



**REPUBLIC OF KENYA**

**THE KENYA INFORMATION AND  
COMMUNICATIONS BILL 2006**

**February 2006**

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**AN ACT of Parliament to promote and develop in an orderly manner the carriage and content of communications (including broadcasting, multimedia, telecommunications and postal), for the establishment of a commission to regulate all forms of communications, for the establishment of an appeals tribunal and for connected purposes.**

WHEREAS it is considered necessary—

- (i) to facilitate development of a national infrastructure for an information based society, and to enable access thereto;
- (ii) to provide a choice of services to the people of Kenya with a view to promoting plurality of news, views and information;
- (iii) to establish a regulatory framework for carriage and content of communications in scenario of convergence of telecommunications, broadcasting, data-communication, multimedia and other related technologies and services; and
- (iv) to provide for the powers, procedures and functions of a single regulatory and licensing body and of the Appeals Tribunal for the ICT sector

ENACTED by the Parliament of Kenya as follows:

## **PART I - PRELIMINARY**

### **1. Short title and commencement**

This Act may be cited as the Kenya Information and Communications Act, 2006 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

### **2. Interpretation**

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

“Board’ means the Board of Directors constituted under section 8;

"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 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;

“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;

“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.

“Commercial broadcaster’ means a person licensed by the Commission under this Act to provide commercial broadcast services;

“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-



- (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 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;

“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;

‘courier services’ means any specialised service for the collection, despatch, conveyance, handling and delivery of postal articles;

“Digital Signature Certificate” means trusted electronic credentials that enable access control, secure messaging, and transaction security. Digital Certificates are issued by a trusted third party generally referred to as a Certification Service Provider;

“direct to home” means a broadcast via satellite directly to the subscribers;

“Director-General” means the Director General of the Commission appointed under section 13;

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

“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 Government 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 20;  
“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;

“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;

“Fund” means the Universal Service Fund established by section 132 of this Act;

“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 Information and communications;

“multi-channel distributions’ means a service which conveys more than one broadcast channel at the same time by means of radio waves or any other form of telecommunications;

“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;

“possession”, “be in possession of” and “have in possession” have the meanings assigned to such expressions in section 4 of the Penal Code;

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

“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;

“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;

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

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

“public postal licensee” means the Postal Corporation of Kenya established under the Postal Corporation of Kenya Act, 1998;

“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;

“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;

“satellite broadcasting service” means a service in which signals transmitted from aboard a space station are intended for direct reception by the general public;

“secure electronic signature” means an electronic signature which meets the following requirements:

- (a) it is uniquely linked to the signatory;
- (b) it 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 the data is detectable.

“sound broadcasting service” means a broadcasting service destined for direct reception by the general public with the help of sound radio receiving apparatus;

“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 73;

“telecommunication operator” means a telecommunication operator licensed under section 73;

“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 sub paragraph (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;

“television broadcasting service” means a broadcasting service consisting of sending of visual images or other visible signals whether with or without accompanying sounds, where visual images are such that sequences of them are seen as moving pictures;

“television” means the transmission or reproduction by radio-communication, satellite, cable or other electromagnetic system, of images of objects in movement or at rest;

“terrestrial broadcasting service” means a service that is broadcast from the transmitter situated upon the earth’s surface.

“Tribunal” means the Appeals Tribunal set up under section 158 of this Act;

“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 99, 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, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(d) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows:-

(e) if the addressee has designated computer resource for the purpose of receiving electronic record:

- (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
- (ii) 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;

(f) 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.

(g) Save as otherwise agreed between the originator and the addressee, 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.

(h) The provisions in (g) 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 sub-section (3).



## **PART II – COMMUNICATIONS COMMISSION OF KENYA**

### **3. Establishment of Commission**

3. (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, and for furtherance of the provisions of, this Act which may be lawfully done or performed by a body corporate.

(3) The Commission shall be the successor of the Communications Commission of Kenya established under the Kenya Communications Act 1998 (now repealed) and subject to this, all rights, duties, obligations, assets and liabilities of the Communications Commission of Kenya existing at the commencement of this Act shall be automatically and fully transferred to the Commission and any references to the Communications Commission of Kenya in any contract or document shall for all purposes be deemed to be a reference to the Commission established under subsection (1).

### **4. Headquarters**

4. The Headquarters of the Commission shall be in Nairobi.

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

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

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

(3) The Commission may enter into association with such other bodies or organizations within and outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission was 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 information and communication services.

## **6. Minister to issue policy guidelines**

6. (1) The Minister may issue to the Commission guidelines on sector policy as may be appropriate.

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

## **7. Independence of the Commission**

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

## **8. Board of Directors**

8. (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; and
- (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 and/or media;
  - (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 commerce or related consumer interests.

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

## **9. Powers of the Board**

9. 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 23.

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

10. 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 procedure.

## **11. Delegation by the Board**

11. 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.

## **12. Remuneration of Board Members**

12. 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.

## **13. The Director General**

13 (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.

(3) There shall be a Deputy Director General who shall be appointed on such terms and conditions as the Board may determine.

## **14. Secretary to the Board**

14 (1) There shall be a Secretary to the Board who shall be appointed by the Board 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.

## **15. Staff of the Commission**

15. 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.

## **16. The Common Seal of the Commission**

16 (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.

## **17. Protection from Personal Liability**

17. 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.

## **18. Liabilities for Damages**

18. The provisions of section 17 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.

## **19. Funds of the Commission**

19. 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.

## **20. Financial year**

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

## **21. Annual Estimates**

21(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, gratuities, allowances and other charges in respect of the staff of the National Information and Communications Secretariat; established under section 139, 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.

## **22. Accounts and audit**

22 (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 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 or by an auditor appointed by the Board with the written approval of the Auditor-General.

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

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

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

(7) Within a period of six months after the end of the financial year, the Auditor-General 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.



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

(9) Notwithstanding anything in this Act, the Auditor General 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 shall, *mutatis mutandis*, apply to any report made under this section.

(10) The Minister shall lay the annual 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.

### **23. Investment of funds**

23. (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.

### **24. Annual report**

24 (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 – BROADCASTING**

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

25. Functions of the Commission in relation to broadcasting shall be to:

- (a) promote the development of diverse range broadcasting services in Kenya in accordance with internationally acceptable standards of broadcasting and with due regard to the needs and susceptibilities of the people of Kenya;
- (b) encourage the development of Kenyan expression by promoting a wide range of programmes that reflect Kenyan attitudes, opinions, ideas, values and artistic creativity;
- (c) promote the development of local content in broadcasts;
- (d) ensure the provision by broadcasters, of appropriate means for disposing of complaints in relation to broadcasting services;
- (e) ensure respect of the privacy of all persons; and
- (f) carry out such other functions as are necessary or expedient for discharge of all or any functions conferred upon it under this Act.

### **26. Classification of broadcasting Services**

26 Subject to the provisions of this Act, the Commission may, on such terms as it may determine, issue sound or television broadcasting service licence for a specified area according to the following service categories-

- a) public broadcasting service
- b) Private broadcasting service
- c) community broadcasting service

(2) Subject to the provisions of this Act, broadcasting licences are categorized in the following classes:

- a) Free-to-air radio service;
- b) Free-to-air television service;
- c) Satellite-free-to-air radio services;
- d) Satellite-free-to-air television services;
- e) Satellite-subscription television services;
- f) Satellite-subscription radio services;
- g) Terrestrial-subscription television services;
- h) Direct-to-home delivery service, including multi-channel satellite distribution;
- i) Cable television subscription service;
- j) Low power radio service;
- k) Any other class of license as determined in accordance with the Regulations.

## **27. Requirement of a broadcasting license**

27(1) Subject to the provisions of this Act, no person shall provide broadcasting services except in accordance with a valid licence issued under this Part.

(2) Any person who contravenes the provisions of 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 license granted under this section may include conditions requiring the licensee to –

- (a) broadcast in such areas and with such geographical limits as the Commission may prescribe;
- (b) pay such fees as the Commission may prescribe; and
- (c) fulfill such other conditions as the Commission may from time to time require.

## **28. Eligibility for licensing and considerations for award of licence**

28(1) A person shall not be eligible for the grant of a broadcast licence if such a person-

- (a) has a direct, indirect or beneficial interest of whatever nature, in another broadcast service category, as provided for in section 26;
- (b) is a political party or has affiliation or connection to one or more political parties;
- (c) is adjudged bankrupt or has entered into a composition scheme or arrangement with his creditors;
- (d) does not fulfill such other conditions as may be prescribed;
- (e) Does not operate local studios for the production and broadcasting of local content;
- (f) is a person of unsound mind.

(2) No broadcasting licensee –

- (a) shall own, control or hold any securities in another broadcasting licensee;
- (b) shall own or control a newspaper or more than ten per centum of the securities in a body corporate owning or controlling a newspaper.

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

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

## **29. Public Broadcast Services**

29(1) The Kenya Broadcasting Corporation is hereby designated as the public broadcaster and shall provide public broadcast services.

(2) A licence granted to the public broadcaster may include conditions requiring the broadcaster to –

- (a) provide universal broadcasting services as may be specified;
- (b) provide the public with quality programmes that provide impartial and balanced information, education and entertainment;
- (c) operate in the public interest and conduct broadcasting services with impartial attention to the interests and susceptibilities of different communities of Kenya;
- (d) respond to the aspirations of the entire Kenya population in terms of age, race, gender, interests and backgrounds;
- (e) promote, the cultural, moral, social and economic values of Kenya;

- (f) promote the use of local and national languages;
- (g) provide programming that promotes Kenyan identity and programmes; and
- (h) provide any other broadcasting services and in a manner as the Commission may, in writing, require.

### **30. Community Broadcast Services**

30(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 provision of community broadcasting services by any group of people having a common interest.

(2) Subject to the provisions of this Act, the Commission shall in considering applications for community broadcast services have regard to –

- (a) commonality of interest of the persons applying for or on whose behalf the application is made;
- (b) whether the persons, or a significant proportion thereof constituting the community have consented to the application;
- (c) the source of funding;
- (d) whether the broadcasting service to be established is not-for-profit; and
- (e) 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 affairs of the broadcasting service;
- (b) ensure that each member of the community has equal opportunity to be elected to the board or committees managing the affairs 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 from time to time require or issue with regard to such broadcasting service.

### **31. Private Broadcasting Services**

31 (1) Subject to the provisions of 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) meet the highest standard of journalistic professionalism;
- (c) in the case of free-to-air television, include drama, documentaries and children's programmes that reflect Kenyan themes.

### **32. Commission to prescribe programme code**

32(1) The Commission shall have the power to set standards for the manner, time, and type of programmes to be broadcast by licensees under this Act.

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

- (a) draw up and from time to time review a programming code;
- (b) define a watershed period with special regard to programming included in licensed services when large numbers of children and young persons are expected to be watching programmes; and
- (c) publish the code drawn up under this section;

Provided that the programme 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 code of conduct enforced by that body by means of its own disciplinary mechanisms and provided further that such code of conduct and disciplinary mechanisms are acceptable to the Commission.

### **33. Responsibilities of broadcasters**

33(1) All licensed broadcasters shall, in their programmes, be responsible for the presentation and maintenance of standards and 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 interests 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 neighboring rights in respect of any work or material;
- (h) conform to guidelines as may be issued by the Commission from time to time; and
- (i) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;



- (j) ensure that advertisements either in terms of content tone or treatment, do not mislead or not repugnant to good taste.

(2) (a) Where any cinematograph film has been submitted under any law for 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.

### **34. Enforcement of licence conditions**

34 (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 a broadcast 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 and such penalty shall be a debt owed to the Commission and recoverable summarily.

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

### **35. Revocation of licences**

35. The Commission may 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;
- (c) fails to use the assigned broadcasting frequencies within one year after the as by the Commission.

### **36. Regulations on broadcasts**

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

- (a) the development, production and broadcast content;
- (b) financing and broadcast of local content;
- (d) prescribing anything to be prescribed under this Part.

### **37. Complaints**

37 (1) All broadcasters shall establish and maintain a procedure, which shall be submitted to the Commission for approval, by which persons aggrieved by any broadcast or who allege that a broadcaster is not complying with the provisions of this Act or any other written law, may file complaints.

(2) 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.

(3) complaints made under this section shall be in writing 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.

(4) Any person who is aggrieved by the decision of the Commission made under this section may appeal to the Tribunal.

(5) Save as provided in this Act, no complain based merely on the person's preferences shall be entertained by a licensee, the Commission or the Tribunal

### **38. Access to Programmes**

38. The Commission or the Tribunal may with a view to solving any dispute brought under section 37 require a licensee to –

- (a) enable the Commission, the Tribunal or the complainant to review or hear the broadcast complaint of;
- (b) provide the Commission, the Tribunal or the complaint with the transcript of the broadcast complained of;
- (c) furnish the Commission, the Tribunal or the complainant with copies of any document that may assist in resolving the dispute.
- (d) furnish the Commission or the Tribunal with any written or oral evidence to assist in resolving the dispute or in answer to the complaint.

### **39. Requirement for a licence for Signal Distribution**

39(1) subject to the provisions of this Act, no person shall provide signal distribution services within Kenya and 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 liable to imprisonment for a term not exceeding five years or to a fine of not more than one million Kenya Shillings or to both.

#### **40. Signal Distribution Licence**

40(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 —

- (a) terrestrial broadcasting signal distribution services;
- (b) satellite broadcasting signal distribution services;
- (c) cable broadcasting signal distribution services; and
- (d) any other signal distribution services as the Commission may determine.

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

- (a) prioritise the provision of broadcasting channels licensed in Kenya;
- (b) provide capability for a diversity of broadcast services and content;
- (c) deliver public services, including educational programmes as well as commercial and community services;
- (d) provide an open network that is interoperable with other signal distribution networks; and
- (e) any other conditions as the Commission may from time to time determine.

(2) In case of a signal distribution licensee utilizing the radio frequency resource, the Commission may in addition require the licensee to comply with conditions as to the nature, and location of transmitters and their transmission characteristics.

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

#### **41. Revocation of Signal distribution licence**

41. (1) The Commission may revoke a licence under this Part where the licensee or a person in control of 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 licence;
- (c) fails to commence operations within the period prescribed by the Commission

#### **42. Offences relating to Broadcasting Services**

42 (1) Any person who operates a broadcasting station or provides a broadcasting service without a valid broadcasting license commits an offence.

(2) Any person who operate a broadcasting system or provides a broadcasting service in contravention of a license granted under this Act commits an offence if-

- (a) that person who operate a broadcasting system or provides broadcasting services which are not of a description specified in the license;
- (b) that person provides broadcasting services in an area for which he is not licensed to broadcast;
- (c) that person broadcasts in contravention of the Act or the licence conditions; and
- (d) that person operates a broadcasting service or uses broadcasting equipment in contravention of the Act or license.

(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 to both.

## **PART IV – INFORMATION TECHNOLOGY**

### **Background to this Part:**

*A revolution is occurring in the way people transact business. Governments, businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper based commerce to e-commerce. Although individuals and businesses are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework.*

*The two principal hurdles which stand in the way of facilitating electronic transactions are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. In addition, the Law of Evidence is traditionally based upon paper based records and oral testimony and many have made appropriate amendments to their laws to facilitate electronic transactions.*

*The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Electronic Commerce in 1996. The General Assembly of United Nations by its Resolution No. 51/162, dated 30th January, 1997, recommended that all States should give favourable considerations to the said Model Law when they enact or revise their laws. The Model Law provides for equal legal treatment of users of electronic communication and paper based communication.*

*The General Assembly of United Nations by its Resolution No. A/RES/56/80, dated 24 January 2002, recommended that all States should give favourable considerations to the Model Law Model Law on Electronic Signatures when they enact or revise their laws. The Model Law provides for the use of electronic signatures in the context of commercial activities.*

*More recently, the General Assembly of United Nations by its Resolution No. A/RES/60/21, dated December 2005, adopted the United Nations Convention on the Use of Electronic Communications in International Contracts which applies to the use of electronic communications in*

*connection with the formation or performance of a contract between parties whose places of business are in different States.*

*There is therefore need to provide for legal recognition of electronic records and digital signatures. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. It is also proposed to provide for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature Certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium.*

*With a view to facilitate e-government, it is proposed to provide for the use and acceptance of electronic records and digital signatures in the Government offices and state-owned bodies. This will make the citizens interaction with the Governmental offices hassle free.*

*It is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislation. And to make consequential amendments in the Penal Code and the Evidence Act, to provide for necessary changes in the various provisions which deal with offences relating to documents and paper based transactions.*

### **43. Application**

43. (1) This Part shall not apply to any rule of 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, deleting or amending any class of transactions or matters.

### **44. Functions of the Commission in relation to Information Technology Services**

44. The functions of the Commission in relation to information technology services shall be to:

- (a) facilitate electronic communications by means of reliable electronic records;
- (b) facilitate electronic commerce and eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements;
- (c) promote public confidence in the integrity and reliability of electronic records and electronic transactions, and to foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium.
- (d) facilitate access to e-government services;
- (e) minimise the incidence of forged electronic records and fraud in electronic commerce and other electronic transactions;

#### **45. Requirement for a licence**

45. No person shall –

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

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 three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

#### **46. Licence for Electronic Certification Services**

46 (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 authorising persons, whether of a specified class or any particular 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 to ensure that the secrecy and privacy of the digital signatures are assured; and
- (d) observe such other standards as may be specified by regulations.

## **47. Licence for Country Code Top-Level Domain Registrars and Registries**

47. 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 persons, whether of a specified class or any particular person to administer a sub-domain in the Country Code Top-Level Domain.

### **Comment:**

*Domain names are Internet addresses allocated to users on application to the relevant institutions assigned with the responsibility of allocating these addressees locally and worldwide. There are two main forms of domain names classified as, first, country top-level domains and denoted by cc TLD's, and second, the sub-domains.*

*Domain names are used as internet addresses for websites of organizations and individuals on the internet. Examples of such domain names in the Kenyan ccTLD are: [www.communications.go.ke](http://www.communications.go.ke), [www.uonbi.ac.ke](http://www.uonbi.ac.ke), [www.kbc.co.ke](http://www.kbc.co.ke), and [www.nationaudio.co.ke](http://www.nationaudio.co.ke). Careless registration of domain names within a ccTLD can lead to situation where individuals with ill motives register names of well-known organizations.*

## **48. Legal recognition of electronic Records**

48. Where the law provides that information or other matter shall be in writing then, notwithstanding anything contained in such a 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.

## **49. Retention of Electronic Records**

49(1) 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 if such documents, records or information are retained in electronic form, and 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 does not apply to any information, which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

## **50. Retention of information in original form**

50(1) Where the law requires information to be presented or retained in its original form, that requirement is met by 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 a 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 (a) of subsection (1):

(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 the light of all the relevant circumstances.

**Comments:**

*If any law provides that documents, records or information are required to be retained for any specific period then, that requirement shall be deemed to have been satisfied if the same is retained in electronic form.*

## **51. Formation and Validity of Contracts**

51(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. Where a electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability on the sole ground that a 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.

## **52. Recognition of Parties of Electronic Messages**

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

### **53. Attribution of Electronic Records**

53(1) A 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 the originator and addressee, an addressee is entitled to regard a 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.

### **54. Acknowledgement of receipt**

54(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 the 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 been never 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 the aforesaid time limit he may, after giving notice to the addressee, treat the electronic record as though it has never been sent.

## **55. Secure Electronic Record**

55. 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.

## **56. Compliance with Requirement for a Signature**

56(1) Where the law requires a signature of a person, that requirement is met in relation to a electronic message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the electronic message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

(2) Sub-section (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 electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in sub-section (1) if:

- (a) the signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
- (b) the signature creation data were, at the time of signing, under the control of the signatory and of no other person;
- (c) any alteration to the electronic signature, made after the time of signing, is detectable; and
- (d) 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.

## **57. Legal recognition of Electronic signatures**

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

### **Comment:**

This section provides for the recognition of electronic signatures according to the provisions of the UNCITRAL model law on electronic signatures adopted by the UN Assembly on

## **58. Protected Systems**

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

(2) The Minister may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).

### **Comment:**

*As the government will start relying more on its information technology resources, certain resources will require legal protection against unauthorized entry due to the sensitivity and dependence of the country on such resources.*

## **59. Regulations for Electronic Signatures**

59. The Minister may, for the purposes of this Act, prescribe regulation 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.

**Comment:**

*As digital technology advances, so will the type and complexity of electronic signatures change. The minister following advice by the Commission shall have powers to prescribe the type and form of electronic signatures.*

## **60. Use of electronic records and electronic signatures in Government and its agencies**

60(1) Where the law provides for:

- (a) the filling 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;
- (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner; and
- (c) the receipt of payment of money in a particular manner;

then notwithstanding anything contained in any 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 form as may be prescribed by the Minister in consultation with the Commission.

(2) The Minister may, for the purposes of sub-section (1) by regulations prescribe:-

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

**Comments:**

*This clause allows the use electronic transactions to support e-government services, i.e Government-to-citizen and government-to-business.*

## **61. Electronic Kenya Gazette**

61. Where any law provides that any rule, regulation, order, notification, or any other matter shall be published in the Kenya 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 Kenya Gazette.

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

**Comment:**

*This Section facilitates e-government services by allowing Government-to-Citizen electronic dissemination of rules, regulations, notifications, etc.*

## ***Offenses relating to Information Technology***

## **62. Tampering with Computer Source Documents**

62. Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be guilty of an offence punishable with imprisonment for a period not exceeding three years, or a fine not exceeding three hundred thousand shillings or both.

## **63. Hacking into Computer system**

63 (1) Whoever with the intent to cause or knowing that he is likely to cause loss or damage to the public or any person destroys or deletes or alters any information in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.



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

#### **64. Publishing of Information which is Obscene in electronic form**

64. Whoever publishes or transmits or causes to be published in electronic form, any material which is lascivious or appeals to the prurient interest, or if 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 be guilty of an offence punishable with imprisonment for a period not exceeding three years or a fine not exceeding three hundred thousand shillings, or both.

#### **65. Publication for fraudulent purpose**

65. Whoever knowingly creates, publishes or otherwise makes available a Electronic Signature Certificate for any fraudulent or unlawful purpose commits an offence punishable by a fine not exceeding one million shillings with imprisonment for a period not exceeding five years or both.

#### **66. Unauthorized access to protected systems**

66. 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 punishable with imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or both.

## **67. Re-programming of mobile telephone**

67. (1) Whoever knowingly or intentionally, while not being a manufacturer of a mobile telephone devices or authorised agent of the 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 is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred thousand shillings or to both.

## **68. Possession or supply of anything for re-programming mobile telephone**

68(1) A person commits an offence if:-

- (a) he 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) he intends to use the thing unlawfully for that purpose or to allow it to be used unlawfully for that purpose;

or

- (a) he supplies anything which may be used for the purpose of changing or interfering with the operation of a mobile telephone equipment, and
- (b) he 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

- (a) he 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
- (b) he 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 imprisonment for a term not exceeding 5 years or to a fine not exceeding million shillings or to both.

**Comments:**

*The international Global System for Mobiles (GSM) standards require that all mobile telephone handsets have a unique identifier known as the International Mobile Equipment Identity (IMEI) number which should be resistant to change. Other than the manufacturers, only a very limited and strictly controlled service centers have authorization to change mobile telephone identity numbers.*

*Over 40% of robbery with violence incidents involve mobile handsets which are later sold in the country. The mobile telephone network providers have the capability to bar mobile telephone handsets from accessing their services by using the IMEI number, when these are reported stolen or lost. However, if the IMEI number of the telephone is changed, it is not possible to implement the barring process.*

*Currently, it is not an offence to re-programme the IMEI number of a mobile handset. Consequently criminals are altering the IMEI numbers of stolen phones and selling them to the public as genuine new or second hand merchandise.*

## **PART V - TELECOMMUNICATIONS**

### **69. Provision of telecommunication services**

69 (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;

### **70. Requirement of licence**

70 (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 for a term not exceeding five years, or to both.

## **71. Telecommunication licences**

71 (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 authorize

- (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 fulfill such other conditions as the Commission may prescribe.

(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.

## **72. Enforcement of licence conditions**

72(1) Where, on its own motion or consequent upon complaints made by third parties, the Commission –

(a) is satisfied that a telecommunication operator is contravening or has contravened any of the conditions of a licence and that the contravention or apparent contravention is not of a trivial nature;

(b) notifies the telecommunication operator, in writing, specifying the acts or omissions which, in its opinion, constitute or would constitute contravention of the conditions of the licence;

(c) requires the telecommunication operator to remedy the contravention within such period as the Commission may specify in the notice, then, if the telecommunication operator fails to remedy the contravention within that period without reasonable cause, such telecommunication operator shall be liable to a penalty of five hundred thousand shillings for every month or part thereof during which the contravention continues, and such penalty shall be a debt owed to the Commission and recoverable summarily.

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

### **73. General Regulations for Telecommunication services**

73(1) The Minister in consultation with the Commission may make regulations generally with respect to telecommunication services.

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

- b) the running of telecommunication systems;
- c) the privacy of telecommunication;
- d) the provision of telecommunication services 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;
- e) 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;
- f) 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;
- g) fees and other charges for any matter permitted or matters required to be done under this Act in relation to telecommunication services;
- h) 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.

(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.

## ***Offences relating to telecommunications services***

### **74. Obtaining services dishonestly**

74. 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.

### **75. Improper use of system**

75. 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.

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

76. 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.

## **77. Interception and disclosure**

77. 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 a 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.

## **78. Tampering with telecommunication plant**

78. A person who, with intent to –

- (a) prevent or obstruct the transmission or to delay any message; or
- (b) intercept or acquaint himself with the contents of any message; or
- (c) commit mischief;
- (d) damages, removes, tampers with, touches or in any way whatsoever interferes with any telecommunication apparatus or telecommunication line, post or other thing whatsoever, being part of or used in or about any licensed telecommunication system or in the use thereof,

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 three years, or to both.

## **79. Trespass and wilful obstruction of telecommunication officer**

79. 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 one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

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

80(1) A person who, while not holding a valid licence under section 73, 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 73 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 three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

## **PART VI - RADIO COMMUNICATION**

### **81. Licensing Requirements**

81(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 84.

(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.

### **82. Radio Communication Licence**

82 (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.

### **83. Licences for scientific or research use**

83(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) 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 an offence involving the use of 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.

### **84. Regulations on radio communications**

84(1) The Minister in consultation with the Commission may make regulations generally with respect to radio communication (other than radio communication restricted to the receiving of public broadcasting) 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 conditions in which the radio station or apparatus is kept and, in the case of a station or apparatus for the establishment, installation or use of which a licence is necessary, as to the production of the licence or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;

(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 licenced 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 three hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

## **85. Regulations for radiation of electromagnetic energy**

85(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 electromagnetic 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 89 or 91 of this Act, as the case may be.

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

86. (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 or hires, 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.

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

87 (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 88; 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.

## **88. Onus of proof**

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

(c) 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;

(d) 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.

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

89(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 88, 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 89 shall apply with necessary modifications to the provisions of this section.

## **90. Unlawful sending of misleading messages**

90. 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 five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both.

## **91. Deliberate interference with radio-communication**

91. 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.

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

92(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 there under, 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.

## **PART VII - POSTAL SERVICES**

### **93. Functions of the Commission in relation to postal services**

93. 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 viability;
- (c) promote development of postal systems and services in accordance with recognised international standards, practices and public demand;
- (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 99 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.

#### **94. Exclusive right to provide certain postal services**

94(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.

## **95. Requirement of a licence**

95(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 fifty thousand shillings, or to imprisonment for a term not exceeding six months, 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.

## **96. Designation of public postal licensee**

96. 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.

## **97. Licence to provide postal services**

97(1) The Commission may, upon application in the prescribed manner and subject to the conditions specified in section 100 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.

## **98. Conditions of licence**

98. 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 applicant 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.

## ***General Provisions Relating to Postal Services***

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

99. 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.

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

100. 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.

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

101 (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 post article.

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

102(1) On the declaration of any public emergency or in the interest of public safety or tranquility, the Minister responsible for internal security may, by an order in writing direct that any postal article or any 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 tranquility.

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

103(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.

### **104. Prohibited materials**

104. 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.

### **105. Regulations prohibiting injurious articles**

105. The Commission may make regulations in respect of the articles prohibited by section 106 and for the detaining, disposing of, or destroying any such postal article sent or tendered for transmission by post.

## **106. Materials sent in contravention of this Act**

106(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 114.

(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.

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

107(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 deputised 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.

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

108. 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.

### **109. Postal financial services**

109(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.

### **110. Refund of wrong payment of money order**

110. 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.

### **111. Proof of return of postal articles**

111. 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.

### **112. Regulations for postal services**

112. 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.

### ***Offenses Relating to Postal Services***

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

113. A person who otherwise than in accordance with the terms of a valid licence issued under section 99 –

- (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 fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

#### **114. Damaging letter box**

114. 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.

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

115. 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 fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

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

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

- (e) opens or permits to be opened any postal article otherwise than in accordance with the provisions of this Act;
- (f) 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;
- (g) knowingly destroys, detains or secretes any mail bag or postal article otherwise than in accordance with this Act;
- (h) knowingly permits any unauthorised person to interfere in any way with any mail bag or postal article; or
- (i) 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.



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

117. 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 scumulous, threatening, obscene or grossly offensive character, commits an offence and shall on Conviction be liable a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years or to both.

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

118. 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 two years or to a fine not exceeding one hundred thousand shillings or to both.

## **119 Using of fictitious stamps**

119. 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 two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

## **120. Use of certain words**

120. 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 five thousand shillings.

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

121. Any person who -

- (d) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;
- (e) 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;
- (f) 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
- (g) 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 one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

## **122. Interfering with postal installation**

122. Any person who unlawfully and willfully 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 one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

## **PART VIII- LICENSING PROCEDURE**

### **123. Application for licence**

123(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.

### **124. Notice of licence**

124 (1) The Commission shall, at least sixty 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 sixty 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) telecommunication 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).

### **125. Grant of licence**

125. The Commission may, upon expiry of the period of notice under section 126 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 sixty days of such refusal and the applicant may, if aggrieved, appeal to the Tribunal.

### **126. Duration of licence**

126. 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.

### **127. Renewal of licence**

127. 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 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

### **128. Modification of conditions of licence**

128(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 sixty 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-

- (iv) telecommunication vendors;
- (v) radio-communications; or
- (vi) 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 public interest the Commission may proceed to make the proposed modification and shall inform the licensee in writing of the said modification and the reasons 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.

### **129. Register of licences.**

129 (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.

## **PART IX - UNIVERSAL SERVICE FUND**

### **130. Establishment of the Fund**

130. (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 provide funds to support widespread access to ICT services and to promote capacity building and innovation.

### **131. Revenue and expenditure of the Fund**

131. (1) There shall be credited to the Fund—

- (a) fees from licensed operators;
- (b) sums of money which may from time to time be voted by Parliament for that purpose;
- (c) sums which represent the repayment of the capital and interest of any loan granted by the Commission;
- (d) income from any investment made by the Commission;
- (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 and incurred in connection with the administration of the Fund.

### **132. Administration of the Fund**

132. (1) Every licensed service provider wishing to be considered for the grant of a universal access fund loan shall make an application to the Board in the prescribed form.

### **133. Conditions for grant of loan**



133. (1) The Board may—

- (a) accept or reject any application for a loan;
- (b) grant a loan to any operator and in so granting impose conditions, demand security and require repayment in installments 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 operator to whom a loan has been granted at any time vary—

- (i) the condition subject to which the loan was made;
- (ii) any security given in relation to the loan;
- (iii) any of the terms of repayment of the loan.

(2) Where the Board has resolved to make a loan to any eligible operator, 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 any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.

#### **134. Penalties for delayed remittance**

134. (1) Where an operator fails to pay the loan to the Board within the prescribed period, a sum equal to five percent of the total amount of the repayment shall be charged on the operator for each month or part of the month that the repayment remains unpaid.

#### **135. Annual Returns**

135. On the last day of each calendar year the Board shall send to all loanees an annual return form which every loanee shall be required to fill and submit to the Board before the end of the month of February of the succeeding year.

## **136. Regulations for Universal Service Fund**

136. The Minister in consultation with the Commission may make regulations generally with respect to the administration of the universal service fund and, without prejudice to the generality of the foregoing, with respect to-

- (a) Fees from licensed operators;
- (b) levels of subsidy; and
- (c) mechanisms for collection;
- (d) prescribing anything to be prescribed under this Part.

## **PART IX- MISCELLANEOUS PROVISIONS**

### **137. National Information and Communications Secretariat**

137(1) There is established a Secretariat to be known as the National Information and 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:

(a) to advise the Government on the adoption and implementation of information and communication technology policy by conducting research, analysis and preparing policy recommendations which -

- (i) promotes the benefits of technological development to all users of information and communication facilities;
- (ii) fosters national safety and security, economic prosperity and the delivery of critical social services;
- (iii) facilitates and contributes to the full development of competition and efficiency in the provision of services both within and outside Kenya; and
- (iv) fosters full and efficient use of information and communication 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.

(2) provide technical support to the Government in advancing information and communications infrastructure development, enhancing competition and creating ICT trade opportunities.

(3) to represent the Government in domestic and international information and communications policy activities.

### **138. Content Advisory Council**

138 (1) There shall be established a council to be known as the Content Advisory Council.

(2) The Council shall consist of a maximum of seven members –

(a) a Chairman appointed by the Minister upon consultation with the Commission;

(b) at least four members appointed by the Minister upon consultation with the Board;

(3) the Council shall upon approval by the Board, co-opt experts as it considers necessary.

(4) In appointing members of the Council under section (2), the Minister shall have regard to appoint persons who-

(f) have knowledge and experience in media, broadcasting, communication or culture;

(g) have satisfied the Minister that they are unlikely to have a conflict of interest under Part III and will not have any financial or other interest which will be likely prejudicially affect the carrying out of any functions under this Part;

(h) are in the opinion of the Minister, otherwise suitable to perform the functions and duties of a member competently and honestly, and are willing to serve as members;

(5) The Council shall have such powers and functions as the Board may determine in the exercise of the powers conferred Part III of the Act and in particular shall provide advice on -

(a) monitoring and regulating broadcast content;

(b) handling complaints from operators and consumers; and

(c) monitoring compliance with broadcasting code/ethics.

### **139. Universal Access Advisory Council**

139 (1) There shall be established a council to be known as the Universal Access Advisory Council.

(2) The Council shall consist of a maximum of seven members –

(c) a Chairman appointed by the Minister upon consultation with the Commission;

(d) at least four members appointed by the Minister upon consultation with the Board;

(3) the Council shall, upon approval by the Board, co-opt experts as it considers necessary.

(4) In appointing members of the Council under section (2), the Minister shall have regard to appoint persons who-

(i) have knowledge and experience in broadcasting, telecommunication, postal systems, information technology or finance;

(j) 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;

(k) are in the opinion of the Minister, otherwise suitable to perform the functions and duties of a member competently and honestly, and are willing to serve as members.

(5) The Council shall have such powers and functions as the Board may determine and in particular shall provide advice on mechanisms for -

(a) project identification and prioritization;

(b) monitoring projects and disbursements of funds; and

(c) project auditing and impact assessment.

## **140. Anti-competitive Practices and Conduct**

140 (1) A major telecommunications systems provider shall not take advantage of his power in a market for the supply of a telecommunications service with a view to:

- a) Eliminating or substantially damaging another licensee in the market in which he operates or in any other market;
- b) Preventing the entry of any other person in that market or any other market;
- c) Deterring any other licensee from engaging in competitive conduct in that or any other market.

(2) (a) A major telecommunications systems provider shall not discriminate between persons who acquire or make use of a telecommunications service, in the market in which he operates in relation to:

- i. Any fees or charge for the service provided
- ii. The quality of service provided
- iii. Any form or condition on which the service is provided

(b) Nothing in sub-paragraph (a) shall prevent a major operator from making a reasonable allowance, subject to the approval of the Commission, for the cost of providing a telecommunications service where the difference results from:

- i. Different quantities in which the service is supplied;
- ii. Different transmission capacities needed for the supply of the service;
- iii. Different places from, or to which the service is provided
- iv. Different periods for which the service is provided
- v. Different performance characteristics of the service provided or
- vi. Doing an act in good faith to meet a price or benefit offered by a competitor

(c) If it appears to the Commission that a major telecommunications systems provider is taking or intends taking any action which has or is likely to have the effect of giving an undue preference to or causing undue discrimination against any person or category of persons, the Commission may, after giving the major telecommunications systems provider concerned an opportunity to be heard, direct the licensee by

written notice to cease or refrain from taking such action, as the case may be.

(3) 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 five million shillings or to imprisonment for a term not exceeding five years or both

## **141. Power of operator to use land**

141(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 –

- (v) put up any posts, which may be required for support of any telecommunication lines;
- (vi) fasten or attach to any tree growing, on that land a bracket or other support for the line;
- (vii) cut down any tree or branch which is likely to injure, impede or interfere with any telecommunication lines; or
- (viii) 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 144.

(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.

## **142. Procedure for using public land**

142 (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 143 (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 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.



### **143. Compulsory purchase of land**

143(1) Where, upon application by a telecommunication operator the Commission considers that it is necessary land, for the purpose of providing the 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.

(3) Where land is acquired on behalf of a telecommunication operator under subsection (2), such operator shall bear all costs in relation thereto.

### **144. Powers on occurrence of emergency**

144. (1) On the declaration of any public emergency or in the interest of public safety and tranquility, the Minister for the time being responsible for internal security may, by order in writing, direct any officer duly authorised in that behalf, to take temporary possession of-

- (a) any telecommunication apparatus or any radio communication station or apparatus within Kenya, and –
- (b) in the case of radio communication, that any communication or class of communication shall or shall not be emitted from any radio communication station or apparatus taken under this section; or
- (c) in the case of telecommunication, that any communication within Kenya from any person or class of persons relating to any particular subject shall be intercepted and disclosed to such person as may be specified in the direction; or
- (d) in the case of postal services, that any postal article or class or description of postal article 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 or shall be disposed of in such manner as the Minister may direct.

(e) In the case of broadcasting, any broadcasting apparatus or any radio, television, cable or satellite broadcasting or signal distribution station or apparatus within Kenya, and —

- (i) in the case broadcasting station, that any broadcasting shall not be broadcast from any radio communication station or apparatus taken under this section;
- (ii) in the case of signal distribution, that any signal within Kenya from any person or class of persons relating to any particular subject shall be intercepted and disclosed to such person as may be specified in the direction.

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

(3) A telecommunication, broadcasting apparatus constructed, maintained or operated by any person within Kenya or any postal article which is seized by any officer duly authorised under subsection (1) (a) shall be returned to the telecommunication operator at the end of the emergency or where such apparatus or article is not returned, full compensation in respect thereof, to be determined by the Minister, shall be paid to the owner.

(4) A person aggrieved by a decision of the Minister under subsection (3) as to the compensation payable in respect of anything seized under this section may appeal to the High Court within fourteen days of such decision.

## **145. Entry and Search of premises, etc.**

145(l) 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 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 or computer system 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

apparatus or computer system 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.

## **146. Seizure of apparatus, article or other property**

146 (1) A search warrant granted under section 147 may authorise the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any radio apparatus, telecommunication apparatus, computer, 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, computer system or other thing which appears to him 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.

(4) Any person who intentionally obstructs the authorised person in the exercise of the power conferred on him under this section (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.

### **147. Forfeiture of property used in commission of offence.**

147 (1) Where a person is convicted of an offence under this Act for 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 computer system or uses any article or property for disrupting the postal services in contravention of any of the provision 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 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.

## **148. Disposal of property seized under section 148**

148. (1) Any property seized by a person authorized by a warrant under section 147 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 period 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 151.

shall be dealt with in accordance with the following provisions of this section.

(4) The Commission shall take reasonable steps to 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 sub-section (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.

## **149. General restrictions on disclosure of information**

149 (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.

## **150. Powers in relation to electricity undertakers, etc.**

150 (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 sub-section(1) if in effecting any work, any such undertaker or railway operator proposes to comply with such general requirements.

### **151. Structures likely to interfere with communication services**

151. Where any person erects any building or structure which is likely to cause interference with the telecommunication, or radio communication, broadcasting or postal services, the operator or 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.

### **152. Offences by Companies**

152 (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 Kenya Communications connection with his functions of management as if he were a director of that Company or body corporate.

### **153. Property of the Commission in custody of employee**

153 (1) Where any employee of the Commission dies or leaves 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 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.

### **154. Limitation**

154. 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 or 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.

#### **154. Restrictions on execution against property of Commission**

154. 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.

#### **155. Service of notice etc. to the Director General**

155. Any notice or other document required or authorised under this Act to be served on the Commission maybe served –

- (a) by delivering of the notice or other document to the Director General or to any authorized 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.

#### **157. Establishment and Constitution of Appeals Tribunal**

157 (1) There shall be established an Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties under this Act which shall consist of-

- (b) 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
- (c) 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 Commission.

(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 amend 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.

## **158. Repeal and savings**

158. (1) The Kenya Communications Act of 1998, in this section referred to as former Act, is repealed.

(2) Notwithstanding the repeal of the former Act, all acts, directions, orders, appointments, requirements, authorizations, other things given, taken or done under, and all funds, assets and other property acquired in virtue of, that Act shall, so far as not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

(3) All statutes or regulations made under the former Act and in force immediately prior to the commencement of this Act shall continue in force but may be amended or revoked by a statute or regulations made under this Act.

# **FIRST SCHEDULE - PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD.**

## ***Tenure of Office***

1. (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 re-appointment 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.

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 the 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;
- (vi) fails to comply with the provisions of this Act relating to disclosure; or
- (vii) is engaged in an information or communications organisation which operates an information or communications system or provides information or communications services or is engaged

in the manufacture or distribution of communication equipment in Kenya as an owner, shareholder, partner or otherwise, whether directly or indirectly.

### ***Meetings***

3. (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.

### ***Disclosure of interest***

4. (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 restrictions 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.

### ***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.

### ***Minutes***

The Board shall cause minutes of all proceedings, & meetings of the Board to be entered in books kept for that purpose.

## **SECOND SCHEDULE (s.153) - MEETINGS PROCEDURE OF THE APPEALS TRIBUNAL**

### ***Appointment of members***

1. The members of the Tribunal shall hold office for a period, not exceeding three years. Such member shall hold and vacate his office in accordance with the terms and conditions of his appointment.

### ***Resignation***

2. Any member may at anytime by notice in writing to the Minister resign his office.

### ***Vacation of office of member***

3.(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.

### ***Disclosure of interest***

4. 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.



### ***Vacancy***

5. 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.

### ***Temporary Members***

6. 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.

### ***Majority Decisions***

7. The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

### ***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 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.

**Venue**

9. The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

**Rules**

10 Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.

**Proof of Documents**

11. 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.

## **THIRD SCHEDULE - PROVISIONS AS TO ADVISORY COUNCILS**

### ***Tenure of office***

1. The Chairman and members of an advisory 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 the instrument of appointment but shall be eligible for reappointment for one more term of a period not exceeding three years..

### ***Vacation of office***

2. A member of an advisory Council may:-

- (a) at any time by notice in writing addressed to the Board resign his office.
- (b) Be removed from office by the Board 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 scheme or arrangement with 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 a fine exceeding ten thousand; or
  - (v) is incapacitated by prolonged physical or mental illness; or
  - (vi) fails to comply with the provisions of the Act relating disclosure.

3. 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.

### ***Meetings and Proceedings***

4. Subject as hereinafter provided, an advisory council shall regulate its own procedure.

5. Meetings of an advisory council shall be called by the chairman of the council whenever the Board so requests.

6. If the chairman is absent from a meeting of the Council, the members present shall elect one of their member to preside at that meeting.

7. The agenda at a meeting of an advisory 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 to consider.

8. A quorum at any meeting of an advisory council shall be one half of the members of the council.

9. A resolution at a meeting of an advisory council shall require the affirmative votes of one-half of the members present except the chairman, who shall have a casting vote only.

***Staff of the Council***

10. The secretary and any other staff of an advisory council shall be members of the staff of the Commission appointed for the purpose by the Board.

## **FOURTH SCHEDULE – TRANSITIONAL PROVISIONS**

### **1. Interpretation**

1. In this Part, unless the context requires otherwise –

“broadcasting permits” means authority given, prior to the commencement of this Act, by the Minister in charge of broadcasting authorizing any person to undertake broadcasting services;

### **2. Licences granted under the Kenya Communications Act of 1998**

2. Notwithstanding the repeal of the Kenya Communications Act of 1998, all licences granted under the Act shall be deemed to be granted by the Commission and shall remain in force until they are revoked in accordance with any terms in that regard set out in the licence.

### **3. Broadcasting permits granted by the Minister**

3. The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Minister at the date of its establishment, provided that:

- (a) such parties must be granted a period of six months during which they may continue to operate in respect of their existing permits; and
- (b) after the expiry of six months period, such parties must apply to be licensed as broadcasters as provided for in this Part.

### **4. .ke ccTLD domain administrators**

4. 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 its establishment, provided that:

- a) such parties must be granted a period of six months during which they may continue to operate in respect of their existing delegated sub-domains; and
- b) after the expiry of six months period, such parties must apply to be licenced as registrars and registries as provided for in this Act.

# **FIFTH SCHEDULE - AMENDMENTS TO THE KBC ACT**

## **HEADING**

Delete the Words “to provide for the control of broadcast receiving sets, and for the licensing of dealers, repairers and importers of broadcast receiving sets”;

### **1. Short Title and Application**

Delete Subsection (2) which reads:

(2) This Act shall have effect notwithstanding the provisions of the Kenya Posts and Telecommunications Corporation Act.

### **9. Assumption of Broadcasting services of Government Cap. 221 (1967), 7 of 1990, Sch.**

Delete Subsection (2) which reads:

(3) No person shall, unless authorized by or permitted by or under any written law, construct, maintain or operate, or permit the construction, maintenance or operation of. any apparatus for, or connected with, radiocommunication for the purpose of broadcasting, and any person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

### **11. Functions of the managing director**

Delete Sub-section (3) which reads:

(3) The Board may direct the managing director to establish divisions for the Corporation and without prejudice to the generality of the foregoing there may be established divisions for—

radio engineering;  
television engineering;  
television programmes;  
radio programmes;  
news;  
personnel and administration;  
finance.

**PART VI—LICENSING OF BROADCAST RECEIVING APPARATUS AND  
CONNECTED FUNCTIONS OF THE CORPORATION**

Delete whole part

**49. Offences by Corporations and forfeiture of apparatus**

Delete whole section

**50. Place of trial**

Delete whole section

# **SIXTH SCHEDULE - AMENDMENTS TO THE PENAL CODE**

## **CHAPTER II - INTERPRETATION**

Add the following definition

“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;

### **346. Document**

After the words “In this division of this code “document” does not include a trade mark or any sign used in connexion with articles of commerce though they may be written or printed” add the words “or electronic”.

### **347. Making a false document**

Alter the section as follows:

Any person makes a false document who-

- (a) makes a document purporting to be what in fact it is not; or
- (b) alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document; or
- (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorized would have altered the effect of the document; or
- (d) signs a document -
  - (i) in the same name as any person without his authority, whether such name is or is not the same as that of the person signing; or
  - (ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be the same name as the person signing; or
  - (iii) in the name represented as being the name of a different person signing it and intended to be mistaken for the name of that person; or
  - (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity



between the person signing the document and the person whom he professes to be.

- (e) dishonestly and fraudulently-
  - (i) makes or transmits any electronic record or part of an electronic record;
  - (ii) affixes any digital signature on any electronic record;
  - (iii) makes any mark denoting the authenticity of the digital signature;

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, executed, transmitted or affixed by or by the authority of a person by whom or whose authority he knows that it was not made, signed, executed or affixed; or

- (f) without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with a digital signature either by himself or by any other person, whether such person is living or dead at the time of such alteration; or
- (g) dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of deception practiced upon him, does not know the contents of the document or electronic record or the nature of the alteration.

## **CHAPTER XXXV – PUNISHMENT FOR FORGERY**

### **349. General Punishment for Forgery**

For the words “Any person who forges any document” the words “Any person who forges a document or electronic record” will be substituted.

### **353. Uttering false Documents**

For the words “Any person who knowingly and fraudulently utters a false document” the words “Any person who knowingly and fraudulently utters a false document or transmits a false electronic record” will be substituted.

### **354. Uttering Cancellation or exhausted Documents**

For the words “Any person who knowingly utters as and a subsisting and effectual document any document” the words “Any person who knowingly utters as and a subsisting and effectual document or electronic record any document or electronic record” will be substituted.

### **355. Procuring execution of documents by false pretences**

For the words “Any person who, by means of any false and fraudulent representations as to the nature, contents or operations of a document, procures another to sign or execute the document”, the words “Any person who, by means of any false and fraudulent representations as to the nature, contents or operations of a document or electronic record, procures another to sign or execute the document or electronic record” will be substituted.

### **357. Making documents without authority**

- (a) For the words “document or writing”, the words “document, writing or electronic record” will be substituted.
- (b) For the words “document or writing”, the words “document, writing or electronic record” will be substituted.

# **SEVENTH SCHEDULE: AMENDMENTS TO THE EVIDENCE ACT, CAP. 80**

## **CHAPTER I - PRELIMINARY**

In section 3 (1)

(a) In the definition of "banker's book" the clause shall be substituted as follows:

"a banker's book" includes a ledger, day book, cash book, account book, and any other book used in the ordinary business of the bank whether kept in written form or printouts or electronic form"

## **PART III - DOCUMENTARY EVIDENCE**

Add new Sections as follows:

### **79. Special provisions as evidence relating to electronic records**

The contents of electronic records may be proved in accordance with the provisions of section 108.

### **80. Admissibility of electronic records**

80(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any

contents of the original or of any fact stated therein which direct evidence would be admissible.

(2) The conditions mentioned in sub-section (1), in respect of computer output, shall be the following:

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
- (b) During the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
- (c) Throughout the material part of the said period, the computer was operating properly or, if not; then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
- (d) Information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether:

- (a) by a combination of computers operating in succession over that period; or
- (b) by different computers operating in succession over that period; or
- (c) in any manner involving the successive operation over that period, in whatever order,

of one or more computers and one or more combinations of computers; then

all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer; and references to this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following:

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any matters to which conditions mentioned in sub-section (2) relate; and
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate),

shall be evidence of any matter stated in the certificate; and for the purpose of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge of the person stating it.

(5) For the purpose of this section -

- (a) information can be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment.
- (b) Whether in course of activities carried on by any official, information is supplied

with a view to its being stored or processed for the purpose of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.

#### **81. Proof as to a digital signature**

81. Except in the case of a secure signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record, then the fact that such a digital signature is the digital signature of the subscriber must be proved.

#### **82. Proof as to the verification of digital signature**

82. In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct:-

- (a) that person or the Certification Service Provider to produce the Digital Signature Certificate;
- (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

#### **83. Presumption as to Gazettes in Electronic Form**

83. The Court shall presume the genuineness of every electronic record purporting to be the Kenya Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantively in the form required by law and is produced from its proper custody.

#### **84. Presumption as to Electronic Agreements**

84. The Court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was concluded by affixing the digital signature of the parties.

**85. Presumption as to electronic records and digital signatures**

85(1) In any proceedings involving a secure electronic record, the court shall presume unless contrary is proved that the secure electronic record has not been altered since the specific point of time at the Secure Digital Signature was affixed.

(2) In any proceedings involving Secure Digital Signature, the Court shall presume unless the contrary is proved that:

- (a) the secure signature is affixed by the subscriber with the intention of signing or approving the electronic record;
- (b) except in the case of a secure electronic or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.

**86. Presumption as to Digital Signature Certificates**

86. The Court shall presume, unless the contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information, which has not been verified, if the certificate was accepted by the subscriber.

**87. Presumption as to electronic messages**

The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission, but the court shall not make any presumption as to the person by whom such a message was sent.

# MEMORANDUM OF OBJECTS AND REASONS

## Summary

This bill is developed to provide for the institutional and legal framework required to implement the National Information and Communications Technology policy. The bill seeks to address the following policy imperatives:

1. Creating regulatory, advisory and dispute resolution bodies to support the implementation of the national ICT policy;
2. Providing a new regulatory framework for broadcasting stations and services;
3. providing licensing of certification service providers and ccTLD domain administrators;
4. providing for legal recognition and functional equivalence between electronic and paper-based transactions;
5. providing for computer-related offences including reprogramming of mobile telephones;
6. Providing a new regulatory framework for telecommunications services;
7. Providing a new regulatory framework for postal services; and
8. Establishing a universal service fund.

## Part I – Preliminary

This part names the Act; sets out the objects of the bill; and defines critical words and phrases used in the bill.

## Part II – Communications Commission of Kenya

This part established the Communications Commission of Kenya as a successor of the Communications Commission of Kenya established by the Kenya Communications Act of 1998 and outlines its functions.



### **Part III – Broadcasting**

This part deals with the functions of the commission relating to broadcasting; licensing of broadcasting services; responsibility of broadcasters; handling of complaints from listeners; and offences relating to broadcasting services.

### **Part IV – Information Technology**

This part outlines the functions of the Commission with respect to information technology; establishes the framework for recognition of electronic records and use of electronic records within government; and outlines offences relating to information technology.

### **Part V – Telecommunications**

This part provides a framework for licensing telecommunication services, enforcement of licence conditions, and outlines offences relating to telecommunication services.

### **Part VI – Radio Communications**

This part makes provisions for licensing radio communication services and radio communication stations. In addition, the part outlines offences relating to radio communication.

### **Part VII – Postal Services**

This part outlines the functions of the Commission relating to postal services; exclusive rights to postal services; conditions of postal licences and offences relating to postal services.

### **Part VIII: Licensing**

This part outlines the procedure for applying, granting and modifying licences.

### **Part IX: Universal Access Fund**

This part sets up a universal access fund to be administered by the Communications Commission of Kenya.

## **Part XI: Miscellaneous provision**

This part establishes the National Communications Secretariat, the Content Advisory Council, the Universal Access Advisory Council and the Tribunal. It also deals with anticompetitive practices and conduct; power to use land, powers on occurrence of emergency; seizure and or forfeiture of property; offences relating to companies, notices to the Director General; and repeal and savings

### **Schedule I: Provisions as to the Conduct of business and affairs of the Board**

This schedule contains provisions concerning the conduct of business of the Board of the Commission.

### **Schedule II: Provisions as to the Meetings and Procedures of the Appeals Tribunal**

This schedule makes provisions for the meeting and procedures of the Appeals Tribunal, its powers, rules and venue for its meetings.

### **Schedule III: Provisions as to advisory councils**

This schedule makes provisions for the meeting and procedures of the advisory councils.

### **Schedule IV: Amendments to the Kenya Broadcasting Corporation Act**

This schedule lists amendments to be made to the Kenya Broadcasting Corporation Act for the Act to be effective.

### **Schedule V: Amendments to the Penal Code**

This schedule list amendments to be made to the Penal Code for the Act to be effective.

### **Schedule VI: Amendments to the Evidence Act**

This schedule lists amendments to be made to the Evidence Act for the Act to be effective.