or other appropriate governmental authority;
- (g) intentionally damages telecommunication facilities belonging to another person;
- (h) contravenes any provision of this Act where a penalty has not been provided;

shall be guilty of an offence and liable to a fine of -----
 ---- or to a term of imprisonment not exceeding twelve
 months or both.

- (3) All fines imposed and payable under this Act shall be paid into the funds of the Authority.

Production of books
 and records 58.

- (1) The Authority may by notice in writing direct a licensee to produce or furnish to the Authority at a time and place specified in the notice, such accounts, records and other documents or information specified in such notice and relating to any matter in respect of which a duty is imposed on the licensee under this Act.
- (2) Any licensee who fails to comply with the provisions of this section shall be guilty of an offence.

Inquiries and
 investigations 59.

- (1) The Authority may on its own motion or on application by an interested person conduct enquiries and investigations with respect to any activity prohibited or permitted to be done under this Act and the Authority may appoint inspectors for the purpose.
- (2) If it appears to the Authority that a contravention has occurred, the Authority may issue an enforcement order providing the subject of such order thirty days in which to comply with the order or agree with the Authority on a course of action to remedy the contravention.

- (3) Any person who fails to comply with an order issued by the Authority shall be guilty of an offence.
- (4) The Authority shall have the powers to enforce the provisions of this Act, and notwithstanding the foregoing, nothing in this Act shall oust the jurisdiction of the civil courts provided that no person shall be punished twice for the same offence.

Powers of enforcement

- 60. The Authority shall have all the powers of the superior courts of record necessary to enforce and adjudicate on any matter or proceedings under this Act.

Settlement of disputes

- 61. The Authority shall adjudicate disputes and complaints arising between-
 - (a) telecommunication service providers;
 - (b) telecommunications service providers and consumers;and shall establish procedures for the adjudication of such disputes or complaints.

PART XI

RESTRUCTURING OF THE INCUMBENT NATIONAL OPERATOR:

National
operator

62 The incumbent national operator shall be restructured in accordance with the provisions of the first Schedule.

Transitional
provisions

63. (1) Any person granted a licence and lawfully providing telecommunication services consistent with the provisions hereof before the effective date of this Act shall be deemed to be a licensee under this Act.

(2) The material terms of the licence shall be made to conform to this Act and such licence shall be subject in all respects to the provisions of this Act.

(3) Any person providing telecommunication services for which there was no requirement to be licensed before the commencement of this Act, where such services are required to be licensed under this Act, shall apply for a licence within thirty days of the coming into force and effect of this Act and shall continue to provide services pending the determination of his application.

(4) Any person who fails to apply for a licence within the thirty day period and continues to provide services as before shall be guilty of an offence and liable to a fine of -----

(5) All applications for licences pending before entry into force of this Act shall be transferred to the Authority for determination.

(6) Applicants shall be afforded an opportunity to amend their applications to conform to the provisions of this Act.

Repeals and
savings

64. (1) The following Acts are hereby repealed:

(2) The following Acts are amended as follows:

SCHEDULE I

RESTRUCTURING OF THE INCUMBENT NATIONAL OPERATOR

Arrangement of paragraphs:

1. Incorporation of public company
2. Share allotment
3. Classes of shares
4. Transfer of assets and liabilities
5. Transfer of employees
6. Rights and privileges
7. Privatisation of public company
8. Ownership of shares
9. Resignation and election of directors
10. Tax exemption

SCHEDULE I

RESTRUCTURING OF THE INCUMBENT NATIONAL OPERATOR

- | | | |
|------------------------------------|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Incorporation of new company | 1. | The Minister shall within a period of not more than two years from the date of commencement of this Act cause to be incorporated a public company limited by shares under the Companies Act. |
| Share allotment | 2. | In allotting shares, the directors of the public company shall reserve shares for local, national and international telecommunication and related services providers. |
| Classes of shares | 3. | The articles of association may establish different classes of have different voting rights relating to the respective functions and responsibilities of each class or the management and governance of the public company. |
| Transfer of assets and liabilities | 4. | <p>(1) The Minister shall determine which assets and liabilities currently owned or controlled by the incumbent national operator shall be transferred to the new company.</p> <p>(2) The Minister shall by notice published in the government gazette determine the date of transfer of the assets and liabilities of the incumbent national operator to the public company.</p> <p>(3) The date of transfer of assets and liabilities shall equally be deemed to be the date upon which the Telecommunications Act [Act No. 19.....] is repealed. [The statute incorporating the incumbent national operator.</p> <p>(4) All bonds, deeds, contracts, documents and working arrangements that subsisted immediately before the transfer date and to which the incumbent national operator was a party shall on and after that date be fully effective and enforceable against or in favour of the public company.</p> |
| Transfer of employees | 5. | All employees in the service of the incumbent national operator shall be entitled to be transferred to the public company without losing their period of service and on terms and conditions not less favorable than those enjoyed by them prior to their transfer and any service with the incumbent national operator shall be deemed to be service with the public company. |

Rights and
privileges

6. The new company shall have the rights and privileges which have been granted to the incumbent national operator subject to the provisions of this Act.

Privatisation of
new company

7. (1) The Minister is hereby authorised under this Act to cause the public company to be privatised by selling its shares to persons, citizens, local persons and non citizen persons.
- (2) In so doing the Minister shall determine the best pricing method, which may include competitive bids, private placements or public offerings of the company's shares.

Ownership of
shares

8. No person shall be allotted, buy or acquire, hold or own directly or indirectly ten per centum or more of the shares of the public company without the prior written consent of the Government.

Resignation and
election of
directors

9. (1) The Minister shall immediately prior to the initial sale of shares to interested persons procure the resignation of all the directors of the public company; who shall continue to hold office until their successors are elected.
- (2) A new board of directors shall be elected at a general meeting of the new company held immediately after the initial sale of the shares pursuant to the provisions of the Companies Act.

Tax exemption

10. The public company is hereby exempted from payment of any tax on its income profits or gains for a period of ----- years from date of its incorporation. [This may be permissible under tax legislation or may not be necessary.]

SCHEDULE II

CONSTITUTION OF THE BOARD AND BUSINESS OF THE AUTHORITY

Arrangement of Paragraphs:

1. Appointment and payment of members
2. Business of the Board
3. Meetings of the Board
4. Public availability of information
5. Maintenance of public register of licences
6. Procedures for determining applications
7. Public access to information
8. Hearings of applications
9. Written decisions of Authority
10. Compulsory attendance
11. Notification of dispute settlements

SCHEDULE II

Composition and Business of the Authority

Appointment and
payment of
members

1. (1) In the appointment of the Board, the Minister may specify whether the appointment is on a full time or part time basis being guided by the requirements of the business of the Authority.
- (2) Where appointments are on a full time basis, remuneration of the members shall not compare less favourably with those of persons appointed to judicial office and/or it shall be commensurate with their status and responsibilities.

Business of the
Board

2. The Board for the efficient discharge of its duties may constitute itself into several committees as it deems fit and may establish such advisory committees comprised of experts or individuals possessed of appropriate expertise to fairly represent views and interests of users and operators and to advise members and staff of the Authority.

Meetings of the
Board

3. (1) Meetings of the Authority shall be held regularly.
- (2) The Authority may invite any expert or adviser to sit in its meetings during its deliberations and the proceedings of the Authority shall not be held invalid on that account.
- (3) In any licensing meeting, no person may disclose to any other person information or documents where the disclosure may invade personal privacy or injure or harm the security or interests of the State.

Public availability
of information

4. The Authority shall establish and publish in the government gazette internal procedures to make the following documents and information publicly available -
 - (a) documents describing its organisation and the places at which the employees from whom, and the methods whereby the public may obtain information, make submissions or requests or obtain copies of decisions;
 - (b) rules and procedures, description of forms available and places from which they are obtainable.

Maintenance of public register of licences

5. (1) The Authority shall maintain a public register, in such details as it may determine of all licences it issues, amends or revokes.
- (2) [The register shall contain the name of licensee, directors of licensee, address of licensee etc.]

Procedures for determining applications

6. The Authority shall establish procedures to be followed in proceedings before it, to determine applications for licences and such procedures shall establish the format of licence applications, full details to be provided, publication of licence application, invitation to objections and time schedule for replies to objections.

Public access to information

7. Any person may have access to non confidential or information on payment of entry and search fees that may be charged and upon payment of fees that may be levied, the Authority shall make available copies of documents or information requested by such person.

Hearings of applications

8. (1) Applicants for licences may -
 - (a) appear in person or through their representatives; and
 - (b) submit their applications either orally or in writing such submission shall be placed on public record.
- (2) There shall be no private meetings between members of the Authority or its staff and interested parties relating to the substance of contested proceedings.
- (3) Applications for licences shall be held in public.

Written decisions of the Authority shall be in writing

9. (1) In consideration of the application for the licence, the Authority shall take into account any submission whether written or oral made by the applicant and interested parties and shall state its decision in writing and incorporating all the rules taken into consideration.
- (2) The decision of the Authority shall be made public and shall become effective thirty days thereafter unless the Authority for good cause waives the thirty day period.

Compulsory
Attendance

10. The Authority may issue subpoenas for the attendance and examination of witnesses and production of documents at its hearings and shall exercise such powers inherent in the superior courts of record necessary for the exercise of its powers and performance of its duties.

Notification of
dispute settlement
by parties

11. All parties involved in disputes before the Authority shall, within fourteen days of privately settling their dispute, inform in writing the Authority of the terms of the settlement.