



LAWS OF KENYA

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## **KENYA INFORMATION AND COMMUNICATIONS ACT**

CHAPTER 411A

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**CHAPTER 411A**

**KENYA INFORMATION AND COMMUNICATIONS ACT**

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## CHAPTER 411A

## KENYA INFORMATION AND COMMUNICATIONS ACT

[Date of assent: 1st October, 1998.]

[Date of commencement: 15th February, 1999: sections 2-4, 5 (i>1)-(4), 6-22,  
84, 102;  
26th April, 1999: sections 23-83, 85-101;  
1st July, 1999: section 103;  
1st July, 2004: section 5 (5).]

**An Act of Parliament to provide for the establishment of the Communications Commission of Kenya, to facilitate the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce to provide for the transfer of the functions, powers, assets and liabilities of the Kenya Posts and Telecommunication Corporation to the Commission, the Telkom Kenya Limited and the Postal Corporation of Kenya, and for connected purposes**

[L.N. 22/1999, L.N. 39/1999, L.N. 84/1999, L.N. 63/2004, Act No. 1 of 2009, Act No. 6 of 2009, Act No. 4 of 2012, Act No. 12 of 2012.]

## PART I – PRELIMINARY

## 1. Short title

This Act may be cited as the Kenya Information and Communications Act, 1998.

[Act No. 1 of 2009, s. 3.]

## 2. Interpretation

(1) In this Act unless, the context otherwise requires—

“**access**” in relation to any computer system”, means instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system;

“**act of vandalism**” means any willful, negligent, reckless or malicious act of stealing, destroying, damaging or breaking into telecommunications apparatus, lines, installations, hardware, software or plant used for telecommunication services and systems;

“**advanced electronic signature**” means an electronic signature which meets all the following requirements—

- (a) is uniquely linked to the signatory;
- (b) is capable of identifying the signatory;
- (c) it is created using means that the signatory can maintain under his sole control; and
- (d) it is linked to the data to which it relates in such a manner that any subsequent change to the data is detectable;

“**agreement**” includes decisions or practices;

“**Board**” means the Board of Directors constituted under section 6;

**“broadcaster”** means any legal or natural person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service, irrespective of technology used;

**“broadcasting”** means unidirectional conveyance of sounds or television programmes, whether encrypted or not by radio or other means of telecommunications, for reception by the public;

**“broadcasting service”** means any service which consists of the broadcasting of television or sound broadcasting programs to the public, sections of the public or subscribers to such a service;

**“broadcasting signal distribution”** means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area by means of a telecommunication process and includes multi-channel distribution;

**“certificate”** means a record which is issued by a certification service provider for the purpose of supporting a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair; identifies the certification service provider issuing it; names or identifies the person to whom it is issued; contains the public key of the person to whom it is issued; and is signed by a responsible officer of the certification service provider issuing it;

**“certification service provider”** means a person who has been granted a licence to issue a digital signature certificate;

**“Commission”** means the Communications Commission of Kenya established under section 3;

**“community”** includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

**“community broadcasting service”** means a broadcasting service which meets all the following requirements—

- (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships or membership fees, or by any combination of the aforementioned;

**“computer”** means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, software and communication facilities which are connected or related as a system or network;

**“computer service”** includes data processing and the storage or retrieval of data;

**“computer system”** means a device or collection of devices including input and output devices but excluding calculators which are not programmable and capable of being used in conjunction with external files which contain computer programmes, electronic instructions and data that perform logic, arithmetic, data storage, data retrieval, communication control and other functions;

**“country code top-level domain”** means top-level domain .ke used and reserved for Kenya;

**“courier services”** means any specialised service for the collection, despatch, conveyance, handling and delivery of postal articles;

**“customs law”** means any law relating to the collection of customs duties or transfer tax;

**“data”** means information recorded in a format in which it can be processed by equipment operating automatically in response to instructions given for that purpose, and includes representations of facts, information and concepts held in any removable storage medium;

**“Director-General”** means the Director-General of the Commission appointed under section 6;

**“document of title”** means a formal document that is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers;

**“dominant telecommunications service provider”** means a licensee who has been declared by the Commission to be a dominant telecommunications service provider pursuant to section 84W(4) of this Act;

**“e-Government services”** means public services provided electronically by a Ministry or Government department, local authority, or any body established by or under any law or controlled or funded by the Government;

**“electronic”** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

**“electronic form”** with reference to information, means any information generated, sent, received or stored in magnetic, optical, computer memory, microfilm or similar device;

**“electronic Gazette”** means the Kenya Gazette published in electronic form;

**“electronic record”** means a record generated in digital form by an information system, which can be transmitted within an information system or from one information system to another and stored in an information system or other medium;

**“electronic signature”** means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message;

“**encryption**” means a method transforming signals in a systematic way so that the signal would be unintelligible without a suitable receiving apparatus;

“**equipment**” includes any appliance, apparatus or accessory used or intended to be used for communication services;

“**financial year**” means a financial year within the meaning of section 18;

“**franking machine**” means a machine for the purpose of making impressions on postal articles to denote pre-payment of postage and includes any meter or meters and any franking or date-stamping die incidental thereto;

“**free-to-air service**” means a service which is broadcast without encryption and capable of being received by conventional broadcasting receiving apparatus;

“**function**” includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer system;

“**Fund**” means the Universal Service Fund established by section 84J of this Act;

“**information and communication technologies**” means technologies employed in collecting, storing, using or sending out information and include those involving the use of computers or any telecommunication system;

“**installation or plant used for posts**” includes all buildings, lands, structures, machinery, equipment, boxes and receptacles used or intended for use in connection with the transmission of postal articles by post;

“**intercept**” in relation to a function of a computer, includes listening to, or recording a function of a computer, or acquiring the substance, its meaning or purport of such function;

“**Kenyan programme**” means sounds or vision or a combination of both whose content comply with the classification of local content as may be required by the Commission from time to time;

“**letter**” means any written or printed communication conveying from one person to another particular information upon matters personal to such persons or information upon which it is intended that the recipient should reply, act or refrain from acting, but does not include any written or printed communication which is a newspaper or a periodical accompanied by any other communication;

“**licence**” means any licence issued under this Act;

“**mail bag**” means any bag, container, envelope or covering in which postal articles are conveyed;

“**Minister**” means the Minister for the time being responsible for communications;

“**modification**” means a modification of the contents of any computer system by the operation of any function of that computer system or any other computer system as a result of which—

- (a) any program or data held in the computer system is altered or erased;

- (b) any program or data is added to its contents; or
- (c) any act occurs which impairs the normal operation of the computer system;

“**parcel**” means a postal article which is posted at the office of a licensee as a parcel or is received at another office:

Provided that the said parcel is not smaller than the minimum size or heavier than the maximum weight prescribed;

“**password**” means any data by which a computer service or a computer system is capable of being obtained or used;

“**possession**”, “be in possession of” and “have in possession” have the meanings assigned to such expressions in section 4 of the Penal Code, (Cap. 63);

“**post**”—

- (i) when used with reference to telecommunication includes any pole, standard, stay, strut or other above-ground contrivance for installing, carrying, supporting or suspending a telecommunication line; and
- (ii) when used with reference to the transmission of postal articles by post, means any system for the collection, despatch, conveyance, handling and delivery of postal articles;

“**post office**” means any building, house, room, receptacle, vessel, vehicle or place where postal articles are received, delivered, sorted, made up or despatched;

“**postage**” means the fee chargeable for the transmission by post of postal articles;

“**postage stamp**” means any label or stamp for denoting any postage or other sum payable in respect of a postal article, and includes an adhesive postage stamp or a stamp printed, impressed or otherwise indicated on a postal article, whether issued by the Government of Kenya or any other country;

“**postal article**” means any article or thing transmissible by post, including but not limited to letters, aerogrammes, postcards and parcels but does include such article or thing as the Commission determines not to be transmissible by post;

“**postal service**” means any service by post;

“**postcard**” means a card recognised as a postcard in accordance with the terms of the Convention regulating the affairs of the Universal Postal Union;

“**posting box**” includes any pillar box, wall box, any other box or receptacle provided by or under the authority of the public postal licensee for the purpose of receiving postal articles for transmission by or under the authority of the public postal licensee;

“**private broadcaster**” means a person licensed by the Commission under this Act to provide commercial broadcast services;

“**private letter box/bag**” means any receptacle whether identified by a distinctive number or not rented to a person for the receipt of postal articles and capable of being used whether the person or company renting it has his business premises open or not;

“**programme**” means sound, vision or a combination of both, intended to inform, educate or entertain, but does not include text or data;

“**public broadcaster**” means the Kenya Broadcasting Corporation established by the Kenya Broadcasting Corporation Act (Cap. 221);

“**public broadcasting services**” means broadcasting services of the public broadcaster;

“**public postal licensee**” means the Postal Corporation of Kenya established under the Postal Corporation of Kenya Act, 1998 (No. 3 of 1998);

“**public postal licensee’s installation or plant**” means any installation or plant used for postal purposes belonging to or used by the public postal licensee;

“**radio communication**” means the emitting or receiving over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megahertz being energy which either—

- (i) is capable of being transmitted through a telecommunication system; or
- (ii) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence or, motion of any object or objects of any class;

“**radio communication apparatus**” means any apparatus capable of being used or adapted for radio communication and where the context so requires, includes a radio communication station;

“**radio communication station**” means any telecommunication station capable of being used or being adapted for radio communication;

“**repository**” means a system for storing and retrieving certificates or other information relevant to certificates;

“**signatory**” means a person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person or entity he represents;

“**signature-creation data**” means unique data, such as codes or private cryptographic keys, which are used by the signatory to create an electronic signature;

“**signature-creation device**” means configured software or hardware used to implement the signature-creation data;

“**subscription management service**” means a service which consists of the provision of support services to a subscription broadcasting service which support services may include, but not limited to, subscriber management support, subscription fee collection, call centres, sales and marketing, and technical and installation support;

**“telecommunication apparatus”** means apparatus constructed or adapted for use in transmitting anything which is transmissible by a telecommunication system or in conveying anything which is transmitted through such a system;

**“telecommunication line”** means any wire, cable, tube, pipe or other similar thing which is designed or adapted for use in connection with the operation of a telecommunication system or a radio communication apparatus with any casing, coating, tube or pipe enclosing the same and any appliances and apparatus connected therewith for the same; and includes any structure, post or other thing in, by or from which any telecommunication and radio-communication apparatus is or may be installed, supported, carried or suspended;

**“telecommunication officer”** means any person employed either permanently or temporarily by a telecommunication operator in connection with a telecommunication system licensed under section 79;

**“telecommunication operator”** means a telecommunication operator licensed under section 79;

**“telecommunication service”** means any of the following—

- (i) a service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (i) to (v) in the definition of **“telecommunication system”**;
- (ii) a service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system; or
- (iii) a directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (i) above and provided by means of that system;

**“telecommunication system”** means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of—

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) data;
- (iv) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or
- (v) signals serving for the activation or control of machinery or apparatus and includes any cable for the distribution of anything falling within (i) to (iv) above;

**“Tribunal”** means the Appeals Tribunal set up under section 102 of this Act;

**“vandalize”** means to commit an act of vandalism;

“**vessel**” includes any ship, boat, air-cushioned vehicle or floating rig or platform used in navigation.

(2) For the purpose of this Act, a telecommunication system is operated by the person who controls and manages it by himself or through servants or agents.

(3) In this Act—

- (a) a postal article shall be deemed to have been delivered—
  - (i) to the addressee, if it is delivered into the private letter box of the addressee, leaving it at the house, or office of the addressee as set out thereon, or with his employee or agent or other persons authorised to receive it and, where the addressee is a guest or is resident at a hotel, hostel or lodgings, it is left with the proprietor or manager thereof or with his agent; or
  - (ii) to a postal services operator licensed under section 51, if it is deposited into a posting box or handed over to an employee or agent of a postal services operator authorised to receive it;
- (b) a postal article shall be deemed to be in the course of transmission by post from the time of its being delivered to the public postal licensee until the time of its being delivered to the addressee, or it is returned to the sender or otherwise disposed of under the provisions of this Act;
- (c) save as otherwise agreed to between the originator and the addressee—
  - (i) the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator;
  - (ii) if the addressee has a designated computer resource for the purpose of receiving an electronic record, receipt occurs at the time when the electronic record enters the designated computer resource; or
  - (iii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; or
  - (iv) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee;
  - (v) an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business; and
  - (vi) the provisions of subparagraph (v) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under subparagraphs (ii) or (iii).

[Act No. 1 of 2009, s. 4, Act No. 12 of 2012, Sch.]



## PART II – COMMUNICATIONS COMMISSION OF KENYA

**3. Establishment of Commission**

(1) There is hereby established a Commission to be known as the Communications Commission of Kenya.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

**4. Headquarters**

The Headquarters of the Commission shall be in Nairobi.

**5. Object and purpose of the Commission**

(1) The object and purpose for which the Commission is established shall be to licence and regulate postal, information and communication services in accordance with the provisions of this Act.

(2) The Commission shall have all powers necessary for the performance of its functions under this Act.

(3) The Commission may enter into association with such other bodies or organisations within or outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.

(4) The Commission shall, in the performance of its functions under this Act have regard to—

- (a) any policy guidelines of a general nature relating to the provisions of this Act notified to it by the Minister and published in the *Gazette*;
- (b) Kenya's obligations under any international treaty or agreement relating to the provisions of telecommunication, radio and postal services.

(5) Deleted by Act No. 1 of 2009, s. 5.

[L.N. 63/1999, Act No. 1 of 2009.]

**5A. Minister to issue policy guidelines**

(1) The Minister may issue to the Commission policy guidelines of a general nature relating to the provisions of this Act as may be appropriate.

(2) The guidelines referred to under subsection (1) shall be in writing and shall be published in the *Gazette*.

[Act No. 1 of 2009, s. 6.]

**5B. Independence of the Commission**

Except as provided for under this Act or any other law, the Commission shall exercise its functions independent of any person or body.

[Act No. 1 of 2009, s. 6.]

**6. Board of Directors**

(1) The management of the Commission shall vest in a Board of Directors of the Commission which shall consist of—

- (a) a chairman who shall be appointed by the President;
- (b) the Director-General who shall be appointed by the Minister;
- (c) the Permanent Secretary in the Ministry for the time being responsible for Information and Communications or his representative;
- (d) the Permanent Secretary in the Ministry for the time being responsible for Finance or his representative;
- (e) the Permanent Secretary in the Ministry for the time being responsible for internal security or his representative;
- (f) at least seven other persons, not being public officers, appointed by the Minister and of whom—
  - (i) at least one shall have knowledge or experience in matters relating to law;
  - (ii) at least one shall have knowledge or experience in postal services;
  - (iii) at least one shall have knowledge or experience in matters relating to broadcasting;
  - (iv) at least one shall have knowledge or experience in matters relating to radio communications;
  - (v) at least one shall have knowledge or experience in matters relating to information technology or computer science;
  - (vi) at least one shall have knowledge or experience in matters relating to telecommunications; and
  - (vii) at least one shall have knowledge or experience in consumer protection matters.
- (g) *Deleted by Act No. 1 of 2009, s. 7.*

(2) The Minister shall have due regard to registered societies representing such matters in exercising his powers under this section.

[Act No. 1 of 2009, s. 7.]

**7. Powers of the Board**

The Board shall have all the powers necessary for the performance of the functions of the Commission under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) manage, control and administer the assets of the Commission in such manner and for such purposes as best promote the purposes for which the Commission is established;

(b) receive any gifts, grants, donations or endowments made to the Commission or any other monies in respect of the Commission and make disbursements therefrom in accordance with the provisions of this Act;

(c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Commission;

(d) open a banking account or banking accounts for the funds of the Commission; and

(e) invest any monies of the Commission not immediately required for the purposes of this Act in the manner provided in section 21.

#### **8. Conduct of business and affairs of the Board**

The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule, but subject thereto, the Board may regulate its own procedure.

#### **9. Delegation by the Board**

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Commission the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

#### **10. Remuneration of Board members**

The Board, in consultation with the Minister, shall pay to members of the Board such remuneration, fees or allowances for expenses as it may determine.

#### **11. The Director-General**

(1) The Director-General shall be the chief executive of the Commission and shall, subject to the directions of the Commission, be responsible for the day to day management of the Commission.

(2) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

#### **12. Secretary to the Board**

(1) There shall be a Secretary to the Board who shall be appointed on such terms and conditions as the Board may determine and who shall perform such duties as the Board may, from time to time, assign.

(2) In the performance of his duties under this Act, the Secretary shall be responsible to the Director-General.

#### **13. Staff of the Commission**

The Board may appoint such officers or servants as are necessary for the proper discharge of the functions of the Commission under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

**14. The common seal of the Commission**

(1) The common seal of the Commission shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Commission, when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

**15. Protection from personal liability**

Subject to section 16, no matter or thing done by a member of the Board or by any officer, employee or agent of the Commission shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Commission under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

**16. Liability for damages**

The provisions of section 15 shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

**17. Funds of the Commission**

The funds of the Commission shall consist of—

(a) such moneys or assets as may accrue to or vest in the Commission in the course of the exercise of its powers or the performance of its functions under this Act;

(b) such sums as may be payable to the Commission pursuant to this Act or any other written law, or pursuant to any gift or trust;

(c) such moneys as may be provided by Parliament for the purposes of the Commission;

(d) all moneys from any other source provided for or donated or lent to the Commission.

**18. Financial year**

The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

**19. Annual estimates**

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide—

(a) for the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the members of the Board;

- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Commission;
- (c) for the proper maintenance of the buildings and grounds of the Commission;
- (d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Commission;
- (e) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem fit;
- (f) for the payment of the salaries, allowances and other charges in respect of the staff of the National Communications Secretariat established under section 84, and such other expenses of the Secretariat as may be approved by the Minister from time to time; and
- (g) for the payment of salaries, allowances and other charges in respect of the staff of the Tribunal and such other expenses of the Tribunal as may be approved by the Minister from time to time.

(3) The annual estimates shall be submitted to the Board for approval before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Board.

## **20. Accounts and audit**

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General (Corporations) or to an auditor appointed under subsection (3), the accounts of the Commission together with—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of the financial year.

(3) The accounts of the Commission shall be audited by the Auditor-General (Corporations) or by an auditor appointed by the Board with the written approval of the Auditor-General (Corporations).

(4) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General (Corporations).

(5) The Auditor-General (Corporations) may give general or special directions to an auditor appointed under subsection (3) and the auditor shall comply with those directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor-General (Corporations) on any matter relating to the directions given under subsection (5) of this section.

(7) Within a period of six months after the end of the financial year, the Auditor-General (Corporations) shall report on the examination and audit of the accounts of the Commission to the Board and to the Minister, and in the case of an auditor appointed under subsection (3), the auditor shall transmit a copy of the report to the Auditor-General (Corporations).

(8) Nothing in this Act shall be construed to prohibit the Auditor-General (Corporations) from carrying out an inspection of the Commission's accounts or records whenever it appears to him desirable and the Auditor-General (Corporations) shall carry out such an inspection at least once every six months.

(9) Notwithstanding anything in this Act, the Auditor-General (Corporations) may transmit to the Minister a special report on any matters incidental to his powers under this Act, and section 19 (3) and (4) of the Exchequer and Audit Act (Cap. 412) shall, *mutatis mutandis*, apply to any report made under this section.

(10) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

(11) The fee for any auditor, not being a public officer, shall be determined and paid by the Board.

## **21. Investment of funds**

(1) The Board may invest any of the funds of the Commission which are not immediately required for its purposes in such securities as the Treasury may, from time to time, approve.

(2) The Board may place on deposit with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Commission.

## **22. Annual report**

(1) The Board shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Board for the immediately preceding year.

(2) The Minister shall lay the annual report before the National Assembly within three months of the day the Assembly next sits after the report is presented to him.

## **PART III – TELECOMMUNICATION SERVICES**

### **23. Provision of telecommunication services**

(1) The Commission shall, so far as is reasonably practicable, ensure there are provided throughout Kenya, such telecommunication services and in particular, emergency, public payphone and directory information services, as are reasonably necessary to satisfy the public demand thereof.

- (2) Without prejudice to the generality of subsection (1), the Commission shall—
- (a) protect the interests of all users of telecommunication services in Kenya with respect to the prices charged for and the quality and variety of such services;
  - (b) maintain and promote effective competition between persons engaged in commercial activities connected with telecommunication services in Kenya in order to ensure efficiency and economy in the provision of such services and to promote research and development in relation thereto;
  - (c) encourage private investment in the telecommunication sector;
  - (d) promote the provision of international transit services by persons providing telecommunication services in Kenya;
  - (e) enable persons providing telecommunication services or producing telecommunication apparatus in Kenya to compete effectively in the provision of such services or apparatus outside Kenya.

[L.N. 39/1999.]

#### **24. Requirement of licence**

- (1) No person shall—
- (a) operate a telecommunication system; or
  - (b) provide any telecommunication services,

except in accordance with a valid licence granted under this Act.

(2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment to a term not exceeding five years, or to both.

[L.N. 39/1999, Act No. 1 of 2009, s. 8.]

#### **25. Telecommunication licences**

(1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorising all persons, whether of a specified class or any particular person to—

- (a) operate telecommunication systems; or
- (b) provide telecommunication services,

of such description as may be specified in the licence.

- (2) A licence granted under subsection (2)(a) may authorise—
- (a) the provision, by means of any telecommunication system to which the licence relates, of any telecommunication services of a description specified in the licence; and
  - (b) the connection to any telecommunication system to which the licence relates of—
    - (i) any other telecommunication systems of a description specified in the licence; and
    - (ii) any telecommunication apparatus of a description specified in the licence.

(3) A licence granted under this section may include conditions requiring the licensee—

- (a) to provide the telecommunication services specified in the licence or of a description so specified;
- (b) to interconnect to the telecommunication system to which the licence relates, or to permit the connection to such system, of such other telecommunication systems and apparatus as are specified in the licence or are of a description so specified, either without charge or subject to a reasonable charge to be determined in accordance with the method specified in the licence;
- (c) to permit the provision by means of the telecommunication system or telecommunication apparatus connected thereto of such services as are specified or of a description so specified;
- (d) to pay such fees as the Commission may prescribe; and
- (e) to fulfil such other conditions as the Commission may prescribe.

(3A) A licensee shall maintain a register of all persons to whom telecommunications services are provided under the licence, in such form as may be prescribed.

(4) A licence granted under this section shall, unless earlier revoked in accordance with any term in that regard contained in the licence, continue in force for such period as may be specified in the licence.

(5) The Commission may renew, vary, modify or revoke any licence granted under this Act in accordance with the provisions of this Act.

[L.N. 39/1999, Act No. 12 of 2012, Sch.]

**26. Deleted by Act No. 1 of 2009, s. 9.**

### **27. General regulations for telecommunication services**

(1) The Minister in consultation with the Commission may make regulations generally with respect to telecommunication services.

(2) Without prejudice to the generality of subsection (1), the Minister in consultation with the Commission may make regulations with respect to—

- (a) the running of telecommunication systems;
- (b) the privacy of telecommunication;
- (c) the provision of telecommunication services pursuant to the provisions of section 23 and in particular, the manner in which such services shall be offered and performed, the issue of licences and the payment of fees in respect thereof, and such other matters as it deems fit;
- (d) the period during which and conditions subject to which messages and papers relating to telecommunication services belonging to, or in the custody of telecommunication operators shall be preserved;
- (e) the issue, variation and withdrawal of approvals in respect of contractors for relevant operations in connection with any telecommunication system and the maintenance of registers of such contractors;



- (f) fees and other charges for any matter permitted or matters required to be done under this Act in relation to telecommunication services;
- (g) the form of any licence, notice, approval, certificate, authority or other written document required or permitted to be issued by or submitted to the Commission in relation to telecommunication services;
- (gg) the registration of telecommunications subscribers;
- (h) the registration of subscribers to telecommunications services.

(3) Regulations under this section may make different provisions with respect to different classes or descriptions of telecommunication systems, apparatus or services.

(4) Any person who contravenes any regulation made under this section commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999, Act No. 4 of 2012, s. 52, Act No. 12 of 2012, Sch.]

#### *Offences relating to Telecommunication Services*

### **28. Obtaining service dishonestly**

A person who dishonestly facilitates or obtains a service provided by a person authorised under this Act to provide telecommunication services with intent to avoid payment of any charge applicable to the provision of that service commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

[L.N. 39/1999, Act No. 1 of 2009, s. 10.]

### **29. Improper use of system**

A person who by means of a licensed telecommunication system—

(a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.

[L.N. 39/1999.]

### **30. Modification, etc., of messages**

A person engaged in the running of a licensed telecommunication system who, otherwise than in the course of his duty, intentionally modifies or interferes with the contents of a message sent by means of that system, commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

**31. Interception and disclosure**

A licensed telecommunication operator who otherwise than in the course of his business—

- (a) intercepts a message sent through a licensed telecommunication system; or
  - (b) discloses to any person the contents of a message intercepted under paragraph (a); or
  - (c) discloses to any person the contents of any statement or account specifying the telecommunication services provided by means of that statement or account,
- commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999.]

**32. Tampering with telecommunication plant**

A person who willfully, with intent to—

- (a) prevent, obstruct or delay transmission of any message;
- (b) interfere with the management or operation of a telecommunication apparatus; or
- (c) unlawfully intercept or acquaint himself or herself with the contents of any message; vandalizes, damages, removes, tampers with, touches or in any other way whatsoever interferes with any telecommunication apparatus or telecommunication line, post, or anything whatsoever, being part of or used in or about any licensed telecommunication system,

commits an offence and shall be liable, on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.

[L.N. 39/1999.]

**32A. Severing with intent to steal**

A person who, with intent to steal, severs any telecommunication apparatus or other works under the control of a licensee, commits an offence and is liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years or to both.

[L.N. 39/1999, Act No. 12 of 2012, Sch.]

**33. Trespass and wilful obstruction of telecommunication officer**

Any person who—

- (a) without permission, enters the equipment room of a telecommunication operator; or
- (b) enters any enclosure around the telecommunication office in contravention of any rule or notice to the contrary; or
- (c) refuses to leave such equipment room or enclosure on being requested to do so by any telecommunication officer; or

(d) wilfully obstructs any such telecommunication officer or a telecommunication operator in the performance of his duty,

commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

[L.N. 39/1999.]

#### **34. Prohibition of unlicensed telecommunication system**

(1) A person who, while not holding a valid licence under section 25, runs a telecommunication system or provides a telecommunication service, commits an offence.

(2) Any person who runs a telecommunication system in accordance with a licence granted under section 25 of this Act shall commit an offence if—

- (a) that person provides telecommunication services which are not of a description specified in the licence; or
- (b) there is connected to the licensed system, any telecommunication system or, as the case may be, any telecommunication apparatus which is not of a description so specified in the licence.

(3) A person convicted of an offence under this section shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

[L.N. 39/1999.]

### **PART IV – RADIO COMMUNICATION**

#### **35. Licensing requirements**

(1) Subject to subsection (2), no person shall establish or use any radio communication station or apparatus except in accordance with the terms of a licence granted under section 36.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999, Act No. 1 of 2009, s. 12.]

#### **36. Radio communication licence**

(1) The Commission may, on application in the prescribed manner, grant a licence authorising any person or persons of a specified class to establish or to use any radio communication station or apparatus or to install or use any apparatus for radio communication.

(2) A licence granted under this section may be issued subject to such terms, conditions and limitations as the Commission may think fit, including—

- (a) in the case of a licence to establish a station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be imported, installed or used therein; and

- (b) in the case of any other licence, limitations as to the apparatus which may be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.

(3) A radio communication licence shall, unless earlier revoked in accordance with any term in that regard contained in the licence, continue in force for such period as may be specified therein.

(4) Subject to the provisions of this Act, the Commission may renew or revoke a licence issued under this Part, or vary or modify any conditions attached thereto.

[L.N. 39/1999.]

### **37. Licenses for scientific or research use**

(1) Where an application for the grant or renewal of a radio communication licence is made to the Commission by any person, and the Commission is satisfied that the purpose of the licence is to enable the applicant to conduct experiments in radio communications for the purpose of scientific research, the Commission shall subject to subsection (2) not refuse to grant or renew the licence, and shall not revoke the licence when granted and no sum shall be payable under any regulations in respect of such licence except the fee for the grant or the renewal thereof.

(2) Nothing in subsection (1) shall prevent the Commission from refusing to grant or renew, or from revoking, a radio communication licence if the applicant has, whether before or after the grant or last renewal of the licence, been convicted of any offence under this Act, whether in relation to any radio communication apparatus covered by such licence or any other radio communication apparatus, or has been convicted of using any apparatus for the purpose of interfering with any radio communication.

(3) Nothing in subsection (1) shall limit the discretion of the Commission as to the conditions which it attaches to any radio communication licence or its power to vary the conditions of any such licence.

[L.N. 39/1999.]

### **38. Regulations on radio communication**

(1) The Minister in consultation with the Commission may make regulations generally with respect to radio communication and, without prejudice to the generality of the foregoing, with respect to—

- (a) the fees or sums to be paid by a person to whom a radio communication licence is granted on the grant or renewal of such licence and the conditions on which any such licence may be granted, renewed or revoked;
- (b) anything which may or may not be done in connection with the use of any radio communication station or apparatus and, in particular, requiring the use of any such station or apparatus to cease on the demand in that behalf by any authorised employee of the Commission;
- (c) imposing on the person to whom a radio communication licence is granted with respect to any radio communication station or apparatus, or who is in possession or control of any radio communication station or apparatus, obligations as to permitting and facilitating the inspection of such station or apparatus, as to the

- (d) where sums are or may become due from the person to whom a radio communication licence is granted after the grant or renewal thereof, requiring that person to keep and produce such accounts and records as may be specified in the regulations;
- (e) requiring the person to whom a radio communication licence authorising the establishment or use of a station has been granted, to exhibit at the station such notices as may be specified in the regulations;
- (f) regulating the use on board any vessel or aircraft, other than a vessel or aircraft registered or licensed in Kenya, within the limits of Kenya and territorial waters adjacent thereto, of radio communication apparatus on board such vessel or aircraft;
- (g) controlling the importation, acquisition, manufacture and sale, letting on hire or other disposition of radio communication apparatus of any kind, or the possession, use or installation of such, and different provisions may be made by such regulations for different classes of cases;
- (h) the licensing and fees in respect thereof, of dealers in radio communication apparatus and the sale, transfer or use of such apparatus;
- (i) the conduct of examinations for radio communication operators, the content of such examination and the issue of certificates of competence in respect thereof;
- (j) the issue, variation and withdrawal of approvals in respect of radio communication stations and radio communication apparatus and apparatus for connection to any telecommunication system licensed under this Act:

Provided that nothing in any such regulations shall require any person to concede any form of right of entry into a private dwelling house for the purpose of permitting or facilitating the inspection of any radio communication apparatus not designed or adapted for emission.

(2) Any person who contravenes any regulations made under this section, or causes or permits any radio communication station or apparatus to be used in contravention of any such regulations, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

[L.N. 39/1999.]

### **39. Regulations for radiation of electro-magnetic energy**

(1) The Minister in consultation with the Commission may make regulations for the following purposes—

- (a) for prescribing the requirements to be complied with in the use of any apparatus to which this section applies;

- (b) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be sold or offered or advertised for sale otherwise than for export, or let or hire or offered or advertised for letting or hire by any person who in the course of business manufactures, assembles or imports such apparatus.

(2) Regulations made under subsection (1) shall make provisions to ensure that the use of the apparatus does not cause undue interference with radio communication and may in particular include—

- (a) requirements as to the maximum intensity of electromagnetic energy of any specified frequencies which may be emitted in any direction from the apparatus while it is in use; and
- (b) in the case of any apparatus, the power for which is supplied from electric supply lines, requirements as to maximum electro-magnetic energy of any specified frequencies which may be injected into those lines by the apparatus, and different requirements may be prescribed for different circumstances and in relation to different classes or descriptions of apparatus, different districts or places and different times of use.

(3) The apparatus to which this section applies shall be such apparatus, other than radio communication apparatus, as may be specified in the regulations, being apparatus generating or designed to generate or liable to generate fortuitously electro-magnetic energy at frequencies of not more than three million megahertz per second and references in this subsection to apparatus include references to any form of electric supply line.

(4) It shall not be unlawful for any person to use any apparatus to which this section applies or to sell, offer, advertise for sale, let on hire or offer or advertise, such apparatus for letting on hire, by reason only that it does not comply with the requirements applicable under any regulations made under this section, but such non-compliance shall be a ground for the giving of a notice under section 41 or 43 of this Act, as the case may be.

[L.N. 39/1999, Act No. 1 of 2009, s. 13.]

#### **40. Regulations with respect to resistance to interference**

(1) The Commission may, by regulations, prescribe technical requirements to be complied with in the case of radio communication apparatus specified in the regulations.

(2) The technical requirements in respect of any apparatus shall be such as appear to the Commission to be appropriate for the purpose of minimising so far as practicable, the risk of interference, arising from lawful use of any other apparatus to which the requirements apply, or any apparatus used in connection with it and which it is designed or adapted to receive.

(3) Any person who, in the course of business—

- (a) sells or offers for sale (otherwise than for export) any apparatus which does not comply with the technical requirements applicable to it under regulations made under this section;
- (b) lets on hire or offers to let or hire any such apparatus; or

- (c) indicates, whether by display of the apparatus or by any form of advertisement, his willingness to do anything in relation to any such apparatus,

commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(4) In any proceedings for an offence under this section brought against any person other than one who in the course of business has manufactured, assembled or imported, the apparatus to which the proceedings relate, it shall be a defence for the accused person to show that he did not know and could not, with reasonable care, have ascertained that the apparatus did not comply with the requirements in question.

(5) In this section “**apparatus**” means any radio communication station or any radio communication apparatus and includes any apparatus designed or adapted for use in connection with any radio communication station and radio communication apparatus.

[L.N. 39/1999.]

#### **41. Enforcement of regulations as to use of apparatus**

(1) If the Commission is of the opinion—

- (a) that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose under subsection (1) of section 40; or
- (b) that either—
- (i) the use of the apparatus is likely to cause undue interference with any radio communication used for the purpose of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
  - (ii) the use of the apparatus has caused or is causing undue interference with any other radio communication apparatus in circumstances where all reasonable steps to minimise interference have been taken in relation to the situation or apparatus receiving such radio communication,

it may serve on the person in whose possession the apparatus is, a notice in writing requiring that, after a date fixed by the notice, not being less than thirty days from the date of service thereof, the apparatus shall not be used, whether by the person to whom the notice is given or otherwise, or shall only be used in such manner, at such times and in such circumstances as may be specified in the notice:

Provided that if the Commission is satisfied that the use of the apparatus in question is likely to cause undue interference with any radio communication used for the purpose of any safety-of-life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, the date to be fixed by the notice may be the date of the service thereof.

(2) A notice under subsection (1) may be revoked or varied by a subsequent notice in writing by the Commission, served on the person in whose possession the apparatus then is:

Provided that where a notice under this section has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of

subsection (1) relating to the coming into force of the notice shall apply in relation to the subsequent notice as if it had been a notice served under subsection (1).

(3) Where a notice has been given under subsection (1), any person having possession of, or any interest in, the apparatus to which the notice relates may, at any time whether before or after the date fixed by such notice, by notice in writing served on the Commission, show reasons why the apparatus in question complies with the requirements applicable to it under the regulations and if the Commission is satisfied that—

- (a) the apparatus in question so complies, it shall revoke the notice; or
- (b) the said requirements ought to be relaxed in relation to the apparatus, may revoke the notice or vary it in such manner as the Commission may deem fit:

Provided that, nothing done under this subsection shall prevent any person from serving another notice and shall not, where the Commission is satisfied that there has been a change in the circumstances, prevent the Commission from giving a further notice.

(4) A revocation or variation made under subsection (2) or (3) may be absolute or may be conditional on such steps being taken in relation to the apparatus or on the apparatus being made to comply with such requirements as may be specified in the direction and any questions as to whether or not the apparatus has been made to comply with the requirements shall, on the application of the Director-General or of any person having possession of or any interest in the apparatus, be determined by the Tribunal.

(5) Any person who, knowing that a notice of the Commission under this section is in force with respect to any apparatus, uses such apparatus, or causes or permits it to be used in contravention of the notice, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999.]

#### **42. Onus of proof**

(1) In any proceedings arising from the provisions of this Part—

- (a) the occupier of any dwelling house or premises in which there is any radio communication apparatus shall be deemed to be in possession thereof, unless he satisfies the court that he was not aware and could not with reasonable diligence have become aware of the presence in the dwelling house or premises, of the apparatus in question;
- (b) any radio communication apparatus which, if fully assembled and in working order, would be a radio communication station, shall not, unless completely dismantled, cease to be a radio communication station by reason of the fact that it is temporarily incapable of transmitting or receiving electromagnetic waves owing to a defect or absence of some part.

[L.N. 39/1999.]

#### **43. Enforcement of regulations as to sales, etc., by manufacturers and others**

(1) If the Commission is of the opinion that any radio communication apparatus does not comply with the requirements applicable to it under



regulations made under section 40, the Commission may serve on any person who has manufactured, assembled or imported such apparatus in the course of business, a notice in writing prohibiting him from selling that apparatus or offering or advertising it for sale or letting it on hire or offering or advertising it for letting on hire.

(2) The provisions of subsections (2) to (5) of section 41 shall apply with necessary modifications to the provisions of this section.

[L.N. 39/1999.]

#### **44. Unlawfully sending of misleading messages, etc.**

Any person who—

(a) by means of radio communication, sends or attempts to send any message which to his knowledge is false or misleading and is to his knowledge likely to prejudice the efficiency of any safety-of-life service or endanger the safety of any person, or of any vessel, aircraft or vehicle, and, in particular, any message which to his knowledge falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or

(b) otherwise than under the authority of the Minister for the time being responsible for internal security—

- (i) uses any radio communication apparatus with intent to obtain information as to the contents, sender or addressee of any message, (whether sent by means of radio communication or not) which neither the person using the station or apparatus nor any person on whose behalf he is acting is authorised to receive; or
- (ii) except in the course of legal proceedings or for the purposes of any report thereon, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of the radio communication station or radio communication apparatus by him or by any other person acting on his behalf,

commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.

[L.N. 39/1999.]

#### **45. Deliberate interference with radio communication**

Any person who uses any station or apparatus for interfering with any radio communication commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

[L.N. 39/1999.]

#### **46. Extent of the application of provisions relating to radio communication**

(1) The provisions relating to radio communication shall apply—

- (a) to all radio communication stations and radio communication apparatus in or over, or for the time being in or over Kenya or the territorial waters adjacent thereto; and

- (b) subject to any limitations which the Commission may, by regulations, determine, to all radio communication stations and radio communication apparatus which is released from within Kenya or its territorial waters, or from any vessel or aircraft which is registered in Kenya.

(2) Without prejudice to the liability of any other person, in the event of the contravention of the provisions of subsection (1) or of any regulations or orders made thereunder, occurring in relation to any radio communication station or radio communication apparatus on board or released from any vessel or aircraft, the captain or the person, for the time being, in charge of the vessel or aircraft commits an offence under this Act:

Provided that this subsection shall not apply if the contravention consists of the use by a passenger, on board the vessel or aircraft, of any radio communication apparatus not designed or adapted, for transmission (as opposed to reception) which is not part of the radio communication apparatus of the vessel or aircraft.

(3) The Commission may make regulations for the use of radio communication apparatus on board a vessel or aircraft not registered in Kenya while the vessel or aircraft is within the territorial limits of Kenya or its territorial waters.

[L.N. 39/1999, Act No. 1 of 2009, s. 15.]

#### PART IVA – BROADCASTING SERVICES

##### **46A. Functions of the Commission in relation to broadcasting services**

The functions of the Commission in relation to broadcasting services shall be to—

- (a) promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya;
- (b) facilitate and encourage the development of Kenyan programmes;
- (c) promote the observance at all times, of public interest obligations in all broadcasting categories;
- (d) promote diversity and plurality of views for a competitive marketplace of ideas;
- (e) ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;
- (f) protect the right to privacy of all persons; and
- (g) carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act.

[L.N. 39/1999.]

##### **46B. Classification of broadcasting services**

(1) Broadcasting services shall be classified for specified areas according to the following service categories—

- (a) public broadcasting;

- (b) private broadcasting;
- (c) community broadcasting.

(2) Subject to the provisions of this Act, broadcasting service licences are categorized into the following classes—

- (a) free-to-air radio;
- (b) free-to-air television;
- (c) subscription radio;
- (d) subscription television;
- (e) subscription management;
- (f) any other class of licence as may be determined in accordance with the Regulations.

[Act No. 1 of 2009, s. 16.]

#### **46C. Requirement of a broadcasting licence**

(1) Subject to this Act, no person shall provide broadcasting services except in accordance with a licence issued under this Part.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) A licence granted under this section may include conditions requiring the licensee to—

- (a) broadcast in such areas and within such geographical limits as the Commission may prescribe;
- (b) commit a minimum amount of time as may be prescribed, in its programme schedule to locally produced programmes, or, in the alternative, pay such amount of money as may be prescribed, into a Fund to assist the development of the Kenyan production industry;
- (c) pay such fees as the Commission may prescribe; and
- (d) fulfill such other conditions as the Commission may require.

[Act No. 1 of 2009, s. 16.]

#### **46D. Eligibility for licensing and considerations for grant of licence**

(1) A person shall not be eligible for the grant of a broadcasting licence if such person—

- (a) is a political party;
- (b) is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
- (c) is of unsound mind;
- (d) does not fulfill such other conditions as may be prescribed.

(2) In considering applications for the grant of a broadcasting licence, the Commission shall have regard to—

- (a) observance at all times of public interest obligations in all broadcasting categories;

- (b) diversity and plurality of views for a competitive marketplace of ideas;
- (c) availability of radio frequency spectrum including the availability of such spectrum for future use;
- (d) efficiency and economy in the provision of broadcasting services;
- (e) demand for the proposed broadcasting service within the proposed broadcast area;
- (f) expected technical quality of the proposed service, having regard to developments in broadcasting technology;
- (g) suitability, capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
- (h) financial means and business record, if any, of the applicant; and
- (i) any other relevant matter that the Commission may consider necessary.

[Act No. 1 of 2009, s. 16.]

#### **46E. Public broadcasting services**

The Kenya Broadcasting Corporation established under section 3 of the Kenya Broadcasting Corporation Act (Cap. 221) is hereby designated as the public broadcaster and shall provide public broadcasting services.

[Act No. 1 of 2009, s. 16.]

#### **46F. Community broadcasting services**

(1) The Commission may, upon application in the prescribed manner and subject to such conditions as the Commission may deem necessary, grant a licence authorizing the provision of community broadcasting services.

(2) The Commission in considering applications for grant of a licence under this section shall have regard—

- (a) to the community of interests of the persons applying for or on whose behalf the application is made;
- (b) as to whether the persons, or a significant proportion thereof constituting the community have consented to the application;
- (c) to the source of funding for the broadcasting service;
- (d) as to whether the broadcasting service to be established is not-for-profit; and
- (e) to the manner in which members of the community will participate in the selection and provision of programmes to be broadcast.

(3) A licence granted under this section may contain conditions requiring the licensee to—

- (a) ensure that a cross section of the community is represented in the management of the broadcasting service;
- (b) ensure that each member of the community has a reasonable chance to serve in the management of the broadcasting service;
- (c) ensure that members of the community have a way of making their preferences known in the selection and provision of programmes;

- (d) conform to any conditions or guidelines as the Commission may require or issue with regard to such broadcasting service.

[Act No. 1 of 2009, s. 16.]

#### **46G. Private broadcasting services**

(1) Subject to this Act, the Commission may grant a licence to any person to provide private broadcasting services.

(2) A licence granted under this section may include conditions requiring the private broadcaster to—

- (a) provide coverage in such areas as may be specified by the Commission;
- (b) in the case of television, include drama, documentaries and children's programmes that reflect Kenyan themes.

[Act No. 1 of 2009, s. 16.]

#### **46H. Commission to prescribe programme code**

(1) The Commission shall have the power to set standards for the time and manner of programmes to be broadcast by licensees under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission shall—

- (a) prescribe a programming code;
- (b) review the programming code at least once every two years;
- (c) prescribe a watershed period programming when large numbers of children are likely to be watching programmes; and
- (d) ensure compliance with the programming code prescribed under this section:

Provided that the programming code referred to herein shall not apply where a licensee is a member of a body which has proved to the satisfaction of the Commission that its members subscribe and adhere to a programming code enforced by that body by means of its own mechanisms and provided further that such programming code and mechanisms have been filed with and accepted by the Commission.

[Act No. 1 of 2009, s. 16.]

#### **46I. Responsibilities of broadcasters**

(1) All licensed broadcasters shall—

- (a) provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Kenyan community;
- (b) ensure that Kenyan identity is developed and maintained in programmes;
- (c) observe standards of good taste and decency;
- (d) gather and present news and information accurately and impartially;

- (e) when controversial or contentious issues of public interest are discussed, make reasonable efforts to present alternative points of view, either in the same programme or in other programmes within the period of current interest;
- (f) respect the right to privacy of individuals;
- (g) respect copyright and neighbouring rights in respect of any work or material;
- (h) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;
- (i) ensure that advertisements, either in terms of content, tone or treatment, are not deceptive or are not repugnant to good taste;
- (j) ensure that derogatory remarks based on ethnicity, race, creed, colour and sex are not broadcast.

(2) Where—

- (a) Where any cinematograph film has been submitted under any law for classification or censorship and approved for exhibition; and
- (b) where approval of the film for exhibition has been denied or has been given subject to excisions, no broadcaster shall—
  - (i) in the case of any film in respect of which such approval has been denied, broadcast the film or any part thereof; or
  - (ii) in the case of any film that has been approved for exhibition subject to excisions therefrom, broadcast that film or any part thereof if the film or, as the case may be, that part thereof includes any part of the film required to be excised;

except with the consent of and subject to any conditions given by the Kenya Film Censorship Board established under the Films and Stage Plays Act (Cap. 222).

[Act No. 1 of 2009, s. 16.]

#### **46J. Revocation of licences**

The Commission may in accordance with this Act revoke a licence to broadcast where the licensee—

- (a) is in breach of the provisions of the Act or regulations made thereunder;
- (b) is in breach of the conditions of a broadcasting licence; or
- (c) fails to use the assigned broadcasting frequencies within one year after assignment by the Commission.

[Act No. 1 of 2009, s. 16.]

#### **46K. Regulations on broadcasting**

The Minister may, in consultation with the Commission, make regulations generally with respect to all broadcasting services and without prejudice to the generality of the foregoing, with respect to—

- (a) the facilitation, promotion and maintenance of diversity and plurality of views for a competitive marketplace of ideas;
- (b) financing and broadcast of local content;

(c) mandating the carriage of content, in keeping with public interest obligations, across licensed broadcasting services;

(d) prescribing anything that may be prescribed under this Part.

[Act No. 1 of 2009, s. 16.]

#### **46L. Requirement for complaints procedure**

(1) All broadcasters shall establish and maintain a procedure, by which persons aggrieved by any broadcast or who allege that a broadcaster is not complying with this Act, may file complaints.

(2) The procedure referred to in subsection (1) shall be submitted to the Commission for approval.

(3) Where any person alleges that he has exhausted the procedure mentioned in subsection (1) but is not satisfied with the remedy offered or action taken, he may appeal to the Commission.

(4) Complaints made under this section shall be made in writing within thirty days of the breach under subsection (1) and shall set out the grounds upon which they are based, the nature of damage or injury suffered as result of the broadcast or the violation complained of and the remedy sought.

(5) Any person who is aggrieved by a decision of the Commission made under this section may appeal to the Tribunal within thirty days after the decision.

[Act No. 1 of 2009, s. 16.]

#### **46M. Access to programmes**

The Commission or the Tribunal may with a view to solving any dispute brought under section 46L require a licensee to—

(a) provide the Commission, the Tribunal or the complainant with a transcript of the broadcast complained of;

(b) furnish the Commission, the Tribunal or the complainant with copies of any document that may assist in resolving the dispute; or

(c) furnish the Commission or the Tribunal with any written or oral evidence to assist in resolving the dispute or in answer to the complaint.

[Act No. 1 of 2009, s. 16.]

#### **46N. Requirement for a licence for signal distribution**

(1) Subject to this Act, no person shall provide signal distribution services within Kenya or from Kenya to other countries except in accordance with a licence issued under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

[Act No. 1 of 2009, s. 16.]

#### **46O. Signal distribution services**

(1) The Commission may upon an application in the prescribed manner and subject to such conditions as it may deem necessary, grant a licence authorizing any person or persons to provide signal distribution services.

(2) A signal distribution licence granted under this section may require the signal distribution licensee to—

- (a) provide signal distribution services as a common carrier to broadcasting licensees;
- (b) provide services promptly upon request, in an equitable, reasonable, non-preferential and non-discriminatory manner;
- (c) provide capability for a diversity of broadcast services and content;
- (d) provide an open network that is interoperable with other signal distribution networks; and
- (e) comply with any other conditions that the Commission may determine.

(3) A signal distribution licensee utilizing the radio frequency resource may be required by the Commission to comply with conditions as to the nature and location of transmitters and their transmission characteristics.

(4) A licensee who changes the nature, location or transmission characteristics approved in terms of subsection (1) without the approval of the Commission commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or, to both.

[Act No. 1 of 2009, s. 16.]

#### **46P. Revocation of signal distribution licence**

The Commission may revoke a licence under this Part where the licensee or a person under the control of the licensee—

- (a) is in breach of this Act or regulations made thereunder;
- (b) is in breach of the conditions of a licence;
- (c) fails to commence operations within the period prescribed by the Commission.

[Act No. 1 of 2009, s. 16.]

#### **46Q. Offences relating to broadcasting services**

(1) Any person who provides a broadcasting service without a broadcasting licence commits an offence.

(2) Any person who provides a broadcasting service pursuant to a licence granted under this Act commits an offence if—

- (a) that person provides a broadcasting service which is not of a description specified in the licence;
- (b) that person provides broadcasting services in an area for which he is not licensed to broadcast; or
- (c) that person broadcasts in contravention of the Act or the licence conditions.

(3) A person convicted of an offence under this section shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

[Act No. 1 of 2009, s. 16.]



**46R. Transitional provisions**

The transitional provisions set out in the Fifth Schedule to this Act shall have effect with respect to broadcasting permits issued prior to the commencement of this Act.

[Act No. 1 of 2009, s. 16.]

**46S. Broadcasting Content Advisory Council**

(1) There is established a Council to be known as the Broadcasting Content Advisory Council, in this section referred to as the "Council".

(2) The Council shall—

- (a) be responsible for and make decisions on—
  - (i) the administration of the broadcasting content aspects and provisions in the Act;
  - (ii) the mechanisms for handling complaints under the Act;
- (b) monitor compliance with broadcasting codes and ethics for broadcasters; and
- (c) have such other functions and powers as the Board may determine.

(3) The Council shall consist of—

- (a) the Permanent Secretary in the Ministry responsible for information and communications, or his representative;
- (b) six other members appointed by the Minister as follows—
  - (i) two members nominated by the Commission, one of whom shall be recommended by the Inter-Religious Forum;
  - (ii) two members appointed by the Media Council of Kenya established under the Media Act, 2007 (No. 3 of 2007);
  - (iii) one member nominated by the Law Society of Kenya; and
  - (iv) one member, not being a civil servant, nominated by the Attorney-General.

(4) The members shall at their first meeting elect one of their number to be the Chairman.

(5) In nominating members of the Council under subsection (3), the nominating body or authority shall nominate persons who—

- (a) have knowledge and experience in media matters, broadcasting, communication or cultural issues;
- (b) it is satisfied do not have a conflict of interest under Part IVA and have no financial or other interest likely to prejudicially affect the carrying out of their functions under this Part; and
- (c) are, in the opinion of the nominating body or authority, suitable to perform the functions and duties of a member competently and honestly.

[Act No. 1 of 2009, s. 16.]

## PART V – POSTAL SERVICES

**47. Functions of the Commission in relation to postal services**

- (1) The functions of the Commission in relation to postal services shall be to—
- (a) ensure that there are provided throughout Kenya good and sufficient postal and other related services, on such terms as the Commission may deem expedient;
  - (b) ensure that the public post licensee is able to provide postal services at rates consistent with efficient and continuous service and financing liability;
  - (c) promote development of postal systems and services in accordance with recognised international standards, practices and public demands;
  - (d) exercise licensing and regulatory functions in respect of postal systems and services in Kenya in accordance with this Act;
  - (e) regulate the fixing of rates of postage and other fees or sums to be charged in respect of postal articles weighing not more than three hundred and fifty grams;
  - (f) regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;
  - (g) ensure the terms and conditions stated in any licence granted under section 51 are complied with;
  - (h) promote competition in the provision of postal services;
  - (i) ensure that reasonable demands for postal services are satisfied;
  - (j) promote and encourage the expansion of postal services in Kenya; and
  - (k) further the advancement of technology relating to the post and postal services.
- (2) In discharging the functions and duties under subsection (1), the Commission shall have regard to—
- (a) efficiency and economy;
  - (b) fostering the development and expansion of postal services in Kenya in collaboration with other countries and international organisations;
  - (c) the maintenance of effective competition between persons providing or interested in providing postal services;
  - (d) the promotion of measures for the safety of life through communications;
  - (e) the provision of postal service rates consistent with efficient service and the necessity for maintaining financial viability; and
  - (f) the promotion and development of standards in the field of postal systems and services.

**48. Exclusive right to provide certain postal services**

(1) The Commission shall grant to the public postal licensee the exclusive right to provide private letter boxes or bags and postal services except in relation to—

- (a) letters weighing more than three hundred and fifty grams;
- (b) trade announcements, circulars, printed extracts from newspapers or advertisements not addressed to any particular person;
- (c) letters delivered by an employee of the sender;
- (d) letters delivered by a messenger employed by the sender especially for the purpose, not being a person employed or engaged in the course of his business or employment in delivering or procuring the delivery of letters;
- (e) letters concerning goods sent with the goods and delivered therewith;
- (f) letters carried to or from a post office;
- (g) letters carried in accordance with an agreement entered with the public postal licensee;
- (h) transfers between document exchanges;
- (i) letters carried to the premises of a provider of electronic mail services for the purposes of being transmitted as electronic mail, or letters carried from the premises of such a person after having been transmitted;
- (j) letters carried privately and delivered without hire, reward or other profit;
- (k) letters carried and delivered personally by the sender; and
- (l) letters, postcards, aerogrammes of three hundred and fifty grams or less in weight, if a charge of at least five times the basic charge of the public postal licensee letter rate for that class of item is made in respect of receiving, collecting, sending, despatching and delivery.

(2) If any question arises as to whether or not any postal article is a letter within the meaning of this Act, the decision of the Commission thereon shall be final.

[L.N. 39/1999.]

**49. Requirement of licence**

(1) Subject to the provisions of this Act, no person shall operate or provide postal services except in accordance with a valid licence issued in accordance with this Part.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(3) In this section, “**person**” means a natural or a corporate person, a firm, government, State or State agency, any association or partnership.

[L.N. 39/1999.]

**50. Designation of public postal licensee**

The minister shall designate the Postal Corporation of Kenya to be the public postal licensee and may, by notice in the *Gazette*, assign to it, any of the powers, duties and functions of the Commission under this Part relating to postal articles being conveyed within the system of a public postal licensee as he may think fit.

[L.N. 39/1999, Act No. 1 of 2009, s. 17.]

**51. Licence to provide postal services**

(1) The Commission may, upon application in the prescribed manner and subject to the conditions specified in section 52 or such other conditions as the Commission may deem necessary, grant a licence in the prescribed form authorising any person to operate or to provide postal services in accordance with the provisions of this Act.

(2) A licence granted under this section shall unless earlier revoked in accordance with any term specified therein, continue in force for such period as may be specified therein.

(3) Subject to the provisions of this Act, the Commission may renew or revoke a licence issued under this section or vary or modify any conditions attached thereto.

[L.N. 39/1999.]

**52. Conditions of licence**

Every licensee shall be required to observe the following conditions—

(a) to provide courier services to any person, who requests for such services where available;

(b) to notify the Commission forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes;

(c) to display prominently at each premises from which it conducts its business, current tariffs for each postal service to various destinations;

(d) to comply with all applicable and relevant laws, rules and regulations including, but not limited to the law relating to customs and imports and exports with regard to receipt and dispatch of postal articles to and from Kenya;

(e) to furnish the Commission with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;

(f) if the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the application for renewal of its licence;

(g) where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal services which only the licensee is permitted under its licence to provide, to seek approval from the Commission before entering into such association, contract or arrangement;

(h) to exercise its rights and powers and perform its duties and obligations under the licence in such manner as is consistent with the agreements or treaties to which Kenya is a party;

(i) not to enter into any arrangement with any person running an international postal service on terms and conditions which the Commission deems to be unfavourable to the national interest.

[L.N. 39/1999.]

#### *General Provisions relating to Postal Services*

### **53. Postage stamps and postal charges**

The public postal licensee shall have exclusive rights to issue postage stamps and provide private letter boxes subject to such conditions as the Commission may specify.

[L.N. 39/1999.]

### **54. Addressee may be liable for postage, etc.**

(1) The person to whom any postal article is tendered for delivery on which postage or any other charge is due shall be liable to pay such postage or other charge unless—

- (a) he refuses to accept delivery of such postal article; or
- (b) having accepted delivery of such postal article, he forthwith returns it unopened.

(2) If any postal article appears, to the satisfaction of the licensee, to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage or other charge due from the addressee.

(3) If any postal article which the postage or any other charge is due is refused or returned unopened by the addressee, or if the addressee is dead or cannot be found, the sender shall be liable to pay the postage or other charge due thereon.

[L.N. 39/1999.]

### **55. Postal articles not to be opened**

(1) Subject to this Act, where any postal article is in the course of transmission by post, no employee of the licensee shall open it or deliver it to any person other than the addressee, or permit it to be opened or delivered to any person other than the addressee, unless he is authorised to do so by express authority in writing under the hand of the licensee:

Provided that, nothing in this Part shall preclude the examination of any postal article and the disposal of any article in accordance with the provisions of any law—

- (a) relating to customs; or
- (b) prohibiting or regulating the importation or exportation of any article.

(2) The licensee may, in any individual case which appears to warrant such a course of action, grant its warrant for opening or returning any specified postal article.

[L.N. 39/1999.]

### **56. Interception of postal articles in public emergency, etc.**

(1) On the declaration of any public emergency or in the interest of public safety or tranquillity, the Minister responsible for Internal Security may, by an

order in class or description of postal articles in the course of transmission by post within Kenya shall be intercepted or detained or shall be delivered to any officer mentioned in the order in the service of the Government, or shall be disposed of in such manner as the Minister directs.

(2) A certificate signed by the Minister responsible for internal security shall be conclusive proof of the existence of a public emergency or that any act under subsection (1) is in the interest of public security or tranquillity.

[L.N. 39/1999.]

#### **57. Article or material injurious to persons**

(1) No person shall send by post any material or postal article which is likely to injure any person in the course of transmission by post.

(2) Except as otherwise provided by regulations made under this Act and subject to such conditions as may be prescribed, no person shall send by post any explosive, inflammable, dangerous, filthy, noxious or deleterious substance or any sharp instrument not properly protected which is likely to injure any person or any postal article in the course of transmission by post.

[L.N. 39/1999.]

#### **58. Prohibited materials**

No person shall send by post—

(a) any indecent or obscene printing, photograph, lithograph, engraving, book or card or any other indecent or obscene article;

(b) any postal article having thereon, or on the cover thereof, any words or designs of an indecent, obscene, scurrilous, threatening or grossly offensive character;

(c) any postal article bearing any fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used in payment of any stamp duty;

(d) any other article which the Commission may by regulation prohibit.

[L.N. 39/1999.]

#### **59. Regulations prohibiting injurious articles**

The Commission may make regulations in respect of the articles prohibited by section 58 and for the detaining, disposing of, or destroying any such postal article sent or tendered for transmission by post.

[L.N. 39/1999.]

#### **60. Material sent in contravention of this Act**

(1) Where any postal article sent by post is reasonably suspected by the public postal licensee or other person licensed to provide postal services under this Act to have been sent in contravention of this Act or of any of the regulations made thereunder, or of any other written law, the public postal licensee or such other person shall immediately inform the Commission and hand over such postal article to the Commission or any person authorised in writing by the Commission.

(2) On receiving the aforesaid information, an authorised officer shall detain such postal article for opening and examination.

(3) Subject to the provisions of this Act, if any postal article opened or examined under this section is found to be in contravention or to have been

posted in contravention of this Act, or of any regulations made thereunder, or of any other written law, such postal article shall be dealt with in accordance with regulations made under section 66.

(4) Notwithstanding any provisions of any written law to the contrary, if any postal article opened under this Act is found to be in contravention of any law relating to customs, it shall be handed over to the customs authority to be dealt with in accordance with such law.

(5) The detention, destruction or disposal under this Act of a postal article or its contents shall not relieve any person sending or delivering it, from liability for any offence under this Act or under any other written law.

[L.N. 39/1999.]

#### **61. Power to deal with postal articles containing anything in respect of which an offence is committed**

(1) If any licensee under this Part has reason to believe that any postal article contains anything in respect of which an offence is being or has been committed, or is being attempted to be committed, such licensee may require, by notice in writing, the attendance, at a specified post office and time, of the addressee of such postal article or of some agent deputed in writing by such addressee and of a police officer, and such postal article shall then be opened by the addressee or his agent in the presence of an authorised employee and of the police officer.

(2) If the addressee or his agent fails to attend in pursuance of the notice under subsection (1) or refuses to open the article, it shall be opened by the authorised employee of the licensee in the presence of the police officer.

(3) Where the postal article has been opened under this section, it shall be delivered to the addressee unless the police officer states that it is required for the purpose of any legal proceedings, in which event it shall be delivered to the police officer on his signing a receipt therefor.

(4) Where the licensee is requested by the Commissioner of Police to exercise its powers under this section, it shall do so and thereupon the notice referred to in subsection (1) shall be issued.

[L.N. 39/1999.]

#### **62. Withholding postal articles until postage, etc., is paid**

If any person refuses to pay any postage or other sum which he is legally bound to pay in respect of any postal article, the licensee may, without prejudice to any other method of recovery, withhold from that person any postal article addressed to that person, until such postage or other sum is paid.

[L.N. 39/1999.]

#### **63. Postal financial services**

(1) The Commission shall allow the public postal licensee to carry out postal financial services on its own account.

(2) For the purposes of this section, “**postal financial services**” include money orders, postal orders, postal drafts, postal cheques, postal traveller’s cheques, giro, cash-on-delivery, collection of bills, savings service, subscription to newspapers and periodicals or any other form of financial service as the Commission may prescribe.

[L.N. 39/1999.]

**64. Refund of wrong payment of money order**

Where any person receives—

(a) any amount paid to him in respect of a money order by an employee of the public postal licensee, in excess of that which ought to have been paid to him; or

(b) any amount in respect of a money order paid to him by an employee of the public postal licensee, instead of to some other person to whom it ought to have been paid,

the public postal licensee may call upon that person to refund immediately to such licensee the amount wrongly paid.

[L.N. 39/1999.]

**65. Proof of return, of postal articles**

In any proceedings for the recovery of any postage or other charge alleged to be due under this Act in respect of any postal article—

(a) the production of the postal article having thereon the official mark of the licensee or the signature of an employee of the licensee denoting that the article has been refused, returned unopened or unclaimed, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted;

(b) the person from whom the postal article is supposed to have come shall, until the contrary is proved, be deemed to be the sender thereof; and

(c) the production of the postal article, having thereon the official mark of the public postal licensee denoting that any postage or other charge is due in respect thereof to the operator or to the postal administration of any foreign country, shall be conclusive evidence for all purposes that the sum so denoted is due.

[L.N. 39/1999.]

**66. Regulations for postal services**

The Minister in consultation with the Commission may make regulations generally with respect to postal services and, without prejudice to the generality of the foregoing, with respect to—

(a) the disposal of undelivered postal articles;

(b) the licensing and use of franking machines for pre-payment of postage and the use of postal franks;

(c) specifying the conditions for the perforation or defacement of postage stamps and the conditions on which postage stamps may be accepted or refused in payment of postage or other charges;

(d) specifying the conditions on which compensation may be paid for the loss of or damage to any postal article;

(e) specifying the conditions for the registration and insurance of postal articles;

(f) specifying the conditions for the issue and payment of money orders at post offices;



(g) specifying the conditions subject to which any postal article in the course of transmission by post may be redelivered to the sender without reference to the consent of the addressee; and

(h) specifying the conditions for the acceptance of cash-on-delivery postal articles.

[L.N. 39/1999.]

#### *Offences relating to Postal Services*

### **67. Operating without a valid licence**

A person who otherwise than in accordance with the terms of a valid licence issued under section 51—

(a) conveys any letter or postal article;

(b) performs any service incidental to conveying any letter or postal article;

(c) delivers or tenders in order to be sent otherwise than in accordance with the terms of a valid licence, any letter or postal article as aforesaid; or

(d) makes a collection of letters or postal articles for the purpose of sending them,

commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

[L.N. 39/1999.]

### **68. Damaging letter box**

A person who places in or against any letter box provided by the public postal licensee for the reception of postal articles any fire, match or light, or any explosive, dangerous, filthy, noxious, or deleterious substance or any fluid, or commits a nuisance in or against any such letter box, or does anything likely to injure any such letter box or its appurtenances or contents, commits an offence and shall be liable on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[L.N. 39/1999, Act No. 1 of 2009, s. 18.]

### **69. Affixing materials on post office**

A person who, without the authority of the public postal licensee, affixes any placard, advertisement, notice, document, board or other thing in or on, or paints tar, or in any way disfigures any post office, commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[L.N. 39/1999.]

### **70. Unlawful opening or delivery, etc., of postal articles by employees of licensee**

A person who, being an employee of the public postal licensee or being employed in connection with postal services—

(a) opens or permits to be opened any postal article otherwise than in accordance with the provisions of this Act;

(b) knowingly reveals, discloses or in any way makes known the contents of, or any information in relation to, any postal article opened under the authority of this Act, otherwise than in accordance with the law;

(c) knowingly destroys, detains or secretes any mail bag or postal article otherwise than in accordance with this Act;

(d) knowingly permits any unauthorised person to interfere in any way with any mail bag or postal article; or

(e) fraudulently or with intent to deceive prepares, alters, secretes or destroys any document used for the purposes of postal services,

commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[L.N. 39/1999, Act No. 1 of 2009, s. 19.]

#### **71. Transmitting offensive material by post**

Any person, who without lawful excuse, the proof of which shall lie on the person charged, sends or procures to be sent by post, a postal article which has thereon or enclosed therein any word, drawing or picture of a scurrilous, threatening, obscene or grossly offensive character, commits an offence and shall on conviction be liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999.]

#### **72. Unlawful opening of postal articles, etc., by non-employees of licensee**

Any person who, not being an employee of the public postal licensee or not being employed in connection with postal services—

(a) opens any postal article otherwise than in accordance with this Act;

(b) interferes in any way with any mailbag or postal article opened under the authority of this Act, otherwise than in accordance with the law;

(c) fraudulently puts, alters, removes or erases any official mark on a postal article;

(d) maliciously and without authority, the proof of which authority shall lie on the person charged, opens, destroys, detains or secretes any article after it has been transmitted by post and before it has been delivered to the addressee;

(e) without the authority of the public postal licensee, the proof of whose authority shall lie on the person charged, knowingly enters any premises used for the purpose of the postal services and to which the public has no right of access;

(f) refuses or fails to leave any such premises when called upon so to do by an authorised employee of the public postal licensee; or

(g) wilfully and unlawfully obstructs or impedes any employee of the public postal licensee or any other person in the discharge of his duties in connection with postal services,

commits an offence and shall, on conviction, be liable to an imprisonment for a term not exceeding three years, or to a fine not exceeding three hundred thousand shillings, or to both.

[L.N. 39/1999.]

### **73. Using of fictitious stamps**

Any person who—

(a) makes or knowingly utters, deals in, hawks, distributes, or sells any fictitious stamps or knowingly uses for postal purposes any fictitious stamps;

(b) has in his possession without lawful excuse any fictitious stamp;

(c) makes, issues or sends by post any stamped or embossed envelope, wrapper, card, form or paper in imitation of one issued under the authority of the public postal licensee,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[L.N. 39/1999.]

### **74. Use of certain words**

Any person who, without authority from the Commission, places or maintains or permits to be placed or maintained in or on any house, wall, door, window, box, pillar or other place, belonging to him or under his control, any of the following words, letters, or marks—

(a) the words “post office” or “postal office”;

(b) the words “letter box”, accompanied with words, letters, marks, which signify or imply or may reasonably lead the public to believe that it is a post office letter box;

(c) any words, letters, or mark which signify or imply or may lead the public to believe that any house or place is a post office, or that any box is a post office letter box,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings.

[L.N. 39/1999.]

### **75. Transmitting prohibited articles by post**

Any person who—

(a) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;

(b) sends by post, otherwise than in accordance with any regulations made under this Act, any postal article containing any noxious, explosive or dangerous substance which would be likely to damage any other postal article;

(c) subscribes on the outside of any postal article, or makes in any declaration relating to a postal article, any statement which he knows or has reason to believe to be false, or which he does not believe to be true, in relation to the contents or value thereof; or

(d) with intent to defeat the course of justice sends by post any postal article containing anything with respect to which, or in connection with which any offence, to his knowledge, has been or is being committed,

commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999.]

#### **76. Interfering with postal installation**

Any person who unlawfully and wilfully removes, destroys or damages any installation or plant used for postal services commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

[L.N. 39/1999.]

### **PART VI – LICENSING AND ENFORCEMENT**

[Act No. 1 of 2009, s. 26.]

#### **77. Application for license**

(1) Every application for a licence under this Act shall be in the prescribed form addressed to the Commission and shall be accompanied by such fee as may be prescribed.

(2) The Commission may, with respect to any application, require the applicant to supply such additional information as it may consider necessary in considering the application.

[L.N. 39/1999, Act No. 1 of 2009, s. 25.]

#### **78. Notice of licence**

(1) The Commission shall, at least thirty days before granting a licence under this Act, give notice in the *Gazette* and in such other manner as the Commission considers appropriate—

- (a) specifying the name and other particulars of the person or class of persons to whom the licence is to be granted;
- (b) stating the reasons for the proposed grant of the licence; and
- (c) specifying the time (not being less than thirty days from the date of the notice) within which written representations or objections in respect of the proposed licence may be made to the Commission.

Provided that nothing in this subsection shall apply in respect of licences for—

- (i) telecommunications vendors;
- (ii) radio-communications; or
- (iii) value-added or resale services.

(2) The Commission shall, in considering the application, take into account any written representations or objections received under subsection (1)(c).

[L.N. 39/1999.]

**79. Grant of licence**

The Commission may, upon expiry of the period of notice under section 78 grant a licence to the applicant if satisfied that the applicant should be licensed, subject to such conditions, including the payment of such licence fee as may be prescribed:

Provided that where the Commission does not grant a licence, it shall notify the applicant in writing of the reasons for refusal within thirty days of such refusal and the applicant may, if aggrieved, appeal to the Tribunal.

[L.N. 39/1999.]

**80. Duration of licence**

A licence granted under this Act shall, unless earlier revoked in accordance with any term in that regard contained in the licence, continue in force for such period as may be specified in the licence.

[L.N. 39/1999, Act No. 1 of 2009, s. 28.]

**81. Renewal of licence**

A licence issued under this Act may, on application and subject to the payment of the prescribed fee, be renewed for such further period as the Commission may specify:

Provided that where the Commission does not renew the licence it shall notify the licensee in writing of the reasons for refusal within thirty days, and the licensee may, if aggrieved, appeal to the Tribunal.

[L.N. 39/1999.]

**82. Modification of conditions of licence**

(1) Subject to the provisions of this Act, the Commission may, from time to time, modify any conditions attached to a licence under this Act.

(2) Subject to subsection (4), before making any modifications under this section, the Commission shall give notice in writing and by publication in the *Gazette* to the licensee—

- (a) stating that it proposes to make the modification and setting out the effects of such modification;
- (b) giving reasons for the modification; and
- (c) specifying the time (not being less than thirty days from the date of publication of the notice) within which any written objections or representations may be made by the licensee or by any interested party with respect to the proposed modifications.

Provided that nothing in this subsection shall apply in respect of licences for—

- (i) telecommunication vendors;
- (ii) radio-communications; or
- (iii) value-added or resale services.

(3) The Commission shall cause every notice given under subsection (2) to be published in the *Gazette*.

(4) Notwithstanding the provisions of subsection (2), where a modification under this section is intended to remedy or prevent matters which operate or are

likely to operate against the public interest, the Commission may proceed to make the proposed modification and shall inform the telecommunication operator in writing of the said modification and the reason therefor.

(5) A licensee aggrieved by the decision of the Commission under this section may appeal to the Tribunal within fifteen days from the date of receipt of the notice under subsection (2) and the Tribunal may stay the modification pending its decision on the appeal.

(6) The Tribunal shall, within fifteen days of every decision of an appeal under this section, cause the decision and the reasons therefor to be published in the *Gazette*.

[L.N. 39/1999.]

### **83. Register of licences**

(1) The Commission shall maintain separate registers for the various licences issued under this Act and shall enter therein, in respect of every licence, such particulars as may be prescribed.

(2) Any person may, during working hours and on payment of the prescribed fee, inspect any register of licenses:

Provided that a person who is—

- (a) a member of the police force or a public officer acting in the course of duty; or
- (b) authorised in writing by the Board,

may inspect the register without payment of any fee.

[L.N. 39/1999, Act No. 1 of 2009, s. 29.]

### **83A. Enforcement of licence conditions**

(1) Where, on its own motion or consequent upon a complaint made by any person, the Commission—

- (a) is satisfied that a licensee is contravening or has contravened the Act, or any other written law or any of the conditions of that licence;
- (b) notifies the licensee in writing, specifying the acts or omissions which, in its opinion, constitute or would constitute contravention of the Act or the licence;
- (c) requires the licensee to remedy the contravention within such period as the Commission may specify in the notice,

then if the licensee fails to remedy the contravention within the prescribed period without reasonable cause, such a licensee shall be liable to a penalty of five hundred thousand shillings and such penalty shall be a debt owed to the Commission and recoverable summarily.

(2) Notwithstanding the provisions of subsection (1), any licensee aggrieved by a decision of the Commission under this section may appeal to the tribunal within fifteen days of receipt of the notification thereof by the Commission.

[L.N. 39/1999.]

## PART VIA – ELECTRONIC TRANSACTIONS

**83B. Application**

(1) This Part shall not apply to any rule or law requiring writing or signatures in any of the following matters—

- (a) the creation or execution of a will;
- (b) negotiable instruments;
- (c) documents of title.

(2) The Minister may by order modify the provisions of subsection (1) by adding or removing any class of transactions or matters.

[Act No. 1 of 2009, s. 30.]

**83C. Functions of the Commission in relation to electronic transactions**

The functions of the Commission in relation to electronic transactions shall be to—

(a) facilitate electronic transactions by ensuring the use of reliable electronic records;

(b) facilitate electronic commerce and eliminate barriers to electronic commerce such as those resulting from uncertainties over writing and signature requirements;

(c) promote public confidence in the integrity and reliability of electronic records and electronic transactions;

(d) foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium;

(e) promote and facilitate efficient delivery of public sector services by means of reliable electronic records; and

(f) develop sound frameworks to minimize the incidence of forged electronic records and fraud in electronic commerce and other electronic transactions.

[Act No. 1 of 2009, s. 31.]

**83D. Requirement for a licence**

(1) No person shall—

- (a) operate an electronic certification system; or
- (b) update a repository or administer a sub-domain in the Kenya country top level domain (.ke ccTLD),

except in accordance with a licence granted under this Act.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or both.

[Act No. 1 of 2009, s. 31.]

**83E. Licence for electronic certification services**

(1) The Commission may, upon application in a prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorizing a person to provide electronic certification services.

(2) A licence granted under subsection (1) may require a licensee to—

- (a) make use of hardware, software and procedures that are secure from intrusion and misuse;
- (b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;
- (c) adhere to procedures that ensure that the secrecy and privacy of the electronic signatures are assured; and
- (d) observe such other standards as may be specified by regulations.

[Act No. 1 of 2009, s. 31.]

**83F. Licence for country code top-level domain**

The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorizing a person to administer a sub-domain in the country code top-level domain.

[Act No. 1 of 2009, s. 31.]

**83G. Legal recognition of electronic records**

Where any law provides that information or other matter shall be in writing then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.

[Act No. 1 of 2009, s. 31.]

**83H. Retention of electronic records**

Where any law provides that documents, records or information shall be retained for any specific period, then that requirement shall be deemed to have been satisfied where such documents, records or information are retained in electronic form if—

(a) the information contained therein remains accessible so as to be usable for subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and

(c) the details which will facilitate the identification of the original destination, date and time of dispatch or receipt of such electronic record are available in the electronic record;

Provided that this clause shall not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

[Act No. 1 of 2009, s. 31.]



**83I. Retention of information in original form**

(1) Where any law requires information to be presented or retained in its original form, that requirement is met by an electronic record if—

- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form as an electronic message or otherwise; and
- (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

(2) Subsection (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purposes of subsection (1)(a)—

- (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and
- (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in light of all the relevant circumstances.

[Act No. 1 of 2009, s. 31.]

**83J. Formation and validity of contracts**

(1) In the context of contract formation, unless otherwise agreed by the parties, an offer and acceptance of an offer may be expressed by means of electronic messages thus where an electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability solely on the ground that an electronic message was used for the purpose.

(2) Nothing in this section shall apply to any law that expressly provides a different method for the formation of a valid contract.

[Act No. 1 of 2009, s. 31.]

**83K. Recognition of parties of electronic messages**

As between the originator and the addressee of an electronic message, a declaration of intent or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic message.

[Act No. 1 of 2009, s. 31.]

**83L. Attribution of electronic records**

(1) An electronic message shall be attributed to the originator if it was sent by the originator himself, or by a person who had the authority to act on behalf of the originator in respect of the electronic record or by an information system programmed by or on behalf of the originator to operate automatically.

(2) As between an originator and an addressee, an addressee is entitled to regard an electronic message as being that of the originator, and act on that assumption, if—

- (a) in order to ascertain whether the electronic message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for the purpose; or
- (b) the electronic message as received by addressee resulted from actions of a person who had the authority to act on behalf of the originator in respect of the electronic record.

[Act No. 1 of 2009, s. 31.]

### **83M. Acknowledgement of receipt**

(1) Where the originator has not agreed with the addressee that the acknowledgement of receipt of electronic records be given in a particular form or by a particular method, an acknowledgement may be given by—

- (a) any communication by the addressee, automated or otherwise;
- (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that an electronic record shall be binding only on receipt of an acknowledgement of such electronic record, then, unless acknowledgement has been received, the electronic record shall be deemed to have never been sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding on receipt of such acknowledgement, and acknowledgement has not been received by the originator within a reasonable time, then, the originator may give notice to the addressee stating that no acknowledgement has been received by him and specifying a reasonable time by which the acknowledgement must be received by him and if no acknowledgement is received within that time limit, he may, after giving notice to the addressee, treat the electronic record as though it was never sent.

[Act No. 1 of 2009, s. 31.]

### **83N. Secure electronic record**

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from that point of time to verification.

[Act No. 1 of 2009, s. 31.]

### **83O. Compliance with requirement for a signature**

(1) Where any law requires a signature of a person, that requirement is met in relation to an electronic message if an advanced electronic signature is used that is as reliable as was appropriate for the purpose for which the electronic message was generated or communicated, in light of all the circumstances, including any relevant agreement.

(2) Subsection (1) applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

(3) An advanced electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in subsection (1) if—

- (a) it is generated through a signature-creation device;
- (b) the signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
- (c) the signature creation data were, at the time of signing, under the control of the signatory and of no other person;
- (d) any alteration to the electronic signature made after the time of signing is detectable; and
- (e) where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing, is detectable.

[Act No. 1 of 2009, s. 31.]

### **83P. Legal recognition of electronic signatures**

Where any law provides that information or any other matter shall be authenticated by affixing a signature or that any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in that law, such requirement shall be deemed to have been satisfied if such information is authenticated by means of an advanced electronic signature affixed in such manner as may be prescribed by the Minister.

[Act No. 1 of 2009, s. 31.]

### **83Q. Protected systems**

(1) The Minister may, by notification in the *Gazette*, declare that any computer system or computer network is a protected system.

(2) The Minister may, by order in writing, authorize any person to access protected systems notified under subsection (1).

[Act No. 1 of 2009, s. 31.]

### **83R. Regulations for electronic signatures**

The Minister may, in consultation with the Commission, for the purposes of this Act, prescribe regulations on—

- (a) the type of electronic signature;
- (b) the manner and format in which the electronic signature shall be affixed;
- (c) the manner and procedure which facilitates identification of the person affixing the electronic signature;
- (d) control of the processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- (e) any other matter which is necessary to give legal effect to electronic signatures.

[Act No. 1 of 2009, s. 31.]

**83S. Use of electronic records and electronic signatures in Government and its agencies**

(1) Where any law provides for—

- (a) the effective delivery of public goods and services, improving quality of life for disadvantaged communities, strengthening good governance and public participation, creation of a better business environment, improving productivity and efficiency of government departments;
- (b) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Government in a particular manner;
- (c) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner; or
- (d) the receipt or payment of money in a particular manner,

then notwithstanding anything contained in such law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic forms as may be prescribed by the Minister in consultation with the Commission.

(2) The Minister may, for the purposes of subsection (1), by regulations prescribe—

- (a) the manner and format in which such electronic records shall be filed, created or used;
- (b) the manner or method of payment of any fee or charges for filing, creation or issue of any electronic record under subparagraph (a).

[Act No. 1 of 2009, s. 31.]

**83T. Electronic Gazette**

Where any law provides that any rule, regulation, order, notification, or any other matter shall be published in the *Gazette*, then such requirement shall be deemed to have been satisfied if such rule, regulation, order, notification or any other matter is published in the electronic *Gazette*;

Provided that where any rule, regulation, order, by-law, notification or any other matter is published both in the printed and electronic *Gazettes*, the date of publication shall be deemed to be the date of the *Gazette* which was first published in any form.

[Act No. 1 of 2009, s. 31.]

**83U. Unauthorized access to computer data**

(1) Subject to subsections (2), any person who causes a computer system to perform a function, knowing that the access he has secured is unauthorized, shall commit an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

- (2) A person shall not be liable under subsection (1) where he—
- (a) is a person with a right to control the operation or use of the computer system and exercises such right in good faith;
  - (b) has the express or implied consent of the person empowered to authorize him to have such an access;
  - (c) has reasonable grounds to believe that he had such consent as specified under paragraph (b) above; or
  - (d) is acting in reliance of any statutory power for the purpose of obtaining information, or taking possession of any document or other property.

[Act No. 1 of 2009, s. 31.]

### **83V. Access with intent to commit offences**

(1) Any person who causes a computer system to perform any function for the purpose of securing access to any program or data held in any computer system, with intent to commit an offence under any law, shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

- (2) For the purposes of this section, it is immaterial that—
- (a) the access referred to in subsection (1) is authorized or unauthorized;
  - (b) the further offence to which this section applies is committed at the same time when the access is secured or at any other time.

[Act No. 1 of 2009, s. 31.]

### **83W. Unauthorized access to and interception of computer service**

- (1) Subject to subsection (3), any person who by any means knowingly—
- (a) secures access to any computer system for the purpose of obtaining, directly or indirectly, any computer service;
  - (b) intercepts or causes to be intercepted, directly or indirectly, any function of, or any data within a computer system, shall commit an offence.

(2) A person convicted for an offence under subsection (1) shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

(3) Where as a result of the commission of an offence under subsection (1), the operation of the computer system, is impaired, or data contained in the computer system is suppressed or modified, the person convicted of such offence shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

- (4) For the purpose of this section, it is immaterial that the unauthorized access or interception is not directed at—
- (a) any particular program or data;
  - (b) a program or data of any kind; or
  - (c) a program or data held in any particular computer system.

- (5) A person shall not be liable under subsection (1) where he—
- (a) has the express or implied consent of both the person who sent the data and the intended recipient of such data;
  - (b) is acting in reliance of any statutory power.

[Act No. 1 of 2009, s. 31.]

### **83X. Unauthorized modification of computer material**

(1) Subject to subsections (3) and (4), any person who, knowingly does an act which causes an unauthorized modification of data held in any computer system shall, on conviction be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both.

(2) Where as a result of the commission of an offence under this section—

- (a) the operation of the computer system;
- (b) access to any program or data held in any computer; or
- (c) the operation of any program or the reliability of any data, is suppressed, modified or otherwise impaired,

a person convicted for the offence shall be liable on conviction to a fine not exceeding two hundred thousand shillings and or imprisonment for a term not exceeding two years or both.

(3) A person shall not be liable under this section where he is acting in reliance of any statutory power.

(4) A modification is unauthorized if—

- (a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and
- (b) he does not have consent to the modification from any person who is so entitled.

(5) For the purposes of this section, it is immaterial whether an unauthorized modification or any intended effect of it, be permanent or merely temporary.

[Act No. 1 of 2009, s. 31.]

### **83Y. Damaging or denying access to computer system**

Any person who without lawful authority or lawful excuse does an act which causes directly or indirectly—

- (a) a degradation, failure, interruption or obstruction of the operation of a computer system; or
- (b) a denial of access to, or impairment of any program or data stored in, the computer system,

shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings and or imprisonment for a term not exceeding two years or both.

[Act No. 1 of 2009, s. 31.]

**83Z. Unauthorized disclosure of password**

Any person who knowingly discloses any password, access code, or any other means of gaining access to any program or data held in any computer system—

- (a) for any wrongful gain;
- (b) for any unlawful purpose; or
- (c) knowing that the disclosure is likely to cause prejudice to any person,

shall commit an offence and shall, on conviction, be liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

[Act No. 1 of 2009, s. 31.]

**84A. Unlawful possession of devices and data**

(1) Any person who knowingly manufactures, sells, procures for use, imports, distributes or otherwise makes available a computer system or any other device designed or adapted primarily for the purpose of committing any offence under sections 83U to 83Z, shall commit an offence.

(2) Any person who knowingly receives, or is in possession, without sufficient excuse or justification, of one or more of the devices under subsection (1) shall commit an offence.

(3) Any person who is found in possession of any data or program with the intention that the data or program be used, by the person himself or another person, to commit or facilitate the commission of an offence under this Act, shall commit an offence.

(4) For the purposes of subsection (3), possession of any data or program includes—

- (a) having possession of a computer system or data storage device that holds or contains the data or program;
- (b) having possession of a document in which the data or program is recorded; or
- (c) having control of data or program that is in the possession of another person.

(5) Where a person is convicted under this section, he shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years or both.

[Act No. 1 of 2009, s. 31.]

**84B. Electronic fraud**

Any person who fraudulently causes loss of property to another person by—

- (a) any input, alteration, deletion or suppression of data; or

(b) any interference with the functioning of a computer system, with intent to procure for himself or another person, an advantage, shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings and or imprisonment for a term not exceeding three years or both.

[Act No. 1 of 2009, s. 31.]

#### **84C. Tampering with computer source documents**

Any person who knowingly or intentionally conceals, destroys or alters, or intentionally or knowingly causes another person to conceal, destroy or alter any computer source code, computer programme, computer system or computer network, where the computer source code is required to be kept or maintained by law for the time being in force, shall on conviction be liable to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years, or both.

[Act No. 1 of 2009, s. 31.]

#### **84D. Publishing of obscene information in electronic form**

Any person who publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest and its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein, shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

[Act No. 1 of 2009, s. 31.]

#### **84E. Publication for fraudulent purpose**

Any person who knowingly creates, publishes or otherwise makes available an electronic signature certificate for any fraudulent or unlawful purpose commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or both.

[Act No. 1 of 2009, s. 31.]

#### **84F. Unauthorized access to protected systems**

Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this Part shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or both.

[Act No. 1 of 2009, s. 31.]

#### **84G. Re-programming of mobile telephone**

(1) Any person who knowingly or intentionally, not being a manufacturer of mobile telephone devices or authorized agent of such manufacturer, changes mobile telephone equipment identity, or interferes with the operation of the mobile telephone equipment identity, commits an offence.

(2) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

[Act No. 1 of 2009, s. 31.]



**84H. Possession or supply of anything for re-programming mobile telephone**

(1) A person commits an offence if he—

- (a) has in his custody or under his control anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment identifier; and
- (b) intends to use the thing unlawfully for that purpose or to allow it to be used unlawfully for that purpose; or
- (c) supplies anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment; and
- (d) knows or believes that the person to whom the thing is supplied intends to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose; or
- (e) offers to supply anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment identifier; and
- (f) knows or believes that the person to whom the thing is offered intends if it is supplied to him to use it unlawfully for that purpose or to allow it to be used unlawfully for that purpose.

(2) A person guilty of an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

[Act No. 1 of 2009, s. 31.]

**84I. Bonafide re-programming or possession**

It shall not be an offence under sections 84G and 84H if—

- (a) the re-programming of mobile telephone equipment identity is done; or
- (b) the possession of anything that can change the mobile telephone equipment identity is had,

*bonafides* for personal technological pursuits or other technological review endeavours.

[Act No. 1 of 2009, s. 31.]

**PART VIB – UNIVERSAL SERVICE FUND****84J. Establishment of the Fund**

(1) There is hereby established a fund to be known as the Universal Service Fund which shall be managed and administered by the Commission.

(2) The object and the purpose of the Fund shall be to support widespread access to, support capacity building and promote innovation in information and communications technology services.

(3) There shall be a universal service levy (in this Part referred to as the “levy”) that shall be charged by the Commission on the licensees under this Act for purposes of the Universal Service Fund.

[Act No. 1 of 2009, s. 31.]

**84K. Revenue and expenditure of the Fund**

(1) There shall be credited to the Fund—

- (a) levies from licensees;
- (b) such monies as may be provided by Parliament for that purpose;
- (c) repayment of the principal sum and interest on any loan granted by the Commission;
- (d) income from any investment made by the Commission; and
- (e) any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Board for the purposes of and the administration of the Fund.

[Act No. 1 of 2009, s. 31.]

**84L. Application for grant of fund loan**

Any person may make an application to the Board for consideration for the grant of a loan from the Fund in the prescribed form.

[Act No. 1 of 2009, s. 31.]

**84M. Conditions for grant of loan**

(1) The Board may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to an applicant and in so granting may impose conditions, demand security and require repayment in instalments at such times and within such periods as the Board deems fit:

Provided that, and subject to the provisions of this section, the Board may upon the request by an applicant to whom a loan has been granted at any time vary—

- (i) the conditions upon which the loan was made;
- (i) any security given in relation to the loan; or
- (ii) any of the terms of repayment of the loan.

(2) Where the Board has resolved to grant a loan, the Board shall notify the applicant in writing and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded.

(3) Where an applicant fails to comply with a requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

[Act No. 1 of 2009, s. 31.]

**84N. Penalties for delayed remittances**

Where an applicant fails to make the repayments of instalments on the loan within the prescribed period, the Board may impose penalties for each month or part of the month that the repayments remain unpaid.

[Act No. 1 of 2009, s. 31.]

**84O. Fund's annual returns and audit**

The Board shall comply with the Public Audit Act as regards the operations of the Fund.

[Act No. 1 of 2009, s. 31.]

**84P. Regulations with respect to the Fund**

The Minister may, in consultation with the Commission, make regulations generally with respect to the administration of the Fund and without prejudice to the generality of the foregoing, with respect to—

- (a) amount of levy;
- (b) levels of subsidies to licensees;
- (c) conditions for the grant of a loan;
- (d) mechanisms for collection of the levy; or
- (e) prescribing anything that may be prescribed under this Part.

[Act No. 1 of 2009, s. 31.]

**PART VIC – FAIR COMPETITION AND EQUAL TREATMENT****84Q. General prohibition on anti-competitive conduct**

A licensee under this Act shall not engage in activities, which have or are intended to or likely to have the effect of unfairly preventing, restricting or distorting competition where such act or omission is done in the course of, as a result of or in connection with any business activity relating to licensed services.

[Act No. 1 of 2009, s. 31.]

**84R. Commission to ensure fair competition**

(1) The Commission shall ensure that there is fair competition in the sector and in this regard may make a determination in the licensed system and services.

(2) Without prejudice to the generality of the foregoing the Commission shall in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among licensees.

(3) The Minister may, in consultation with the Commission, make regulations for the better carrying out of the provisions under this Part.

[Act No. 1 of 2009, s. 31.]

**84S. Anti- competitive conduct**

(1) The Commission may, on its own motion or upon complaint, investigate any licensee whom it has reason to believe or is alleged to have committed any act or omission, or to have engaged in a practice, in breach of fair competition or equal access.

(2) Without limiting the generality of subsection (1) an act or omission shall include—

- (a) any abuse by an licensee, either independently or with others, of a dominant position which unfairly excludes or limits competition between such operator and any other party;

- (b) entering any agreement or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition or which—
  - (i) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (ii) limit or control production, markets, technical development or investment;
  - (iii) share markets or sources of supply;
  - (iv) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (v) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract.
- (c) the effectuation of anti-competitive changes in the market structure and in particular, anti-competitive mergers and acquisitions in the communications sector.

[Act No. 1 of 2009, s. 31.]

#### **84T. Complaints and investigation by the Commission**

(1) The Commission may, on its own motion, investigate any licensee who commits any act or omission in breach of fair competition.

(2) Any person having a complaint of a breach of fair competition against a licensee shall lodge a complaint to the Commission and the Commission shall, if it appears that a breach of fair competition has been or is being committed, investigate the act and omission and give written notice to the licensee stating—

- (a) that the Commission is investigating a possible breach of fair competition;
- (b) the reasons for the suspicion of a contravention or breach, including any matter of facts or law which are relevant to the investigation;
- (c) further information required from the licensee in order to complete the investigations; and
- (d) where appropriate, the steps to be taken in order to remedy breach.

(3) The licensee issued with a notice under subsection (2) may, within thirty days from the date of the notice, make representations in response to the notice and give to the Commission all information required under the notice.

(4) Any person affected by the contravention or breach of fair competition may similarly make representation to the Commission in relation thereto.

(5) The Commission shall, after considering any representations of the licensee or any other person fix a date on which to make a decision on the matter.

(6) Where the Commission makes a decision that a licensee is competing unfairly, the Commission may—

- (a) order the licensee to stop the unfair competition;

- (b) require the licensee to pay a fine not exceeding the equivalent of ten percent of the annual turnover of the licensee for each financial year that the breach lasted up to a maximum of three years;
- (c) declare any anti-competitive agreement or contracts null and void.

(7) The provisions of subsection (6) shall not in any way affect the right of any person to make and sustain any claim under any law in force in Kenya for the act or omission which constitutes an offence under this Act or from being liable under that other written law to any punishment or penalty higher than that prescribed under this Act.

(8) Any person aggrieved by the decision of the Commission under this section may appeal to the Tribunal.

(9) The provisions of this section, shall not limit or in any way affect the obligations of a licensee under any condition of a licence.

[Act No. 1 of 2009, s. 31.]

#### **84U. Denial of access**

No licensee under this Act shall deny access or service to a customer except for delinquency of payment of dues or for any other just cause.

[Act No. 1 of 2009, s. 31.]

#### **84V. Anti-competitive practices and conduct**

A licensee shall provide equal opportunity for access to the same type and quality of service to all customers in a given area at substantially the same tariff limiting variations to available or appropriate technologies required to serve specific customers.

[Act No. 1 of 2009, s. 31.]

#### **84W. Regulations on competition issues**

(1) The Minister may in consultation with the Commission make regulations with respect to competition issues.

(2) Without prejudice to the generality of the foregoing, the Minister in consultation with the Commission may make regulations with respect to—

- (a) access, including rules of interconnection, by licensees under this Act and their subscribers to each other's network;
- (b) the procedure of handling alleged breaches of fair competition;
- (c) investigation of a licensee under this Act alleged to have committed acts or omissions in breach of fair competition;
- (d) access to information from any licensee with regard to facilitating investigations on alleged breaches of fair competition;
- (e) steps to be taken in order to remedy the breach;
- (f) definition of market segments;
- (g) market segments in respect of which limited competition may be allowed.

(3) A dominant telecommunications service provider shall file tariffs, rates, terms, and conditions of interconnection with the Commission.

(4) The Commission may, by notice in the *Gazette*, declare a person or institution to be a “dominant telecommunications service provider” for the purposes of this Act.

(5) In making a declaration under subsection (4), the Commission shall consider

- (a) the market share of the telecommunications service provider being at least twenty five per cent of the total revenue of the entire telecommunications market;
- (b) the level of control over the communications infrastructure;
- (c) the level of technological advancement of the telecommunications service provider;
- (d) the scale of operations of the telecommunications service provider.

[Act No. 1 of 2009, s. 31.]

#### PART VII – MISCELLANEOUS PROVISIONS

##### **84. National Communication Secretariat**

(1) There is established a Secretariat to be known as the National Communication Secretariat, headed by a communications secretary and comprising such other officials as may be determined from time to time.

(2) The function of the Secretariat shall be to advise the Government on the adoption of a communication policy which—

- (a) promotes the benefits of technological development to all users of postal and telecommunication facilities;
- (b) fosters national safety and security, economic prosperity and the delivery of critical social services through posts and telecommunications;
- (c) facilitates and contributes to the full development of competition and efficiency in the provision of services both within and outside Kenya; and
- (d) fosters full and efficient use of telecommunication resources including effective use of the radio spectrum by the Government in a manner which encourages the most beneficial use thereof in the public interest.

##### **85. Power of operator to use land**

(1) Subject to subsection (3), a telecommunication operator may, with the consent in writing of the owner or occupier of any land, and subject to such terms and conditions as may be agreed upon between the operator and the owner or occupier, place or maintain under, over, along, across, in or upon such land, any telecommunication apparatus or such radio communication apparatus, installed or used in accordance with a radio communication licence.

(2) Upon an agreement under subsection (1), it shall be lawful for the telecommunication operator or its representatives, at all times and on reasonable notice, to enter upon the land and to—

- (a) put up any posts, which may be required for support of telecommunication lines;

- (b) fasten or attach to any growing on that land a bracket or other support for the line;
- (c) cut down any tree or branch which is likely to injure, impede or interfere with any telecommunication lines; or
- (d) perform any activities necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing any telecommunication apparatus or radio communication apparatus, or for performing any other activities in accordance with the provisions of this Act.

(3) Notwithstanding any agreement under subsection (1) a telecommunication operator shall not, except with the consent of the owner or occupier of the land—

- (a) acquire any right other than that of user of such land under, over, along, across, in or upon which any telecommunication apparatus or radio communication apparatus is placed and only for such purposes as the parties have agreed;
- (b) exercise those powers in respect of any land vested in or under the control of a local authority, except in accordance with a procedure set out in section 86.

(4) A telecommunication operator shall ensure that as little damage as possible is caused to the land and to the environment by reason of the exercise of the powers conferred by this section and shall pay fair and adequate compensation to the owner or occupier of the land for any damage or loss sustained by reason thereof.

(5) Any dispute arising between an operator and the owner or occupier of any land with respect to the provisions of this section may be referred to the Tribunal for adjudication within thirty days of the dispute.

[Act No. 1 of 2009, s. 31.]

#### **85A. Co-location**

(1) Co-location at sites and facilities may be done with prior agreement of licensees.

(2) When no agreement on co-location is reached, the licensees may refer the issue to the Commission for a decision.

[L.N. 39/1999.]

#### **86. Procedure for using public land**

(1) Where a telecommunication operator licensed by the Commission intends to enter any land under the control of a local authority or other public body, the telecommunication operator shall seek the consent of the local authority or public body, stating the nature and extent of the acts to be done.

(2) The local authority or other public body may, upon request under subsection (1), permit the telecommunication operator to exercise any or all of the powers under section 85(2), subject to such conditions, including the payment of any fee for the use of the property, the time or mode of execution of any works, or for any other related activity undertaken by the telecommunication operator under the section as may be agreed between the telecommunication operator and the authority.

(3) An operator dissatisfied with the terms or conditions imposed by the local authority under subsection (1), may apply to the Commission for the review of such terms or conditions.

(4) A person aggrieved by the decision of the Commission under subsection (3) may appeal to the Tribunal within thirty days of such decision.

[Act No. 1 of 2009, s. 32.]

### **87. Compulsory purchase of land**

(1) Where, upon application by a telecommunication operator, the Commission considers that it is necessary land for the purpose of providing telecommunication services to the public, the Commission may apply to the Commissioner of Lands to acquire the land on behalf of the telecommunication operator.

(2) Upon application by the Commission under subsection (1), the Commissioner of Lands may, if satisfied that it is in the public interest to do so, acquire the land in accordance with the provisions of the Land Acquisition Act (Cap. 301).

(3) Where land is acquired on behalf of a telecommunication operator under subsection (2), such operator shall bear all costs in relation thereto.

[L.N. 39/1999.]

**88.** Deleted by Act No. 6 of 2009, Sch.

### **89. Entry and search of premises, etc.**

(1) If a court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the provisions of this Act has been or is being committed, and that the evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, it may grant a search warrant, authorising any person or persons authorised in that behalf by the Commission and named in the warrant, with any police officer, to enter, at any time within one month from the date of the warrant, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and to search such premises, vehicle, vessel or aircraft, and to examine and test any station or apparatus or obtain any article or thing found in such premises, vessel, vehicle or aircraft.

(2) If a court is satisfied that—

(a) it is necessary to enter any specified premises, vessel, aircraft or vehicle, for the purpose of obtaining such information which will enable the Commission to gather necessary evidence in accordance with the provision of subsection (1);

(b) access to such premises, vessel, aircraft or vehicle for the purpose of obtaining such evidence as aforesaid has, within seven days before the date of the application to the court, been sought by a person duly authorised in that behalf by the Commission and has been denied,

the court may grant written authorisation under its hand and seal empowering any person or persons authorised in that behalf by the Commission and named in the authorisation, with any police officer, to enter and search the premises or as the case may be, the vessel, aircraft or vehicle with a view to discovering



whether any station, apparatus, article or thing as aforesaid is situate thereon, and to examine and test it with a view to obtaining such information as aforesaid:

Provided that an authorisation shall not be issued under this subsection unless either—

- (i) it is shown to the court that the Commission is satisfied that there are reasonable grounds for believing that the use of the station or apparatus in question is likely to cause undue interference with any radio communication used for the purposes of any safety-of-life-service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
- (ii) it is shown to the court that not less than seven days' notice of the demand for access was served on the owner or occupier of the premises, or the person in possession or in charge of the vessel, aircraft or vehicle, and that the demand was made at a reasonable hour and was unreasonably denied.

(3) Where under this section a person is authorised to examine and test any telecommunication system or telecommunication apparatus or radio communication apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give such authorised person such assistance as he may reasonably require in the examination or testing of such station or such apparatus.

(4) Any person who—

- (a) obstructs any authorised person in the exercise of the powers conferred on him under this section; or
- (b) fails or refuses to give to any such authorised person any assistance which he is, under this section, under a duty to give to him; or
- (c) discloses, otherwise than for the purpose of this Act or any report of proceedings thereunder, any information by means of the exercise of powers under this Act, being information with regard to any manufacturing process or trade secret,

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(5) For purposes of this section “**court**” means a Resident Magistrate’s Court.

[L.N. 39/1999.]

## **90. Seizure of apparatus, article or other property**

(1) A search warrant granted under section 89 may authorise the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any radio communication apparatus, telecommunication apparatus, article or other thing found in the course of the search carried out in pursuance of the warrant which appears to have been used in connection with or to be evidence of the commission of any offence under this Act.

(2) If a police officer or any person authorised by a warrant to exercise the power conferred under this section has reasonable grounds to suspect that an

offence under this Act has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any radio communication apparatus, telecommunication apparatus article or other thing which appears to have been used in connection with or to be evidence of the commission of any such offence.

(3) Nothing in this section shall prejudice any power to seize or detain property which is exercisable by a police officer under the Police Act (Cap. 84.)

(4) Any person who intentionally obstructs the authorised person in the exercise of the power conferred on him under subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

[L.N. 39/1999.]

### **91. Forfeiture of property used in commission of offence**

(1) Where a person is convicted of an offence under this Act for the contravening of any of the provisions relating to any radio communication station or telecommunication system, or any radio communication apparatus, or any telecommunication apparatus, or in the use of any apparatus for the purpose of interfering with any radio communication or telecommunication, or uses any article or property for disrupting the postal services in contravention of any of the provisions of this Act, the court may, in addition to any other penalty, order all or any of the apparatus of the telecommunication system, the radio communication station or any such other apparatus, or article or property in connection with which the offence was committed, to be forfeited to the commission:

Provided that the provisions of this subsection shall not apply to radio communication apparatus not designed or adapted for transmission (as opposed to reception).

(2) The court by which any such apparatus, article or property is ordered to be forfeited under this section may also order the person, by whom the offence giving rise to the forfeiture was committed, not to dispose of that apparatus, article or property except by delivering it to the Commission within such period as the court may deem fit.

(3) If a person against whom an order is made under subsection (2) contravenes that order or fails to deliver such apparatus, article or property to the commission as required, he shall be guilty of a further offence which, for the purpose of determining the appropriate penalty shall be treated as an offence under the same provision as the offence for which the forfeiture was ordered.

[L.N. 39/1999.]

### **92. Disposal of property seized under section 90**

(1) Any property seized by a person authorised by a warrant under section 89 may be detained—

- (a) until the end of the period of six months from the date of the seizure; or
- (b) if proceedings in respect of an offence involving that property are instituted within that period, until the conclusion of those proceedings, or such shorter periods as the court may order.

(2) After the end of the period for which its detention is authorised by virtue of subsection (1) above, any such property which—

- (a) remains in the possession of the Commission; and
- (b) has not been ordered to be forfeited under section 91,

shall be dealt with in accordance with the following provisions of this section.

(4) The Commission shall take reasonable steps to deliver the property to the person who, in the opinion of the Commission, is the owner of that property and such owner shall indemnify the Commission against any claims that may arise under subsection (5).

(5) Where the property remains in the possession of the Commission after the end of the period of one year immediately following the end of the period for which its detention is authorised under subsection (1), the Commission may dispose of it in such manner as it thinks fit.

(6) The delivery of the property in accordance with subsection (3) to any person appearing to the Commission to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of that property.

[L.N. 39/1999.]

### **93. General restrictions on disclosure of information**

(1) No information with respect to any particular business which—

- (a) has been obtained under or by virtue of the provisions of this Act; and
- (b) relates to the private affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on be disclosed by the Commission or by any other person without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) shall not apply to any disclosure of information which is made

- (a) for the purpose of facilitating the performance of any statutory functions of the Commission; or
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or
- (c) for the purpose of any civil proceedings brought under or by virtue of this Act.

(3) Any person who discloses any information in contravention of this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings.

[L.N. 39/1999.]

**94. Powers in relation to electricity undertakers, etc.**

(1) Subject to subsection (7), any person who establishes or operates, under any written law or otherwise, any undertaking for the supply of electricity (in this section referred to as “**the undertaker**”) or any person who constructs, equips or operates a railway by means of electricity (in this section referred to as “**the railway operator**”) shall, at least one month before erecting, placing or altering the position of any line or wire for the transmission of such electricity, forward to the telecommunication operator within the area within which such work is to be executed, or to the public postal licensee where any post office or other property is likely to be affected, a notice in writing of his intention to execute such work together with a plan of the proposed work, and the undertaker or the railway operator shall also give to the telecommunication operator, or as the case may be, the public postal licensee all such other information as he may require in order to determine whether such work is likely to interfere unduly with any telecommunication or postal services.

(2) Where an undertaker has given notice in writing in accordance with subsection (1), the telecommunication operator, or as the case may be, the public postal licensee within one month of the receipt of such notice, shall inform the undertaker in writing that the proposed work has either been approved or that, in accordance with subsection (3), certain requirements are considered necessary to be effected or that the matter referred to in the notice is receiving attention, and in the event of no such notification in writing being so given, the position of any electric supply line specified in the notice given in accordance with subsection (1) shall, for the purposes of this Act, be deemed to have been approved in writing.

(3) If the telecommunication operator, or as the case may be, the public postal licensee considers that any such work is likely to interfere unduly with any telecommunication or postal services provided by or under the authority of the Commission, he may inform the undertaker or the railway operator of any requirements he may consider necessary to be effected by the undertaker or the railway operator in order to remove or lessen such anticipated interference, and in so doing he shall have regard not only to the interests of such telecommunication or postal services, but also to the interests of all persons supplied or who may be supplied with electricity by the undertaker and of all persons using the facilities provided by the railway operator.

(4) If the undertaker or the railway operator does not agree to effect such requirements, or any altered requirements communicated to him under subsection (3) the matter shall be referred to the Minister for the time being responsible for Public Lands, and the undertaker or the railway operator shall not proceed with the execution of such work until that Minister has given his decision thereon.

(5) Where any matter has been referred to the Minister for the time being responsible for Public Lands under this section, that Minister may appoint any person or committee to investigate the matter and to report thereon to him.

(6) After consideration of the report of any such person or committee, the Minister responsible for Public Lands may, after giving the parties reasonable opportunity of being heard, give such decision as he may think fit, and may specify what requirements, if any, the undertaker or the railway operator shall comply with in executing any such work and any such decision shall be final.

(7) The Commission may, by notice in the *Gazette*, specify general requirements to be observed by any undertaker or railway operator when erecting, placing or altering the position of any electric supply line, and in any such notice the Commission may provide that it shall not be necessary—

- (a) for any undertaker or railway operator effecting any specified class of work; or
- (b) for any specified class of undertaker or railway operator,

to give to the telecommunication operator, or the public postal licensee notice referred to in subsection (1) if, in effecting any work, any such undertaker or railway operator proposes to comply with such general requirements.

[L.N. 39/1999.]

#### **95. Structures likely to interfere with telecommunication or postal services**

Where any person erects any building or structure which is likely to cause interference with the telecommunication, or radio communication or postal services, the telecommunication operator or, as the case may be, the public postal licensee may, unless such person has previously obtained the approval in writing of such operator or licensee to the erection of such building or structure or has modified it to the satisfaction of the said operator or licensee, require such person to pay to the said operator or the licensee the amount of any expenditure necessarily incurred by him in the removal of any installation, apparatus or equipment in order not to interfere with telecommunication, radio communication or postal services.

[L.N. 39/1999.]

#### **96. Offences by companies**

(1) Where any offence under this Act has been committed by a company or body corporate, every person who at the time of the commission of the offence was a director, general manager, company secretary or other similar officer of such company or body corporate, or was purporting to act in any such capacity, shall be deemed also to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where a person is convicted of an offence under this Act in relation to the unlawful use of any telecommunication system or radio communication apparatus, or to the use of any apparatus or property for the purpose of interfering with any telecommunication, radio communication or postal services, the court may, in addition to any other penalty, order all or any of the apparatus or property with which the offence was committed to be forfeited to the Commission.

(3) Where the affairs of the company or body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that company or body corporate.

[L.N. 39/1999.]

#### **97. Property of the Commission in the custody of employees**

(1) Where any employee of the Commission dies or leaves property of the service of the Commission and at the time of such death or termination of service

any premises of the Commission were occupied by him or any property of the Commission was in his possession, it shall be the duty of such employee or, in

the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable, to deliver such property to the Commission or to vacate such premises.

(2) If any property or premises to which subsection (1) refers, is not delivered to the Commission or vacated, the Director-General shall give notice in writing to the person appearing to him to be in possession of such property or in occupation of such premises to deliver to the Commission such property or vacate such premises within such time as may be specified in the notice and if such property is not so delivered or such premises are not so vacated within such time, the Director-General may, without prejudice to any other means of recovery, apply to a Resident Magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property, if found, to the Commission or, as the case may require, to evict from such premises any person found therein.

[L.N. 39/1999.]

#### **98. Limitation of actions**

Where any action or other legal proceeding is commenced against the Commission for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

(a) the action or legal proceeding shall not be commenced against the Commission until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent;

(b) the action of legal proceeding shall not lie or be instituted unless it is commenced within twelve months of the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

[L.N. 39/1999.]

#### **99. Restriction on execution against property of Commission**

Notwithstanding anything to the contrary in any law—

(a) where any judgement or order has been obtained against the Commission no execution or attachment, or process in the nature thereof, shall be issued against the Commission or against any property of the Commission, but the Director-General shall, without delay, cause to be paid out of the revenue of the Commission such amounts as may, by the judgement or order, be awarded against the Commission to the person entitled thereto;

(b) no property of the Commission shall be seized or taken by any person having by law power to attach or restrain property without the previous written permission of the Director-General.

[L.N. 39/1999.]

#### **100. Service of notice, etc., on Director-General**

Any notice or other document required or authorised under this Act to be served on the Commission may be served—

(a) by delivering of the notice or other documents to the Director-General or to any other authorised employee of the Commission; or

- (b) by leaving it at the office of the Director-General; or
- (c) by sending it by registered post to the Director-General.

[L.N. 39/1999.]

#### **101. Service of notice, etc., by Director-General**

Any notice or other document required or authorised under this Act to be served on any person by the Commission or the Director-General or any employee may be served—

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by registered post addressed to that person at his usual or last known address.

[L.N. 39/1999.]

#### **102. Establishment and constitution of Appeals Tribunal**

(1) There shall be established an Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties under this Act and such matters as may be referred to it by the Minister which shall consist of—

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and
- (b) two other members who are persons possessing, in the opinion of the Minister, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or the Corporation;
- (c) two other members who shall be nominated by the media Council established under the Media Act, 2007 (No. 3 of 2007), and appointed by the Minister.

(2) The chairman and other members of the Tribunal shall be appointed by the Minister in consultation with the Attorney-General and the provisions set out in the second Schedule shall have effect in relation to the membership, procedure and sittings of the Tribunal.

(3) The Minister may from time to time publish in the *Gazette* amendments to the schedule as he deems fit.

(4) The members of the Tribunal shall hold office for a period of three years but shall be eligible for reappointment for one further term of a period not exceeding three years.

[Act No. 1 of 2009, s. 33.]

#### **102A. Universal Service Advisory Council**

(1) There is established a Council to be known as the Universal Service Advisory Council.

- (2) The Council shall consist of a maximum of seven members as follows—
  - (a) a chairman appointed by the Minister in consultation with the Board;



(b) at least four members appointed by the Minister in consultation with the Board.

(3) The Council may, upon approval by the Board, co-opt experts as it considers necessary.

(4) In appointing members of the Council under subsection (2), the Minister shall have regard to appoint persons who—

- (a) have knowledge or experience in broadcasting, telecommunication, postal systems, information technology or finance;
- (b) have satisfied the Minister that they are unlikely to have a conflict of interest under this Act and will not have any financial or other interest which will be likely prejudicially affect the carrying out of any functions under this Part;

Provided that an authorization shall not be issued under this subsection unless either—

- (i) it is shown to the court that the Commission is satisfied that there are reasonable grounds for believing that the use of the station or apparatus in question is likely to cause undue interference with any radio-communication used for the purposes of any safety-of life-service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or

[Act No. 1 of 2009, s. 33, Act No. 6 of 2009, Sch.]

### 103. Repeal of Cap. 411 and savings

(1) The Kenya Posts and Telecommunication Corporation Act (Cap. 411) is repealed.

(2) The provisions of the Third Schedule shall, upon the repeal of the Kenya Posts and Telecommunication Corporation Act, have effect with respect to the transfer of the functions, assets and liabilities of the former corporation to the company, the corporation and the Commission, as the case may be, and to all matters incidental to such transfer.

[Act No. 1 of 2009, s. 34.]

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## FIRST SCHEDULE

[Section 8.]

### PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

#### 1. Tenure of office

(1) The chairman or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding four years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for reappointment for one more term of a period not exceeding four years.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

## 2. Vacation of office

A member other than the chairman or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
  - (i) has been absent from three consecutive meetings of the Board without the permission from chairman; or
  - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
  - (iii) is convicted of an offence involving dishonesty or fraud; or
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
  - (v) is incapacitated by prolonged physical or mental illness; or
  - (vi) fails to comply with the provisions of this Act relating to disclosure; or
  - (vii) is engaged in a communications organisation which operates on telecommunication system or provides telecommunication services or is engaged in the manufacture or distribution of telecommunication equipment in Kenya as an owner, shareholder, partner or otherwise, whether directly or indirectly.

## 3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairman may call a special meeting at any time where he deems it expedient for the transaction of the business of the Board.

(3) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairman and an honorary treasurer.

(4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of the business of the Board shall be seven members excluding the chief executive officer.

(6) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairman shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(8) Subject to paragraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

#### **4. Disclosure of interest**

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restriction as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

#### **5. The common seal**

The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and the chief executive officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the chief executive officer:

Provided that the Board shall, in the absence of either the chairman or the chief executive officer, in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or the chief executive officer.

#### **6. Minutes**

The Board shall cause minutes of all proceedings, of meeting of the Board to be entered in books kept for that purpose.

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### SECOND SCHEDULE

[Section 102.]

#### MEETINGS AND PROCEDURE OF THE APPEALS TRIBUNAL

##### **1. Appointment of Members**

The members of the Tribunal shall hold office for a period, not exceeding two years, such member shall hold and vacate his office in accordance with the terms and conditions of his appointment.

**2. Resignation**

Any member may at any time by notice in writing to the Minister resign his office.

**3. Vacation of office of member**

(1) If a member of the Tribunal becomes a member of the Board or, in the case of a member other than the chairman is appointed to the service of the Government or the Commission his office shall become vacant.

(2) The chairman or a member of the Tribunal may be removed from office by the Minister if he is—

- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
- (b) an undischarged bankrupt; or
- (c) convicted of an offence involving fraud or dishonesty; or
- (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings.

**4. Disclosure of interests**

If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Minister and the Minister may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.

**5. Vacancy**

Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.

**6. Temporary members**

In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint a temporary member for the purposes of those proceedings.

**7. Majority decisions**

The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

**8. Powers**

The Tribunal shall have the powers of the High Court—

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
  - (i) the protection of the members of the Tribunal from suit;

- (ii) the form of summonses to witnesses;
- (iii) the giving or fabricating of false evidence;
- (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
- (v) the appearance of advocates,

shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

#### 9. Venue

The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

#### 10. Rules

Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.

#### 11. Proof of documents

A document purporting to be a copy of any order of the Tribunal, and certified by the Chairman to be a true copy thereof, shall in any legal proceedings be *prima facie* evidence of the order.

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### THIRD SCHEDULE

[Section 103.]

#### TRANSITIONAL PROVISIONS

##### 1. Interpretation

In this Part, unless the context requires otherwise—

“**assets**” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former Corporation whether situated in Kenya or elsewhere;

“**Company**” means the Telkom Kenya Limited registered under the Companies Act (Cap. 486), and having its registered office at Nairobi;

“**Corporation**” means the Postal Corporation of Kenya established by the Postal Corporation of Kenya Act, 1998 (Cap. 411);

“**former Corporation**” means the Kenya Posts and Telecommunications Corporation Act (now repealed);

“**liabilities**” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

“**rights**” means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

“**vesting day**” means the day specified by the Minister for Finance under paragraph 5 of this Schedule.

## **2. Licences granted former Corporation**

Notwithstanding the repeal of the Kenya Posts and Telecommunications Act, all licences granted by the former Corporation shall be deemed to be granted by the Commission under the corresponding provisions of this Act and shall remain in force until they are revoked in accordance with any terms in that regard set out in the licence and replaced by licences granted under this Act.

## **3. Winding-up of former Corporation**

The Board of Directors of the former Corporation shall remain in office for the purpose of winding up the affairs of the former Corporation:

Provided that the Minister may by notice in the *Gazette* dissolve the Board of Directors referred to in this subsection upon the completion of the winding up of the affairs of the former Corporation.

## **4. Cessation of exclusive privilege**

The exclusive privilege conferred upon the former Corporation by the Kenya Posts and Telecommunications Corporation Act (Cap. 411) (now repealed) with respect to providing—

(a) telephone services and constructing, maintaining and operating telephone apparatus conferred on the former Corporation by section 59(1); and

(b) telegraph services and of constructing, maintaining and operating telephone apparatus conferred on the former Corporation by section 70,

shall lapse upon the commencement of this provision.

## **5. Transfer of assets and liabilities of the former Corporation**

(1) The Minister for Finance may by notice in the *Gazette*, specify the date or dates and the manner in which the assets and liabilities of the former Corporation shall be transferred to and vested in—

(a) the Commission, in respect of assets and liabilities relating to regulatory services;

(b) the Company, in respect of assets and liabilities relating to telecommunication services; and

(c) the Corporation, in respect of assets and liabilities relating to postal services.

(2) References in this Schedule to assets and liabilities of the former Corporation shall be references to all such assets and liabilities, whether or not capable of being transferred or assigned by the former Corporation.

(3) A notice under subsection (1) shall specify the assets and liabilities of the former Corporation which are to be transferred to the Commission, the Company, or the Corporation, as the case may be.

(4) If, on the vesting day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever instituted in relation to the business of the former Corporation which is by virtue of this section, transferred to the Commission, Company, or, the Corporation, as the case may be, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former Corporation or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Commission, Company or, the Corporation, as the case may be.

(5) In the case of assets and liabilities arising under any loans which vest in the Commission, the Company or the Corporation, as the case may be on the vesting day, the Commission, the Company or the Corporation as the case may be, may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.

(6) Any assets and liabilities of the former Corporation which are not to be vested either in the Commission, the Company or the Corporation as the case may be, shall be disposed of in such manner as the Minister for Finance shall determine.

## **6. Transfer of other Assets**

(1) The Minister for Finance may, by order published in the *Gazette*, from time to time, provide that any property registered in the name of the Cable and Wireless Company, (Kenya), the East African External Telecommunication Company, the Post Master General, or the East African Posts and Telecommunication Corporation, companies incorporated under the Companies Act (Cap. 486), which had not been transferred to the former Corporation, shall on the date mentioned in the order, be deemed to have been transferred to and registered in the name of the Commission, the Company, or the Corporation, as the case may be.

(2) Except as otherwise provided in this Act, any agreement made, transaction effected or other thing done by, to or in relation to the former Corporation which is in force or effective immediately before the vesting day shall have effect as from that day as if made, effected or done by, to or in relation to the Commission, the Company or the Corporation as the case may be, were the same person, in law, as the former Corporation, and accordingly, references to the former Corporation—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument; and
- (b) in any other document whatsoever (other than an enactment) relating to or affecting any asset or liability of the former Corporation which vests by virtue of paragraph 5 of this Schedule in the Commission, the Company or the Corporation, as the case may be, shall be taken with effect from the vesting date as referring to the Commission, the Company or the Corporation, as the case may be.

## **7. Employees**

(1) Every person who at the commencement of this Act is an employee of the former Corporation, not being under notice of dismissal or resignation, shall on

the vesting day, become an employee of the Commission, the Company or, the Corporation, as the case may be, as may be respectively specified by the Minister on the same or improved terms and conditions of service.

(2) Where on the vesting day—

- (a) any disciplinary proceedings against any employee of the former Corporation, are in the course of being heard or instituted, or have been heard or investigated by the former Corporation but no order or decision has been made thereon; or
- (b) any such employee is interdicted or suspended, the Commission, Company, the Corporation, as the case may be, shall—
  - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
  - (ii) in the case of paragraph (b), deal with such employee in such manner as it thinks appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings making of an order or the rendering of a decision, as the case may be, as if such disciplinary proceedings have been commenced by the Commission, the Company, or the Corporation, as the case may be.

(3) Where on the vesting day, any penalty (other than dismissal) has been imposed on any employee of the former Corporation pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such employee, he shall on his transfer to the Commission, the Company, or, the Corporation, as the case may be, under subsection (1) serve or continue to serve such penalty to its full term as if it had been imposed by the Commission, the Company or, the Corporation as the case may be.

## **8. Pensions**

Where any person whose services are transferred to the Commission, the Company, or the Corporation, as the case may be, is on the vesting day, a member of any statutory or voluntary pension scheme or provident fund he shall, for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds his service with the Commission, the Company or the Corporation, as the case may be, shall be deemed to be service in the former Corporation.

## **9. Former employees**

The Commission, the Company or the Corporation, as the case may be, shall continue to be liable to former employees of the former Corporation, who have retired on the vesting day for such pension benefits payable as they are entitled to under the regulations of those pension schemes.



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**FOURTH SCHEDULE**

[Section 102A, Act No. 1 of 2009, s. 35.]

**PROVISIONS AS TO THE UNIVERSAL SERVICE ADVISORY COUNCIL****1. Tenure of office**

The Chairman and members of the Council shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years on such terms and conditions as may be specified in their instrument of appointment, but shall be eligible for reappointment for one more term of a period not exceeding three years.

**2. Appointment of members**

The members of the Council shall be appointed at such times that their respective terms of office shall expire at different times.

**3. Vacation of office**

A member of the Council may—

- (a) at any time by notice in writing addressed to the Minister, resign his office;
- (b) be removed from office by the Minister if the member—
  - (i) has been absent from three consecutive meetings of the Council without permission from the chairman;
  - (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with creditors; or
  - (iii) is convicted of an offence involving dishonesty or fraud;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings; or
  - (v) is incapacitated by prolonged physical or mental illness; or
  - (vi) fails to comply with the provisions of the Act relating to disclosure.

**4. Gazettement of members**

The names of persons appointed to be members of an advisory council and the interests they represent and the names of persons ceasing to be members of the council shall be notified in the *Gazette*.

**5. Meetings and proceedings**

Subject to this Schedule, the Council shall regulate its own procedure.

**6. Meetings**

Meetings of the Council shall be called by the Chairman whenever the Board so requests.

**7. Absence of chairman**

If the chairman is absent from a meeting of the Council, the members present shall elect one of their number to preside at that meeting.

**8. Agenda of meetings**

The agenda at a meeting of the Council shall consist of such matters as the Board may from time to time refer to the Council for consideration and such other matters as the Council, with the agreement of the Board, may receive.

**9. Quorum**

A quorum at any meeting of the Council shall be one half of the members of the Council.

**10. Resolutions**

A resolution at a meeting of the Council shall require the affirmative votes of one half of the members present except the chairman, who shall have a casting vote only.

**11. Staff of the council**

The secretary and any other staff of the Council shall be members of the staff of the Commission appointed for the purpose by the Board.

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**FIFTH SCHEDULE**

[Section 46R, Act No. 1 of 2009, s. 35, Act No. 12 of 2012, Sch.]

**TRANSITIONAL PROVISIONS****1. Interpretation**

In this Schedule, unless the context requires otherwise, “**broadcasting permits**” means any authority given prior to the commencement of this Act by the Minister in charge of broadcasting authorizing any person to undertake broadcasting services.

**2. Broadcasting permits granted by the Minister**

The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Minister prior to the commencement of this Act;

Provided that—

(a) such parties shall be granted a period not exceeding one year or such longer period and subject to such terms and conditions as the Minister may by notice in the *Gazette*, specify during which they may continue to operate in accordance with their existing permits; and

(b) before the expiry of the one year or such longer period as aforesaid period, such parties shall apply to the Commission to be licensed under this Act.

### **3. Domain administrators**

The Commission shall respect and uphold the vested rights and interests of parties that were actively involved in the management and administration of the .ke domain name space at the date of commencement of this Act provided that—

(a) such parties shall be granted a period not exceeding six months during which they may continue to operate in respect of their existing delegated sub-domains; and

(b) before the expiry of the six months or such longer period as the Minister may, by notice in the *Gazette*, specify period, such parties shall apply to the Commission to be licensed under this Act.

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