



LAWS OF KENYA



KENYA INFORMATION AND COMMUNICATIONS ACT

CHAPTER 411A

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CHAPTER 411A**KENYA INFORMATION AND COMMUNICATIONS ACT**

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CHAPTER 411A

KENYA INFORMATION AND COMMUNICATIONS ACT

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

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

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

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

PART I – PRELIMINARY

1. Short title

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

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

2. Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“licence” means any licence issued under this Act;

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

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

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

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

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

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

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

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

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

“post”—

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

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

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

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

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

“postal service” means any service by post;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“telecommunication service” means any of the following—

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

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

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

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

“vandalize” means to commit an act of vandalism;

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

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

(3) In this Act—

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

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

PART II – COMMUNICATIONS COMMISSION OF KENYA

3. Establishment of Commission

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

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

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

4. Headquarters

The Headquarters of the Commission shall be in Nairobi.

5. Object and purpose of the Commission

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

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

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

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

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

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

[Act No. 1 of 2009, s. 5.]

5A. Minister to issue policy guidelines

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

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

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

5B. Independence of the Commission

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

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

6. Board of Directors

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

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

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

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

7. Powers of the Board

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

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

- (b) receive any gifts, grants, donations or endowments made to the Commission or any other monies in respect of the Commission and make disbursements therefrom in accordance with the provisions of this Act;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Commission;
- (d) open a banking account or banking accounts for the funds of the Commission; and
- (e) invest any monies of the Commission not immediately required for the purposes of this Act in the manner provided in section 21.

8. Conduct of business and affairs of the Board

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

9. Delegation by the Board

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

10. Remuneration of Board members

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

11. The Director-General

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

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

12. Secretary to the Board

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

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

13. Staff of the Commission

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

14. The common seal of the Commission

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

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

15. Protection from personal liability

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

16. Liability for damages

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

17. Funds of the Commission

The funds of the Commission shall consist of—

- (a) such moneys or assets as may accrue to or vest in the Commission in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such sums as may be payable to the Commission pursuant to this Act or any other written law, or pursuant to any gift or trust;
- (c) such moneys as may be provided by Parliament for the purposes of the Commission;
- (d) all moneys from any other source provided for or donated or lent to the Commission.

18. Financial year

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

19. Annual estimates

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

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

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

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

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

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

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

20. Accounts and audit

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

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

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

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

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

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

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

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

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

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

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

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

21. Investment of funds

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

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

22. Annual report

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

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

PART III – TELECOMMUNICATION SERVICES

23. Provision of telecommunication services

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

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

- (a) protect the interests of all users of telecommunication services in Kenya with respect to the prices charged for and the quality and variety of such services;
- (b) maintain and promote effective competition between persons engaged in commercial activities connected with telecommunication services in Kenya in order to ensure efficiency and economy in the provision of such services and to promote research and development in relation thereto;
- (c) encourage private investment in the telecommunication sector;
- (d) promote the provision of international transit services by persons providing telecommunication services in Kenya;
- (e) enable persons providing telecommunication services or producing telecommunication apparatus in Kenya to compete effectively in the provision of such services or apparatus outside Kenya.

24. Requirement of licence

(1) No person shall—

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

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

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

[Act No. 1 of 2009, s. 8.]

25. Telecommunication licences

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

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

of such description as may be specified in the licence.

(2) A licence granted under subsection (2)(a) may authorise—

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

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

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

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

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

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

[Act No. 12 of 2012, Schedule.]

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

27. General regulations for telecommunication services

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

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

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

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

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

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

[Act No. 4 of 2012, s. 52, Act No. 12 of 2012, Sch.]

Offences relating to Telecommunication Services

28. Obtaining service dishonestly

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

[Act No. 1 of 2009, s. 10.]

29. Improper use of system

A person who by means of a licensed telecommunication system—

- (a) sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

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

30. Modification, etc., of messages

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

31. Interception and disclosure

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

- (a) intercepts a message sent through a licensed telecommunication system; or
- (b) discloses to any person the contents of a message intercepted under paragraph (a); or
- (c) discloses to any person the contents of any statement or account specifying the telecommunication services provided by means of that statement or account,

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

32. Tampering with telecommunication plant

A person who willfully, with intent to—

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

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

[Act No. 12 of 2012, Sch.]

32A. Severing with intent to steal

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

[Act No. 12 of 2012, Sch.]

33. Trespass and wilful obstruction of telecommunication officer

Any person who—

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

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

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

[Act No. 1 of 2009, s. 11.]

34. Prohibition of unlicensed telecommunication system

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

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

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

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

[Act No. 1 of 2009, s. 12.]

PART IV – RADIO COMMUNICATION

35. Licensing requirements

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

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

36. Radio communication licence

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

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

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

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

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

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

37. Licenses for scientific or research use

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

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

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

38. Regulations on radio communication

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

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

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 licensed in Kenya, within the limits of Kenya and territorial waters adjacent thereto, of radio communication apparatus on board such vessel or aircraft;
- (g) controlling the importation, acquisition, manufacture and sale, letting on hire or other disposition of radio communication apparatus of any kind, or the possession, use or installation of such, and different provisions may be made by such regulations for different classes of cases;
- (h) the licensing and fees in respect thereof, of dealers in radio communication apparatus and the sale, transfer or use of such apparatus;
- (i) the conduct of examinations for radio communication operators, the content of such examination and the issue of certificates of competence in respect thereof;
- (j) the issue, variation and withdrawal of approvals in respect of radio communication stations and radio communication apparatus and apparatus for connection to any telecommunication system licensed under this Act:

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

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

[Act No. 1 of 2009, s. 13.]

39. Regulations for radiation of electro-magnetic energy

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

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

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

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

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

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

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

40. Regulations with respect to resistance to interference

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

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

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

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

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

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

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

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

41. Enforcement of regulations as to use of apparatus

(1) If the Commission is of the opinion—

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

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

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

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

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

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

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

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

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

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

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

42. Onus of proof

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

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

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

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

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

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

44. Unlawfully sending of misleading messages, etc.

Any person who—

- (a) by means of radio communication, sends or attempts to send any message which to his knowledge is false or misleading and is to his knowledge likely to prejudice the efficiency of any safety-of-life service or endanger the safety of any person, or of any vessel, aircraft or vehicle, and, in particular, any message which to his knowledge falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or
- (b) otherwise than under the authority of the Minister for the time being responsible for internal security—
 - (i) uses any radio communication apparatus with intent to obtain information as to the contents, sender or addressee of any message, (whether sent by means of radio communication or not) which neither the person using the station or apparatus nor any person on whose behalf he is acting is authorised to receive; or
 - (ii) except in the course of legal proceedings or for the purposes of any report thereon, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of the radio communication station or radio communication apparatus by him or by any other person acting on his behalf,

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

[Act No. 1 of 2009, s. 14.]

45. Deliberate interference with radio communication

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

[Act No. 1 of 2009, s. 15.]

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

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

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

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

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

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

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

PART IVA – BROADCASTING SERVICES

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

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

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

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

46B. Classification of broadcasting services

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

- (a) public broadcasting;

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

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

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

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

46C. Requirement of a broadcasting licence

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

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

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

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

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

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

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

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

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

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

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

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

46E. Public broadcasting services

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

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

46F. Community broadcasting services

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

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

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

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

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

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

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

46G. Private broadcasting services

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

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

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

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

46H. Commission to prescribe programme code

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

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

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

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

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

46I. Responsibilities of broadcasters

(1) All licensed broadcasters shall—

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

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

(2) Where—

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

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

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

46J. Revocation of licences

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

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

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

46K. Regulations on broadcasting

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

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

- (c) mandating the carriage of content, in keeping with public interest obligations, across licensed broadcasting services;
- (d) prescribing anything that may be prescribed under this Part.

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

46L. Requirement for complaints procedure

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

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

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

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

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

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

46M. Access to programmes

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

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

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

46N. Requirement for a licence for signal distribution

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

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

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

46O. Signal distribution services

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

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

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

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

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

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

46P. Revocation of signal distribution licence

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

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

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

46Q. Offences relating to broadcasting services

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

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

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

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

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

46R. Transitional provisions

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

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

46S. Broadcasting Content Advisory Council

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

(2) The Council shall—

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

(3) The Council shall consist of—

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

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

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

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

[Act No. 6 of 2009, Sch.]

PART V – POSTAL SERVICES

47. Functions of the Commission in relation to postal services

(1) The functions of the Commission in relation to postal services shall be to—

- (a) ensure that there are provided throughout Kenya good and sufficient postal and other related services, on such terms as the Commission may deem expedient;
- (b) ensure that the public post licensee is able to provide postal services at rates consistent with efficient and continuous service and financing liability;
- (c) promote development of postal systems and services in accordance with recognised international standards, practices and public demands;
- (d) exercise licensing and regulatory functions in respect of postal systems and services in Kenya in accordance with this Act;
- (e) regulate the fixing of rates of postage and other fees or sums to be charged in respect of postal articles weighing not more than three hundred and fifty grams;
- (f) regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;
- (g) ensure the terms and conditions stated in any licence granted under section 51 are complied with;
- (h) promote competition in the provision of postal services;
- (i) ensure that reasonable demands for postal services are satisfied;
- (j) promote and encourage the expansion of postal services in Kenya; and
- (k) further the advancement of technology relating to the post and postal services.

(2) In discharging the functions and duties under subsection (1), the Commission shall have regard to—

- (a) efficiency and economy;
- (b) fostering the development and expansion of postal services in Kenya in collaboration with other countries and international organisations;
- (c) the maintenance of effective competition between persons providing or interested in providing postal services;
- (d) the promotion of measures for the safety of life through communications;
- (e) the provision of postal service rates consistent with efficient service and the necessity for maintaining financial viability; and
- (f) the promotion and development of standards in the field of postal systems and services.

48. Exclusive right to provide certain postal services

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

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

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

49. Requirement of licence

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

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

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

[Act No. 1 of 2009, s. 17.]

50. Designation of public postal licensee

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

51. Licence to provide postal services

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

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

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

52. Conditions of licence

Every licensee shall be required to observe the following conditions—

- (a) to provide courier services to any person, who requests for such services where available;
- (b) to notify the Commission forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes;
- (c) to display prominently at each premises from which it conducts its business, current tariffs for each postal service to various destinations;
- (d) to comply with all applicable and relevant laws, rules and regulations including, but not limited to the law relating to customs and imports and exports with regard to receipt and dispatch of postal articles to and from Kenya;
- (e) to furnish the Commission with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;
- (f) if the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the application for renewal of its licence;
- (g) where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal services which only the licensee is permitted under its licence to provide, to seek approval from the Commission before entering into such association, contract or arrangement;

- (h) to exercise its rights and powers and perform its duties and obligations under the licence in such manner as is consistent with the agreements or treaties to which Kenya is a party;
- (i) not to enter into any arrangement with any person running an international postal service on terms and conditions which the Commission deems to be unfavourable to the national interest.

General Provisions relating to Postal Services

53. Postage stamps and postal charges

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

54. Addressee may be liable for postage, etc.

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

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

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

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

55. Postal articles not to be opened

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

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

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

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

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

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

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

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

57. Article or material injurious to persons

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

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

58. Prohibited materials

No person shall send by post—

- (a) any indecent or obscene printing, photograph, lithograph, engraving, book or card or any other indecent or obscene article;
- (b) any postal article having thereon, or on the cover thereof, any words or designs of an indecent, obscene, scurrilous, threatening or grossly offensive character;
- (c) any postal article bearing any fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used in payment of any stamp duty;
- (d) any other article which the Commission may by regulation prohibit.

59. Regulations prohibiting injurious articles

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

60. Material sent in contravention of this Act

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

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

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

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

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

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

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

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

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

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

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

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

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

63. Postal financial services

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

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

64. Refund of wrong payment of money order

Where any person receives—

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

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

65. Proof of return, of postal articles

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

- (a) the production of the postal article having thereon the official mark of the licensee or the signature of an employee of the licensee denoting that the article has been refused, returned unopened or unclaimed, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted;
- (b) the person from whom the postal article is supposed to have come shall, until the contrary is proved, be deemed to be the sender thereof; and
- (c) the production of the postal article, having thereon the official mark of the public postal licensee denoting that any postage or other charge is due in respect thereof to the operator or to the postal administration of any foreign country, shall be conclusive evidence for all purposes that the sum so denoted is due.

66. Regulations for postal services

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

- (a) the disposal of undelivered postal articles;
- (b) the licensing and use of franking machines for pre-payment of postage and the use of postal franks;
- (c) specifying the conditions for the perforation or defacement of postage stamps and the conditions on which postage stamps may be accepted or refused in payment of postage or other charges;
- (d) specifying the conditions on which compensation may be paid for the loss of or damage to any postal article;
- (e) specifying the conditions for the registration and insurance of postal articles;
- (f) specifying the conditions for the issue and payment of money orders at post offices;

- (g) specifying the conditions subject to which any postal article in the course of transmission by post may be redelivered to the sender without reference to the consent of the addressee; and
- (h) specifying the conditions for the acceptance of cash-on-delivery postal articles.

Offences relating to Postal Services

67. Operating without a valid licence

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

- (a) conveys any letter or postal article;
- (b) performs any service incidental to conveying any letter or postal article;
- (c) delivers or tenders in order to be sent otherwise than in accordance with the terms of a valid licence, any letter or postal article as aforesaid; or
- (d) makes a collection of letters or postal articles for the purpose of sending them,

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

[Act No. 1 of 2009, s. 18.]

68. Damaging letter box

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

69. Affixing materials on post office

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

[Act No. 1 of 2009, s. 19.]

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

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

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

- (b) knowingly reveals, discloses or in any way makes known the contents of, or any information in relation to, any postal article opened under the authority of this Act, otherwise than in accordance with the law;
- (c) knowingly destroys, detains or secretes any mail bag or postal article otherwise than in accordance with this Act;
- (d) knowingly permits any unauthorised person to interfere in any way with any mail bag or postal article; or
- (e) fraudulently or with intent to deceive prepares, alters, secretes or destroys any document used for the purposes of postal services,

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

71. Transmitting offensive material by post

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

[Act No. 1 of 2009, s. 20.]

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

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

- (a) opens any postal article otherwise than in accordance with this Act;
- (b) interferes in any way with any mailbag or postal article opened under the authority of this Act, otherwise than in accordance with the law;
- (c) fraudulently puts, alters, removes or erases any official mark on a postal article;
- (d) maliciously and without authority, the proof of which authority shall lie on the person charged, opens, destroys, detains or secretes any article after it has been transmitted by post and before it has been delivered to the addressee;
- (e) without the authority of the public postal licensee, the proof of whose authority shall lie on the person charged, knowingly enters any premises used for the purpose of the postal services and to which the public has no right of access;
- (f) refuses or fails to leave any such premises when called upon so to do by an authorised employee of the public postal licensee; or
- (g) wilfully and unlawfully obstructs or impedes any employee of the public postal licensee or any other person in the discharge of his duties in connection with postal services,

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

[Act No. 1 of 2009, s. 21.]

73. Using of fictitious stamps

Any person who—

- (a) makes or knowingly utters, deals in, hawks, distributes, or sells any fictitious stamps or knowingly uses for postal purposes any fictitious stamps;
- (b) has in his possession without lawful excuse any fictitious stamp;
- (c) makes, issues or sends by post any stamped or embossed envelope, wrapper, card, form or paper in imitation of one issued under the authority of the public postal licensee,

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

[Act No. 1 of 2009, s. 22.]

74. Use of certain words

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

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

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

[Act No. 1 of 2009, s. 23.]

75. Transmitting prohibited articles by post

Any person who—

- (a) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;
- (b) sends by post, otherwise than in accordance with any regulations made under this Act, any postal article containing any noxious, explosive or dangerous substance which would be likely to damage any other postal article;
- (c) subscribes on the outside of any postal article, or makes in any declaration relating to a postal article, any statement which he knows or has reason to believe to be false, or which he does not believe to be true, in relation to the contents or value thereof; or

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

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

[Act No. 1 of 2009, s. 24.]

76. Interfering with postal installation

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

[Act No. 1 of 2009, Section 25.]

PART VI – LICENSING AND ENFORCEMENT

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

77. Application for license

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

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

78. Notice of licence

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

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

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

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

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

[Act No. 1 of 2009, s. 27.]

79. Grant of licence

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

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

[Act No. 1 of 2009, s. 28.]

80. Duration of licence

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

81. Renewal of licence

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

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

82. Modification of conditions of licence

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

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

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

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

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

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

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

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

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

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

[Act No. 1 of 2009, s. 29.]

83. Register of licences

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

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

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.

83A. Enforcement of licence conditions

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

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

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

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

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

PART VIA – ELECTRONIC TRANSACTIONS

83B. Application

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

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

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

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

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

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

- (a) facilitate electronic transactions by ensuring the use of reliable electronic records;
- (b) facilitate electronic commerce and eliminate barriers to electronic commerce such as those resulting from uncertainties over writing and signature requirements;
- (c) promote public confidence in the integrity and reliability of electronic records and electronic transactions;
- (d) foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium;
- (e) promote and facilitate efficient delivery of public sector services by means of reliable electronic records; and
- (f) develop sound frameworks to minimize the incidence of forged electronic records and fraud in electronic commerce and other electronic transactions.

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

83D. Requirement for a licence

(1) No person shall—

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

except in accordance with a licence granted under this Act.

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

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

83E. Licence for electronic certification services

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

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

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

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

83F. Licence for country code top-level domain

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

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

83G. Legal recognition of electronic records

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

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

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

83H. Retention of electronic records

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

- (a) the information contained therein remains accessible so as to be usable for subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identification of the original destination, date and time of dispatch or receipt of such electronic record are available in the electronic record;

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

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

83I. Retention of information in original form

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

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

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

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

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

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

83J. Formation and validity of contracts

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

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

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

83K. Recognition of parties of electronic messages

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

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

83L. Attribution of electronic records

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

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

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

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

83M. Acknowledgement of receipt

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

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

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

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

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

83N. Secure electronic record

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

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

83O. Compliance with requirement for a signature

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

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

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

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

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

83P. Legal recognition of electronic signatures

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

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

83Q. Protected systems

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

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

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

83R. Regulations for electronic signatures

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

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

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

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

(1) Where any law provides for—

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

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

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

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

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

83T. Electronic Gazette

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

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

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

83U. Unauthorized access to computer data

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

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

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

83V. Access with intent to commit offences

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

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

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

83W. Unauthorized access to and interception of computer service

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

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

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

(4) For the purpose of this section, it is immaterial that the unauthorized access or interception is not directed at—

- (a) any particular program or data;
- (b) a program or data of any kind; or
- (c) a program or data held in any particular computer system.

(5) A person shall not be liable under subsection (1) where he—

- (a) has the express or implied consent of both the person who sent the data and the intended recipient of such data;
- (b) is acting in reliance of any statutory power.

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

83X. Unauthorized modification of computer material

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

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

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

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

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

(4) A modification is unauthorized if—

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

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

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

83Y. Damaging or denying access to computer system

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

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

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

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

83Z. Unauthorized disclosure of password

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

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

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

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

84A. Unlawful possession of devices and data

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

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

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

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

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

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

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

84B. Electronic fraud

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

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

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

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

84C. Tampering with computer source documents

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

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

84D. Publishing of obscene information in electronic form

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

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

84E. Publication for fraudulent purpose

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

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

84F. Unauthorized access to protected systems

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

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

84G. Re-programming of mobile telephone

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

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

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

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

(1) A person commits an offence if he—

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

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

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

84I. Bonafide re-programming or possession

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

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

bonafides for personal technological pursuits or other technological review endeavours.

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

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

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

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

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

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

84K. Revenue and expenditure of the Fund

(1) There shall be credited to the Fund—

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

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

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

84L. Application for grant of fund loan

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

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

84M. Conditions for grant of loan

(1) The Board may—

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

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

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

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

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

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

84N. Penalties for delayed remittances

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

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

84O. Fund's annual returns and audit

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

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

84P. Regulations with respect to the Fund

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

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

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

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

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

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

84R. Commission to ensure fair competition

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

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

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

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

84S. Anti- competitive conduct

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

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

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

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

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

84T. Complaints and investigation by the Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

84U. Denial of access

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

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

84V. Anti-competitive practices and conduct

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

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

84W. Regulations on competition issues

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

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

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

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

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

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

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

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

PART VII – MISCELLANEOUS PROVISIONS

84. National Communication Secretariat

(1) There is established a Secretariat to be known as the National Communication Secretariat, headed by a communications secretary and comprising such other officials as may be determined from time to time.

(2) The function of the Secretariat shall be to advise the Government on the adoption of a communication policy which—

- (a) promotes the benefits of technological development to all users of postal and telecommunication facilities;
- (b) fosters national safety and security, economic prosperity and the delivery of critical social services through posts and telecommunications;
- (c) facilitates and contributes to the full development of competition and efficiency in the provision of services both within and outside Kenya; and
- (d) fosters full and efficient use of telecommunication resources including effective use of the radio spectrum by the Government in a manner which encourages the most beneficial use thereof in the public interest.

85. Power of operator to use land

(1) Subject to subsection (3), a telecommunication operator may, with the consent in writing of the owner or occupier of any land, and subject to such terms and conditions as may be agreed upon between the operator and the owner or occupier, place or maintain under, over, along, across, in or upon such land, any telecommunication apparatus or such radio communication apparatus, installed or used in accordance with a radio communication licence.

(2) Upon an agreement under subsection (1), it shall be lawful for the telecommunication operator or its representatives, at all times and on reasonable notice, to enter upon the land and to—

- (a) put up any posts, which may be required for support of telecommunication lines;

- (b) fasten or attach to any growing on that land a bracket or other support for the line;
- (c) cut down any tree or branch which is likely to injure, impede or interfere with any telecommunication lines; or
- (d) perform any activities necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing any telecommunication apparatus or radio communication apparatus, or for performing any other activities in accordance with the provisions of this Act.

(3) Notwithstanding any agreement under subsection (1) a telecommunication operator shall not, except with the consent of the owner or occupier of the land—

- (a) acquire any right other than that of user of such land under, over, along, across, in or upon which any telecommunication apparatus or radio communication apparatus is placed and only for such purposes as the parties have agreed;
- (b) exercise those powers in respect of any land vested in or under the control of a local authority, except in accordance with a procedure set out in section 86.

(4) A telecommunication operator shall ensure that as little damage as possible is caused to the land and to the environment by reason of the exercise of the powers conferred by this section and shall pay fair and adequate compensation to the owner or occupier of the land for any damage or loss sustained by reason thereof.

(5) Any dispute arising between an operator and the owner or occupier of any land with respect to the provisions of this section may be referred to the Tribunal for adjudication within thirty days of the dispute.

85A. Co-location

(1) Co-location at sites and facilities may be done with prior agreement of licensees.

(2) When no agreement on co-location is reached, the licensees may refer the issue to the Commission for a decision.

[Act No. 1 of 2009, s. 32.]

86. Procedure for using public land

(1) Where a telecommunication operator licensed by the Commission intends to enter any land under the control of a local authority or other public body, the telecommunication operator shall seek the consent of the local authority or public body, stating the nature and extent of the acts to be done.

(2) The local authority or other public body may, upon request under subsection (1), permit the telecommunication operator to exercise any or all of the powers under section 85(2), subject to such conditions, including the payment of any fee for the use of the property, the time or mode of execution of any works, or for any other related activity undertaken by the telecommunication operator under the section as may be agreed between the telecommunication operator and the authority.

(3) An operator dissatisfied with the terms or conditions imposed by the local authority under subsection (1), may apply to the Commission for the review of such terms or conditions.

(4) A person aggrieved by the decision of the Commission under subsection (3) may appeal to the Tribunal within thirty days of such decision.

87. Compulsory purchase of land

(1) Where, upon application by a telecommunication operator, the Commission considers that it is necessary land for the purpose of providing telecommunication services to the public, the Commission may apply to the Commissioner of Lands to acquire the land on behalf of the telecommunication operator.

(2) Upon application by the Commission under subsection (1), the Commissioner of Lands may, if satisfied that it is in the public interest to do so, acquire the land in accordance with the provisions of the Land Acquisition Act (Cap. 301).

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

88. *Deleted by Act No. 6 of 2009, Sch.*

89. Entry and search of premises, etc.

(1) If a court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the provisions of this Act has been or is being committed, and that the evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, it may grant a search warrant, authorising any person or persons authorised in that behalf by the Commission and named in the warrant, with any police officer, to enter, at any time within one month from the date of the warrant, the premises specified in the information or, as the case may be, the vehicle, vessel or aircraft so specified and to search such premises, vehicle, vessel or aircraft, and to examine and test any station or apparatus or obtain any article or thing found in such premises, vessel, vehicle or aircraft.

(2) If a court is satisfied that—

- (a) it is necessary to enter any specified premises, vessel, aircraft or vehicle, for the purpose of obtaining such information which will enable the Commission to gather necessary evidence in accordance with the provision of subsection (1);
- (b) access to such premises, vessel, aircraft or vehicle for the purpose of obtaining such evidence as aforesaid has, within seven days before the date of the application to the court, been sought by a person duly authorised in that behalf by the Commission and has been denied,

the court may grant written authorisation under its hand and seal empowering any person or persons authorised in that behalf by the Commission and named in the authorisation, with any police officer, to enter and search the premises or as the case may be, the vessel, aircraft or vehicle with a view to discovering

whether any station, apparatus, article or thing as aforesaid is situate thereon, and to examine and test it with a view to obtaining such information as aforesaid:

Provided that an authorisation shall not be issued under this subsection unless either—

- (i) it is shown to the court that the Commission is satisfied that there are reasonable grounds for believing that the use of the station or apparatus in question is likely to cause undue interference with any radio communication used for the purposes of any safety-of-life-service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
- (ii) it is shown to the court that not less than seven days' notice of the demand for access was served on the owner or occupier of the premises, or the person in possession or in charge of the vessel, aircraft or vehicle, and that the demand was made at a reasonable hour and was unreasonably denied.

(3) Where under this section a person is authorised to examine and test any telecommunication system or telecommunication apparatus or radio communication apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vessel, aircraft or vehicle, to give such authorised person such assistance as he may reasonably require in the examination or testing of such station or such apparatus.

(4) Any person who—

- (a) obstructs any authorised person in the exercise of the powers conferred on him under this section; or
- (b) fails or refuses to give to any such authorised person any assistance which he is, under this section, under a duty to give to him; or
- (c) discloses, otherwise than for the purpose of this Act or any report of proceedings thereunder, any information by means of the exercise of powers under this Act, being information with regard to any manufacturing process or trade secret,

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

(5) For purposes of this section “**court**” means a Resident Magistrate’s Court.

90. Seizure of apparatus, article or other property

(1) A search warrant granted under section 89 may authorise the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any radio communication apparatus, telecommunication apparatus, article or other thing found in the course of the search carried out in pursuance of the warrant which appears to have been used in connection with or to be evidence of the commission of any offence under this Act.

(2) If a police officer or any person authorised by a warrant to exercise the power conferred under this section has reasonable grounds to suspect that an offence under this Act has been or is being committed, he may seize and detain,

for the purposes of any relevant proceedings, any radio communication apparatus, telecommunication apparatus article or other thing which appears to have been used in connection with or to be evidence of the commission of any such offence.

(3) Nothing in this section shall prejudice any power to seize or detain property which is exercisable by a police officer under the Police Act (Cap. 84.)

(4) Any person who intentionally obstructs the authorised person in the exercise of the power conferred on him under subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

91. Forfeiture of property used in commission of offence

(1) Where a person is convicted of an offence under this Act for the contravening of any of the provisions relating to any radio communication station or telecommunication system, or any radio communication apparatus, or any telecommunication apparatus, or in the use of any apparatus for the purpose of interfering with any radio communication or telecommunication, or uses any article or property for disrupting the postal services in contravention of any of the provisions of this Act, the court may, in addition to any other penalty, order all or any of the apparatus of the telecommunication system, the radio communication station or any such other apparatus, or article or property in connection with which the offence was committed, to be forfeited to the commission:

Provided that the provisions of this subsection shall not apply to radio communication apparatus not designed or adapted for transmission (as opposed to reception).

(2) The court by which any such apparatus, article or property is ordered to be forfeited under this section may also order the person, by whom the offence giving rise to the forfeiture was committed, not to dispose of that apparatus, article or property except by delivering it to the Commission within such period as the court may deem fit.

(3) If a person against whom an order is made under subsection (2) contravenes that order or fails to deliver such apparatus, article or property to the commission as required, he shall be guilty of a further offence which, for the purpose of determining the appropriate penalty shall be treated as an offence under the same provision as the offence for which the forfeiture was ordered.

92. Disposal of property seized under section 90

(1) Any property seized by a person authorised by a warrant under section 89 may be detained—

- (a) until the end of the period of six months from the date of the seizure; or
- (b) if proceedings in respect of an offence involving that property are instituted within that period, until the conclusion of those proceedings, or such shorter periods as the court may order.

(2) After the end of the period for which its detention is authorised by virtue of subsection (1) above, any such property which—

- (a) remains in the possession of the Commission; and
- (b) has not been ordered to be forfeited under section 91,

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

(4) The Commission shall take reasonable steps to deliver the property to the person who, in the opinion of the Commission, is the owner of that property and such owner shall indemnify the Commission against any claims that may arise under subsection (5).

(5) Where the property remains in the possession of the Commission after the end of the period of one year immediately following the end of the period for which its detention is authorised under subsection (1), the Commission may dispose of it in such manner as it thinks fit.

(6) The delivery of the property in accordance with subsection (3) to any person appearing to the Commission to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of that property.

93. General restrictions on disclosure of information

(1) No information with respect to any particular business which—

- (a) has been obtained under or by virtue of the provisions of this Act; and
- (b) relates to the private affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on be disclosed by the Commission or by any other person without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) shall not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance of any statutory functions of the Commission; or
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or
- (c) for the purpose of any civil proceedings brought under or by virtue of this Act.

(3) Any person who discloses any information in contravention of this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings.

94. Powers in relation to electricity undertakers, etc.

(1) Subject to subsection (7), any person who establishes or operates, under any written law or otherwise, any undertaking for the supply of electricity (in this

section referred to as “**the undertaker**”) or any person who constructs, equips or operates a railway by means of electricity (in this section referred to as “**the railway operator**”) shall, at least one month before erecting, placing or altering the position of any line or wire for the transmission of such electricity, forward to the telecommunication operator within the area within which such work is to be executed, or to the public postal licensee where any post office or other property is likely to be affected, a notice in writing of his intention to execute such work together with a plan of the proposed work, and the undertaker or the railway operator shall also give to the telecommunication operator, or as the case may be, the public postal licensee all such other information as he may require in order to determine whether such work is likely to interfere unduly with any telecommunication or postal services.

(2) Where an undertaker has given notice in writing in accordance with subsection (1), the telecommunication operator, or as the case may be, the public postal licensee within one month of the receipt of such notice, shall inform the undertaker in writing that the proposed work has either been approved or that, in accordance with subsection (3), certain requirements are considered necessary to be effected or that the matter referred to in the notice is receiving attention, and in the event of no such notification in writing being so given, the position of any electric supply line specified in the notice given in accordance with subsection (1) shall, for the purposes of this Act, be deemed to have been approved in writing.

(3) If the telecommunication operator, or as the case may be, the public postal licensee considers that any such work is likely to interfere unduly with any telecommunication or postal services provided by or under the authority of the Commission, he may inform the undertaker or the railway operator of any requirements he may consider necessary to be effected by the undertaker or the railway operator in order to remove or lessen such anticipated interference, and in so doing he shall have regard not only to the interests of such telecommunication or postal services, but also to the interests of all persons supplied or who may be supplied with electricity by the undertaker and of all persons using the facilities provided by the railway operator.

(4) If the undertaker or the railway operator does not agree to effect such requirements, or any altered requirements communicated to him under subsection (3) the matter shall be referred to the Minister for the time being responsible for Public Lands, and the undertaker or the railway operator shall not proceed with the execution of such work until that Minister has given his decision thereon.

(5) Where any matter has been referred to the Minister for the time being responsible for Public Lands under this section, that Minister may appoint any person or committee to investigate the matter and to report thereon to him.

(6) After consideration of the report of any such person or committee, the Minister responsible for Public Lands may, after giving the parties reasonable opportunity of being heard, give such decision as he may think fit, and may specify what requirements, if any, the undertaker or the railway operator shall comply with in executing any such work and any such decision shall be final.

(7) The Commission may, by notice in the *Gazette*, specify general requirements to be observed by any undertaker or railway operator when erecting, placing or altering the position of any electric supply line, and in any such notice the Commission may provide that it shall not be necessary—

- (a) for any undertaker or railway operator effecting any specified class of work; or
- (b) for any specified class of undertaker or railway operator,

to give to the telecommunication operator, or the public postal licensee notice referred to in subsection (1) if, in effecting any work, any such undertaker or railway operator proposes to comply with such general requirements.

95. Structures likely to interfere with telecommunication or postal services

Where any person erects any building or structure which is likely to cause interference with the telecommunication, or radio communication or postal services, the telecommunication operator or, as the case may be, the public postal licensee may, unless such person has previously obtained the approval in writing of such operator or licensee to the erection of such building or structure or has modified it to the satisfaction of the said operator or licensee, require such person to pay to the said operator or the licensee the amount of any expenditure necessarily incurred by him in the removal of any installation, apparatus or equipment in order not to interfere with telecommunication, radio communication or postal services.

96. Offences by companies

(1) Where any offence under this Act has been committed by a company or body corporate, every person who at the time of the commission of the offence was a director, general manager, company secretary or other similar officer of such company or body corporate, or was purporting to act in any such capacity, shall be deemed also to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where a person is convicted of an offence under this Act in relation to the unlawful use of any telecommunication system or radio communication apparatus, or to the use of any apparatus or property for the purpose of interfering with any telecommunication, radio communication or postal services, the court may, in addition to any other penalty, order all or any of the apparatus or property with which the offence was committed to be forfeited to the Commission.

(3) Where the affairs of the company or body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of that company or body corporate.

97. Property of the Commission in the custody of employees

(1) Where any employee of the Commission dies or leaves property of the service of the Commission and at the time of such death or termination of service any premises of the Commission were occupied by him or any property of the Commission was in his possession, it shall be the duty of such employee or, in

the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable, to deliver such property to the Commission or to vacate such premises.

(2) If any property or premises to which subsection (1) refers, is not delivered to the Commission or vacated, the Director-General shall give notice in writing to the person appearing to him to be in possession of such property or in occupation of such premises to deliver to the Commission such property or vacate such premises within such time as may be specified in the notice and if such property is not so delivered or such premises are not so vacated within such time, the Director-General may, without prejudice to any other means of recovery, apply to a Resident Magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property, if found, to the Commission or, as the case may require, to evict from such premises any person found therein.

98. Limitation of actions

Where any action or other legal proceeding is commenced against the Commission for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Commission until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent;
- (b) the action of legal proceeding shall not lie or be instituted unless it is commenced within twelve months of the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

99. Restriction on execution against property of Commission

Notwithstanding anything to the contrary in any law—

- (a) where any judgement or order has been obtained against the Commission no execution or attachment, or process in the nature thereof, shall be issued against the Commission or against any property of the Commission, but the Director-General shall, without delay, cause to be paid out of the revenue of the Commission such amounts as may, by the judgement or order, be awarded against the Commission to the person entitled thereto;
- (b) no property of the Commission shall be seized or taken by any person having by law power to attach or restrain property without the previous written permission of the Director-General.

100. Service of notice, etc., on Director-General

Any notice or other document required or authorised under this Act to be served on the Commission may be served—

- (a) by delivering of the notice or other documents to the Director-General or to any other authorised employee of the Commission; or

- (b) by leaving it at the office of the Director-General; or
- (c) by sending it by registered post to the Director-General.

101. Service of notice, etc., by Director-General

Any notice or other document required or authorised under this Act to be served on any person by the Commission or the Director-General or any employee may be served—

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by registered post addressed to that person at his usual or last known address.

102. Establishment and constitution of Appeals Tribunal

(1) There shall be established an Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties under this Act and such matters as may be referred to it by the Minister which shall consist of—

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and
- (b) two other members who are persons possessing, in the opinion of the Minister, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or the Corporation;
- (c) two other members who shall be nominated by the media Council established under the Media Act, 2007 (No. 3 of 2007), and appointed by the Minister.

(2) The chairman and other members of the Tribunal shall be appointed by the Minister in consultation with the Attorney-General and the provisions set out in the second Schedule shall have effect in relation to the membership, procedure and sittings of the Tribunal.

(3) The Minister may from time to time publish in the *Gazette* amendments to the schedule as he deems fit.

(4) The members of the Tribunal shall hold office for a period of three years but shall be eligible for reappointment for one further term of a period not exceeding three years.

[Act No. 1 of 2009, s. 33, Act No. 6 of 2009, Sch.]

102A. Universal Service Advisory Council

(1) There is established a Council to be known as the Universal Service Advisory Council.

(2) The Council shall consist of a maximum of seven members as follows—

- (a) a chairman appointed by the Minister in consultation with the Board;

- (b) at least four members appointed by the Minister in consultation with the Board.

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

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

- (a) have knowledge or experience in broadcasting, telecommunication, postal systems, information technology or finance;
- (b) have satisfied the Minister that they are unlikely to have a conflict of interest under this Act and will not have any financial or other interest which will be likely prejudicially affect the carrying out of any functions under this Part;

Provided that an authorization shall not be issued under this sub-section unless either—

- (i) it is shown to the court that the Commission is satisfied that there are reasonable grounds for believing that the use of the station or apparatus in question is likely to cause undue interference with any radio-communication used for the purposes of any safety-of life-service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or

[Act No. 1 of 2009, s. 34.]

103. Repeal of Cap. 411 and savings

(1) The Kenya Posts and Telecommunication Corporation Act (Cap. 411) is repealed.

(2) The provisions of the Third Schedule shall, upon the repeal of the Kenya Posts and Telecommunication Corporation Act, have effect with respect to the transfer of the functions, assets and liabilities of the former corporation to the company, the corporation and the Commission, as the case may be, and to all matters incidental to such transfer.

FIRST SCHEDULE

[Section 8.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of office

(1) The chairman or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding four years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for reappointment for one more term of a period not exceeding four years.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

2. Vacation of office

A member other than the chairman or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission from chairman; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud; or
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure; or
 - (vii) is engaged in a communications organisation which operates on telecommunication system or provides telecommunication services or is engaged in the manufacture or distribution of telecommunication equipment in Kenya as an owner, shareholder, partner or otherwise, whether directly or indirectly.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairman may call a special meeting at any time where he deems it expedient for the transaction of the business of the Board.

(3) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairman and an honorary treasurer.

(4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of the business of the Board shall be seven members excluding the chief executive officer.

(6) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairman shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(8) Subject to paragraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restriction as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The common seal

The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and the chief executive officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the chief executive officer:

Provided that the Board shall, in the absence of either the chairman or the chief executive officer, in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or the chief executive officer.

6. Minutes

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

SECOND SCHEDULE

[Section 102.]

MEETINGS AND PROCEDURE OF THE APPEALS TRIBUNAL

1. Appointment of Members

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

2. Resignation

Any member may at any time by notice in writing to the Minister resign his office.

3. Vacation of office of member

(1) If a member of the Tribunal becomes a member of the Board or, in the case of a member other than the chairman is appointed to the service of the Government or the Commission his office shall become vacant.

(2) The chairman or a member of the Tribunal may be removed from office by the Minister if he is—

- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
- (b) an undischarged bankrupt; or
- (c) convicted of an offence involving fraud or dishonesty; or
- (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings.

4. Disclosure of interests

If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Minister and the Minister may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.

5. Vacancy

Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.

6. Temporary members

In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint a temporary member for the purposes of those proceedings.

7. Majority decisions

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

8. Powers

The Tribunal shall have the powers of the High Court—

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
 - (i) the protection of the members of the Tribunal from suit;

- (ii) the form of summonses to witnesses;
- (iii) the giving or fabricating of false evidence;
- (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
- (v) the appearance of advocates,

shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

9. Venue

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

10. Rules

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

11. Proof of documents

A document purporting to be a copy of any order of the Tribunal, and certified by the Chairman to be a true copy thereof, shall in any legal proceedings be *prima facie* evidence of the order.

THIRD SCHEDULE

[Section 103.]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Part, unless the context requires otherwise—

“**assets**” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former Corporation whether situated in Kenya or elsewhere;

“**Company**” means the Telkom Kenya Limited registered under the Companies Act (Cap. 486), and having its registered office at Nairobi;

“**Corporation**” means the Postal Corporation of Kenya established by the Postal Corporation of Kenya Act, 1998 (Cap. 411);

“**former Corporation**” means the Kenya Posts and Telecommunications Corporation Act (now repealed).

“**liabilities**” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

“**rights**” means all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

“**vesting day**” means the day specified by the Minister for Finance under paragraphs 5 of this Schedule.

2. Licenses granted former Corporation

Notwithstanding the repeal of the Kenya Posts and Telecommunications Act, all licences granted by the former Corporation shall be deemed to be granted by the Commission under the corresponding provisions of this Act and shall remain in force until they are revoked in accordance with any terms in that regard set out in the licence and replaced by licences granted under this Act.

3. Winding-up of former Corporation

The Board of Directors of the former Corporation shall remain in office for the purpose of windingup the affairs of the former Corporation:

Provided that the Minister may by notice in the *Gazette* dissolve the Board of Directors referred to in this subsection upon the completion of the windingup of the affairs of the former Corporation.

4. Cessation of exclusive privilege

The exclusive privilege conferred upon the former Corporation by the Kenya Posts and Telecommunications Corporation Act (Cap. 411) (now repealed) with respect to providing—

- (a) telephone services and constructing, maintaining and operating telephone apparatus conferred on the former Corporation by section 59(1); and
- (b) telegraph services and of constructing, maintaining and operating telephone apparatus conferred on the former Corporation by section 70,

shall lapse upon the commencement of this provision.

5. Transfer of assets and liabilities of the former Corporation

(1) The Minister for Finance may by notice in the *Gazette*, specify the date or dates and the manner in which the assets and liabilities of the former Corporation shall be transferred to and vested in—

- (a) the Commission, in respect of assets and liabilities relating to regulatory services;
- (b) the Company, in respect of assets and liabilities relating to telecommunication services; and
- (c) the Corporation, in respect of assets and liabilities relating to postal services.

(2) References in this Schedule to assets and liabilities of the former Corporation shall be references to all such assets and liabilities, whether or not capable of being transferred or assigned by the former Corporation.

(3) A notice under subsection (1) shall specify the assets and liabilities of the former Corporation which are to be transferred to the Commission, the Company, or the Corporation, as the case may be.

(4) If, on the vesting day, any suit, appeal, arbitration or other proceedings of whatever nature and wheresoever instituted in relation to the business of the former Corporation which is by virtue of this section, transferred to the Commission, Company, or, the Corporation, as the case may be, shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer of the business of the former Corporation or of anything contained in this Act, and any suit, appeal arbitration or other proceedings shall be continued, and enforced by or against the Commission, Company or, the Corporation, as the case may be.

(5) In the case of assets and liabilities arising under any loans which vest in the Commission, the Company or the Corporation, as the case may be on the vesting day, the Commission, the Company or the Corporation as the case may be, may enter into such arrangements or agreements over such rights and liabilities with the Government or any other third party.

(6) Any assets and liabilities of the former Corporation which are not to be vested either in the Commission, the Company or the Corporation as the case may be, shall be disposed of in such manner as the Minister for Finance shall determine.

6. Transfer of other Assets

(1) The Minister for Finance may, by order published in the *Gazette*, from time to time, provide that any property registered in the name of the Cable and Wireless Company, (Kenya), the East African External Telecommunication Company, the Post Master General, or the East African Posts and Telecommunication Corporation, companies incorporated under the Companies Act (Cap. 486), which had not been transferred to the former Corporation, shall on the date mentioned in the order, be deemed to have been transferred to and registered in the name of the Commission, the Company, or the Corporation, as the case may be.

(2) Except as otherwise provided in this Act, any agreement made, transaction effected or other thing done by, to or in relation to the former Corporation which is in force or effective immediately before the vesting day shall have effect as from that day as if made, effected or done by, to or in relation to the Commission, the Company or the Corporation as the case may be, were the same person, in law, as the former Corporation, and accordingly, references to the former Corporation—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument; and
- (b) in any other document whatsoever (other than an enactment) relating to or affecting any asset or liability of the former Corporation which vests by virtue of paragraph 5 of this Schedule in the Commission, the Company or the Corporation, as the case may be, shall be taken with effect from the vesting date as referring to the Commission, the Company or the Corporation, as the case may be.

7. Employees

(1) Every person who at the commencement of this Act is an employee of the former Corporation, not being under notice of dismissal or resignation, shall on the vesting day, become an employee of the Commission, the Company or, the Corporation, as the case may be, as may be respectively specified by the Minister on the same or improved terms and conditions of service.

(2) Where on the vesting day—

- (a) any disciplinary proceedings against any employee of the former Corporation, are in the course of being heard or instituted, or have been heard or investigated by the former Corporation but no order or decision has been made thereon; or
- (b) any such employee is interdicted or suspended, the Commission, Company, the Corporation, as the case may be, shall—
 - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of paragraph (b), deal with such employee in such manner as it thinks appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings making of an order or the rendering of a decision, as the case may be, as if such disciplinary proceedings have been commenced by the Commission, the Company, or the Corporation, as the case may be.

(3) Where on the vesting day, any penalty (other than dismissal) has been imposed on any employee of the former Corporation pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such employee, he shall on his transfer to the Commission, the Company, or, the Corporation, as the case may be, under subsection (1) serve or continue to serve such penalty to its full term as if it had been imposed by the Commission, the Company or, the Corporation as the case may be.

8. Pensions

Where any person whose services are transferred to the Commission, the Company, or the Corporation, as the case may be, is on the vesting day, a member of any statutory or voluntary pension scheme or provident fund he shall, for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds his service with the Commission, the Company or the Corporation, as the case may be, shall be deemed to be service in the former Corporation.

9. Former employees

The Commission, the Company or the Corporation, as the case may be, shall continue to be liable to former employees of the former Corporation, who have retired on the vesting day for such pension benefits payable as they are entitled to under the regulations of those pension schemes.

FOURTH SCHEDULE

[Section 102A, Act No. 1 of 2009, s. 35.]

PROVISIONS AS TO THE UNIVERSAL SERVICE ADVISORY COUNCIL

1. Tenure of office

The Chairman and members of the Council shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years on such terms and conditions as may be specified in their instrument of appointment, but shall be eligible for reappointment for one more term of a period not exceeding three years.

2. Appointment of members

The members of the Council shall be appointed at such times that their respective terms of office shall expire at different times.

3. Vacation of office

A member of the Council may—

- (a) at any time by notice in writing addressed to the Minister, resign his office;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Council without permission from the chairman;
 - (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings; or
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) fails to comply with the provisions of the Act relating to disclosure.

4. Gazettement of members

The names of persons appointed to be members of an advisory council and the interests they represent and the names of persons ceasing to be members of the council shall be notified in the *Gazette*.

5. Meetings and proceedings

Subject to this Schedule, the Council shall regulate its own procedure.

6. Meetings

Meetings of the Council shall be called by the Chairman whenever the Board so requests.

7. Absence of chairman

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

8. Agenda of meetings

The agenda at a meeting of the Council shall consist of such matters as the Board may from time to time refer to the Council for consideration and such other matters as the Council, with the agreement of the Board, may receive.

9. Quorum

A quorum at any meeting of the Council shall be one half of the members of the Council.

10. Resolutions

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

11. Staff of the council

The secretary and any other staff of the Council shall be members of the staff of the Commission appointed for the purpose by the Board.

FIFTH SCHEDULE

[Section 46R, Act No. 1 of 2009, s. 35, Act No. 12 of 2012, Sch.]

TRANSITIONAL PROVISIONS**1. Interpretation**

In this Schedule, unless the context requires otherwise, “**broadcasting permits**” means any authority given prior to the commencement of this Act by the Minister in charge of broadcasting authorizing any person to undertake broadcasting services.

2. Broadcasting permits granted by the Minister

The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Minister prior to the commencement of this Act;

Provided that—

- (a) such parties shall be granted a period not exceeding one year or such longer period and subject to such terms and conditions as the Minister may by notice in the *Gazette*, specify during which they may continue to operate in accordance with their existing permits; and
- (b) before the expiry of the one year or such longer period as aforesaid period, such parties shall apply to the Commission to be licensed under this Act.

[Act No. 12 of 2012, Sch.]

3. Domain administrators

The Commission shall respect and uphold the vested rights and interests of parties that were actively involved in the management and administration of the .ke domain name space at the date of commencement of this Act provided that—

- (a) such parties shall be granted a period not exceeding six months during which they may continue to operate in respect of their existing delegated sub-domains; and
- (b) before the expiry of the six months or such longer period as the Minister may, by notice in the *Gazette*, specify period, such parties shall apply to the Commission to be licensed under this Act.

[Act No. 12 of 2012, Sch.]

NO. 2 OF 1998

KENYA INFORMATION COMMUNICATIONS ACT

SUBSIDIARY LEGISLATION

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KENYA COMMUNICATIONS (APPEALS) RULES, 1999

ARRANGEMENT OF RULES

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[Subsidiary]**KENYA COMMUNICATIONS (APPEALS) RULES, 1999**

[L.N. 2/2000, L.N. 176/2003.]

1. Citation

These Rules may be cited as the Kenya Communications (Appeals) Rules, 1999.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**appeal**” means an appeal to the Tribunal under any of the provisions of the Act;

“**appellant**” means a person entering an appeal and the advocate or duly authorised agent of that person;

“**Chairman**” means the Chairman of the Tribunal appointed under section 102(1) of the Act;

“**Executive Officer**” means the Executive Officer of the Tribunal appointed pursuant to rule 3;

“**memorandum**” means a memorandum of appeal presented under rule 4;

“**Permanent Secretary**” means the Permanent Secretary of the Ministry for the time being responsible for Communications;

“**respondent**”—

(a) in relation to an appeal brought by a licensee who is a party to a dispute determined by the Commission under Regulation 8 of the Kenya Communications Regulations, 2001, means any licensee (other than the appellant) who was bound by the determination; or

(b) in any other case, means the Commission.

[L.N. 176/2003, s. 2.]

3. Appointment of Executive Officer

(1) The Permanent Secretary shall appoint a person to be the Executive Officer of the Tribunal.

(2) The Executive Officer shall, in matters relating to appeals to the Tribunal and to the procedure therefore, comply with general or special directions lawfully given by the Chairman or the Tribunal.

(3) The appeals shall be filed in the offices of the Appeals Tribunal at Transcom House along Ngong Road, Nairobi.

4. Form and time for lodging an appeal

(1) An appeal shall be entered by presentation of memorandum of appeal, together with five copies thereof, to the Executive Officer within the period specified in the Act, or, where not specified, within thirty days of notification of the decision appealed against to the appellant in writing:

Provided that where the appellant has made an application under subrule (2) and the tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within that period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

(2) An appellant may, by application in writing—

- (a) signed by him;
- (b) supported by an affidavit setting out the reasons for delay; and
- (c) files, with five copies, together with the memorandum of appeal apply for leave to file an appeal out of time or;

(3) The Executive Officer shall give every appeal filed pursuant to subrule (1) an appeal number and every document filed together with the memorandum or subsequently filed in relation to the appeal shall bear the said number.

[L.N. 176/2003, s. 3.]

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely, under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of appeal

Each copy of a memorandum shall be accompanied by—

- (a) a copy of the decision appealed against; and
- (b) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document upon which the appellant proposes to rely as evidence at the hearing of the appeal.

7. Service of memorandum of appeal

Within four (4) days after the presentation of a memorandum to the Executive Officer a copy thereof and of the statement of facts of the appellant and the documents, annexed thereto, together with any application for leave to file the appeal out of time shall, be served by the appellant upon the respondent.

[L.N. 176/2003, s. 4, s. 5.]

8. Statement of facts of the respondent

(1) The respondent shall, if he does not accept any of the facts of the appellant, within twenty-one (21) days after the service thereof upon him under rule 7, file with the Executive Officer a statement of facts together with five copies thereof and the provisions of rule 6 (b) shall *mutatis mutandis* apply to the statement of facts.

(2) At the time of filing a statement of facts pursuant to subrule (1), the respondent shall serve a copy thereof, together with copies of the documents annexed thereto, upon the appellant.

(3) If the respondent does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the Executive Officer and to the appellant, and in that case the respondent shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

[L.N. 176/2003, s. 5.]

9. Notice and place of hearing

(1) As soon as may be convenient after receipt by him of the memorandum, the Executive officer shall notify the Chairman thereof.

[Subsidiary]

(2) The Chairman shall, after the respondent has filed a statement of facts or has notified the Executive Officer that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal, and the Executive Officer shall cause notice thereof to be served on the appellant and the respondent.

(3) The Executive Officer shall cause to be supplied to each member of the Tribunal a copy of the notice of the hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

[L.N. 176/2003, s. 5.]

10. Procedure at hearing of appeal

At the hearing of an appeal, the following procedure shall be observed—

- (a) the respondent shall be entitled to be present or be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;
- (c) at the conclusion of the statement and evidence on behalf of the appellant, the respondent may make submissions supported by relevant evidence, and subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the respondent;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the Chairman or a member of the Tribunal may at any stage of the hearing, ask any questions of the appellant or the respondent or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal;
- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) at the conclusion of the hearing of the appeal the Tribunal may, if necessary, adjourn the proceedings and reserve its decision to be delivered on a day to be notified;
- (j) notes of proceedings including submissions and evidence, if any, given by witnesses as far as they are relevant shall be recorded by the Chairman or, where possible, may also be recorded electronically.

[L.N. 176/2003, s. 5.]

11. Tribunal to determine own procedure in certain matters

In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

12. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

13. Costs

The Tribunal may make such order as to costs on an appeal as it may determine.

KENYA COMMUNICATIONS REGULATIONS, 2001

ARRANGEMENT OF REGULATIONS

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PART VI – RADIO COMMUNICATIONS

14. – 31. *Revoked.*

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32. – 49. *Revoked.*

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50. – 61. *Revoked.*

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KENYA COMMUNICATIONS REGULATIONS, 2001

[L.N. 68/2001, L.N. 28/2010, L.N. 29/2010, L.N. 30/2010, L.N. 55/2010, L.N. 56/2010, L.N. 57/2010, L.N. 58/2010.]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Kenya Communications Regulations, 2001.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Kenya Communications Act, No. 2 of 1998;

“**basic telecommunications service**” means a service offered to subscribers which provides such subscribers with a telephone connection to, and a unique local telephone number address on a licensed local access provider and which enables such subscribers to place calls to, or receive calls from, other telecommunications stations on those systems and shall include residence and business line services;

“**basic telephone service**” means a service provided to the public which allows end users to transmit and receive real time voice communications, including voice telephony service, public pay telephone service, operator assisted services, local, domestic and international long distance telephone services whether by wire or wireless means as well as basic, non-packet switched data communications, such as facsimile transmissions but does not include advanced or enhanced telephone services or dedicated data communications services such as paging services;

“**basic telephony**” means fixed or mobile communications service in which two-way connections are established without any deliberate removal or addition to the information content transmitted over that connection or any additional service having been provided thereof;

“**circuit**” means the physical connection or path of channels or conductors and equipment between two given points through which an electric current may be established;

“**communications**” shall, where used in these Regulations refer to telecommunication, postal and radio communications services;

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

“**confidential business information**” means a proprietary information of a trade, commercial or financial nature that is—

- (a) of a kind that would customarily not be released to the public by the person from whom it is obtained; and
- (b) the disclosure of which is likely to impair the Commission’s ability to obtain similar necessary information in the future or to cause substantial harm to the competitive position of the person from whom the information is obtained;

“**contract**” means any agreement, arrangement, bond, commitment, franchise, indemnity, indenture, instrument, lease, concession, licence or understanding, whether in writing or not in writing;

[Subsidiary]

“global navigation system” means an arrangement of technical apparatus by means of which an end user can determine location parameters of latitude, longitude and altitude at any instant of time anywhere on the earth surface;

“international call completion rate” means the minimum percentage of international telephone calls originating within a licensee’s network completed per total of international call attempts measured during the peak traffic hour;

“international telephone call” means an effective or completed telephone call exchanged with a telecommunications station outside the country in which the calling telecommunications station is situated;

“ITU” means the International Telecommunications Union;

“leased line” means a telecommunications line that is made available to a subscriber for his exclusive use;

“licensee” means the holder of a licence issued by the Commission under the Act or these Regulations;

“line” means a transmission medium between terminal locations and includes associated repeaters;

“local call completion rate” means the minimum percentage of local telephone calls completed per total of local call attempts measured during the peak traffic hour which originate and terminate from the licensee’s network;

“local service provider” means a telecommunications licensee licensed to provide local basic telephone service excluding international and long distance services but include value added services in accordance with the relevant licence issued by the Commission;

“local telephone call” means an effective or completed telephone call exchanged with a telecommunications station within the local charging area in which the calling telecommunications station is situated;

“mobile radio communication service” means a telecommunications service that operates through a mobile radio-communications system employing a network architecture in a “cell” configuration in which low-powered radio transmissions allow for the re-use of the same frequency simultaneously in multiple cells and shall include both voice telephony services and non-voice telephony services but shall unless otherwise expressly provided in a licence, exclude video, paging and high speed data services;

“mobile radio communication system” means a telecommunications system consisting of mobile service switching centres each of which typically serves a number of “cells” which establish calls to and from mobile subscribers in their respective call service areas, thereby allowing calls to be transferred from one cell to another cell without interruption and established or to be established by an operator under a licence to provide mobile radio-communications services;

“national long distance call completion rate” means the percentage of national long distance telephone calls completed per total of national long distance call attempts measured during the peak traffic hour which originate and terminate within a licensee’s network (internal national long distance call completion rate), or which terminate outside the licensee’s network (external national long distance call completion rate);

“national long distance telephone call” means an effective or completed telephone call exchanged with a telecommunications station outside the local charging area in which the calling telecommunications station is situated;

[Subsidiary]

“non-service specific interfaces” means a shared boundary between two functional units that is not specific to any one telecommunications service;

“operational subscriber’s line” means an operational subscriber’s line connecting a subscriber’s premises to the exchange;

“paging service” means a telecommunications services that provide subscribers with radio messages, through portable radio equipment used in a given zone, which may be accompanied by a verbal or codified visual message;

“private telecommunications services” means telecommunications services established by any person for the sole purpose of satisfying his own communications needs within Kenya and may include telephony service or value added services, radio communication and cable services;

“roaming services” means a type of telecommunications or radio communications service that enables subscribers of one mobile cellular communications system to utilise the facilities of another mobile radio communications system with which the subscriber has no direct pre-existing service or contractual relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call;

“satellite mobile telecommunications service” means a service which allows for voice or data communications through the use of mobile terminal equipment and capable of maintaining a direct uplink to or direct downlink from a satellite-based telecommunications network;

“satellite telecommunications service” means a telecommunications service provided through connections from earth stations to authorised public or private satellite-based telecommunications system;

“service agreement” means any agreement between an operator and a subscriber or subscribers relating to the provision and use of a telecommunications service;

“service quality requirements” means conditions of licence established by the Commission pursuant to section 25 of the Act for the purpose of improving the quality and delivery of telecommunications services in Kenya;

“store and forward messaging service” means a service whereby messages can be exchanged between subscribers using storage and retransmission devices;

“subscriber” means any person provided with a telecommunications service by a licensee, and who is responsible for payment of all charges and rentals;

“subscriber line” means a telecommunications link connecting the local telecommunications center to the subscriber’s premises or telephone instrument or system;

“tariffs” means the charges by a telecommunications service operator or its subscribers;

“telex service” means a telecommunications service that provides for the interactive telecommunication of texts between subscribers through teleprinting devices interconnected by a telex network via transmission of codified information;

“third party private network service” means a service over a user-dedicated network supplied by a licensee providing such services, whether directly or indirectly, to the user of such services;

“Tribunal” means the Appeals Tribunal established under section 102 of the Act;

[Subsidiary]

“trunk capacity resale service” means a type of telecommunications service which, using a trunk capacity resale system, provides the necessary capacity to carry and route telecommunications signals constituting the main interconnection between telecommunications systems and networks and which allows the provision of final services, distribution services and value added services;

“value added services” means such services as may be available over a telecommunications system in addition to voice telephony service, and specifically those services listed as “value added services” in these Regulations, including the following—

- (a) **“videotex”** means a service involving a two-way interactive computer-based information system in which a subscriber is linked to a database by telephone line or cable;
- (b) **“teletex”** means a service whereby a subscriber can exchange office correspondence in the form of documents containing teletex coded information on an automatic memory-to-memory basis;
- (c) **“teleaction”** means a service used to send short messages at very low transmission speeds between the subscriber and a communications network;
- (d) **“telecommand”** means a service whereby a supervised system is controlled from a remote control device;
- (e) **“telealarm”** means a service whereby an electric signal is sent to a remote control device each time there is a threshold change of conditions in the supervised system;
- (f) **“store and forward messaging service”** means a service whereby messages can be exchanged between subscribers using storage and retransmission devices;
- (g) **“teleprocessing and data processing”** means an interactive service used for the processing of data and exchange of messages between the terminals of geographically distant subscribers;
- (h) **“electronic mail services”** means a service whereby subscribers may send messages to one or more addressees and receive messages using a combination of data storage and retransmission techniques so that the final subscriber may recover the message. This service may be used as follows—
 - (i) electronic mail (X.400): a service allowing a subscriber to send messages instantaneously to another subscriber’s directory or electronic “mailbox” (i.e. person-to-person messaging, according to the ITU X.400 international standards);
 - (ii) electronic document interchange (EDI): person-to-person messaging, according to electronic data interchange fact (EDIFACT);
 - (iii) electronic fund transfer;
 - (iv) electronic voice mail: a storage and retrieval service whereby voice messages from one subscriber are digitally stored in order to be received by another subscriber;
- (i) **“voice messaging”** means a service whereby the subscriber transmits a brief message by calling one or more telephone numbers at a given time or by answering the call of another subscriber;
- (j) **“voice telephony service”** means a telecommunications service which provides subscribers with the ability to conduct real-time two-way speech conversation via a fixed or mobile network;

- (k) **“information services”** means an interactive service that provides access to information stored in database centres and which may be sent to the world wide web subscriber only upon request;
- (l) **“packet switching service”** means without using the systems network, data signals called packages are split up according to a sequence of signals arranged in a specific format, in accordance with the ITU X.25 and X.75 standards and such other generally recognised standards as may be approved for use over the public communications network by the Commission;
- (m) any other service as may be classified as such in the *Gazette* by the Commission.

PART II – OPERATING PROCEDURES

3. Protected information

(1) Any person who communicates with the Commission, and whose communication includes confidential business information, may submit a written request to the Commission that the specific portion of that communication consisting of such confidential information be protected from disclosure.

(2) Any request made under subregulation (1) of this regulation that is deemed by the Commission to be valid shall entitle the person who has made such a request to—

- (a) protection of confidential business information from being referred to in any writing or communication issued by the Commission;
- (b) non-publication of the confidential information in its entirety in any writing or communication issued by the Commission and, to the extent that the confidential information quoted or referred to by the Commission in any writing or communication, it shall be identified as such, together with directions on how the full text of the information may be obtained by the public.

(3) Trade secrets and other confidential or proprietary information pertaining to the commercial interests of any person, which are submitted in connection with a communication by any person to the Commission, may be entitled to treatment as confidential business information.

(4) A person seeking to have information or materials treated as confidential business information may submit the information or materials to be considered separately from the other communications to the Commission, together with a written request that the Commission treat such information as confidential business information.

(5) The Commission may on its own motion determine that the information or materials should not be routinely available for public inspection.

(6) In the absence of a request referred to in subregulation (4), materials or information that are submitted may be made available for inspection upon request, even though such information or materials may contain trade secrets or confidential information.

(7) The presence of confidential business information within the body of a communication to the Commission shall not entitle the entirety of those communications to confidential treatment, but that portion of the communications which is entitled to confidential treatment as confidential business information may be extracted from the main body of the communication made available for public inspection.

(8) The disclosure of confidential business information may be compelled pursuant to a parliamentary, judicial or other lawful process.

PART III – FINANCIAL PROVISIONS

4. Payments to the Commission

(1) The Commission may from time to time prescribe fees payable in respect of any licence issued or service performed under the Act or these Regulations.

(2) Every fee payable to the Commission in connection with applications for licences, frequency spectrum assignments, or any other matter shall be paid in full before the licence is granted or the frequency is assigned by the Commission.

(3) Unless otherwise prescribed by the Commission, all licensees shall make yearly payment of the annual operating fees due for the current year by the 1st day of July of each calendar year, but not later than three months after the end of the licensee's financial year.

(4) Where any licensee is required to pay fees to the Commission on the basis of information or records in the custody of such licensee, the licensee shall submit a declaration to the Commission in the manner prescribed by the Commission, attesting to the completeness and accuracy of the information upon which such computation of fees is based.

(5) Where a licence requires that payment of a licence or an annual operating fee be based on a percentage of a licensee's gross annual revenues, the base for calculating a licensee's gross annual revenues shall include—

- (a) payments from subscribers and other users; and
- (b) the amount billed including uncollected payments from subscribers and other customer accounts.

PART IV – FAIR COMPETITION AND EQUALITY OF TREATMENT

5. – 8. *Revoked by L.N. 29/2010, s. 5.*

PART V – TELECOMMUNICATIONS LICENCES

9. Licences required

The Commission shall issue telecommunications licences in accordance with the provisions of the Act.

10. Licensing

(1) The Commission shall prescribe the terms and conditions of all licences, as it considers consistent with the objectives of the Act, these Regulations and such other circumstances as the Commission may consider appropriate, including the terms and conditions upon which the license is granted, the services to be provided by the licensee and the network to be operated by the licensee.

(2) The Commission may issue licences for the provision of local access services, national long distance services, international services, very small aperture terminal services, internet backbone, global mobile personal communications services (GMPCS) and customer premises wiring, terminal equipment and maintenance, repair work Shop services and radio station licence.

(3) Local access services shall be provided by a licensed local access provider or a regional telecommunications operator.

(4) Licences granted shall contain an obligation to provide services efficiently and at reasonable costs.

(5) Licences may include the provision of services to rural or sparsely populated areas or other specified areas and other conditions as the Commission may deem necessary.

11. International conventions

The Commission may require licensees to comply with international conventions or agreements relating to communications services to which Kenya is signatory.

12. Transfer of licence

(1) A licence granted under the Act may not be transferred without the written consent of the Commission.

(2) An application for the transfer of a licence shall be accompanied by an application in the prescribed Form 1 set out in the First Schedule, completed by the person to whom the licensee intends to transfer the licence.

(3) The Commission shall in considering an application for transfer have regard to the same terms and conditions as in considering a grant of a new licence, provided that the Commission may in its discretion refuse to approve such an application for transfer under this regulation.

13. Lapse and renewal of licence

(1) An application for renewal of a licence shall be made in accordance with the conditions of each licence.

(2) In considering an application for renewal of a licence, the Commission shall have regard to the fulfilment by the licensee of the obligations contained in the licence in the previous licence period.

(3) The process for renewal of a licence for telecommunications services shall be contained in each licence and each application process shall be considered as part of these Regulations.

PART VI – RADIO COMMUNICATIONS

14. – 31. *Revoked by L.N. 58/2010, s. 19.*

PART VII – INTERCONNECTION AND PROVISION OF FIXED LINKS

32. – 49. *Revoked by L.N. 30/2010, s. 23.*

PART VIII – TYPE-APPROVAL OF TERMINAL EQUIPMENT

50. – 61. *Revoked by L.N. 57/2010, s. 25.*

PART IX – NUMBERING

62. – 63. *Revoked by L.N. 55/2010, s. 14.*

PART X – POSTAL AND COURIER SERVICES

64. – 89. *Revoked by L.N. 56/2010, s. 18*

[Subsidiary]

PART XI – TARIFF REGULATION

90. Scope

Except as provided in regulation 97, this Part shall apply to licensed services which are not open to competition and whose tariffs are subject to regulation by the Commission.

91. Price cap

(1) All licensees whose tariff rates are subject to review by the Commission pursuant to the price cap condition provided for in respective licences shall file with the Commission applications for the adjustment of such tariff rates.

(2) All licences for services that are subject to price cap condition shall contain the period in which such tariffs may be adjusted once a year.

(3) The obligation to comply with the terms and conditions of the price cap shall extend from the date on which a licence becomes effective up to the period when the services whose tariffs are regulated are open to competition as provided for in the relevant licences or as may be determined by the Commission.

92. Application for approval of tariff

All applications for approval of tariffs shall be filed with the Commission and shall—

- (a) conform to the methodology and formula defined in the relevant licence or such other terms as the Commission may prescribe; and
- (b) contain relevant documentation, including all calculations and other information in support of the application.

93. Notice on tariffs

(1) The Commission shall, at least sixty (60) days before approving any proposed tariffs submitted to it under regulation 93, give notice in the *Gazette* and in such other manner as it considers necessary—

- (a) specifying the name and particulars of the licensee or class of licensees providing the service to which the tariffs relates;
- (b) stating the reasons for the proposed review of the tariffs and the new tariffs;
- (c) specifying the time within which representation or objections may be made to the proposed new tariffs.

(2) The Commission shall in considering the application for review of the tariffs take into account such written representations or objections received under subregulation (1)(c).

94. Decision on tariffs

(1) Any proposed tariffs under the price cap condition shall be deemed approved if the Commission does not communicate its disapproval of the same to the applicant within sixty (60) days after receipt of the application or within fifteen (15) days after the applicant has furnished the Commission with any information sought and the Commission has not indicated its approval of the proposed tariffs.

(2) The Commission may reject an application for the imposition of proposed tariffs if it is of the view that the proposed rates are unjustifiable.

(3) A decision of the Commission rejecting the imposition of proposed tariffs shall—

- (a) be in writing;
- (b) state the reasons for the rejection; and
- (c) be made available to the licensee.

[Subsidiary]

(4) Upon approval by the Commission of any new tariffs, a licensee shall notify its customers of the new tariffs through publication in the *Gazette* or in such other publications as the Commission may determine and shall in such notice provide for a grace period of not less than fourteen days before implementing the new tariffs.

95. Investigation and suspension of tariffs

(1) The Commission may, on its own motion or pursuant to a complaint made under this regulation, investigate any tariffs charged by a licensee.

(2) An application for investigation, suspension or rejection of any tariffs brought under subregulation (1) shall—

- (a) be in writing;
- (b) specify the name and address of the petitioner and state the interest of such petitioner; and
- (c) the reasons why such tariffs should be investigated, suspended or rejected.

(3) Where after the investigations, the Commission is of the view that the tariffs should be suspended or rejected, it may reject or suspend such tariffs:

Provided that in case of a suspension of the tariffs the Commission shall notify the licensee and give such licensee twenty (20) days to respond to the intended cancellation.

96. Tariffs (file and use)

(1) All licensees under the Act who provide services to the public shall file with the Commission schedules of their tariff rates including those of their agents and correspondents.

(2) All licensees whose services are not subject to the price cap condition shall file with the Commission changes to existing tariffs, including the terms and conditions applicable thereto but excluding special offers and other promotions.

(3) All licensees, unless exempted by the Commission, shall only charge their customers the filed tariffs and shall further ensure that all filed tariff rates are printed and kept open for public review and inspection and shall furnish its customers upon request with such schedules.

(4) In this Part unless the context otherwise requires—

“**price cap**” means a methodology where the price charged for a service is allowed to change by the rate of inflation over the initial price with an adjustment factor (X) based on factors such as technological changes, need to finance development infrastructure and need to adopt efficient working systems; and

“**tariff-regulated services**” means services offered by a licensee which are not open to competition and whose tariffs are subject to regulation by the Commission.

PART XII – REPORTS, INVESTIGATIONS, INSPECTIONS AND ENFORCEMENT

97. – 100. *Revoked by L.N. 28/2010, s. 14.*

PART XIII – MISCELLANEOUS PROVISIONS

101. Roaming agreements

(1) Mobile cellular telecommunications licensees may enter into agreements to provide roaming services on a reciprocal basis to every other licensee of mobile cellular service that requests such service.

[Subsidiary]

(2) An agreement to provide roaming services shall, upon request, require a licensee to provide mobile cellular telecommunications to all subscribers of another licensee of a mobile cellular telecommunications system, while such subscribers are located within any portion of the licensee's authorised geographic service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

102. Registration of telecommunications contractors and vendors

(1) Any person who intends to be a contractor of telecommunications wiring or a vendor of a telecommunications or vendors of such equipment or apparatus shall register with the Commission upon payment of the prescribed fees.

(2) Upon application and registration, the Commission shall issue such contractor or vendor with a registration certificate in the prescribed form.

(3) Any person who conducts any business of wiring, installing or maintaining customer premises equipment or vending of telecommunications equipment without a registration certificate from the Commission shall be guilty of an offence.

103. Fees

The fees structure set out in the Second Schedule shall be applicable in respect of any application made under these Regulations and may be reviewed from time to time by the Minister.

FIRST SCHEDULE

PRESCRIBED FORMS

FORM NO. 1

(Regulations 12, 69 and 77)

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR LICENCES

1. NAME OF COMPANY/PERSON TO BE LICENCED

(The Company or person's name should be stated in full)

2. ADDRESS AND TELEPHONE NUMBER OF THE COMPANY/PERSON TO BE LICENSED

(The physical address, postal address, telephone and fax numbers should be stated)

Physical address: Town Street/Road LR No.

Name of building Floor Room

Postal address P.O. Box Town

Telephone Fax

3. INCOME TAX PERSONAL IDENTIFICATION NUMBER (PIN)**4. SHORT DESCRIPTION OF THE APPLICANT'S LICENSABLE SERVICE**

(A single sentence description of what aspect of postal service the applicant is applying to be licensed in)

5. NAME OF COMPANY/PERSON TO BE LICENSED

(Give full details of the proprietors or partners owning the business or if the applicant is a Company the names of the directors and shareholders of the Company)

Where the applicant is not a company

	Name of proprietor	Nationality	Address	Passport/ID No.
1.
2.
3.
4.
5.
6.
7.

Where the applicant is a company

(i)	Name of shareholder	Nationality	No. of shares held	Passport/ID No.
1.
2.

[Subsidiary]

FIRST SCHEDULE, FORM NO. 1—*continued*

3.

4.

(ii) Name of director Nationality Address Passport/ID No.

1.

2.

3.

4.

6. SHAREHOLDING

(i) Local % Foreign %

(ii) Authorised Shares Issued Shares

(iii) Is the company listed in the Nairobi Stock Exchanges? If yes, state the date on which it started trading.

7. REGISTRATION CERTIFICATE

Certificate No. Date

8. NAME AND ADDRESS OF THE BANK OR FINANCIAL INSTITUTION WHERE BUSINESS ACCOUNT IS MAINTAINED**9. DETAILS OF THE SERVICES PROPOSED AND MARKET TO BE SERVED**

(Use separate sheet where necessary)

10. PERSONAL DETAILS

(i) State whether any of the partners/directors/shareholders is an undischarged bankrupt.

(If so, indicate the names)

.....

.....

.....

.....

(ii) State whether any of the partners/directors/shareholders have a beneficial interest in any other business licensed to provide or operate postal services.

.....

.....

.....

.....

.....

FIRST SCHEDULE, FORM NO. 1—*continued*

- (iii) Has any previous application by you been rejected under the Act? (If so, give details)

.....

.....

.....

.....

- (iv) Has any previous licence granted to you under the Act been cancelled, suspended or modified? (If so, give details)

.....

.....

.....

.....

11. MANDATORY REQUIREMENTS

- (i) Certified copy of proof of shareholding from the Registrar of Companies.
 - (ii) Certified copy of proof of registration or incorporation in Kenya.
 - (iii) Certified copy of PIN card.
 - (iv) Non-refundable licence application fee of K.Shs 10,000/=.
 - (v) Letter of application with Company seal (where applicable).
- (All documents attached to this application should be certified as true copies of the originals.)

12. COMPLETED APPLICATION FORMS SHOULD BE RETURNED TO—

Director-General
Communications Commission of Kenya

13. DECLARATION

I/We hereby certify the information we have provided in this application is true and correct. I/We also understand that it is an offence under the Penal Code to give false information in support of any application.

Name

Designation

Signature

Date

FOR OFFICIAL USE ONLY

The applicant **MEETS/DOES NOT MEET** the Commission's requirements and is hereby **RECOMMENDED/NOT RECOMMENDED** for approval of licensing as a

The reasons for not recommending the applicant are as follows:

.....

.....

.....

.....

.....

[Subsidiary]

FIRST SCHEDULE, FORM NO. 1—*continued*

Name	Designation
Signature	Date
Official stamp	

FORM NO. 2

(Regulations 52 and 57)

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR TYPE-APPROVAL/ACCEPTANCE

1. PARTICULARS OF VENDOR

- (i) Full names of Company/Business

P.O. Box Tel No.

Fax No. E-mail

- (ii) Physical address:

Town Estate Street/Road

Name of building Floor Room

2. DESCRIPTION OF EQUIPMENT

ITEM NO	TYPE	MANUFACTURER	MAKE AND MODEL	SERIAL NUMBER/IMEI	COUNTRY OF ORIGIN

3. REQUIRED ITEMS

- (i) Letter of Agency from manufacturer or principal distributor.
- (ii) Non-refundable approval/acceptable fee of KSh *vide* Receipt No. of
- (iii) Sample of equipment/instrument model complete with associated accessories and attachments.
- (iv) Detailed technical documentation (operation, programming, service, technical, circuitry) in English language.
- (v) Test report (results) from manufacturer or accredited laboratories and test schedules.
- (vi) List from manufacturer stating other countries where the equipment is type-approved and in service.

4. DECLARATION

I hereby apply for provisional type-approval/Acceptance/authority to market the equipment(s) specified above in Kenya on behalf of my company. I certify that all the information I have given in this form is correct to the best of my knowledge.

Applicant's

Name Sign Date

Contact Tel No.

FIRST SCHEDULE, FORM NO. 2—continued

5. FOR OFFICIAL USE ONLY

- (i) Case No.
- (ii) Evaluating officer's name Sign
- (iii) Approval recommended/Not recommended (delete where not applicable).
- (iv) TAC No. Approved/Not Approved/Deferred
(delete where applicable)

FORM NO. 3

(Regulation 57)

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR FINAL TYPE-APPROVAL/ACCEPTANCE

1. PARTICULARS OF VENDOR

- (i) Full names of Company/Business
.....
P.O. Box Tel No.
Fax No. E-mail
- (ii) Physical address:
Town Estate Street/Road
Name of building Floor Room

2. DESCRIPTION OF EQUIPMENT

ITEM NO.	TYPE	MANUFACTURER	MAKE AND MODEL	SERIAL NUMBER/IMEI	COUNTRY OF ORIGIN

3. DETAILS OF INSTALLATIONS

ITEM NO.	MAKE, MODEL, TYPE OF EQUIPMENT	DATE PROVISIONALLY APPROVED BY CCK & REFERENCE NUMBER	DATE OF INSTALLATION	POSTAL, TELEPHONE, FAX, E-MAIL, & PHYSICAL ADDRESS OF REFERENCE	CONTACT PERSON & RANK IN ESTABLISHMENT

Please continue on a separate sheet. Also attach details of employees and their qualifications and details of work.

4. DECLARATION

I hereby apply for Final Type-Approval/Acceptance/authority to market the equipment(s) specified above in Kenya on behalf of my company I certify that all information I have given in this form is correct to the best of my knowledge.

Applicant's name Sign Date
Contact Tel No.

[Subsidiary]

FIRST SCHEDULE, FORM NO. 3—continued

5. FOR OFFICIAL USE ONLY

- (i) Case No.
- (ii) Evaluating officers name Sign
- (iii) Approval recommended/Not recommended (delete where not applicable).
- (iv) TAC No./Item No. Approved/Not Approved/Deferred
(Delete where applicable).

FORM NO. 4**(Regulation 56)**

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR INDIVIDUAL AUTHORITY TO USE TELECOMMUNICATION
TERMINAL EQUIPMENT**1. PARTICULARS OF APPLICANT**

- (i) Full names of Applicant/Company
.....
P.O. Box Tel No.....
- (ii) Physical address where the equipment will be used
Town Road/Street/Estate Building
- (iii) Details of network in which the equipment is to be connected (i.e. radio/data, etc.)
- (iv) Type of service for which the equipment is intended to be used (e.g. ISP access, bureau, residential voicemail, etc.)
.....
- (v) Telephone/Circuit number(s) to which the equipment will be connected (where applicable)
.....

2. DESCRIPTION OF EQUIPMENT

ITEM NO	TYPE	MANUFACTURER	MAKE AND MODEL	SERIAL NUMBER/IMEI	COUNTRY OF ORIGIN

3. REQUIRED ITEMS

- (i) Sample of equipment/instrument model complete with associated accessories and attachments.
- (ii) Technical Manuals (Operation, Programming, specifications).
- (iii) Non-refundable approval/acceptance fee of KShs vide
Receipt No. of
- (iv) Maintenance contract letter from registered contractor (where applicable).
- (v) Copy of purchase/import ownership documents.

4. DECLARATION

I hereby apply for authority to use the equipment specified above in Kenya. I certify that all information I have given in the form is correct to the best of my knowledge.

Applicant's

Name Signature Date

Contact Tel No.

FIRST SCHEDULE, FORM NO. 4—continued

5. FOR OFFICIAL USE ONLY

- (i) Case No.
- (ii) Evaluating officer's name Sign
- (iii) Approval recommended/Not recommended (delete where not applicable).
- (iv) TAC No. Approved/Not Approved/Deferred
(delete where applicable)

FORM NO. 5

(Regulation 18)

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR FREQUENCY ASSIGNMENT AND LICENCE IN RADIO
COMMUNICATION SERVICE

1. Administrative details:

- (a) Name of the organisation (or individual)
Nationality
ID/PP No.
Postal address
Business telephone Fax
Physical location: Road/Street Building LR No.
- (b) Name and postal address of the local supplier (if any)
Postal address
Business Telephone Fax
- (c) Type of radio communication service
• HF
• MF
• FM
(delete as appropriate)
- (d) Authorised broadcast area(s)
(attach certified copy of broadcasting permit)
- (e) Name of person/organisation responsible for payment of bills

2. Transmitter site details:

- (i) Name
- (ii) Land registration number
- (iii) Road/Area
- (iv) Geographical co-ordinates:
Latitude: Degrees Minutes Seconds (N/S)
Longitude: Degrees Minutes Seconds (E)
- (v) Altitude above sea level (in metres)
- (vi) Relative height around 15 kilometre radius

3. Transmitter equipment details:

- (a) Equipment and performance characteristics.
(i) Name
Model
Serial number

[Subsidiary]

FIRST SCHEDULE, FORM NO. 5—continued

- (ii) Carrier output power.....
- (iii) Effective Radiated Power (dBW).....
- (iv) Transmission system (applicable to FM systems only):
- System 1: Monophonic, max deviation ± 75 kHz
 - System 2: Monophonic, max deviation ± 50 kHz
 - System 3: Stereophonic polar modulation, max deviation ± 50 kHz
 - System 4: Stereophonic, pilot tone system, max deviation ± 75 kHz
 - System 5: Stereophonic, pilot tone system max deviation ± 50 kHz
- (v) RF bandwidth Hz
- (vi) IF bandwidth at -3dB level..... Hz
- (vii) RF filter loss dB
- (b) Transmit antenna details:
- (i) Type of antenna
- (ii) Antenna height above ground level
- (iii) Relative antenna height around a 15 kilometre radius
- (iv) Radiation pattern:
- (a) Omnidirectional: (YES or NO)
- (b) If not omnidirectional provide the following details:
- (1) Azimuth of the main lobe
 - (2) Angular beam width of the main lobe at the 3 dB point
 - (3) Radiation suppression at every 10° (use a separate sheet of paper)
- (v) Antenna gain in dBi
- (c) Feeder:
- (i) Feeder type
- (ii) Attenuation per metre dB
- (iii) Total feeder loss dB
- 4. Miscellaneous data.**
- (a) Hours of operation: from hours to hours.
- (b) Proposed date of commencement of service

Date Signature of applicant:

Name:

Designation

Official stamp

FORM NO. 6

(Regulation 18)

COMMUNICATIONS COMMISSION OF KENYA

APPLICATION FOR FREQUENCY ASSIGNMENT AND LICENCE IN THE FIXED AND MOBILE RADIO COMMUNICATION SERVICE

1. Administrative details:

- (a) Name of the organisation (or individual)
- Nationality ID/PP No.
- Postal address
- Business Telephone Fax
- Physical location: Road/Street Building LR No.

FIRST SCHEDULE, FORM NO. 6—continued

(b) Purpose for which this service is required

.....

(c) Name of person/organisation responsible for payment of bills

.....

.....

2. Transmit Station:

(a) Transmitter site details (for fixed station):

- (i) Name
- (ii) LR. No.
- (iii) Road/Area
- (iv) Geographical co-ordinates:
 - Latitude: deg min
 - sec (N/S)
 - Longitude: deg min sec (E)
- (v) Altitude above sea level (in metres)
- (vi) Radius of service area in kms

(b) Equipment details:

- (i) Station Configuration: Fixed/Mobile (delete as appropriate)
- (ii) Make
- Model
- Serial number
- (iii) Name and postal address of the local supplier (if any)
 -
 - Postal address
 - Business Telephone
 - Fax
- (iv) Channel capacity
- (v) Carrier output power (watts)
- (vi) Duplex spacing
- (vii) Adjacent channel spacing
- (viii) Power to antenna
- (ix) System deviation (or equivalent for digital systems)
- (x) FM noise and hum level (in case of analogue systems)
- (xi) Bit error rate (in case of digital systems)
- (xii) Conducted spurious emissions
- (xiii) Radiated spurious emissions
- (xiv) Audio frequency harmonic distortion
- (xv) Emission designation
- (xvi) Operating frequency band
- (xvii) RF bandwidth
- (xviii) IF bandwidth at -3dB level
- (xix) Receiver sensitivity rated at 12 dB SINAD
- (xx) Receiver adjacent channel selectivity
- (xxi) Desensitisation

[Subsidiary]

FIRST SCHEDULE, FORM NO. 6—continued

(xxii) Threshold/squelch level

(xxiii) RF filter loss

(c) Transmit antenna details:

(i) Type of transmit antenna

(ii) Antenna height above ground level

(iii) Relative antenna height around a 15 kilometre radius

(iv) Directivity

(v) Azimuth of the main lobe

(vi) Angular beam width of the main lobe at the 3 dB point

(vii) Antenna gain in dBi

(d) Receiving antenna details (if different from transmitting antenna):

(i) Type of receiving antenna and its directivity

(ii) Azimuth of the main lobe

(iii) Angular beam width at the 3 dB power point

(iv) Receiving antenna gain in dBi

(e) Feeder:

(i) Feeder type

(ii) Attenuation per metre

(iii) Total feeder loss

3. Associated Receiving Station.

(a) Receiver site details:

(i) Name

(ii) LR No.

(iii) Road/Area

(iv) Geographical co-ordinates:

Latitude: deg min sec (N/S)

Longitude: deg min sec (E).

(v) Altitude above sea level (in metres)

(vi) Antenna height above ground level

(vii) Relative antenna height around a 15 kilometre radius

4. Miscellaneous data.

(a) Maximum hours of operation

(b) Class of station Nature of service

(Insert prefix, see NOTE 1 & 2)

(c) Proposed date of putting into use

(d) Path length in kms (for FIXED service)

(e) Radius of service area in kms (for MOBILE service)

(f) Registration numbers of vehicles to be fitted with mobiles

Date Signature of Applicant

Name

Designation

SECOND SCHEDULE

FEES

COMMUNICATIONS COMMISSION OF KENYA

LICENCE FEES PAYABLE BY VARIOUS TYPES OF TELECOMMUNICATIONS
NETWORK OPERATORS AND SERVICE PROVIDERS IN KENYA**(A) Facility-Based Network Operators**

CATEGORY OF LICENCE	APPLICATION FEE	ANNUAL OPERATING LICENCE FEE
Operation of local systems and the provision of local services	10,000/-	0.5% of audited annual gross turnover
Operation of long distance systems and provision of long distance services	10,000/-	0.5% of audited annual gross turnover
Operation of international systems and provision of international services	10,000/-	0.5% of audited annual gross turnover
Operation of cellular mobile systems and provision of mobile cellular services	10,000/-	0.5% of audited annual gross turnover
Operation of paging systems and provision of paging services	10,000/-	100,000/-
Internet service provider (ISP)	10,000/-	100,000/-
Existing private network operators (e.g. KPL's, KP & LC's, KR's etc.)	10,000/-	100,000/-

(B) Vendors, Contractors, Installers and Maintainers of Telecommunications Wiring and Terminal Equipment

CATEGORY	APPLICATION FEE	REGISTRATION FEE	ANNUAL FEE
Telecommunications Vendor (V)	1,000	5,000	2,000
Telecommunications Terminal Equipment Installation Contractor (I)	1,000	5,000	2,000
Telecommunications Terminal Equipment Maintenance Contractor (M)	1,000	5,000	2,000
Internal Telecommunications Wiring Contractor (W)	1,000	5,000	2,000
External Telecommunications Wiring Contractor (E)	1,000	5,000	2,000

[Subsidiary]

SECOND SCHEDULE—continued

(C) Technical Personnel

CATEGORY	APPLICATION FEE	REGISTRATION FEE	ANNUAL FEE
Telecommunications Terminal Equipment Installer (Installation Engineer/Technician) (I)	500	Class A 2,000 Class B 2,000 Class C 2,000	Not Applicable
Telecommunications Terminal Equipment Maintainer (Maintenance Engineer/Technician) (M)	500	Class A 2,000 Class B 2,000 Class C 2,000	Not Applicable
Internal Telecommunications Wiring Engineer/Technician) (W)	500	Class D 2,000	Not Applicable
External Telecommunications Wiring Engineer/Technician) (E)	500	Class A 2,000	Not Applicable

(D) Mobile Satellite Services

	APPLICATION	INSPECTION FEE	ANNUAL FEE
Inmarsat A	1,000	N/A	N/A
Inmarsat B	1,000	N/A	N/A
Inmarsat C	1,000	N/A	N/A
Inmarsat M	1,000	N/A	N/A
Inmarsat Mini-M	1,000	N/A	N/A
Inmarsat AERO	1,000	N/A	N/A
Inmarsat HSD option (standard)	1,000	N/A	N/A
Inmarsat HSD option (64Kb/s)	1,000	N/A	N/A
VSAT interactive (Single user)	1,000	25,000	100,000
VSAT interactive (Multi-user)	1,000	25,000	100,000
VSAT Receive only	1,000	25,000	50,000
Radio Determination & Related services	1,000	1,000	5,000
Space Research & Related Services	1,000	25,000	500,000
Amateur Satellite Services	1,000	25,000	50,000

SECOND SCHEDULE—continued

COMMUNICATIONS COMMISSION OF KENYA

FREQUENCY SPECTRUM FEES

	SERVICE	DESCRIPTION	ANNUAL FEES PER STATION PER FREQUENCY IN K.Shs.	
			MF/HF	VHF/UHF
1.	AFRONAUTICAL STATION LICENCE.	A licence to establish a radio station for carrying radiocommunication with aircraft station.	K.Shs. 4,800	K.Shs. 4,800
2.	AIRCRAFT STATION LICENCE.	A licence to establish a mobile station aboard an aircraft, to operate in the aeronautical mobile service.	K.Shs. 4,800	K.Shs. 4,800
3.	LICENCE FOR FIXED STATION OPERATING IN MOBILE SERVICE.	A licence to establish a radiocommunication station at a fixed location for carrying on a Mobile Radiocommunication Service.	K.Shs. 18,700	K.Shs. 5,000
4.	MOBILE STATION LICENCE.	A licence to install and use radio apparatus for transmitting and receiving aboard a vehicle, aircraft, or a ship.	K.Shs. 5,610	K.Shs. 2,900
5.	PORTABLE STATION LICENCE.	A licence to a portable radio communication apparatus to operate in the mobile service.	K.Shs. 5,610	K.Shs. 2,900
6.	COAST STATION LICENCE.	A licence to establish a station and land for carrying on a service with ship stations.	K.Shs. 5,610	K.Shs. 2,900
7.	SHIP STATION LICENCE.	A licence to install and use radio apparatus aboard ships	K.Shs. 5,610	K.Shs. 2,900
8.	RADIO AMATEUR LICENCE.	A licence to install and operate an amateur radio station.	K.Shs. 2,000	K.Shs. 2,000
9.	CITIZEN BAND RADIO LICENCE.	A licence to operate a low power radio apparatus operating in the frequency bands 26925 kHz to 27403 kHz.	K.Shs. 1,000	Not applicable.
10.	PRIVATE PAGING SERVICE.	A licence to operate a radio paging service for private use.	N/A	K.Shs. 25,000
11.	PUBLIC PAGING SERVICE.	A licence to operate a radio paging service for public use (base station).	N/A	K.Shs. 140,000
12.	RADIO PRESS RECEPTION LICENCE.	A licence for a radio station to receive press messages from stations transmitting multi-destination radio press messages.	K.Shs. 10,000.	K.Shs. 10,000

[Subsidiary]

SECOND SCHEDULE—continued

13. Alarm systems—

The basic charge for each alarm unit is K.Sh. 1250, but the specific charges for each particular customer will be determined by the applicable charge grouping.

14. **Broadcasting stations & fixed satellite earth stations**

The fee payable for broadcasting stations and fixed satellite earth stations is commensurate with the power and the occupied bandwidth and calculated on the basis of these parameters using the following formula—

Fees per transmitter or carrier in Kenya shillings is:

$$= K_1 \log_{10} \left(\frac{P_{nom} \text{ (watts)}}{25 \text{ watts}} + K_2 \log_{10} \left(\frac{P_{tot} - 1000}{25 \text{ watts}} \right) \right) \times \left(\frac{BW(kHz)}{8.5 \text{ kHz}} \right) \times 574.10$$

Where—

- (a) $K_1 = 1$ for the first 1 kW of radiated carrier power
- (b) $K_2 = 0.2$ for additional power above 1 kW.
- (c) **25 watts** is the maximum power allowable for VHF base stations.
- (d) **8.5 kHz** is maximum allowable RF bandwidth for VHF base stations.
- (e) P_{nom} is the nominal transmitter power.
- (f) P_{tot} is the effective isotropically radiated power
- (g) **Bandwidth** is the width, of frequency band that is just sufficient to ensure the transmission of information at a rate and with the quality acceptable under specific conditions.

15. **Terrestrial Links (Fixed Station Licence)**

A licence to establish a radio communication station at a fixed location for carrying on a Fixed Radio Communication Service to provide a public service.

This category of licence is drawn for radio stations used to interconnect two specified fixed points.

The fee payable for this licence is based on the occupied bandwidth, and is calculated using the following formula—

The fee. F (KShs) per transmitter per location is—

$$F \text{ (KShs)} = \left(\frac{RF \text{ Bandwidth (kHz)}}{8.5 \text{ kHz}} \right) \times \left(\frac{\text{Number of}}{RF \text{ channels}} \right) \times K1 \times \text{Unit fee}$$

Where, unit fee = 574.10, as KShs. 574.10 is the unit spectrum fee for a 8.5kHz band.

- $K1 = 0.6$ for frequency band < 1700 MHz
- $= 0.5$ for frequency band 1700 to 10000 MHz
- $= 0.4$ for frequency band > 10000 MHz.

Where **RF** means Radio Frequency, and other parameters are as defined above.

Transmitter shall include terminal and repeater stations.

The formula is applicable to point-to-point links, microwave radio relay equipment, studio-to-transmitter links, etc.

16. Cellular Networks and Fixed Wireless Access Networks

Licence to establish a fixed radio station to operate a mobile cellular radio service and fixed wireless access.

$$\text{Fee } F \text{ (K.Sh)} = \frac{2 \times RF \text{ Bandwidth (kHz)}}{8.5 \text{ kHz}} \times (\text{number of cell sites}) \times 1043.65$$

The parameters are as defined above.

SECOND SCHEDULE—continued

17. Trunked Network (Mobile Trunked Radio Licence)
A licence to operate a private trunked radio network.
The fee, F per transmitter per location is—

$$F \text{ (KShs)} = \left(\frac{\text{RF Bandwidth (kHz)}}{8.5 \text{ kHz}} \right) \times (\text{number of cell sites}) \times 574.10$$

The parameters are as defined above.

18. Alarm Systems
The basic charge for each alarm unit is KShs 1250, where the specific charges for each particular customer will be determined by the applicable charge grouping
19. Single channel radios
The fee F per transmitter per location is;

$$F \text{ (KSh)} = \left(\frac{\text{RF Bandwidth (kHz)}}{8.5 \text{ kHz}} \right) \times 1043.65$$

20. The Commission is not bound to use any or all of the above formulas if in its opinion the service involved requires technical or other considerations. Spectrum fees for radio equipment not covered in the above schedule shall be determined at the time of application.

COMMUNICATIONS COMMISSION OF KENYA

TYPE-APPROVAL/ACCEPTANCE FEES

(A) General

EQUIPMENT	DESCRIPTION	FEES (KSh)	
		Type-approval of equipment for individual use by the applicant.	Type-approval of equipment for purposes of marketing.
Telephony Instrument	(a) Ordinary	600	10,000
	(b) Executive	900	15,000
	(c) Cordless	1,000	15,000
Telephony Terminals	(a) 2-line executive	1,200	20,000
	(b) Cordless with executive telephone	1,200	20,000
	(c) Intelligent executive telephone	2,000	30,000
	(d) Private payphone	2,000	15,000
Facsimile Transceiver	(a) Without integral answering/recording facility	3,000	20,000
	(b) With integral answering/recording facility	3,500	24,000
Teleprinter	All types	3,000	15,000

[Subsidiary]

SECOND SCHEDULE—continued

EQUIPMENT	DESCRIPTION	FEES (KSh)	
		Type-approval of equipment for individual use by the applicant.	Type-approval of equipment for purposes of marketing.
Answering Systems	Answering machine	400	8,000
	(a) Ordinary answer phone	1,100	14,000
	(b) Executive answer phone	1,400	19,000
Data terminals, PADs and MUXs	All types	8,000	18,000
Data Modems	(a) Data only	1,000	15,000
	(b) Data/fax/voice	2,000	20,000
Radio Communications	(a) HF/VHF/UHF for use in private radio networks	3,000	25,000
	(b) HF/VHF/UHF for use in public radio networks	3,000	30,000
	(c) Radio alarm transmitter	2,300	23,000
	(d) Citizen band	1,600	23,000
	(e) Amateur	3,000	27,000
Paging Systems	(a) Wide area Paging transmitter.	4,000	30,000
	(b) Pager receiver unit for use in wide area paging networks	1,600	15,000
	(c) On site paging transmitter	3,000	20,000
	(d) Pager receiver unit for use in on-site paging systems	1,500	15,000
Broadcast Transmitters	(a) Radio broadcast Transmitters	40,000	40,000
	(b) Television Broadcast Transmitters	40,000	40,000
Integrated Answer/Recording facility	All types (NB. Markup loaded to secretarial sets with this facility)	500	4,000
Subscriber's Private Meter	All types	600	8,000
Call barring units	All types	600	8,000
Bureau meters/Public Call office monitors	All types	1,000	12,000
Cellular Telephones	GSM, GMPCS, ETACS.	10,000	40,000
Fixed Wireless Local Loop Terminals	All types	3,000	30,000
Immarsat Mobile Earth Terminals	All types	10,000	40,000

SECOND SCHEDULE—continued

(B) Call Routing Equipment—PMBXs, PABXs, Voice Messaging Systems, and SBSs.

CAPACITY (PORTS)	INDIVIDUAL	MARKETING
PRIVATE MANUAL BRANCH EXCHANGES:		
All types	4,800	9,700
PRIVATE AUTOMATIC BRANCH EXCHANGES:		
One line systems, max 1+4	2,500	5,000
>1 exch. line ≤ 10 ports	6,200	12,500
> 10 ports ≤ 20 ports	10,000	20,000
> 20 ports ≤ 40 ports	17,500	35,000
> 40 ports ≤ 120 ports	30,000	60,000
> 120 ports ≤ 200 ports	37,500	75,000
> 200 ports ≤ 300 ports	42,500	85,000
> 300 ports ≤ 500 ports	45,000	90,000
> 500 ports	50,000	100,000
VOICE MESSAGING SYSTEMS		
As above		

Notes:

- (a) A telephone shall be deemed to be executive if it has both loop disconnect and dual-tone multi-frequency dialling modes and any two of the following features—
- (i) memories for storing telephone numbers;
 - (ii) liquid crystal display; and
 - (iii) full hands free facility.
- (b) Answering facility means an in-built answering and recording facility for voice and fax messages.

(C) Other Services

- (i) General Information Services
 - List of Type-Approved equipment KSh. 50 per equipment type
- (ii) Technical Information
 - Technical specifications KSh. 200 per equipment type
- (iii) Miscellaneous Services
 - Exhibition/Demonstration of equipment/system:
 - Registered vendor: KSh. 1,000 first day.
KSh. 500 each consecutive day
 - Non-registered vendor: KSh. 2,000 first day
KSh. 1,000 each consecutive day
 - Copy of type-approval certificate KSh. 250
 - Change of name on certificate
 - Letter of no objection to import equipment. KSh. 250

[Subsidiary]

SECOND SCHEDULE—*continued*

POSTAL LICENCE AND OPERATING FEES

[Regulation 81]

<i>Category</i>	<i>Annual Licence Fess</i>
(i) Public Postal Licensee	1% of Gross Annual Turnover
(ii) Dominant International Operators	US D 25,000 or equivalent
(iii) International Inbound Only	US D. 2000 or equivalent
(iv) Other International Operators	US D. 7000 or equivalent
(v) Dominant Regional/Intercountry Operators	US D. 8000 or equivalent
(vi) Other Regional/Intracountry Operators	US D 2500 or equivalent
(vii) Intracity Operators	US D 1200 or equivalent
(viii) One off Licence Application Fees	KShs 10,000/

**KENYA INFORMATION AND COMMUNICATIONS (BROADCASTING)
REGULATIONS, 2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.

PART I – PRELIMINARY

2. Interpretation.

PART II – LICENSING

3. General requirements.
4. Application for a commercial broadcasting services license.
5. Application for a community broadcasting licence.
6. Obligations relating to broadcasting services.
7. Broadcasting licence fees.
8. Commencement of broadcasting service.
9. Renewal of licences.
10. Ownership and control.

PART III – BROADCASTING SERVICES

11. Public broadcasting service.
12. Commercial free-to-air broadcasting service.
13. Community broadcasting services.
14. Subscription broadcasting service licenses and subscription management services.
15. Obligations for subscription broadcasting services licensees and subscription management services.
16. Terrestrial digital broadcasting signal distribution services.
17. Other broadcasting services.

PART IV – CONTENT

18. Minimum standards.
19. General requirements.
20. Protection of children.
21. News reporting.
22. Unconfirmed reporting.
23. Correction of errors in reports.
24. Reporting on controversial issues.
25. Polling period.
26. Conduct of interviews.
27. Commentaries.
28. Sexual offences.
29. Consent to broadcast.
30. Programme sponsorship.
31. Infomercials.
32. Payment of criminals.

[Subsidiary]*Regulation*

- 33. Advertisements.
- 34. Watershed period.
- 35. Local content.
- 36. Content for the physically challenged.

PART V – PROGRAMME CODE

- 37. Setting standards for programmes.
- 38. Acceptance of programme code.

PART VI – COMPLAINTS HANDLING PROCEDURE

- 39. Complaints handling procedure.
- 40. Obligations of licensees.
- 41. Approval of Complaints Handling Procedure.
- 42. Escalating Complaints to the Commission.

PART VII – GENERAL PROVISIONS

- 43. Public emergencies.
- 44. Offence and penalty.

PART VIII – TRANSITIONAL PROVISIONS

- 45. Transition from analogue to digital television broadcasting.
 - 46. Transition of permits to licenses.
-

**KENYA INFORMATION AND COMMUNICATIONS (BROADCASTING)
REGULATIONS, 2009**

[L.N. 187/2009, Corr. No. 2010.]

1. Citation

These Regulations shall be cited as the Kenya Information and Communications (Broadcasting) Regulations, 2009.

PART I – PRELIMINARY**2. Interpretation**

In these Regulations, unless the context otherwise requires—

“**Act**” means the Kenya Information and Communications Act, 1998 (Cap. 411A);

“**advertise**” means to broadcast any item in return for payment or other valuable consideration to a broadcaster with the intention of—

- (a) selling to a viewer or listener, any product or service;
- (b) convincing a viewer or listener of a belief or course of action; or
- (c) promoting a product, service, belief, course of action, person or organisation;

“**broadcasting licence**” means a licence issued by the Commission permitting the licensee to provide broadcasting services;

“**broadcast market**” means the area, specified in the broadcasting licence by the Commission, within which a licensee is licensed to operate;

“**child**” means any human being under the age of eighteen years;

“**disaster**” means a serious disruption of the functioning of the society causing widespread human, material or environmental damage and losses which exceeds the ability of the affected community to cope using their own resources, and includes any event or circumstance arising out of accidents, natural phenomena, fires, floods, explosions, or incidents involving exposure or potential exposure to radioactive or toxic materials;

“**infomercial**” means any advertising broadcast in visual or audio form, lasting for more than two minutes, which may contain demonstrations of the use of the product or service advertised, and includes direct offers to the public in return for payment, and results in the broadcaster receiving payment in monetary terms or otherwise;

“**licensee**” means holder of a broadcasting services licence;

“**local content**” means the total of all television or radio programmes which fulfil any five of the following conditions—

- (a) the production is made in either Kenya’s native languages or official languages of Kenya;
- (b) production was done in Kenya;
- (c) the content deals with issues that are unique and relevant to Kenyan audiences;
- (d) at least twenty *per centum* of the share of the production company are owned by Kenyans;
- (e) a majority of the artistes are Kenyans;

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- (f) the location of shooting, in case of audiovisual programmes or performance was in Kenya;
- (g) the author thereof must be a Kenyan national and in case of co-authorship or multi-authorship fifty *per centum* or more of the authors must be Kenyan;
- (h) the production is made under Kenyan creative and technical control,

but does not include news and commentaries;

“national emergency organizations” include the police force, security forces, fire brigade, ambulance services, medical services, veterinarian services and environmental disaster agencies, whether or not such organizations are owned and managed on a private or public organizations;

“political party” means a party registered by the Registrar of Political Parties as a political party in Kenya under the Political Parties Act, 2007 (No. 10 of 2007);

“polling period” means the period covering the period of national general elections are held, including election campaigns and postelection and referendum period;

“programme” means a body of live or recorded material consisting of images, sounds or both embodied in signals emitted for the purpose of ultimate broadcasting’;

“programme segment” means a programme which, in audiovisual sense, presents one whole unit, with a beginning and end, clearly separated from other segments and content;

“public broadcaster” means the public broadcaster designated under section 46E of the Act;

“public emergency service” means broadcasting services offered in the event of a disaster emergency on the request of person authorized by the government;

“re-broadcasting” means the simultaneous or subsequent broadcasting by one broadcasting organization of the broadcasts of another broadcasting organization;

“satellite broadcasting service” means a broadcasting service that is broadcasted through transmitters situated on a satellite;

“sponsored programme” means a programme which all or part of its costs are paid by a sponsor, with a view to promoting that sponsor's, or another sponsor's name, product or service;

“station programming format” means an arrangement of programmes which are presented on a broadcasting station;

“subscriber” means a person who, in relation to subscription television and or radio broadcasts, has entered into an agreement with a provider of subscription radio or television services;

“subscription broadcasting services” includes, among other services, cable broadcasting and multi-channel satellite distribution services from foreign territories that are offered through subscription;

“subscription management services” means a service which involves the provision of support services to a subscription broadcasting service which may include, among other services, subscriber management support, subscription fee collection, call centers, sales and marketing, and technical and installation;

“terrestrial broadcasts” means the services that are broadcast from a transmitter situated upon the earth's surface within the country;

“terrestrial digital signal distributor” means any person who provides network facility operator services for multimedia broadcasting;

“watershed period” means the time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Commission by Notice in the *Kenya Gazette*, within which content intended for an adult audience is not to be aired.

PART II – LICENSING

3. General requirements

(1) Any person who wishes to provide broadcasting services in Kenya shall apply to the Commission for the licence through the prescribed procedure.

(2) The Commission shall provide information relating to the availability of broadcasting frequencies, the application requirements and the selection criteria for issuance of a licence.

(3) A person who wishes to provide broadcasting services in more than one station shall apply for a licence for every broadcasting station it wishes to operate.

(4) The Commission may require an applicant to provide additional documentation or information which that is directly relevant to assessing whether the applicant meets the criteria established in the Act and regulations for the grant of the licence.

(5) The Commission shall publish applications received for broadcasting licences in the *Gazette* and invite the public to comment before it issues a licence.

(6) The Commission shall grant successful a applicant a broadcasting services licence and require the licensee to establish the necessary broadcasting infrastructure and commence broadcasting within a period of twelve months.

(7) The commission shall revoke the licence of a licensee who does not establish the necessary broadcasting infrastructure within the period specified in paragraph (6).

4. Application for a commercial broadcasting services license

(1) A person applying for a licence for a free-to-air commercial broadcasting service or services shall furnish the Commission with a business plan which shall include the—

- (a) evidence of technical capacity in terms of personnel and equipment to carry out the broadcasting services;
- (b) evidence of relevant experience and expertise to carry out the broadcasting services;
- (c) evidence of the capacity to offer broadcasting services for at least eight continuous hours in a day;
- (d) programme line-up or schedule for the broadcasting services which the licence is sought; and
- (e) such other information or requirement as the Commission may from time to time prescribe.

(2) A person who applies for a licence to provide subscription television or radio service shall, unless it is otherwise prescribed by the Commission, comply with paragraph (1) and satisfy the Commission that it has the capacity to offer a minimum of ten channels to each subscriber.

5. Application for a community broadcasting licence

(1) A person applying for a community broadcasting licence shall furnish the Commission with—

- (a) information on the service for which the community broadcasting licence is sought for;

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- (b) the minutes of the meeting where it was resolved to establish a community broadcasting station;
- (c) proof of the sources of funding and sustainability mechanisms;
- (d) weekly programme schedules for the broadcasting services which the licence is sought; and
- (e) such other information or requirement as the Commission may from time to time prescribe.

6. Obligations relating to broadcasting services**(1) The Commission shall—**

- (a) ensure that broadcasting services reflect the national identity, needs and aspirations of Kenyans;
- (b) ensure that broadcasting services are delivered using the most efficient and effective available technologies;
- (c) develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among various tiers of broadcasting;
- (d) ensure that every applicant secures relevant permission or entered into agreements or arrangements necessary for the operation of the broadcasting service.

(2) All broadcasters shall—

- (a) annually file with the Commission documents showing their station identity and any changes thereto;
- (b) ensure that their station identity is unique and does not cause confusion;
- (b) keep such records as the Commission may prescribe from time to time;
- (c) reveal their station's identity at intervals of sixty minutes during the period which broadcasts are made from that station; and
- (d) state, at least twice within a period of twenty four hours, all the frequencies and channels on which the broadcasting station is licensed to operate state.

(3) In the case of free-to-air broadcasting services the Commission shall ensure that the services—

- (a) provide the amount of local content as specified in the licence;
- (b) include news and information in their programming, as well as discussions on matters of national importance; and
- (c) adhere to strictly to the Commission's or subscribed programme codes in the manner and time of programming schedules.

7. Broadcasting licence fees**The Commission may—**

- (a) prescribe fees payable for, among others, the broadcasting services licence, application, renewal, transfer, annual licence fee and any other fees related to the services; or
- (b) exempt the public broadcasting services and any other licence category from payment of any fees prescribed pursuant to paragraph in (1).

8. Commencement of broadcasting service

A licensee shall, not later than fourteen days before commencement of broadcasting services publish a notice in a news paper, with wide circulation in the licensee's coverage area, containing—

- (a) a statement on the licensee's intention to transmit a broadcasting service from a station in the licensee's coverage area;
- (b) the commencement date and time of transmissions;
- (c) the assigned frequency or channel that the station shall operate from;
- (d) the station programming format;
- (e) a statement inviting the members of the public to contact the licensee in case any transmission by the licensee causes interference with the services provided by other licensees; and
- (f) the address and telephone number of the licensee.

9. Renewal of licences

(1) A licensee may, within a period of six months before the expiry of its licence apply to the Commission for the renewal of the licence in such manner as the Commission may prescribe.

(2) Where a licence is renewed, the applicant shall prior to the issuance of the licence pay such fees as the Commission may prescribe.

10. Ownership and control

(1) No persons other than the public broadcaster shall be directly or indirectly, entitled to more than one broadcast frequency or channel for radio or television broadcasting in the same coverage area:

Provided the Commission shall prescribe a timeframe for existing stations to comply with this requirement.

(2) The shareholding of a licensee shall at all times comply with the Government's Communications Sector Policy, as may be published from time to time.

(3) A licensee shall, at least ninety days prior to effecting such change, notify the Commission of any proposed change in ownership, control or proportion of shares held in it:

Provided that—

- (a) any change in shareholding exceeding fifteen *per centum* of the issued share capital; or
- (b) the acquisition by an existing shareholder of at least five *per centum* additional shares, shall require the prior written consent of the Commission and the Commission shall notify the applicant of its acceptance or refusal stating the reasons for the refusal, within thirty days of receipt of the application for the consent.

(4) A notification of change in ownership, control or proportion of shares held in a licensee shall state—

- (a) the date when the intended transfer of ownership or part thereof is to be effected;
- (b) the name and address of the acquirer;

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- (c) the names, nationality and addresses of persons who are in control of the business; and
- (d) any change in the name or address of the business.

(5) In considering an application for a written consent for transfer of ownership or change of person in control or change in shareholding of a broadcasting licensee the Commission shall consider—

- (a) the capacity of the acquiring entity to roll out the broadcasting services;
- (b) the nature of broadcasting services and programming that the acquiring entity intends to roll out;
- (c) the extent to which the allocated frequency resource(s) of the entity to be acquired have been utilized;
- (d) the possible impact on promotion of pluralism and diversity that the transfer may have;
- (e) the effect or impact of the transfer on competition or promotion of competition in the sector;
- (f) whether the transfer conformity with the stipulations of the sector policy;
- (g) the past and current compliance record, relating to the conditions of the current licences, of the acquiring and acquired entities; and
- (h) any other matter as the Commission may consider relevant.

(6) A broadcaster shall not lease or transfer broadcast frequencies or channels assigned to it to any other person without the written authority of the Commission.

(7) For companies that are listed in the stock exchange, the Capital Markets Authority Act (Cap. 485A) shall apply.

PART III – BROADCASTING SERVICES

11. Public broadcasting service

(1) A Public Broadcaster shall—

- (a) provide independent and impartial broadcasting services of information, education and entertainment in English and Kiswahili and such other languages as the broadcaster may decide;
- (b) conduct the broadcasting services impartially and consider to the interests and susceptibilities of the different communities in Kenya;
- (c) provide and receive from other persons material to be broadcast:

Provided that in acquiring such material, the public broadcaster shall have regard to the need to maintain the distinctive character of the public broadcasting service and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(2) The public broadcasting service shall be supported by revenues from the exchequer, grants, donations and its commercial services but shall not draw from advertising and sponsorship.

(3) The public broadcaster shall not lease or transfer the broadcast frequencies or channels assigned to it for use in public broadcasting.

(4) The Commission may, on application by the public broadcaster, grant the public broadcaster a licence to provide broadcasting services on a commercial basis.

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(5) Where the public broadcaster is granted a licence to provide broadcasting services on a commercial basis, it may be required to maintain and keep separate accounts for its public and commercial broadcasting services.

(6) The public broadcaster may, when providing its commercial services, enter into public private partnership:

Provided that the public private partnership complies with the law relating to public procurement.

(7) The Commission shall give priority and ensure equitable allocation of resources for the public broadcasting services.

12. Commercial free-to-air broadcasting service

A commercial free-to-air broadcaster shall—

- (a) be issued with a broadcasting service licence which includes the frequency or channel licence for each broadcast station that utilizes a frequency or channel resource;
- (b) provide a diverse range of programming that reflects the identity, needs and aspirations of people in its broadcasting area;
- (c) where the commercial broadcaster provides national coverage, be required, without prejudice to paragraph (a) and
- (b) to provide programming that reflects the identity and needs of the people of Kenya;
- (d) commence broadcasts within twelve months after being issued with a licence;
- (e) not acquire exclusive rights for the non-commercial broadcast of national events identified to be of public interest as may be determined by the Commission from time to time;

(2) The Commission shall, in consultation with the Minister in charge of information, license foreign commercial broadcasters, subject to availability of frequencies or channels.

13. Community broadcasting services

(1) A Community broadcaster shall—

- (a) reflect the needs of the people in the community including cultural, religious, language and demographic needs;
- (b) deal specifically with community issues which are not normally dealt with by other broadcasting services covering the same area; and
- (c) be informational, educational and entertaining in nature:

Provide a distinct broadcasting service that highlights community issues.

(2) The Commission shall, through the frequency plan, ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

(3) A community broadcaster shall ensure all the funds generated from the operations of a community broadcasting station are reinvested in activities benefiting the Community.

(4) The Commission shall monitor community broadcasters to ensure that the funds generated from operations of a community broadcasting station are re-invested in activities benefiting the community.

(5) The Commission shall allow community broadcasting licensees to advertise, on their stations, adverts that are relevant and specific to that community within the broadcast area.

[Subsidiary]**14. Subscription broadcasting service licenses and subscription management services**

(1) The Commission may upon application, in the prescribed form, grant a subscription broadcasting services licence for—

- (a) satellite broadcasting services;
- (b) cable broadcasting services; and
- (c) subscription Management services.

(2) The Commission may require a licensee granted a licence under paragraph (1) to—

- (a) distribute broadcasting services, whether through cable or satellite within the borders of the Kenya or from Kenya to other territories;
- (b) provide a prescribed minimum number of Kenyan Broadcasting channels;
- (c) provide diversity in programming:

Provided that a satellite subscription broadcasting service provider whose signal originates from outside Kenya and who wishes to provide their broadcasting services in Kenya shall have landing rights authorization from the Commission and be licensed as subscription service provider or provide their services through a subscription management service provider.

(3) The Commission may require licensee to offer subscription management services to provide the following services on behalf of a multi-channel satellite provider broadcasting from outside Kenya—

- (a) subscription fee collection;
- (b) marketing and sales;
- (c) technical and installation support;
- (d) operation of a national call centre;
- (e) guarantees of quality of service and customer protection; and
- (f) any other services as the Commission may require.

(4) A subscription management services provider shall not enter into contractual arrangements with a foreign multi-channel satellite provider unless the foreign multi-channel satellite provider has landing rights in Kenya.

(5) A subscription management services licensee shall be required to have minimum local equity participation of twenty *per centum*.

15. Obligations for subscription broadcasting services licensees and subscription management services

(1) A person licensed to provide subscription broadcasting service or subscription management services shall provide a subscriber with information, in writing, relating to the—

- (a) products and services offered;
- (b) cost of subscription including installation and maintenance;
- (c) options of programming service available;
- (d) conditions under which the service is supplied;
- (e) instructions regarding to usage of the service in the official languages;
- (f) number and allocation of channels carried on the system and the programming available on each channel;

- (g) billing and complaints procedures;
- (h) address and telephone number of the licensee's business office;
- (i) notice period of at least fourteen days to be given before effecting to any changes in the programming service or channel allocation, in writing.

(2) A person licensed to provide subscription broadcasting service or subscription management services shall provide means that parents or guardians may use to control access to broadcast content that is accessible and that they may consider inappropriate.

16. Terrestrial digital broadcasting signal distribution services

(1) The Commission may upon application in the prescribed form grant a licence for the provision of terrestrial digital broadcasting signal distribution services.

(2) The Commission may require a person granted a licence under paragraph (1) to—

- (a) distribute on its digital platform free to air and subscription broadcasting services and related data on behalf of other licensed broadcasters;
- (b) submit to the Commission for approval any contractual agreements entered into with other licensed broadcasters for the distribution of broadcasting services prescribed under its license;
- (c) provide its services on such terms and conditions as to access, tariffs and quality of service as the Commission may prescribe.
- (d) terminate the provision of services to a broadcaster within fourteen days of notification by the Commission.

(3) A person granted a licence under this regulation may impose charges in respect of—

- (a) any contractual arrangements entered into under paragraph (2);
- (b) reception of broadcastings services requiring conditional access;
- (c) the provision by of any apparatus or device enabling the reception of digital broadcasting services, including free-to-air broadcasting services.

(4) A person granted a licence under this regulation shall, in consultation with other broadcasters, prepare an electronic programme guide for audiences to use to access information relating to the schedules of programme materials for all broadcasting services it carries.

(5) A licensee shall ensure that an electronic programme guide prepared in paragraph (4) shall be user friendly and that its easy to navigate through programme materials which are the subject of a broadcasting service.

17. Other broadcasting services

The Commission may issue other broadcasting service licences as it may find necessary from time to time.

PART IV – CONTENT

18. Minimum standards

Content prescribed in this part shall form the basis upon which the Commission or a recognized body of broadcasters shall prepare their respective programme codes.

19. General requirements

(1) A licensee shall ensure that no broadcasts by its station—

- (a) contains the use of offensive language, including profanity and blasphemy;

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- (b) presents sexual matters in an explicit and offensive manner;
- (c) glorifies violence or depicts violence in an offensive manner;
- (d) is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- (e) has no program rating from Kenya Films Classification Board indicated prior to the commencement of such programs.

20. Protection of children

A licensee shall—

- (a) ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence;
- (b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;
- (c) request for permission to conduct an interview with a minor from the minor's parents or guardian before conducting an interview with a minor.

21. News reporting

A licensee shall ensure that news and information are broadcast and presented in a balanced manner, without prejudice or negligent departure from facts through distortion, exaggeration, misrepresentation and material omissions give fair reporting regardless of its context and importance.

22. Unconfirmed reporting

A licensee shall ensure that—

- (a) reports or broadcast from its station are based on fact and that are not founded on opinion, rumour supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly;
- (b) it does not broadcast any report where there is sufficient reason to doubt its accuracy and it is not possible to verify the accuracy of the report before it is broadcast.

23. Correction of errors in reports

A licensee shall broadcast correction of any factual error—

- (a) without reservation, as soon as it is reasonably possible after it has been established that there was an error; and
- (b) with such degree of prominence and timing and shall be broadcast during a similar time-slot as the original error as soon as is reasonably possible and where appropriate shall include an apology.

24. Reporting on controversial issues

A licensee shall endeavour to ensure that when broadcasting controversial issues of public interest during live broadcasts—

- (a) a wide range of views and opinions are represented.
- (b) a person or organisation whose views on any controversial issues of public interest have been criticised during a broadcast, and who wishes to reply to such criticism is given an opportunity by the licensee to reply to such criticism within a reasonable time;

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- (c) a reply to criticism under subparagraph (b) is given a similar degree of prominence and shall be broadcast on a similar time-slot, as soon as is reasonably possible.

25. Polling period

During a polling period, a licensee shall—

- (a) provide equitable coverage and opportunities to registered political parties participating in an election and in particular to presidential candidates;
- (b) ensure that the name of the political party or sponsor, if any, on whose behalf a broadcast is made, is announced, immediately before the commencement and immediately after such broadcast;
- (c) permit any broadcast sponsored by or made on behalf of a political party other than an advertisement thereof to be dramatized; and
- (d) ensure that the employees of a licensee who wish to be candidates for any elective position(s) resign from their employment with the licensee during polling period.

26. Conduct of interviews

(1) A licensee shall ensure that any person who is to be interviewed in any of the licensee's broadcast is—

- (a) advised of the subject of the interview; and
- (b) informed, before the interview takes place, to determine whether the interview is to be recorded or broadcast live.

(2) A licensee shall exercise sensitivity in conducting interviews with bereaved persons, survivors of traumatic incidents or witnesses thereof.

27. Commentaries

A licensee shall ensure that any commentaries that are broadcast by a licensee, whether as comments are made by the licensee or by any person invited by a licensee, are presented in a manner that clearly indicates that they are based on facts which are clearly stated.

28. Sexual offences

A licensee shall—

- (a) not disclose, in a broadcast, the identity of a victim of a sexual offence unless such victim consents in writing to the disclosure of his or her identity.
- (b) avoid the use of unnecessary or repetitive detail when broadcasting the circumstances of a sexual offence.

29. Consent to broadcast

A licensee shall not broadcast any information acquired from a person without that person's consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.

30. Programme sponsorship

A licensee—

- (a) shall not accept sponsorship of news broadcasts;

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- (b) shall not accept sponsorship of weather broadcasts, financial broadcasts or traffic reports:
Provided that the licensee shall retain ultimate editorial control of the sponsored programme;
- (c) shall ensure that sponsorship of an informative programme does not compromise the accuracy and impartiality of the programme's contents;
- (d) shall not unreasonably discriminate against or favour a particular sponsor;
- (e) shall not broadcast any programme which has been sponsored by a political party save for an advertisement by a political party in which case the advert must be distinctly identified so as not to be confused with normal programming;
- (f) shall acknowledge the sponsorship of a programme immediately before and after the programme is broadcasted, and identify any connection between the programme's subject-matter and the sponsor's commercial activities.

31. Infomercials

(1) A licensee shall not broadcast an infomercial—

- (a) for a period exceeding three and half hours of the performance period in any day;
- (b) during prime-time; or
- (c) during any break in the transmission of a children's programme.

(2) A licensee shall ensure, through visual or audio form, that the broadcast of any infomercial is distinguishable from any broadcast programme material.

(3) A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest, decent and conform with the principles of fair competition.

(4) The provisions of paragraphs (1) and (2) shall not apply to stations which exclusively broadcast infomercials.

32. Payment of criminals

A licensee shall not knowingly pay any person involved in a crime or any person who has been convicted of a criminal offence, in order to obtain information.

33. Advertisements

(1) A licensee shall ensure that it only broadcasts advertisements that are lawful, honest, decent and conform with the principles of fair competition.

(2) A licensee shall ensure that advertisements broadcast by its station do not—

- (a) contain any descriptions, claims or other material which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and
- (b) unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.

(4) A licensee shall not unreasonably discriminate against or favour any advertiser.

(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when large numbers of children are expected to be watching or listening to programmes.

(6) A licensee shall ensure that—

- (a) any advertising breaks are clearly distinguishable from broadcast programmes; and
- (b) its presenters, when reading advertisements, make a clear distinction between the programming material and the advertisements they deliver.

34. Watershed period

(1) A licensee shall ensure that—

- (a) content which depicts or contains scenes that are rated by the Kenya Film Classification Board as adult, or are of the language intended for adult audiences are not aired during the watershed period;
- (b) all programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual;
- (c) consumer advice such as warnings, labelling, classification details and other announcements are given prior to the telecast of a programme or its trailers.
- (d) all trailers and promotional material shown before the watershed time comply with paragraph (b) and (c).

(2) All licensees shall exercise responsibility in scheduling of programmes to reduce the risk of causing offence.

35. Local content

(1) The Commission may require a licensee to commit the minimum amount of time, as maybe specified in the licence, to broadcast of local content or as may be prescribed from time to time by the Commission by notice in the *gazette*:

Provided that where a broadcaster is, unable to comply with the foregoing, the Commission shall require such broadcaster to pay such an amount of money, as may be prescribed by the Commission into the Fund.

(2) The Commission shall from time to time prescribe a minimum local content quota for foreign broadcasting stations that broadcast in Kenya.

36. Content for the physically challenged

(1) the Commission shall require broadcasters to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted.

(2) The Commission shall prescribe by notice in the *gazette* the manner, time and percentage of programmes targeting persons referred to in paragraph (1) shall be broadcast.

PART V – PROGRAMME CODE

37. Setting standards for programmes

(1) The Commission shall prescribe a Programme Code that sets the standards for the time and manner of programmes to be broadcast by licensees.

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(2) A licensee shall be subject to the Programme Code prescribed by the Commission or by a duly recognized body of broadcasters under regulation 38.

38. Acceptance of programme code

(1) Pursuant to section 46H of the Act, any registered body of broadcasters wishing to operate under its own Programme Code shall submit such a code to the Commission for approval.

(2) A body of broadcasters referred to in paragraph (1) shall satisfy the Commission that all its members subscribe and adhere to the Programme Code that has been approved by the Commission.

(3) A licensee who subscribes to a Programme Code prescribed by a body of broadcasters under paragraph (1) shall furnish the Commission with proof of membership, subscription and adherence to the Programme Code prescribed by the body.

(4) When considering a Code submitted for approval, the Commission shall have regard to the specific standards to be complied with and rules and practices to be observed as prescribed in part IV of these regulations and such other matters as the Commission may prescribe from time to time.

(5) In the event that the Programme Code is not acceptable either in part or in whole—

- (a) the Commission shall notify the body of broadcasters in writing and specify the remedial measures that the broadcasting body is to undertake in order to satisfy the Commission's requirements; and
- (b) the body of broadcasters shall within thirty days from the date of notification resubmit the revised Programme Code for reconsideration by the Commission.

(6) Once the Commission approves the Programme Code submitted under this regulation, the body of broadcasters shall publish its Programme Code and a list of broadcasters subscribing to the code, and avail both the Programme Code and list to the public.

(7) The body of broadcasters shall—

- (a) avail to the Commission such information relating to the enforcement of the Programme Code as the Commission may require and in the form prescribed by the Commission;
- (b) inform the Commission within five days if any of its members ceases to subscribe to the Programme Code of the body of broadcasters;
- (c) cause to be published in at least one newspaper circulating in Kenya a notice of the fact that the code is available for inspection by any member of the public.
- (d) review or cause the revision of the Programme Codes and enforcement mechanisms at least once in every two years from the date of the Programme Code and mechanisms came into force;
- (e) file the reviewed programme code with the Commission for approval.

PART VI – COMPLAINTS HANDLING PROCEDURE**39. Complaints handling procedure**

(1) Every broadcaster shall develop a procedure, for handling complaints from persons who may be aggrieved by its broadcasts.

(2) The complaints handling procedure, shall, among other things cover the following—

- (a) full name of the broadcaster as it appears in the licence as well as the broadcast station identity specific to different broadcast services offered;
- (b) the physical postal and email addresses where complaints can be sent;
- (c) the contact person authorized to receive and handle complaints;
- (d) the manner in which the complaint may be lodged including the applicable languages;
- (e) details which need to be submitted when lodging a complaint;
- (f) the need for the complainant to retain a copy of every correspondence exchanged between complainant and broadcaster;
- (g) the manner in which the complaint shall be investigated and process of investigation;

(3) In addition to the information under paragraph (2) the complaint handling procedure shall also include information—

- (a) to listeners or viewers that the first opportunity to resolve a complaint should be given to the broadcaster to resolve the complaint;
- (b) relating to the timeframes for responding to the complainant, and resolving the complaint;
- (c) relating to how complaints from physically challenged and illiterate consumers who are not capable of providing complaints in writing, shall be addressed;
- (d) on the methods of recording and tracking of complaints, together with the associated responses;
- (e) on the duration of storage of records of complaints received and actions taken;
- (f) on the retention and production of recordings of any programme which is the subject matter of a complaint;
- (g) on the categories of complaints which the broadcaster is under no obligation to respond to or complaints considered frivolous, vexatious or an abuse of the complaint process or from complainants who choose to remain anonymous;
- (h) on any other matter as the Commission may from time to time by notice in the *gazette* prescribe.

40. Obligations of licensees

(1) A licensee shall—

- (a) document its complaints handling procedure;
- (b) inform their listeners or viewers at least once a day of the existence of a complaints handling procedure and how they can lodge a complaint regarding the broadcast station;
- (c) not dispose off broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Commission, the Tribunal or the High Court:

Provided that the clause in the licence stipulating the minimum duration that a licensee shall retain a copy of recordings of broadcasts shall not apply to this subparagraph; and

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- (d) on 1st July of every year, submit to the Commission a written report of all complaints received during the period and the manner in which they were addressed.

41. Approval of Complaints Handling Procedure

(1) Every broadcaster shall, prior to the commencement of broadcasting services submit its Complaints Handling Procedure to the Commission for approval.

(2) In the event that the Commission does not approve the complaints handling procedure submitted under paragraph (1), in part or in whole—

- (a) the Commission shall specify the remedial measures the broadcaster should take in order to satisfy the Commission's requirements; and
- (b) the broadcaster shall within thirty days of being notified of the disapproval, resubmit the revised complaints handling procedure for reconsideration by the Commission:

Provided that in the interim, the Commission may require the broadcaster to handle any complaints submitted during that period in accordance with the procedure determined by the Commission.

(3) A broadcaster shall, after approval, publish its Complaints Handling Procedure and avail it to any person who reasonably requests.

42. Escalating Complaints to the Commission

(1) Where any person alleges that he has exhausted the broadcasters' complaints handling procedure and is not satisfied with the remedy offered or action taken, he may appeal to the Commission and such appeal shall be dealt with in accordance with the Dispute Resolution Regulations or such procedures as may be prescribed by the Commission from time to time:

Provided that the Commission may, on its own motion, investigate a matter where in its view a broadcaster has breached the provisions of the Act, Regulations or the Programme Code.

(2) A broadcaster or the Commission shall not entertain a complaint or dispute lodged pursuant to a broadcast after ninety days from the date when the material complained of was broadcast;

PART VII – GENERAL PROVISIONS**43. Public emergencies**

(1) All broadcasting service providers shall provide a public notice of an emergency or a public disaster announcement upon the request of a person authorized by the Government.

(2) The Commission shall prescribe, by notice in the *gazette* the manner in which broadcasters shall provide information during public emergencies or national disasters.

44. Offence and penalty

Any person who contravenes any provision of these Regulations commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or both.

PART VIII – TRANSITIONAL PROVISIONS

45. Transition from analogue to digital television broadcasting

(1) The Commission shall specify the following, among other conditions, in a terrestrial digital signal distribution licence—

- (a) the percentage of the multiplex capacity that shall be used for relaying broadcast content and other related data;
- (b) the technical specifications of the multiplex and associated digital transmitters;
- (c) the requirement that the signal distributor to file such tariffs it proposes to impose on a broadcaster for approval by the Commission; and
- (d) universal service obligations.

(2) After the switchover from analog to digital broadcasting, all analog television broadcasters shall be required to relinquish the frequencies used for free-to-air television broadcasting to the Commission.

(3) Nothing in these Regulations shall be construed as preventing the Commission from requiring broadcasters on digital platform before the enactment of the Kenya Communications Amendment Act, 2009 (No. 1 of 2009), to comply with the Act and these Regulations.

46. Transition of permits to licenses

(1) Pursuant to section 46R of the Act, all persons issued with broadcast permits prior to the commencement of the Kenya Communications (Amendment) Act, 2009 (No. 1 of 2009) shall—

- (a) be required to apply for broadcast licence(s) such as a manner as may be prescribed by the Commission;
- (b) pay such fees as may be prescribed by the Commission for the issuance of the broadcasting licence(s) to replace the permits and frequency licence and usage fees;
- (c) retain such radio frequency resources already assigned under the same terms and conditions of issuance:
Provided that they comply with such new terms and conditions that the Commission may be impose; and
- (d) in the event of failing to apply or qualify for the licence(s), cease to be a broadcaster.

(2) In addition to the requirements specified under section 46D(2), the Commission shall, when considering an application for a licence to replace a permit, consider—

- (a) the past compliance record of the applicant relating to adherence to the conditions of the broadcasting frequency licence; and
- (b) the status of frequency fee payments.

(3) Any person who holds a broadcasting permit and who has been assigned more than one broadcast frequency for either radio or television broadcasting services in the same broadcast coverage area, shall be required within a period not exceeding the licence term, to surrender all additional broadcasting frequencies to the Commission.

**KENYA INFORMATION AND COMMUNICATIONS (DISPUTE RESOLUTION)
REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Powers of the Commission.
 4. Initiation of proceedings.
 5. Response to the complaint.
 6. Withdrawal of dispute.
 7. Hearing of disputes.
 8. Decision of the Commission.
 9. General Provisions.
-

[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (DISPUTE RESOLUTION)
REGULATIONS, 2010**

[L.N. 26/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Dispute Resolution) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**consumer**” any person who uses communication services or products offered by a licensee;

“**dispute**” means any matter that is in contention between a licensee and another, a consumer and a licensee, where one or both parties is aggrieved by the conduct of the other and the parties have failed to reach an amicable resolution after due effort has been made;

“**licensee**” means any person who has been licensed under the Act.

3. Powers of the Commission

The Commission shall have power to resolve disputes between—

- (a) a consumer and a service provider;
- (b) a service provider and another service provider; or
- (c) any other persons as may be prescribed under the Act.

(3) The Commission may, for the purpose of resolving any dispute hold hearings, inquiries and investigations, it considers appropriate in the discharge of its functions under the Act.

(4) The Commission shall not emphasize on technicalities or rules of procedure in resolving disputes filed under these regulations and may waive any rule or requirement where necessary.

4. Initiation of Proceedings

(1) A party to a dispute may, within sixty days of the occurrence of a dispute, notify the Commission and any adverse party of the dispute, in writing:

Provided that where a notification is made orally or in any other form, the Commission may reduce the notification in writing and the notification shall, if signed by the complainant, be considered to be a written notification for the purposes of these Regulations.

(2) The Commission shall not seek to resolve a dispute under these Regulations unless it has been notified of the dispute in writing and has been requested by either of the party or both parties to intervene.

(3) A party shall notify the Commission of a dispute under paragraph (1) by the presenting to the Commission a letter or Memorandum of Complaint together with the prescribed fees.

(4) The letter or Memorandum of Complaint shall set out concisely, the grounds of complaint and the facts upon which the complaint is based on, and shall be accompanied by documentary evidence supporting the complaint.

[Subsidiary]

(5) The letter or Memorandum of Complaint shall be signed by the party presenting it if the party is an individual, and where the party is a corporation, by an agent or authorized officer of the corporation.

(6) The Commission shall acknowledge the receipt of a letter or Memorandum of Complaint, in writing.

(7) The Commission may decline to accept a letter or Memorandum of Complaint that—

- (a) does not raise any issue, under the Act;
- (b) does not conform to the provisions of the Act or directions given by the Commission;
- (c) is trivial, frivolous or vexatious;
- (d) is defective or which is presented otherwise than in accordance with these Regulations or the directions of the Commission; or
- (e) has been filed with any other authority or body that has jurisdiction to hear and determine the dispute.

(8) The Commission shall, before declining to accept a letter or Memorandum of Complaint, give the complainant an opportunity to be heard.

(9) The Commission shall not decline to resolve for the reason of defects in the pleadings or in the presentation, without giving an opportunity to the person filing the complaint to rectify the defects within the period the Commission specified for that purpose.

(10) Where the Commission has declined to resolve a dispute, it shall notify the parties to the dispute, in writing, stating the reasons for declining.

5. Response to the complaint

(1) Where the Commission accepts to resolve a dispute, it shall, within seven days of receiving a notification, notify the party against whom the complaint was made and serve the party with the letter or Memorandum of Complaint.

(2) The party against whom a complaint has been made shall, within twenty-one days after being notified of dispute under paragraph (1), file with the Commission and serve the complainant with, a response signed by that party, or where the party is a corporation by agent or authorized official of the corporation.

(3) The Commission may invite the complainant to file a reply to the response within a specified time.

6. Withdrawal of dispute

(1) A complainant may, at any time before the dispute is heard, withdraw the letter or Memorandum of Complaint by notifying the Commission, in writing.

(2) The Commission shall, where a complainant withdraws a letter or Memorandum of Complaint make such orders relating to costs as it considers fit.

7. Hearing of disputes

(1) The Commission may, for the purpose of resolving a dispute, hold such hearings, inquiries and investigations, as it may consider appropriate.

(2) The Commission shall not place undue regard on technicalities or rules of procedure and may waive any such rule or requirement when it considers it appropriate.

(3) The parties to a dispute shall set the date for the hearing of a dispute within fifteen days from the date of the filing of the last response or any reply to the response.

[Subsidiary]

(4) Save where the parties otherwise agree, each party shall be entitled to not less than seven days notice of the time, date and place fixed for the hearing of the dispute.

(5) The Commission may determine a dispute on the basis of the documents filed by the parties or oral evidence given before it.

(6) Where the Commission considers it necessary or expedient, it may direct the parties to file written submissions upon such terms as the Commission considers fit.

(7) Where in the course of resolving a dispute a matter arises that in the opinion of the Commission requires certain expertise or competence, the Commission may call upon any person who possesses the expertise to sit with the Commission as an assessor.

(8) At the hearing, the complainant shall open its case by stating the grounds of the complaint and may support it by relevant evidence.

(9) A party to a dispute shall, unless the party has the consent of the Commission, not rely on any grounds other than a grounds stated in the letter or Memorandum of Complaint or adduce additional facts or documents that were not referred to in the letter or memorandum of complaint or copies of the documents were not annexed to the letter or Memorandum of Complaint.

(10) The complainant shall close its case by making oral or written submissions and at the close of the complainant's case, the party against whom a complaint has been made may make submissions supported by relevant evidence.

(11) The complainant shall be entitled to reply to the submissions of the party against whom a complaint has been made and not raise new issues.

(12) The Commission may examine the parties and their witnesses when hearing a dispute.

(13) A witness called and examined by the either party may be cross-examined by the other party and after being cross-examined, the witness may be re-examined.

(14) The Commission may, at any time before making any orders relating to a dispute, require a party or any other person whom the Commission considers competent, to adduce documentary evidence or produce any material, specimen or product that the Commission may consider necessary for the determination of a dispute.

(15) The Commission may adjourn the hearing of a dispute for the production of further evidence or for other good cause, on such terms as it may determine.

(16) Where on the date of hearing any of the parties or their authorized representative does not appear when the dispute is called for hearing, the Commission may dismiss the dispute for non-appearance or proceed *ex parte*.

(17) Where a dispute is dismissed in default or decided *ex parte* an aggrieved party may file an application within fourteen days from the date of such dismissal, for review of the order given, and the Commission may review the order if it is satisfied that there was sufficient cause for the non-appearance.

(18) No party to a dispute shall communicate, outside the hearing of the matter, with any member of the Commission with regard to matters or issues which are the subject matter of the dispute.

8. Decision of the Commission

(1) The Commission shall make its decision in writing, stating reasons for the decision, within thirty days from the date of conclusion of the hearing.

(2) The decision of the Commission shall be dated and signed by the members of the Commission who participated in the hearing and determination of the dispute.

[Subsidiary]

(3) The Commission shall cause to be made a record of the proceedings of the hearing of the dispute and include that record, together with a copy of the decision, in a document to be certified and signed by the presiding officer of the Commission as a true and correct record of the proceedings and the decision.

(4) The Commission shall forward a certified copy of the document described in paragraph (3) to each party.

(5) The Commission may, given the urgency of a dispute or for other justifiable reason, issue temporary preservation orders and reliefs pending the hearing and determination of the dispute.

(6) Any party dissatisfied by the decision of the Commission may Appeal to the Appeals Tribunal established under section 102 of the Act within fifteen days of the decision.

(7) The decision of the Commission shall be binding until subsequent orders are made by the Tribunal or the determination of the Appeal.

9. General Provisions

(1) The Commission may on application by either party, extend the time appointed by these rules for the performance of any act or taking of any proceedings upon such terms or conditions, if any, as may appear to the Commission to be just and expedient.

(2) Records of proceedings, except those parts which for reasons specified by the Commission are confidential or privileged or otherwise should not to be disclosed to any person, shall be open to inspection by any person after conclusion of the hearing, subject to such person complying with the terms as the Commission may prescribe from time to time in regard to time, place and manner of inspection and payment of inspection fees.

(3) The Commission may publish in the Kenya *Gazette* and other media, its decision on disputes it has heard and determined.

(4) Nothing in these Regulations shall prevent the parties from reaching an agreement and withdrawing the dispute by submitting the negotiated agreement to the Commission for approval.

(5) The Commission may make orders relating to costs as it considers appropriate.

KENYA INFORMATION AND COMMUNICATIONS (TARIFF) REGULATIONS, 2010

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Purpose and object.
- 3A. Commission to declare regulated services.
4. Tariffs setting.
5. Filing of tariff rates.
6. Tariff approval for regulated services.
7. Review of tariffs for regulated services.
8. Notice on review of tariffs for regulated services.
9. Decision on tariff revision application.
10. Investigation of tariffs.
11. Promotions and special offers.
12. Offence and penalty.
13. Transitional provisions.

SCHEDULE – GUIDELINES

[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (TARIFF) REGULATIONS, 2010**

[L.N. 27/2010, L.N. 149/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Tariff) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“information and communications technology service” means any transmission of information by wire, radio waves, optical media, postal or other means between or amongst points of user’s choice;

“just and reasonable tariffs” means tariffs that enable a licensee to maintain its financial integrity, attract capital, operate efficiently and fully compensate investors for risks borne;

“licensee” means a person licensed under the Act;

“promotion or special offer” means any information, whose content is controlled directly or indirectly by a licensee, that is expressed in any language and communicated through any medium with the intention of influencing the choice, opinion or behaviour of consumers;

“tariff” means any charge, price, levy and underlying terms and conditions imposed by a licensee for the services provided;

“regulated services” means a service offered or supplied by a licensee—

- (a) in a market or market segment that is uncompetitive or
- (b) subject to price controls by the Commission on the basis that the provider of the service has been found to be dominant in the relevant market and the Commission has judged that the price control is appropriate, pursuant to both the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010 and regulation 4 of these Regulations.

“uncompetitive market” means market or market segment in which there is no competition in the provision of service or in which consumer choice of service provider or service is either absent, limited, impeded, obstructed or constrained.

[L.N. 149/2010, s 2.]

3. Purpose and object

(1) The purpose of these Regulations is to provide a framework for the determination of tariffs and tariff structures.

(2) Without prejudice to the generality of paragraph (1), these Regulations seek to—

- (a) ensure licensees maintain financial integrity and attract capital;
- (b) protect interests of investors, consumers and other stakeholders;
- (c) provide market incentives for licensees to operate efficiently; and
- (d) promote efficient and fair competition within the framework for a free market economy;
- (e) ensure compliance with all competition laws.

(3) In the exercise of its powers, the Commission shall ensure that decisions made pursuant to the provisions of these Regulations are consistent with the objectives outlined in paragraph (2).

[L.N. 149/2010, s. 3.]

3A. Commission to declare regulated services

(1) The Commission may declare services in specific markets to be regulated services.

(2) The Commission shall, prior to making a declaration under paragraph (1)—

- (a) identify the relevant specific market;
- (b) notify all affected licensees and issue a consultation, allowing sufficient time for stakeholder comments;
- (c) demonstrate that there is a competition concern as specified in regulation 8A(2) of the Kenya Information and Communication (Fair Competition and Equality of Treatment) Regulations, 2010, (L.N. 29/2010, Sub. Leg.) or that a licensee who has been declared to be in a dominant market position has been found to have abused the dominant market position, and where there is a competition concern, the Commission shall, in satisfying itself, demonstrate pursuant to a report prepared by the Commission that—
 - (i) effective competition amongst existing licensees cannot develop;
 - (ii) there exists strong and non-transitory barriers to entry in the identified market segment;
 - (iii) there is no other competition law that is sufficient to deal with the competition concern;
 - (iv) in the case of a retail service, no wholesale remedies are available to address the competition concern in the identified market segment; and
 - (v) such other circumstances that the Commission may consider necessary from time to time;
- (d) follow the guidelines contained in the Schedule to these Regulations to prepare the report mentioned in paragraph (2)(c);
- (e) show that declaring the relevant service to be a regulated service would prevent a potential abuse; and
- (f) show that the declaration would be consistent with the objectives of these Regulations.

[L.N. 149/2010, s. 4.]

4. Tariffs setting

(1) A licensee shall set tariffs that are—

- (a) just and reasonable;
- (b) sufficiently clear and enable the end-user to determine the description of the service, the details relating to the nature of service and charges payable for the service; and
- (c) *Deleted by L.N. 149/2010, s. 5.*

(2) A licensee shall provide accurate billing information on tariffs to enable customers to verify whether they are billed correctly.

(3) A licensee shall not apply tariffs that prevent market entry or distort competition.

(4) A licensee who contravenes this regulation commits an offence.

[Subsidiary]

(5) The tariff of a licensee shall be non-discriminatory and shall guarantee equality of treatment.

(6) A tariff shall not be in breach of this Regulation if it is shown that there are legitimate commercial reasons for the tariff, such as different costs of providing the service and different identifiable market segments that have different ability to pay and different levels of usage and customer preference.

[L.N. 149/2010, s. 5.]

5. Filing of tariff rates

(1) A licensee shall, on a quarterly basis, file the schedules of their tariff rates, including those of its agents and correspondents with the Commission.

(2) A licensee shall not charge its customers using tariff rates that have not been filed with the Commission under paragraph (1).

(3) A licensee shall ensure that all the tariff rates that have been filed with the Commission are available to the public for review and inspection and shall furnish its customers with the filed tariff rates, upon request.

(4) A licensee who contravenes this regulation commits an offence.

6. Tariff approval for regulated services

(1) The Commission may from time to time publish in the *Gazette* a schedule of regulated services.

(2) A licensee shall charge regulated services using tariffs that have been file and approved by the Commission.

(3) Subject to regulation 7 all applications for approval of tariffs for regulated services shall be filed with the Commission and shall—

- (a) conform to the form, manner and methodology prescribed by the Commission; and
- (b) be accompanied by relevant documents, including all calculations, notes and any other information in support of the application.

(4) Where the Commission does not approve the tariffs proposed by a licensee for a regulated service and recommends that the licensee to makes the adjustments specified to the proposed tariffs, the licensee shall adjust the proposed tariff accordingly.

(5) *Deleted by L.N. 149/2010, s. 6.*

(6) A licensee shall not discontinue the provision of a regulated service without the prior written approval of the Commission.

(7) Where the Commission determines that a service no longer meets the conditions that describe a regulated service, the Commission shall through a *gazette* notice notify the public that the service is no longer a regulated service.

(8) *Deleted by L.N. 149/2010, s. 6.*

(9) A licensee who contravenes this Regulation commits an offence.

[L.N. 149/2010, s. 6.]

7. Review of tariffs for regulated services

(1) A licensee who wishes to increase the tariffs for a regulated service shall file an application for approval of the increase with the Commission in the prescribed manner, at least forty-five days before the proposed increase is intended to come into effect.

(2) The obligations that relate to the provision of a regulated service shall cease when the Commission determines that tariff regulation is no longer necessary in view of market developments.

[L.N. 149/2010, s. 7.]

8. Notice on review of tariffs for regulated services

(1) The Commission shall, within seven days after receiving an application to increase the tariff of a regulated service under these Regulations, place a notice in the *Gazette* and in such other manner as it considers necessary.

(2) The notice under paragraph (1) shall—

- (a) contain the name and particulars of the licensee or class of licensees providing the service to which the tariffs relates;
- (b) state the new tariff and the reasons for the proposed review of the tariff; and
- (c) specify the period, which shall not be less than thirty days, within which written objections or representations to the proposed new tariff may be made.

(3) The Commission shall in considering the application for tariff revision take into account any written representations or objections received under paragraph (2)(c).

[L.N. 149/2010, s. 8.]

9. Decision on tariff revision application

(1) The Commission shall, within thirty days of notification under regulation 8(1), approve or reject such application.

(2) The Commission may reject an application for the revision of a tariff if it is of the view that the proposed tariff is unjustifiable, unfair or unreasonable.

(3) A decision of the Commission rejecting a proposed tariff shall—

- (a) be in writing;
- (b) state the reasons for the rejection; and
- (c) be made available to the provider.

(4) Where the Commission approves a new tariff, a licensee shall notify its customers of the new tariff through publication in two local daily newspapers with nation wide circulation or through any other method as the Commission may determine and shall in the notice provide for a grace period of not less than fourteen days before implementing the new tariff.

(5) A licensee who contravenes this Regulation commits an offence.

[L.N. 149/2010, s. 9.]

10. Investigation of tariffs

(1) The Commission may on its own motion or pursuant to a complaint made under this regulation investigate any tariff set by a licensee where the tariff is anti-competitive.

(2) A complaint about a tariff brought under paragraph (1) shall—

- (a) be in writing;
- (b) specify the name and address of the complainant;
- (c) state the interest of the complainant; and
- (d) state the reasons why the tariff should be investigated.

[Subsidiary]

(3) Where after investigations under regulation 10(1), the Commission is of the view that the tariff is anticompetitive and should be adjusted, it may recommend to the licensee to make the necessary adjustments on the tariffs:

Provided that where the Commission intends to adjust the tariffs after investigation, the Commission shall notify the licensee and give the licensee twenty days to respond to the intended adjustment.

[L.N. 149/2010, s. 10.]

11. Promotions and special offers

(1) The Commission may from time to time issue guidelines on promotions and special offers.

(2) A licensee shall apply for approval, at least four days before the date of the implementation of a promotion or special offer, and shall file all details of the promotion or special offer with the Commission for approval provided that if no objection is made by the Commission within four days the licensee shall proceed with the promotion or special offer.

(3) A licensee shall ensure that all Promotions and special offers—

- (a) provide of information on the duration and date of the promotion or special offer, where the same is time-bound;
Provided that no promotion or special offer shall run for more than ninety days and be repeated before three months have elapsed.
- (b) state clearly the threshold to be applied, where the duration of the promotion or special offer is not time-bound, but subject to attainment of a specific target;
- (c) provide the terms and conditions and the details of the manner of participation;
- (d) provide clear information to its customers on the terms and conditions of the promotion or special offer, through publication in two local daily newspapers with nationwide circulation and where applicable, in electronic media, sign language or any other method that the Commission may determine;
- (e) indicate and publish, where the special offer or promotion requires the customer to pay a charge, the applicable rate;
- (f) has obtained necessary approval from the Betting Control and Licensing Board, where the special offer or promotion involves games of chance, and inform its consumers accordingly;
- (g) provide details on the minimum number and nature of any prizes, where applicable, state if prizes are to be awarded in installments or are to be shared among recipients;
- (h) state whether or not any restrictions based on, among others, age or the need to obtain permission to enter from an adult or employer, to participation apply;
- (i) provide the name and business address of the licensee in the case of direct promotions or, particulars of third parties in the case of indirect promotions;
- (j) promoters do not overstate the consumers' chances of winning prizes; and
- (k) a not discriminatory or anti-competitive.

(4) Prior to the launch of a promotion or a special offer a licensee shall submit a statement of compliance with paragraph (3) to the Commission.

(5) The Commission may discontinue a promotion or special offer that does not comply with this regulation and state the reasons for doing so.

[L.N. 149/2010, s. 11.]

12. Offence and penalty

Any person who commits an offence under these Regulations for which no penalty is provided shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.

13. Transitional provisions

(1) Subject to paragraph (2) a licensee who provides a regulated service shall, within thirty days of these Regulations coming into force or the commencement of the offer of a regulated service to the public, file the tariff applicable to the regulated service with the Commission for approval.

(2) A licensee who provides regulated services at the commencement of these Regulations shall continue to provide the regulated services at the rate and subject to the terms and conditions in effect at that date.

(3) A licensee who provides non-regulated services shall, within thirty days of the commencement of these Regulations, file schedules of their tariff rates, including the terms and conditions of their agents and correspondents with the Commission.

SCHEDULE

[Rule 3A(2)(d), L.N. 149/2010, s. 12.]

GUIDELINES

Guidelines to Address regulation 3A(2)(c)(i)—

When considering whether competition cannot develop with existing players under regulation 3A(c)(i) of these Regulations, the Commission shall consider the following factors—

- (a) Current market shares and their evolution over time;
- (b) Price trends and pricing behaviour for the services under analysis;
- (c) Control of an infrastructure not easily duplicated;
- (d) Barriers to expansion;
- (e) Product or service diversification; or
- (f) such other factors as the Commission may consider from time to time.

Guidelines to Address regulation 3A(2)(c)(ii)—

The Commission shall consider all the factors indicated below in order to assess the existence of high and non-transitory barriers to entry under regulation 3A(c)(ii) of the Regulations—

- (a) Existence of sunk costs;
- (b) Scale and scope economies;
- (c) Control of an infrastructure not easily duplicated;
- (d) Technological advantages;
- (e) Easy or privileged access to capital or financial resources;

[Subsidiary]

- (f) Barriers to development of distribution and sales network;
- (g) Switching costs and product diversification;
- (h) Vertical integration;
- (i) Requirement for an administrative authorization or licence in order to operate in the market and conditions for obtaining such an authorization;
- (j) Limits and conditions attached to the use of spectrum;
- (k) Effects of general regulation over new entrants.

Guidelines to Address regulation 3A(2)(c)(iii)—

The commission shall consider all the factors indicated below in order to assess the insufficiency of competition law to address the competition concern identified in sub-regulations 4(c), condition 3A(2)(c) of these Regulations—

- (a) Degree of generalization of non-competitive behaviour associated to the competition concern;
- (b) Degree of difficulty to address the competition concern;
- (c) Expected damaged created by non-competitive behaviour associated to the competition concern;
- (d) Need of regulatory intervention to ensure the accomplishment of the objectives stated in regulation 3(2).

Guidelines to address regulation 3A(2)(c)(iv)

When considering a retail service, the Commission shall consider whether the identified competition concern can be addressed with—

- (a) existing remedies imposed in related wholesale markets; or
- (b) alternative wholesale remedies.

The analysis of the alternative measures shall consider the costs and benefits associated with each option and the impact for the different undertakings, following a Regulatory Impact Assessment (RIA).

**KENYA INFORMATION AND COMMUNICATIONS (COMPLIANCE MONITORING,
INSPECTIONS AND ENFORCEMENT) REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Commission's monitoring and enforcement powers.
 4. Guidelines.
 5. Principles and procedures of monitoring and enforcement.
 6. Commencement of the processes for monitoring and enforcement.
 7. Licensees duty to prepare, submit and maintain reports.
 8. Investigations by the Commission.
 9. Compliance information.
 10. Payment of penalty.
 11. Appointment of Inspectors.
 12. Right of Access.
 13. Civil Proceedings.
 14. Revocation of Part XII of L.N. 68/2001.
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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (COMPLIANCE MONITORING, INSPECTIONS AND ENFORCEMENT) REGULATIONS, 2010**

[L.N. 28/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Compliance Monitoring, Inspections and Enforcement) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**contravention**” means, non-compliance with or breach of any of the conditions of a licence and the provisions of the Act or Regulations;

“**enforcement**” includes administrative actions of the Commission and any other action taken for the purposes of ensuring compliance with of the Act or Regulations;

“**licensee**” means any person licensed under the Act;

“**monitoring**” means the powers of the Commission to verify compliance with the provisions of the Act, Regulations and Licenses.

3. Commission’s monitoring and enforcement powers

The Commission shall monitor and enforce compliance with the Act, Regulations and conditions of licences by all licensees.

4. Guidelines

The Commission shall issue guidelines on installation and maintenance of communication infrastructure.

5. Principles and procedures of monitoring and enforcement

When carrying out its compliance, monitoring and enforcement duties, the Commission—

- (a) shall be guided by the Act, Regulations and the following principles—
 - (i) transparency, fairness and non-discrimination;
 - (ii) the need to provide modern, qualitative, affordable and readily available communications systems and services in Kenya;
 - (iii) the need to promote fair competition and investment in the information and communications technology industry;
 - (iv) the need to promote and improve the quality of service provided by licensees in Kenya; and
 - (v) any other principles that the Commission may from time to time consider necessary and in the public interest;
- (b) may issue directions in writing to any person to secure compliance with the Act and these Regulations;
- (c) may enlist and rely on the assistance of law enforcement agencies and other relevant departments, ministries and Government of Kenya and international agencies, as provided in the Act; and

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- (d) may appoint a person to inquire into and report to the Commission on any matter pending before it and upon the receipt of a report the Commission may—
 - (i) give directions on the procedures for conducting such inquiries; and
 - (ii) the person or persons appointed to carry out such inquiries shall submit a report to the Commission in the form and manner as the Commission may direct.

6. Commencement of the processes for monitoring and enforcement

- (1) The Commission shall exercise its powers under these Regulations—
 - (a) on its own initiative; or
 - (b) in response to a complaint made by a person or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of representation.

7. Licensees duty to prepare, submit and maintain reports

- (1) Every licensee shall, after every quarter and at the end of its financial year, prepare and submit to the Commission in the prescribed form, an annual report of its operations.
- (2) Every licensee shall prepare and submit to the Commission a quarterly report of its operations and the extent to which the conditions of their licence have been adhered to.
- (3) A licensee may request the Commission to treat any information contained in a report presented to the Commission under these Regulations as confidential business information that may not be disclosed to third parties other than government agencies.

8. Investigations by the Commission

- (1) The Commission may commence investigations on a licensee's compliance where it has reasonable cause to believe that a licensee has failed to comply—
 - (a) with the construction, installation or service provision requirements issued by the Commission; or
 - (b) has contravened any condition of the licence issued by the Commission; or
 - (c) with any of the performance obligations under the Act, Regulations or its licence conditions.
- (2) The Commission, shall in carrying out investigations on any matter under the Act or Regulations, take into account the following factors—
 - (a) any representation made to the Commission by or on behalf of a person whom the Commission considers to have an interest in the matter which is the subject of the representation; or
 - (b) a complaint by any customer of the licensee or a member of the public to the Commission in relating to the services provided by a licensee; and
 - (c) the Commission's necessary inquiries and appropriate measures to be taken as the circumstances of the case may require.
- (3) A licensee shall keep proper records in such manner as the Commission may prescribe, and shall allow the Commission to access the records for purposes of carrying out its mandate under the Act.
- (4) The Commission may request a licensee to periodically submit reports, statistics, data and any other information that it considers necessary.

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(5) When making any request under paragraph (4), the Commission shall ensure that it does not impose undue burden on the licensee in procuring and furnishing such information.

(6) The Commission may from time to time publish compliance or investigation reports in the *Gazette*, as is necessary.

9. Compliance information

(1) Where after an investigation by the Commission, on its own motion or subsequent to a complaint made by a third party, the Commission is satisfied that a licensee is contravening or has contravened any of the conditions of a licence, the Commission shall notify the licensee, in writing.

(2) The Commission shall, in the notification sent to a licensee under paragraph (1), specify the acts or omissions which, in its opinion, constitute a contravention of the conditions of the licence and require the licensee to remedy the contravention within, unless otherwise specified by the Commission in writing, a period of three months.

(3) A licensee shall, after remedying the contravention specified in the notification, prove to the Commission that it has sustainably remedied of the contravention.

(4) If a licensee fails, without reasonable cause, to remedy the contravention referred to in paragraph (1) within the required period, the licensee shall be liable to a penalty of five hundred thousand shillings and such penalty shall be a debt owed to the Commission and recoverable summarily.

(5) Any licensee aggrieved by the decision of the Commission made under these Regulations may appeal to the Tribunal within fifteen days of receipt of notification by the Commission in that regard.

10. Payment of penalty

(1) Any penalty imposed by the Commission pursuant to the Act or Regulations shall become due and payable by the contravening person within fourteen days from the date of receipt of the notification in that regard by the Commission to the contravening person.

(2) The Commission may in addition to the penalty impose any other enforcement sanctions under the Act or Regulations on a licensee.

11. Appointment of Inspectors

(1) The Commission may appoint inspectors for the purposes of verifying compliance with the provisions of the Act and Regulations.

(2) The Commission shall issue all inspectors appointed under these Regulations with identity cards which shall be produced by the inspectors at the request of any person in charge of any place that is to be inspected.

(3) An inspector may at all reasonable times enter into any premises owned or controlled by a licensee in which the inspector has reasonable grounds to believe that has any document, information, or apparatus relevant for ensuring compliance with the Act or these Regulations and to examine such document, information or apparatus or remove the document, information or apparatus for examination or reproduction as the case may be.

(4) Where an inspector has reason to believe that there is any communication equipment or interference causing apparatus, he may examine such equipment, apparatus, logs, books, reports, data, records, documents or other papers and remove such information, document, apparatus, or equipment for examination or reproduction.

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(5) An inspector shall record and sign for any information, document, article, apparatus or equipment removed by him or her and shall leave a copy of the document recording that removal.

(6) For the purpose of exercising, performing and discharging the powers, functions or duties of the Commission under the Act or these Regulations an inspector, may by notice in writing require any person to—

- (a) furnish him or her within such time and at such place as may be specified in the notice, any document specified or described in the notice which is in the custody or control of such a person;
- (b) produce for inspection any book, return, account or record in his possession or control; or
- (c) produce for inspection any equipment, apparatus or systems.

(7) Any person who wilfully obstructs an inspector in the performance of his duties commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

12. Right of Access

(1) All licensees and authorized persons shall allow inspectors to access their facilities at reasonable times for the purpose of enabling the inspectors to carry out inspection and verification, including visits to premises and facilities and the inspection of equipment and documents.

(2) An inspector shall not have the authority to compel any person, for any reason, to produce any document which he could not be compelled to produce in any civil proceedings.

13. Civil Proceedings

Without prejudice to the provisions of the Act or Regulations, the Commission may, in the exercise of its powers pursuant to this Regulations and the Act, institute civil proceedings against any person for remedies that may include injunctive relief, recovery of penalties, specific performance or pecuniary awards or damages.

14. Revocation of Part XII of L.N. 68/2001

Part XII of the Kenya Communication Regulations, 2001 is hereby revoked.

**KENYA INFORMATION AND COMMUNICATIONS (FAIR COMPETITION AND
EQUALITY OF TREATMENT) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (FAIR COMPETITION AND EQUALITY OF TREATMENT) REGULATIONS, 2010**

[L.N. 29/2010, L.N. 150/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010.

2. Interpretation

In these Regulations unless the context otherwise requires—

“**communications services**” means all services provided for under the Act;

“**licensee**” means a person licensed under the Act;

“**service agreement**” means any agreement between a licensee and a subscriber relating to provision and use of a communications service;

“**subscriber**” means a person who has entered into a service agreement with a licensee and who is responsible for payment of all charges and rentals.

[L.N. 150/2010, s. 2.]

3. Purpose and object

(1) The purpose of these Regulations is to—

- (a) provide a regulatory framework for the promotion of fair competition and equal treatment in the communications sector; and
- (b) protect against the abuse of market power or other anticompetitive practices within the communications sector.

(2) Without prejudice to the generality of paragraph (1), these Regulations seek to—

- (a) provide for the standards and procedures to be applied by the Commission in determining whether particular conduct is anti-competitive;
- (b) clarify the agreements, conduct or practices that the Commission shall consider to be anti-competitive, and prohibited under the Act; and
- (c) provide for the standards and processes that the Commission shall apply when determining whether a communications licensee is dominant in a given market.

[L.N. 150/2010, s. 3.]

4. Mandate of the Commission over competition matters

(1) The Commission shall have the power to determine, pronounce upon, administer and enforce compliance of all its licensees with competition laws and regulations, that it relate to commercial activities in the communications sector.

(2) In so far as such matters fall concurrently under the jurisdiction of another statutory agency responsible for competition matters, the Commission shall co-operate with the said agency in matters related to fair competition.

5. Determination of breach

(1) The Commission shall, in order to determine whether a particular agreement or conduct breaches these Regulations—

- (a) evaluate the relevant market or market segment that the agreement, conduct in question or practice relates;

- (b) determine whether the market or market segment is competitive; and
- (c) establish whether a licensee is engaging in anti-competitive practices.

[L.N. 150/2010, s. 4.]

6. Commission to designate market segments

(1) The Commission shall, from time to time, by notice in the *Gazette* designate communications market segments.

(2) The Commission shall, when evaluating or designating the relevant market segments, consider—

- (a) the communications products that constitute a specific market, whose product dimension shall be assessed by analyzing—
 - (i) demand-side substitutability in order to measure the extent to which consumers are prepared or able to substitute other communications products or services for the communications products or services subject to considerations at low cost;
 - (ii) supply-side substitutability to determine the extent to which suppliers are able to supply other communications products or services in place of the communications products or services subject to consideration at low cost;
- (b) the geographic scope of the market for a given group of consumers, considering the following conditions—
 - (i) the geographic distribution of, and evolution over time of market shares;
 - (ii) the pricing of services across the area under consideration;
 - (iii) pricing of the different operators as well as its evolution over time in the relevant areas; and
 - (iv) additional supply and demand characteristics which may indicate the existence of different competitive pressures;
- (c) any other factors or issues which are, in the opinion of the Commission, relevant.

[L.N. 150/2010, s. 5.]

7. Dominant market position

(1) The Commission shall from time to time develop and publish, in the Kenya *Gazette*, guidelines to be followed when determining whether a licensee in a dominant market position in a specific communications market.

(2) The criteria shall among others include—

- (a) the current degree and development of market concentration or the market share of the licensee, determined by reference to revenues, numbers of subscribers or volumes of sales;
- (b) the degree to which a licensee's prices vary over time;
- (c) the ability of the licensee to maintain or erect barriers to entry to the market, including, by means of control of essential facilities, access to superior technology, privileged access to resources or capital markets or superior buying or negotiating position, amongst others;
- (d) the ability of the licensee to earn supernormal profits;
- (e) the global technology and commercial trends affecting market power;
- (f) the licensee's power to make independent rate setting decisions;

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- (g) the degree of product or service differentiation and sales promotion in the market;
- (h) the ability to materially raise prices without suffering a commensurate loss in service demand to other licensees; and
- (i) any other matters which the Commission may consider relevant.

(3) *Deleted by L.N. 150/2010, s. 7.*

8. Dominant market power reports

(1) The Commission may on its own motion or on the application of an interested person, prepare a dominant market power report to determine whether a licensee is dominant in a service or geographic communications markets.

(2) The Commission shall, among other factors, use the criteria in regulations 6(2) and 7(2) when assessing or designating a communications market.

(3) The Commission may, where it determines in a dominant market report that a licensee is dominant by considering the criteria established in regulation 7(2), it shall declare that licensee as dominant in a specific communications market.

(4) The Commission may, on its own motion or pursuant to an application by a licensee, review the dominant market power report to determine whether a licensee is still dominant and shall within, twenty-one days, make a determination that the licensee is not dominant or that the licensee shall continue to be designated as dominant.

(5) *Deleted by L.N. 150/2010, s. 8.*

[L.N. 150/2010, s. 8.]

8A. Investigations in respect of competition concerns

(1) The Commission may, on its own motion or pursuant to a complaint made by a licensee, conduct an investigation to determine if the conduct of a communications licensee gives rise to a competition concern under paragraph (2).

(2) Competition concerns shall arise where there is a likelihood that a licensee will engage in any of the following practices—

- (a) directly or indirectly impose purchase or selling prices or other trading conditions that unfairly prevent, restrict or distort competition;
- (b) limit production, markets or technical development to the prejudice of consumers and other licensees;
- (c) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) any other practices that the Commission may determine from time to time.

(3) Where the Commission determines that there is a competition concern, it may impose appropriate and proportionate remedies in accordance with regulation 9.

[L.N. 150/2010, s. 9.]

9. Interconnection obligations of a dominant telecommunications service provider

(1) Where the Commission has, pursuant to paragraph 8A, found a competition concern, the Commission may impose any or all of the following remedies—

- (a) meet all reasonable requests for access to its public telecommunications network, in particular access at any technically feasible point on its telecommunications network;

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- (b) adhere to the principle of non-discrimination with regard to interconnection offered to other interconnecting licensees, particularly—
 - (i) apply similar conditions in similar circumstances to interconnecting licensees providing similar services; and
 - (ii) provide interconnection facilities and information to other telecommunications licensees under the same conditions and of the same quality as it provides for its own services or those of its affiliates or subsidiaries;
- (c) make available, on request, to other interconnecting licensees considering interconnection with its public telecommunications network, all information and specifications reasonably necessary, in order to facilitate conclusion of an agreement for interconnection, including information on changes planned for implementation within the next six months, unless provided otherwise by the Commission;
- (d) submit to the Commission for approval and publish a Reference Interconnection Offer, sufficiently unbundled, giving the description of the interconnection offerings broken down into components according to the market needs and the associated terms and conditions including tariffs; and
- (e) provide access to the technical standards and specifications of its telecommunications network with which another interconnecting licensee shall be interconnected.

(2) Where a dominant telecommunications service provider abuses its position when negotiating interconnection agreements, the Commission shall—

- (a) require the dominant telecommunications service provider to desist, change its conduct or adopt a particular conduct; or
- (b) declare the interconnection agreement wholly or partially invalid.

(3) The Commission shall, before taking the action in paragraph (2) (b) of this Regulation, request the dominant telecommunications service provider to refrain from the conduct that is inconsistent with these regulations.

(4) A dominant telecommunications service provider shall set charges for interconnection based on an objective criteria, observe the principles of transparency and cost orientation as set out in regulation 11.

(5) The Commission may request the dominant telecommunications service provider to prove that its interconnection charges are based on actual cost and, where necessary request an adjustment of the charges or impose default interconnection charges in the event the proposed adjustment is not implemented by the dominant telecommunications service provider.

(6) A licensee that has been declared dominant in a market segment shall—

- (a) notify the Commission in writing of any proposal to change interconnection charges in the form and manner as prescribed by the Commission from time to time;
- (b) sufficiently unbundle charges for interconnection, so that the telecommunications licensee requesting the interconnection is not required to pay for any item that is not related to the service requested;
- (c) maintain a cost accounting system that—
 - (i) complies with the cost accounting guidelines that may be published by the Commission from time to time;
 - (ii) demonstrates that its charges for interconnection have been fairly and properly calculated;

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- (d) avail to the Commission, on request, a description of its cost accounting system showing the main categories under which costs are grouped and the guidelines for allocation of costs to interconnection and the Commission's, or any other competent body; regulations or guidelines have been adhered to.

(7) A dominant telecommunications service provider shall promptly, on request supply financial information to the Commission to the level of detail specified by the Commission.

(8) The Commission shall upon satisfying that the dominant telecommunications service provider has fully complied with these regulations together with any other guidelines that it may have prescribed, publish a compliance report.

(9) In addition, the Commission while taking account of considerations of commercial confidentiality, may publish such financial information in order to contribute to an open and competitive telecommunications market.

[L.N. 150/2010, s. 10.]

10. Accounts

(1) A licensee shall maintain separate books of account for each service as may be prescribed by the Commission from time to time and shall not cross-subsidize the prices for any service it offers in the market with revenue from the sale of communication systems and services.

(2) A licensee shall maintain accounting separation techniques to be focused on the separation of revenues, costs and capital employed into categories in order to ensure that there is no discrimination between internal and external pricing in all services provided by the licensee.

(3) Where the interconnection services are not provided through a structurally separated subsidiary, a dominant telecommunications service provider shall keep separate accounts as if the telecommunications activities in question were in fact carried out by legally independent companies, to identify all elements of cost and revenue together with the basis of their calculation and the detailed attribution methods used.

(4) A dominant telecommunications service provider shall maintain separate accounts in respect of interconnection services and its core telecommunications services and the accounts shall be submitted for independent audit and thereafter published.

(5) The Commission shall from time to time develop guidelines providing for the system of transfer charges to be applied to services and products provided from one licensee to another and for the implementation of this regulation.

(6) A licensee shall promptly, on request, supply financial information to the Commission to the level of detail specified by the Commission.

[L.N. 150/2010, s. 11.]

11. Obligations of licensees

(1) All licensees shall provide uniform, non-preferential service on a first-come-first-served basis to all persons within a covered geographical area or a given class who request for such service.

(2) A licensee shall not violate the principle of equal access and non preferential treatment if it—

- (a) considers the ability of a person to pay for a service when deciding whether to provide a service to the person; or
- (b) makes other rational classifications among subscribers, such as business and residential, and to provide service on the basis of the classification.

12. Guidance

(1) Where a licensee intends to enter into an agreement or take any action that may affect another licensee in the same market segment, it may seek guidance from the Commission at least thirty days prior to the entering into the agreement or taking of such action.

(2) The Commission's shall respond within thirty days of receiving the request under paragraph (1) stating whether the agreement or conduct is likely to contravene these Regulations.

(3) Notwithstanding the provision of these Regulations, a licensee shall ensure that all its agreements and conduct are lawful.

13. Investigations into complaints of unfair competition and discrimination

(1) The Commission may, on its own motion or upon a complaint, investigate a licensee whom it has reason to believe has committed an act or omission, or is alleged to have committed an act or omission, or to have engaged in a practice, breaching the requirement for fair competition or equality of treatment.

(2) When conducting an investigation under section 84S and 84T of the Act, the Commission may—

- (a) require the production of any document or information that is specified or that falls within a specified category, which it considers relates to any matter relevant to the investigation, at a time and place, and in the manner or form specified;
- (b) take copies of, or extracts from any document produced;
- (c) require an explanation of any such document; and
- (d) where a document is not produced, require a statement specifying where it can be found;
- (e) enter any premises with a warrant and require the production of any document appearing to be the kind in respect of which the warrant was granted or relevant to the investigation and require any relevant information held in computer to be produced in a form in which it can be read and taken away;
- (f) enter premises with a warrant search the premises and take copies of, or extracts from, any documents appearing to be the kind in respect of which the warrant was granted and require any relevant information held in a computer to be produced in a form in which it can be read and taken away.

14. Exemptions

(1) These Regulations shall not apply to conduct which is necessary—

- (a) for a licensee entrusted with the operation of essential communications services that relate to, among others, health, national security and any other circumstance that the Commission may prescribe, insofar as the application of the Regulations would obstruct the performance of the tasks assigned to the licensee;
- (b) to comply with a legal requirement; or
- (c) to avoid conflict with international obligations.

15. Revocation of Part IV of L.N. 68/2001

Part IV of the Kenya Communications Regulations, 2001 is revoked.

**KENYA INFORMATION AND COMMUNICATIONS (INTERCONNECTION AND
PROVISION OF FIXED LINKS, ACCESS AND FACILITIES) REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

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KENYA INFORMATION AND COMMUNICATIONS (INTERCONNECTION AND PROVISION OF FIXED LINKS, ACCESS AND FACILITIES) REGULATIONS

[L.N. 30/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“access” means availing facilities or services, to another service provider under specified conditions, on an exclusive or non-exclusive basis, for the purpose of providing telecommunications services;

“calling line identity” means the information generated by a telecommunications system that identifies the calling number and forwards it through the telecommunications network to a receiving communications system;

“co-location” means accommodation of two or more switches, transmission equipment, antennas or any other electronic communications equipment in, or on a single building tower or any other structure for the purpose of interconnecting communications networks;

“customer” means a user of telecommunications services provided by a telecommunications service licensee;

“end-to-end connectivity” means property that allows all nodes of the network to send information to all other nodes of the network, and do not require intermediate network elements to further interpret them;

“facilities acquirer” means a licensee who provides network services who has leased or shares facilities or has requested to lease or share facilities from a facilities provider;

“facilities provider” means a network facilities licensee who has been requested by a facilities acquirer for lease or to share facilities;

“interconnect capacity” means a transmission and switching capability and any other facility for connecting telecommunications networks of two or more telecommunications service licensees;

“interconnect licensee” means a provider of a telecommunications service who, in accordance with a licence issued by the Commission, is required to provide interconnection service to other telecommunications licensees;

“interconnecting licensee” means a provider of telecommunication services who has interconnected or has requested to interconnect its telecommunications system to the telecommunications system of an interconnect provider;

“interconnection” means the physical and logical linking of telecommunication networks used by the same or different service licensees in order to allow the users of one licensee to communicate with users of the same or another licensee or to access services provided by another licensee;

“interconnection agreement” means an agreement, entered into, before or after the commencement of these Regulations, between an interconnect licensee and an interconnecting licensee in relation to the interconnection of their telecommunication systems;

“interconnection information” means information in the possession or control of parties to an interconnection agreement or intending to interconnect their telecommunications systems and services which may assist such parties to formulate their interconnection or plans, to establish or maintain their telecommunication systems or a telecommunication service for the purpose of interconnection, which information may include—

- (a) technical, traffic and other relevant information system and facilities specifications; and
- (b) any material changes to that information or specifications which may impact on the parties’ interconnection arrangements or the services they intend to provide to customers by means of that interconnection;

“interoperability” means the ability of communication systems, units, or elements to provide services to and accept services from other systems, units or forces and to use the services exchanged to enable them to operate effectively together;

“licensee” means a person licensed under the Act;

“local access provider” means any person licensed by the Commission to provide telecommunications service within a geographical area (telecommunications region) prescribed by the Commission within which a licensee is licensed to operate telecommunications systems and services and shall include regional telecommunications service providers;

“network facility” means any element that forms part of an electronic communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with communications;

“just and reasonable charges” means charges that enable a licensee maintain its financial integrity, attract capital, operate efficiently and fully compensate investors for risks borne;

“licensee” means a person licensed under the Act;

“local access licensee” means any person licensed by the Commission to provide telecommunications service within a specified geographical area (telecommunications region) within which a licensee is licensed to operate telecommunications systems and services and shall include regional telecommunications service licensees;

“network facility” means any element that forms part of an electronic communications network and includes any wire, cable, antenna, mast or other thing which is or may be used for or in connection with communications;

“point of interconnection” means a mutually agreed upon point where the exchange of traffic between the telecommunication system or apparatus of an interconnect provider and the telecommunications system or apparatus of an interconnecting licensee, takes place, including the exchange of traffic between a local access provider or mobile cellular communication service provider (where applicable) and another licensed telecommunications network service provider;

“private network licensee” means the licensee of a telecommunications system that provides private telecommunication services for its own use;

“public network licensee” means a provider of a public telecommunications service;

“reference access offer” means a document setting out the terms and conditions under which an interconnect licensee undertakes to permit access to its telecommunications network in a nondiscriminatory manner;

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“reference interconnect offer” means a document setting out the terms and conditions under which an interconnect licensee undertakes to permit interconnection to its telecommunications network in a nondiscriminatory manner.

3. Application

These Regulations shall apply to all interconnect licensees and interconnecting licensees, including the form and content of interconnection agreements, access and facilities.

4. Rights and obligations to interconnect

(1) An interconnecting licensee shall, subject to compliance with the provisions of the Act and any guidelines on interconnection of telecommunications systems and services that the Commission may from time to time publish, have the right to choose its interconnection licensee to route its data traffic and calls towards customers of another licensee.

(2) Notwithstanding paragraph (1), an interconnecting licensee shall route its data traffic and calls towards international destinations through a licensee who has been licensed to provide the service.

(3) An interconnection licensee shall have the right and, when requested by an interconnecting licensee, an obligation, to negotiate the interconnection of its telecommunications system, facilities and equipment with the telecommunications system, facilities and equipment of the interconnecting licensee, in order to provide end-to-end connectivity and interoperability of services to all customers.

(4) An interconnection licensee shall accept all reasonable requests for access to its telecommunications system at the network termination points offered to the majority of the interconnecting operators.

(5) The Commission may exempt an interconnection licensee from the obligation under paragraph (1), where—

- (a) an interconnection agreement is prohibited by law;
- (b) the licence issued to a licensee does not permit a licensee to offer the services for which the interconnection is requested;
- (c) the requested interconnection is rendered impossible as a result of technical specifications; or
- (d) the interconnection would endanger the life or safety or result in injury of any person or harm to the interconnect licensee's property or hinder the quality of the services provided by the licensed service provider.

(6) The Commission shall publish any exemption granted under paragraph (5) of this Regulation.

5. Negotiation of interconnection agreements

(1) An interconnect licensee shall provide interconnection information to an interconnecting licensee upon receipt of written request.

(2) An interconnecting licensee's request for interconnection shall be given reasonable priority over customer orders of the interconnect licensee.

(3) Parties to an interconnection agreement shall negotiate in good faith and reasonably endeavour to resolve disputes relating to the form and subject of an interconnection agreement that may arise.

(4) Parties to an interconnection agreement shall negotiate freely between themselves and each negotiating party shall not—

- (a) intentionally mislead the other party;
- (b) coerce the other party into making an agreement that it would not otherwise have made; or
- (c) intentionally delay or obstruct negotiations.

(5) The terms and conditions for interconnection of telecommunications networks shall be based on the agreement reached between the parties to an interconnection agreement and promote increased access and efficient use of telecommunications systems, services and facilities.

(6) All interconnection agreements shall facilitate end-to-end connectivity by ensuring that calls originated on the telecommunications system of an interconnecting operator can be terminated at any point on the telecommunications system of any other telecommunications service provider on a non-discriminatory basis.

(7) The telecommunication system licensees shall make all interconnection agreements between them in writing and specify—

- (a) the scope and specification of interconnection;
- (b) access to all ancillary or supplementary services or access to and use of premises or land necessary to support interconnection;
- (c) maintenance of end-to-end quality service and other service levels;
- (d) charges for interconnection;
- (e) billing and settlement procedures;
- (f) ordering, forecasting, provisioning and testing procedures;
- (g) points of interconnection or co-location;
- (h) the amount of, or the forecast procedures to be used to determine, interconnect capacity to be provided;
- (i) transmission of call line identity;
- (j) network information;
- (k) information regarding system modernization or rationalization;
- (l) technical specifications and standards;
- (m) interoperability testing, traffic management, measurement and system maintenance;
- (n) an information handling process and confidentiality agreement;
- (o) duration for and renegotiation of the agreement;
- (p) formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;
- (q) formal dispute resolution procedures;
- (r) definition and limitation of liability and indemnity;
- (s) adequate capacity, service levels and reasonable remedies for any failure to meet those service levels;
- (t) force majeure;
- (u) other contractual terms and conditions; and
- (v) any other matters that the Commission may prescribe.

[Subsidiary]

- (8) Interconnection agreements shall not, directly or indirectly—
- (a) preclude or frustrate the exercise of rights or privileges given under the Act or a licence or by any person;
 - (b) impose any penalty, obligation or disadvantage on any person for exercising any rights under the Act or a licence;
 - (c) prohibit a person from providing an interconnection service which that person is able to lawfully provide; or
 - (d) frustrate the provision of a telecommunications service by a person is able to lawfully provide.
- (9) The Commission may on its own initiative or upon the request of a party—
- (a) intervene in negotiations on agreements for interconnection where no agreement is reached between the negotiating parties within six weeks of the commencement of the negotiations; or
 - (b) set time limits within which negotiations on interconnection are to be completed, which time limits shall not exceed six weeks unless the Commission considers that a longer period is necessary.
- (10) The Commission may from time to time issue technical, costing and other relevant guidelines to guide licensees in negotiating interconnection agreements.
- (11) Where a telecommunications service licensee—
- (a) enters into an interconnection agreement with another telecommunications licensee, the Commission may review the agreement to ensure that it conforms with the Act, Regulations and any guidelines on interconnection of telecommunications networks issued by the Commission; or
 - (b) has not interconnected its facilities upon request by another licensee, the Commission shall require the licensee concerned to interconnect its facilities in order to protect essential public interests and may set the terms and conditions of the interconnection.

6. Approval of interconnection agreements

(1) Parties to an interconnection agreement shall file with the Commission an application for approval of the proposed interconnection agreement at least fourteen days before the date of implementation of the interconnection agreement.

(2) Parties to an interconnection agreement shall file with the Commission an application for approval of the renewal or extension of an existing interconnection agreement at least fourteen days prior to the expiry of the agreement.

(3) The Commission may request for information from the parties to an interconnection agreement that it considers necessary to evaluate the terms and conditions and the charges set forth in the agreement, and request that the interconnection agreement be modified in the manner specified by the Commission, in writing.

(4) Upon receipt of a request by the Commission to modify an interconnection agreement the parties shall negotiate and submit a revised interconnection agreement to the Commission within ten days of receipt of the request by Commission.

(5) Where the parties are unable to agree on the requested modification, the Commission may, if it determines that a negotiated agreement is not achievable, provide an interconnection agreement to the parties that includes the terms and conditions and with the charges payable for the interconnection.

[Subsidiary]

(6) Where licensees are in the process of negotiating an interconnection agreement or have agreed on an agreement but the agreement is pending before the Commission for approval, the parties may agree to exchange traffic based on interim conditions and notify the Commission.

Provided that the conditions agreed on in the interconnection agreement once approved by the Commission shall apply in respect of the period for which the agreement is negotiated.

(7) A party who is aggrieved by the decision of the Commission may, within fifteen days from the date of the Commission's decision, appeal to the Tribunal.

7. Confidentiality

(1) A party to an interconnection agreement may, before the filing of the agreement with the Commission, mark provisions containing trade or operating secrets and the party shall additionally submit to the Commission for review a modified version of the agreement which does not, in that party's view, disclose the trade or operating secrets.

(2) Where the Commission considers the marking unjustified, it shall consult with the respective telecommunications service provider prior to making a decision to allow third parties to inspect the agreements in whole or in part and may subsequently restrict inspection to the modified version of the interconnection agreement.

8. Interconnection

(1) Any transmission of calls across and within telecommunications systems shall be seamless to both the calling party and the party receiving the call.

(2) All procedures for forecasting, ordering and provisioning interconnection shall be efficient and shall occur within reasonable time frames.

(3) All facilities or systems used for interconnection shall be provided in sufficient capacity to enable the efficient transfer of information between interconnected telecommunication systems.

(4) A service acquired as part of interconnection may be used for any lawful purpose.

9. Non-discrimination and transparency

In similar conditions and similar circumstances, an interconnection licensee shall provide interconnection on a non-discriminatory basis and the interconnection licensee shall ensure that—

- (a) the rates it charges do not vary on the basis of the class of customers to be served;
- (b) it provides interconnecting licensees with interconnection facilities and information under the same conditions and in the same quality that it affords to its subsidiaries, affiliates, or other similarly situated interconnecting licensees;
- (c) it avails to interconnecting licensees all necessary information and specifications related to interconnection; and
- (d) customers of an interconnecting licensees receive treatment that is no less favourable than the treatment which it affords to its own customers or the customers of its subsidiaries, affiliates, or other similarly situated interconnecting licensees.

10. Quality of service

(1) Parties to an interconnection agreement shall comply with all relevant service standards of the International Telecommunications Union and other technical standards that the Commission may publish from time to time.

[Subsidiary]

(2) A licensee shall ensure that the prescribed quality of service is not impaired on interconnection.

11. Network upgrading

(1) In order to achieve the quality of inter-operability to the prescribed level a licensee shall—

- (a) notify the Commission and all other licensees interconnecting in the network, of any planned change in the network capacity, technology, structure and configuration, at least three months prior to the planned change; and
- (b) provide details relating to any change in the licensee's network, including traffic forecast to the Commission at least three months prior to the planned change.

12. Interconnection charges structure

(1) All charges for interconnection services shall—

- (a) be objective, independently verifiable and fair;
- (b) be charged for each type of telecommunications service related to interconnection;
- (c) not be designed to facilitate cross-subsidies by an interconnect provider of its network;
- (d) be below the retail charges levied by the interconnect provider for the provision of any retail service that makes similar use of those network elements that are required by both the retail and interconnection service; and
- (e) be sufficiently below retail service charges to allow for recovery of the incremental retail costs associated with provision of the retail service supported by the interconnection service that the interconnect service provider would have to incur in order to compete effectively with the interconnect provider at the retail level.

(2) All charges for interconnection shall be structured to distinguish and separately price—

- (a) fixed charges for the establishment and implementation of physical interconnection;
- (b) periodic rental charges for use of facilities, equipment and resources including interconnect and switching capacity; and
- (c) variable charges for telecommunications services and supplementary services.

(3) A licensee shall be free to acquire services from an interconnect provider at any retail price offered by the interconnect provider without prejudice to any rights to acquire the same or similar services under an interconnection agreement.

(4) The Commission shall prescribe guidelines on interconnection charging methodology from time to time.

13. Interconnection procedures

(1) All requests by an interconnecting licensee for any form of interconnection shall be in writing and shall provide the interconnection licensee with information relating to—

- (a) the form of interconnection;
- (b) the date for the commencement of negotiations;

- (c) the approximate date the interconnection is required; and
- (d) an estimate of the capacity required.

(2) A copy of the request for interconnection in paragraph (1) shall be forwarded to the Commission by the requesting party within seven days of the request by the requesting party.

(3) The interconnect licensee shall inform the interconnecting operator in writing within fourteen days of receipt of the request for interconnection of its ability and willingness to supply the form of interconnection requested within the time frames requested by the interconnecting licensee and its ability to commence negotiations on the date requested.

(4) Where the parties do not agree on the date to commence negotiations, the Commission shall facilitate negotiations to an interconnection agreement on a date specified by the Commission.

(5) Where the Commission is of the view that parties to an interconnection agreement have taken longer than necessary to negotiate and conclude an interconnection agreement, and the proposed charges to an interconnection agreement are unreasonable and do not promote effective competition the Commission shall make a determination to be applicable during the time when negotiations are going on and the time within which negotiations on interconnection are to be completed.

(6) Where a party or any other person alleges that there has been a contravention or failure to comply with the provisions of the Act, Regulations and any guidelines on interconnection or an interconnection agreement, the Commission shall investigate and make a decision.

(7) Where the interconnect licensee has informed the interconnecting licensee that it is able to provide interconnection, it shall ensure that the system conditioning and provisioning procedures required to provide such interconnection are undertaken within the time required by the interconnecting licensee.

(8) Disputes that relate to the timely provision of interconnection or notice of planned changes shall be submitted to the Commission for determination.

14. Establishment and location of points of interconnection

(1) Parties to an interconnecting agreement shall establish and maintain points of interconnection at any technically feasible points agreed by the parties.

(2) An interconnecting licensee shall, in sufficient detail, notify the interconnection licensee of the points at which they wish to be interconnected to enable the interconnection licensee to assess the systems conditioning and other requirements for establishing such points of interconnection.

(3) Points of interconnection shall be established as soon as practicable following a request and not later than thirty days from the date of the request.

(4) Unless otherwise determined by the Commission, interconnecting licensees shall be responsible for the cost of building and maintaining the points, data fill and switching capacity to support the interconnection and for the costs of transport from their points of origination to points of interconnection.

(5) Licensees providing interconnection services may mutually agree on the point of interconnection and share the costs of establishing such points of interconnection.

(6) Where a licensee seeking interconnection from any interconnection licensee requests that its facilities for interconnection be co-located with the facilities or premises of the interconnection licensee, such co-location may be provided and the costs of such collocation shall be mutually agreed by the parties.

[Subsidiary]**15. Calling line identity**

Parties to an interconnecting agreement shall pass calling line identity and all necessary signalling data between interconnecting parties in accordance with standards prescribed and published from time to time by the Commission.

16. Modification, suspension and termination

(1) Parties to an interconnection agreement shall ensure that any modification, suspension or termination of the interconnection agreement does not adversely affect customers.

(2) An interconnect provider may not terminate an interconnection agreement unless—

- (a) the termination is as a result of a fundamental breach of the interconnection agreement and the interconnecting licensee after having been given an opportunity to remedy the breach, has failed to do so;
- (b) the interconnect provider gives reasonable written notice of its intention to terminate and—
 - (i) specifies the grounds for termination; or
 - (ii) gives, in the case of breach, a notice of one month, for the service provider to remedy the breach;
- (c) the Commission has been notified of the intended termination and it has given consent, in writing.

(3) A party to an interconnection agreement may only suspend interconnection in exceptional circumstances and only where such suspension is intended to address a material degradation of telecommunications systems or services and the Commission notified of the intended suspension and it has given its consent.

(4) Parties to an interconnection agreement that has been approved by the Commission may amend or modify the agreement by giving the Commission a copy of the proposed amendment not less than fourteen days prior to the effective date.

17. Confidentiality

(1) A party who receives information relating to interconnection from another party which is designated as confidential shall keep the information confidential and may disclose it—

- (a) to employees, agents or advisers who need to know that information for the purpose of the provision of interconnection, or giving advice thereon;
- (b) to persons to whom such disclosure is authorised by that other party;
- (c) where such disclosure is authorized or required by law; and
- (d) to the Commission.

(2) Confidential information relating to interconnection of a party received by another party, or business information generated by the telecommunications system of a party as a result of interconnection, shall be used solely for the purpose of providing interconnection, and shall not be disclosed to any person involved in the development or provision of retail services of the other party, its subsidiaries or affiliates.

(3) The provisions relating to confidentiality of any matter in an interconnection agreement shall not prevent the disclosure by the Commission of any provisions therein due to public interest or pursuant to a legal process.

18. Reference interconnection offer and reference access offer obligations

(1) Where the Commission issues an order requiring a dominant telecommunications service licensee to publish a reference interconnection offer or a reference access offer, the licensee shall, unless otherwise determined by the Commission—

- (a) submit a proposed reference interconnection or reference access offer, as the case may be, to the Commission for review and approval within three months after the issuance of the order by the Commission; and
- (b) be subject to the terms and conditions of the approved reference interconnection or reference access offer approved by the Commission, subject to any amendments considered appropriate by the Commission, within three months after the issuance of the order by the Commission.

(2) Prior to approving any reference interconnection or reference access offer or any amendments thereto, the Commission may—

- (a) request for additional information or clarification from the dominant telecommunications service licensee with regard to the proposed reference interconnection or reference access offer; or
- (b) consult with the industry and public on the proposed reference interconnection or reference access offer.

(3) The Commission may publish guidelines or models for the uniform sector-wide application of reference interconnection or reference access offers, which shall be used by all dominant telecommunications service licensees.

(4) The reference interconnection offers shall be sufficiently unbundled to ensure that the interconnecting operators do not pay for network elements or facilities which are not necessary and shall contain a description of the components of the offer, associated terms and conditions, including the structure and level of prices.

(5) The reference access offers shall be sufficiently unbundled to ensure that the access seekers do not pay for network elements or facilities which are not necessary and shall contain a description of the components of the offer, associated terms and conditions, including the structure and level of prices.

(6) Where applicable, the reference access offers shall, where applicable, include detailed information related to access to—

- (a) network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means;
- (b) physical infrastructure including buildings, ducts and masts;
- (c) relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality;
- (d) fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services; and
- (e) access to virtual network services.

19. Co-location

(1) Where a licensee has the right to install facilities on, over or under private land or take advantage of a procedure for the expropriation or use of property, the Commission shall encourage the sharing of such facilities and property with other licensees, in particular, where other licensees do not have access to viable alternatives.

(2) A service provider providing such co-location shall—

- (a) file with the Commission a schedule of fees charged for co-location;

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- (b) agree on a meet-point with another licensee seeking interconnection and designating location for interconnecting the network;
- (c) provide reasonable, just, and non-discriminatory rates, terms and conditions for physical collocation of equipment necessary for interconnection or for providing access to the unbundled network elements at the licensee's premises;
- (d) resort to virtual co-location, requiring interconnection at a place outside the licensee's usual premises such as switching, transmission, or main distribution door frame room if it is demonstrated that physical co-location is not practical for technical reasons or for space limitations;
- (e) agree with a licensee seeking interconnection on a facility that is based in the central office of either party to complete the transmission; and
- (f) charge a fee according to filed tariffs.

(3) The terms and conditions for co-location or sharing of facilities shall be subject to a commercial and technical agreement between the parties concerned and the Commission may intervene to resolve disputes arising from such agreements.

20. Network access and facilities

(1) A Facilities licensee shall facilitate access to network facilities in the following manner—

- (a) access to network facilities shall be commercially agreed upon between the facilities acquirer and the facilities licensee;
- (b) request for access to network facilities shall be reasonable and in writing;
- (c) a facilities licensee and a facilities acquirer shall negotiate access to network facilities, at all times, in good faith;
- (d) a facilities licensee shall submit a copy of a concluded access agreement to the Commission within thirty days after the conclusion;
- (e) the Commission may authorize access to essential facilities of dominant telecommunications service providers; and
- (f) a facilities licensee who has been authorized to provide access to network facilities shall be entitled to levy a charge for such access to enable it recover economic costs and ensure a reasonable rate of return;

(2) A facilities provider shall treat each—

- (a) facilities acquirer on a basis that is non-discriminatory in its provision of facilities and no less favourable than the treatment which the facilities provider affords to its subsidiaries, its affiliates, or other similarly situated facilities acquirers;
- (b) communication network service of a facilities acquirer on a basis that is non-discriminatory and no less favourable than the treatment which the facilities provider affords to the electronic communication network services of itself, its affiliates, or other similarly situated facilities acquirers; and
- (c) customer of a facilities acquirer on a basis that is non-discriminatory and not less favourable than the treatment which the facilities provider affords to its own customers of the customers of its subsidiaries, its affiliates, or other similarly situated facilities acquirers.

(3) A facilities licensee may refuse unreasonable requests for access to its network facilities.

(4) A request for access to network facilities shall be unreasonable if it—

- (a) is not economically or technically feasible; or

- (b) may result in the facilities licensee being unduly prejudiced.

(5) An access agreement shall be in writing and it shall, unless it is not relevant to the access that has been requested, specify—

- (a) the scope and specification of the facilities to be provided;
- (b) access to all ancillary or supplementary services, or access to and use of premises or land that are required to support the provision of network facilities;
- (c) service levels and the maintenance of facilities;
- (d) charges for the facilities;
- (e) billing and settlement procedures;
- (f) ordering, forecasting, provisioning and testing procedures;
- (g) the provision of co-location for facilities and the terms and conditions in accordance with which co-location is to be provided;
- (h) technical specifications, standards and inter-operability tests;
- (i) information handling and confidentiality;
- (j) duration, re-negotiation and review procedures; and
- (k) dispute resolution procedures.

(6) A facilities licensee shall not be required to provide access where, in the Commission's view, it is not reasonable to require the facilities provider to provide access including, among others, to circumstances where it is beyond its control or it is not reasonably practicable.

21. Provisions for leased capacity

(1) A telecommunications licensee who intends to acquire leased capacity in order to provide services licensed under the Act shall request for the provision of such capacity from a facilities licensee.

(2) A facilities acquirer who intends to acquire leased capacity shall present a request for leased capacity, in writing, to a facilities licensee specifying the requested location, quantity and other technical requirements.

(3) A facilities licensee shall respond to a request under paragraph (2), in writing within fifteen days of receipt of the request, stating whether the required capacity can be supplied in accordance with the requested technical requirements, the offered price, and the date upon which the installation of the requested capacity shall be completed, which date shall not be later than ninety days after receipt of the request.

(4) A facilities acquirer may apply to the Commission for permission to establish its own network or infrastructure—

- (a) where a facilities licensee is unwilling to provide the service or
- (b) upon failure by the facilities licensee to—
 - (i) reply to a request within ninety days of receipt;
 - (ii) complete the installation of the required capacity within ninety days of receiving the request; or
 - (iii) provide capacity at a reasonable price and at quality or technical standards which comply with telecommunication systems requirements.

(5) The Commission may, upon receipt of an application made under paragraph (4), authorize a facilities acquirer to establish the required capacity.

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22. Dispute resolution

Any dispute arising out of the application of these Regulations shall be resolved in accordance with the Kenya Information and Communications (Dispute Resolution) Regulations, 2010.

23. Revocation of Part VII of L.N. 168/2001

Part VII of the Kenya Communications Regulations, 2001 is revoked.

**KENYA INFORMATION AND COMMUNICATIONS (CONSUMER PROTECTION)
REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (CONSUMER PROTECTION)
REGULATIONS, 2010**

[L.N. 54/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Consumer Protection) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**child**” means any human being under the age of eighteen years;

“**commercial code of practice**” means the principles, values, standards or rules that guide or govern the decisions, procedures and systems of an organization in a way that contributes to the welfare of its key stakeholders, and respects the rights of all constituents affected by its operations;

“**complaint**” means any statement of dissatisfaction with the services of a licensee made by a customer;

“**customer**” means any person who uses the services or purchases the products of a particular licensee or vendor, without necessarily being a subscriber to that licensee or vendor;

“**disability**” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;

“**licensee**” means a person licensed under the Act;

“**outage credit**” means a credit to be paid to a subscriber for a period of time when the service is not operating for reasons not caused by the subscriber;

“**subscriber**” means any person who purchases a communications service or agrees to receive and pay for the service from a licensee through a subscriber service agreement;

“**subscriber service agreement**” means an agreement entered into by a licensee and subscriber for the provision of the licensed services to the subscriber;

“**vendor**” means a person who carries out the business of selling, reselling or distributing ICT terminal equipment used for the provision of licensed services.

3. Rights and obligations of customers

(1) A customer shall have the right to—

- (a) receive clear and complete information about rates, terms and conditions for available and proposed products and services;
- (b) be charged only for the products and services they subscribe to;
- (c) where possible, select a service provider and service of the customer's choice;
- (d) personal privacy and protection against unauthorized use of personal information;

[Subsidiary]

- (e) accurate and understandable bills for products and services authorised by the customer, and to fair prompt redress in the event of a dispute in the provision of the products and services;
 - (f) protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees; and
 - (g) equal opportunity for access to the same type and quality of service as other customers in the same area at substantially the same tariff limiting variations to available or appropriate technologies required to serve specific customers.
- (2) A consumer shall—
- (a) use communications systems and services in the appropriate manner, without abusing them;
 - (b) familiarize with and honour their obligations under any contract entered into with a product supplier or service provider;
 - (c) make reasonable decisions in exercising their right of choice; and
 - (d) familiarize with and abide by any safety or security requirements pertaining to the use of communications systems and services.

4. Safeguards

(1) A service provider shall take appropriate technical and organizational measures to safeguard the security of its services.

(2) Where there is a particular risk of a breach of the security of the network, a licensee shall—

- (a) inform the subscribers of the risk; and
- (b) where the risk lies outside the scope of the measures that may be taken by the licensee, of any possible remedies, including an indication of the likely costs involved.

5. Customer care system

(1) A licensee shall, within the period specified in its licence or by the Commission, establish a customer care system within which customers can make inquiries and complaints concerning its services in such format and containing such details as may be required by the Commission within the time prescribed in the licence or within a reasonable time after the grant of a licence, or as may be specified by the Commission and be available upon commencement of provision of service to the public.

(2) The Commission may from time to time publish guidelines relating to the customer care systems that the licensee may establish.

6. Provision of services and sale of ICT terminal equipment

(1) A vendor shall provide all pertinent information on the equipment it offers for sale, including among others, the type-approval or type acceptance status and whether or not such equipment is new or used, to prospective buyers in a clear and unambiguous manner.

(2) A vendor shall honour all agreements entered into with a buyer, through the sale of terminal equipment and shall ensure that such equipment is in proper working order at the time of sale.

(3) A vendor shall ensure that its advertisements relating to the goods regulated under the Act are unambiguous and factual.

[Subsidiary]**7. Complaint handling procedures of licensees**

(1) A licensee shall provide easily understood information about its complaint handling processes in various media and formats, including as specifically directed by the Commission from time to time.

(2) A customer who wishes to lodge a complaint shall reduce the complaint in writing and lodge it within six months from the date of the incident that the complaint arises from.

(3) A licensee shall acknowledge the receipt of a complaint filed with it.

(4) A licensee shall where possible, advise a customer at the time of making the complaint on the expected action, timing for investigation and resolution of the complaint and in the event that the service provider regards the complaint as frivolous or vexatious, the consumer shall be informed accordingly.

(5) A licensee shall resolve all complaints made by its customers within a reasonable time.

(6) A licensee shall put in place a process to provide customer with sufficient information and the means to inquire on the progress of complaints and the processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by customers.

(7) A licensee shall inform the customer of the outcome of the investigation of their complaint, and any decision of the licensee.

(8) Where a customer is not satisfied with a decision made on a complaint, the licensee shall give the customer the option of pursuing an identified escalation process, where the decision may be examined by a suitably qualified person in the licensee's organisation.

(9) Where the consumer has already gone through the licensee's escalation process and the complaint has not been resolved to the consumer's satisfaction, the customer may refer the complaint to the Commission.

(10) The complaint handling processes shall be provided free of charge.

(11) Notwithstanding paragraph (10), where the investigation of the complaint requires the retrieval of records more than twelve months old or the retrieval results in any incremental expense or significant inconvenience to the licensee, a licensee may impose a reasonable charge for the complaint handling processes.

(12) Any such charges shall be identified by the licensee, be agreed to by the customer and referred to the Commission before being imposed.

(13) A licensee shall file, with the Commission, such information and statistics on all complaints reported, including those resolved and those outstanding, on a quarterly basis in the manner prescribed by the Commission from time to time.

8. Complaints by persons with disabilities

(1) A licensee shall ensure that persons with disabilities can easily access its complaint handling processes.

(2) A licensee shall provide reasonable assistance to a customer who specifically requests for assistance when lodging complaints.

(3) A licensee shall take such measures as may be prescribed by the Commission to ensure that the requirements and interests of disabled customers are fully addressed.

(4) A licensee shall fulfill any specific obligations that relate to special services or special arrangements for customers with disabilities that the Commission may from time to time impose.

9. Protection of children

(1) A licensee shall establish mechanisms that enable parents and legal guardians to block access of children to harmful content.

(2) A licensee who owns promotes, glamorises or markets alcohol and tobacco products or other harmful substances that are directed at children commits an offence.

10. Information for customers

(1) A licensee shall provide a clear and understandable description of available services, rates, terms, conditions and charges for such services and publish the information within such periods as may be determined by the Commission.

(2) The Commission may from time to time publish information that may include, among others, tariffs and statistical information, it considers useful to customers.

(3) Without prejudice to any other information that may be required by the Commission, a service provider shall provide customers at the point of sale, where applicable with—

- (a) the name of the service provider;
- (b) a toll free consumer service number;
- (c) the activation fee or initiation fee, including deposit requirements;
- (d) the monthly access fees or base charges tariff provisions for calculating charges including, among others—
 - (i) minimum charges, units, distances;
 - (ii) peak, and off peak rates;
 - (iii) night, weekends and holidays rates;
 - (iv) international call charges; and
- (e) any additional or different prices, rates or unit values applicable, and additional taxes or fees.

12. Outage credit system

(1) A licensee shall, within six months from the date of the grant of the licence, submit to the Commission a system of outage credits to be given to a subscriber, which upon the Commission's approval shall become part of the licensee's standard subscriber service agreement.

(2) A licensee shall not be responsible to subscribers for scheduled outages arising in accordance with the terms and conditions of a licence, from an event or effect, which in the Commission's view was not reasonably foreseeable or preventable.

13. Code of commercial practice

(1) A licensee shall submit to the Commission, within six months of being granted a licence for approval, a commercial code of practice in the prescribed manner.

(2) Upon receiving the code submitted under paragraph (1), the Commission may—

- (a) approve the proposed code;
- (b) approve the commercial code of practice with the recommendation that the licensee makes alterations specified by the Commission;
- (c) decline to approve the proposed code and direct that the licensee improves specified areas or further develops the proposed code; or
- (d) extend the period for the review of the proposed code.

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(3) The commercial code of practice shall include, among others, the licensee's complaints handling procedure, advertising policy, system of outage credit and the emergency safety and assistance services and any other information as the Commission may determine.

(4) A licensee shall deliver to each subscriber within three months of the commencement of the service, the commercial code of practice as approved by the Commission.

(5) The commercial code of practice shall not replace or reduce any benefit of price assurance provided to the subscriber by the subscriber service contract; and shall—

- (a) supplement the subscriber service contract and not reduce a subscriber's consumer rights; and
- (b) be consistent with consumer protection laws.

14. Standard subscriber service Agreements

(1) A licensee shall submit to the Commission, for approval, the standard subscriber service agreement applicable to each service it offers to the public.

(2) Where a dispute arises between a consumer and a licensee on the interpretation of the terms of a service agreement that had not been submitted to the Commission for approval prior to the dispute or complaint and the dispute is submitted to the Commission for resolution, the decision of the Commission shall prevail over the provisions in the subscriber service agreement that had not been approved by the Commission.

(3) For the avoidance of doubt, agreements entered into between terminal equipment vendors and their customers through the sale of such equipment shall be subject to these Regulations and shall be enforced by the Commission.

15. Confidentiality

(1) Subject to the provisions of the Act or any other written law, a licensee shall not monitor, disclose or allow any person to monitor or disclose, the content of any information of any subscriber transmitted through the licensed systems by listening, tapping, storage, or other kinds of interception or surveillance of communications and related data.

(2) A licensee shall, where applicable, establish mechanisms by which customers may be able to—

- (a) know that information is being collected about them through their use of various telecommunications services and systems; and
- (b) receive conspicuous notice that such information could be used, or is intended to be used, without authorisation, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities;

(3) Notwithstanding paragraph (2)(b), nothing in this regulation shall be construed to mean that a licensee may sell or offer for free, to a third party, any information collected by the licensee without the prior consent of the consumer concerned.

(4) In the case of children, the powers exercised in paragraph (1) and (2) shall be vested in the parents or lawful guardians on their behalf.

16. Operator assistance

A licensee shall, where applicable, ensure that all its customers can access operator assistance services.

17. Unsolicited communications

(1) A person who uses automated calling systems without human intervention, facsimile machines or electronic mail for purposes of direct marketing without the prior consent of the subscriber commits an offence.

(2) A person who sends electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that the communications cease commits an offence.

(3) Where a natural or legal person legally obtains from its subscribers their electronic contact details for electronic mail, in the context of a sale of a product or service, the natural or legal person may use these electronic contact details for direct marketing of his or its own similar products or services so long as he or it gives the subscriber an opportunity to object, free of charge and in a simple manner, to the use of the data when it is collected and on the occasion of each message in case the subscriber had not initially objected to the use.

(4) All automated direct-marketing schemes to be used in Kenya shall be based on an opt-in principle, in which potential subscribers shall be accorded the opportunity to accept or reject inclusion in a marketer's mailing list.

18. Presentation and restriction of calling and connected line identification

The Commission shall, from time to time, prescribe through guidelines, the manner in which calling line identification features shall be available to subscribers through licensees whose systems have such capabilities.

19. Emergency services

(1) A licensee shall provide free access to emergency safety and assistance services in the manner determined by the Commission from time to time, in accordance with the written laws in force and international standards.

(2) A licensee shall permit calls to internationally and nationally emergency numbers to be free of charge.

(3) A licensee shall, where technically possible, forward any useful personal data to the designated emergency services providers upon connecting emergency calls.

(4) Where there is doubt, the Commission shall determine the numbers that qualify for toll free access under paragraph (1) and (2).

20. Billing

(1) A licensee shall install a billing system that permits, upon request by a customer, issuance of bills that identify the rates charged to the subscriber, the number called, the duration of each call, the charge per call, applicable discounts and the class of service and any other information as may be stimulated by the Commission.

(2) The Commission may include in the billing requirements information relating to—

- (a) the name of licensee;
- (b) the billing period covered by bill;
- (c) change in licensee;
- (d) disclosure of any rate or service charge, including those implemented within the next billing cycle;
- (e) a listing of the statement or payment due date;
- (f) amount of charges debited to each billed account from the previous cycle;

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- (g) amount of payments made to each billed account segregated from late payments;
- (h) terms for late payment fees and termination of service;
- (i) the licensee's toll free number or numbers by which customers may make inquiries about or dispute charges contained on the bill and the methodology used to quantify charges;
- (j) toll free number of the where customers may make inquiries or file complaints;
- (k) rental charges; and
- (l) any other information that the Commission may from time to time by require to be included.

(3) A licensee shall put in place a mechanism through which a subscriber to its service may place a request for an itemised bill, where the service is not issued as a standard offer and accord each customer the option of receiving itemised bills on a regular basis if the subscriber so wishes and upon payment of a reasonable charge.

21. Guidelines

(1) The Commission may issue guidelines for the implementation of these Regulations, the guidelines may, among others, relate to—

- (a) standard of conduct for service providers; and
- (b) key performance indicators for both the sector and individual service providers.

(2) The Commission may review the guidelines made under paragraph (1), to ensure that the guidelines remain relevant and effective.

22. Monitoring sector performance

The Commission shall monitor sector performance, conduct consumer satisfaction surveys and publish its findings at least once in every two years.

23. Offences and penalties

(1) A licensee who—

- (a) fails to perform the measurement, reporting and record keeping tasks within the required time;
- (b) fails to reach a target for any of the parameters stipulated under these Regulations;
- (c) fails to submit, during a time specified by the Commission, information requested by the Commission pursuant to these Regulations;
- (d) submits or publishes false or misleading information about the quality of its services;
- (e) obstructs or prevents an inspection or investigation carried out by the Commission pursuant to these Regulations;
- (f) engages in any act or omission whose effect would be to defeat the purposes of these Regulations,

commits an offence.

(3) A person who commits an offence under these Regulations shall, where no specific penalty is provided for, is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

24. Period of compliance

(1) A licensee shall put in place such measures, processes or systems necessary to fully comply with these Regulations within six months of their coming into force.

(2) All existing contracts and codes that have not been filed with and approved by the Commission as required by these Regulations shall be filed and approval sought within six months of the coming into force of these Regulations.

**KENYA INFORMATION AND COMMUNICATIONS (NUMBERING)
REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
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 4. Establishment of a National Communication and Numbering Plan.
 5. Administration and planning of numbering and communication addresses.
 6. Compliance with numbering and address plans.
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 12. Delegation of Responsibility.
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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (NUMBERING)
REGULATIONS, 2010**

[L.N. 55/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Numbering) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“communications addresses” means an address determined by the Commission from time to time, for use in communication;

“communication number” means the number, sign or other mark that a licensee uses for identification of communications systems when its delivering communication services in order to connect between the place of transmission and the place of reception, or for the identification of the type of content of transmission the communications system is to deliver;

“licensee” means a person licensed under the Act;

“Maritime Mobile Service Identity” means a number used for the purpose of identification while using Global Maritime Distress Service System search and rescue facilities on board ships;

“National Communication Numbering and Addressing Plan” means the plan for electronic communications numbers and addresses, postal codes and national addressing system established by the Commission under regulation 4;

“Numbering Scheme” means the procedures and criteria for the reservation, assignment, and reclamation of numbering resources.

3. Object and purpose

The object and purpose of these Regulations is to provide a regulatory framework for the control, planning, administration and management of the numbering and addressing of network services, national plan and applications services.

4. Establishment of a National Communication and Numbering Plan

The Commission shall establish a National Communication Numbering and Address Plan and control all communication numbers and addresses to ensure fairness and efficiency by—

- (a) undertaking planning, allocations and monitoring;
- (b) maintaining the national communication numbering and address register for all licensees in respect of resources which have been assigned;
- (c) facilitating maintenance of the national electronic address and users register;
- (d) managing postal codes and national addressing systems;
- (e) assigning call signs to all amateur radio operators in the country; and
- (f) issuing maritime mobile service identity numbers for maritime vessels registered in Kenya.

5. Administration and planning of numbering and communication addresses

(1) The Commission shall control, plan, administer and manage the numbering and addressing of communications systems and services.

(2) The Commission shall develop a numbering, and addressing plan for the communications systems and services taking into account the numbering plan subsisting immediately prior to the commencement of these Regulations.

(3) In the discharge of its functions under these Regulations, the Commission shall liaise with the relevant international organizations dealing with numbering and electronic addresses.

(4) Prior to the assignment and publication of any numbering plan, the Commission shall ensure that the numbering plan—

- (a) provides for allocation of numbers to licensees in sufficient quantities in the manner determined by the Commission;
- (b) allows for numbers to be allocated without undue delay;
- (c) allows for the inclusion of as few digits as is practicable;
- (d) does not confer an undue advantage on any licensee; and
- (e) minimizes any inconvenience and costs that may be caused by the implementation of the numbering plan to a licensee and to persons using the communication systems.

(5) The numbering scheme of each licensee shall comply with the Commission's guidelines relating to the implementation of the national numbering plan.

(6) The numbering and addressing plan may set out rules which may include—

- (a) the use of different numbers and addresses for different kinds of services;
- (b) the assignment of numbers and addresses;
- (c) the transfer of assigned numbers and addresses;
- (d) the use of assigned numbers and addresses;
- (e) the portability of assigned numbers and addresses;
- (f) the requirements that licensees maintain a plan for assigning and re-assigning numbers and addresses;
- (g) the fees for the assignment and transfer of numbers and addresses which may be determined by the Commission; and
- (h) any other matters that the Commission may, from time to time, prescribe in the *Gazette*.

(7) The Commission may when assigning or allocating numbers to licensees charge the prescribed fees for the allocation or assignment.

(8) The Commission shall permit any person, upon paying the prescribed fee, to inspect the numbering and addressing plan during working hours.

(9) Notwithstanding paragraph (8), any person authorized by the Commission, in writing, may inspect the numbering plan without paying the prescribed fee.

6. Compliance with numbering and address plans

(1) A licensee shall apply and abide by the numbering plan prescribed by the Commission.

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(2) The Commission may, before developing a numbering plan, consult with licensees in respect of—

- (a) arrangements for the allocation and re-allocation of numbers within the initial numbering plan; and
- (b) additions to, or replacement of the initial numbering plan.

(3) The Commission shall, at least six months before prescribing a new numbering plan give notice to licensees and the general public in the *Gazette* and any other media that the Commission considers appropriate.

7. Obligations of licensees

(1) All licensees shall use the communication numbers and addresses assigned by the Commission in accordance with the National Communication Numbering and Address Plan and ensure that the resources are—

- (a) utilized efficiently;
- (b) limited to provision of communication services;
- (c) utilized in a manner that ensures that communications systems and services are identified;
- (d) utilized and paid for as prescribed by the Commission; and
- (e) not transferred without the prior written consent of the Commission.

8. Communications numbering and electronic address plan

(1) The National Communication Numbering and Address Plan shall include communication numbers and addresses used to identify—

- (a) electronic communications networks;
- (b) different carries;
- (c) terminal facilities for cellular phones;
- (d) signaling transmission equipment;
- (e) emergency and inquiry calls;
- (f) terminal transmission line facilities for data communication services;
- (g) electronic mail communications networks;
- (h) types or content of information and communication technologies;
- (i) terminal transmission line facilities for paging services;
- (j) geographical postal points of delivery;
- (k) maritime mobile service identity numbers;
- (l) radio call signs; and
- (m) such other systems and services as the commission may from time to time prescribe in the *Gazette*.

9. Assignment of communications numbers

Where an application for communication numbers or addresses is submitted to the Commission, the Commission shall, after taking into account the National Communication Numbering and Address Plan and availability of the numbers and addresses, assign and issue a certificate of assignment together with the conditions attached to the use of the communication numbers the numbers required for the communication numbers or addresses, upon payment of the prescribed fee.

10. Cancellation of assignment

(1) Where a licensee fails to use the number or address assigned by the Commission within the prescribed period, fails to pay any prescribed fees or uses the number in a manner contrary to the Regulations, the licensee shall be required to submit to the Commission the reasons for such failure, after which the Commission may take such measures as it deems fit including, among others, cancellation of the assignment.

(2) A licensee who fails to utilize a number or address assigned to it by the Commission within the period prescribed in the assignment may apply, in writing, to the Commission for the extension of the time within which the licensee ought to utilize the number or address.

(3) An application for extension of time under paragraph (2) shall include the reasons for the failure to utilize the number within the time prescribed.

11. Prohibition of generation and use of fictitious numbers and addresses

A person shall not regenerate or use fictitious numbers or addresses.

12. Delegation of responsibility

(1) The Commission may appoint a person or an organization to manage or maintain an integrated public number or address database.

(2) The Commission, or a person or an organization appointed under paragraph (1) shall provide non-discriminatory commercial access to the database on terms and conditions similar to those it offers itself.

(3) The Commission may prescribe, in the *Gazette*, the manner in which obligations under this regulation may be undertaken.

13. Offence and penalty

A licensee who uses numbers or addresses contrary to these Regulations, commits an offence and is liable, upon conviction, to a fine of not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

14. Revocation of Part IX of L.N. 68/2001

Part IX of the Kenya Communications Regulations, 2001, is revoked.

**KENYA INFORMATION AND COMMUNICATIONS (POSTAL AND COURIER
SERVICES) REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Delivery and acceptance.
4. Postal licensees to make rules.
5. Issuance of postage stamps.
6. Sale of postage stamps.
7. Illegal manufacture and unlawful use of postage stamps.
8. Issuance of certificates of posting.
9. Disposing undeliverable postal articles.
10. Postal articles of dead persons.
11. Prohibited articles.
12. Postal security and safety.
13. Compensation.
14. Use of technology.
15. Universal service obligation.
16. Extra-Territorial Offices of Exchange (ETOE).
17. Penalty.
18. Revocation of Part X of L.N. 68/2001.

FIRST SCHEDULE

[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (POSTAL AND COURIER SERVICES) REGULATIONS, 2010**

[L.N. 56/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Postal and Courier Services) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“basic postal services” means a defined set of postal services that are essential for public use including postage stamps, private letter boxes, acceptance, conveyance and delivery of letters weighing up to three hundred and fifty grams and postal financial services;

“commemorative stamps” means postage stamps used as a mark of honour for events or matters of national or international significance and for philatelic purposes with a validity period of five years from the date of issue;

“definitive stamp” means stamps depicting nature or natural heritage and which are valid for a maximum of ten years from the date of issue;

“Extra-Territorial Office of Exchange (ETOE)” means an office of exchange operated by or in connection with a postal licensee outside its national territory;

“post code” means a numeric or other code that identifies postal zones and individual post offices within the country for purposes of simplified mail distribution;

“postal licensee” means the Postal Corporation of Kenya and any other organisation licensed to provide unreserved postal services, including courier companies, transporters, freight, forwarders, delivery companies and direct marketing companies that handle postal articles;

“reserved postal services” means—

- (a) the collection, transportation, sorting, and delivery, for hire or reward of letters and postcards weighing up to three hundred and fifty grams, but not including exempted letters sent by licensed courier, letters accompanying goods at the time of delivery, newspapers, magazines, books, non-addressed leaflets, catalogues, and trade announcements letters delivered otherwise than for reward, letters delivered by an employee of the sender, letters containing any writ or proceeding from court or any legal instrument of any kind and, letters carried to the premises of a provider of electronic mail service for the purpose of transmission by electronic mail;
- (b) the production and issuance of postage stamps, prestamped envelopes, aerograms, and international reply coupons bearing the official national coat of arms or the words “Republic of Kenya”, “Kenya,” or “Kenya Post”; and
- (c) the rental or lease of private letter boxes or bags including use of postal addresses and post codes;

“terminal dues” means remuneration by the administration of the origin of a postal article to the administration of the destination of the postal article;

“universal postal services” means consistent supply of basic postal services at affordable prices at all points within the country;

“universal service obligations” means obligations assumed by the public postal licensee by virtue of a license granted by the Commission under the Act to provide universal postal services;

“unreserved postal services” means courier services, counter services, money orders, electronic bill payment, parcel collection, transport and delivery, expedited mail service, overnight mail services, and other ways of handling postal articles not defined as reserved postal services.

3. Delivery and acceptance

(1) A postal article shall be considered—

- (a) to have been delivered to the addressee—
 - (i) when it is delivered into a private letter box or bag of the addressee;
 - (ii) when it is left at the house, or office of the addressee as set out thereon, or with the employee, agent or any other person authorized to receive it; or
 - (iii) where the addressee is a guest or is a resident at a hotel, hostel or lodging, when it is left with the proprietor or manager of the hotel, hostel or lodging or with his agent; or
- (b) to have been received by a postal licensee when it is deposited into a posting box or handed over to an employee or agent of a postal service operator authorized to receive it.

4. Postal licensees to make rules

(1) A postal licensee shall submit to the Commission, for approval, the terms and conditions of the services it offers relating to—

- (a) letters;
- (b) parcels;
- (c) documents;
- (d) financial services;
- (e) registered items;
- (f) insured items;
- (g) *post restante*;
- (h) private boxes or bags; and
- (i) any other services as may be introduced by the licensees.

(2) A postal licensee shall, annually, publish the terms and conditions relating to the services prescribed in paragraph (1) that have been approved by the Commission.

5. Issuance of postage stamps

(1) The public postal licensee shall issue postage stamps that—

- (a) are of the best quality;
- (b) cannot be easily replicated; and
- (c) are engraved with subjects that are consistent with the broad philatelic objectives of Kenya.

(2) When considering any expedient issuance of definitive commemorative and special stamps and related activities, the public postal licensee shall be fair to all interested parties.

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(3) A definitive stamp shall—

- (a) be issued once in every five years;
- (b) run for a period of not less than five years and not exceeding ten years;
- (c) concern subject matters approved by the Commission at least fourteen days before the issue; and
- (d) bear face values chosen by the public postal licensee.

(4) A commemorative stamp may be issued at such intervals as the public postal licensee determines to be commercially viable and shall—

- (a) concern a subject matter approved by the Commission at least fourteen days before the issue; and,
- (b) bear face values chosen by the public postal licensee.

6. Sale of postage stamps

(1) The public postal licensee may enter into arrangement with any person to sell postage stamps on its behalf.

(2) The public postal licensee shall develop standard terms and conditions for re-sale of stamps and submit them to the Commission for approval.

(3) The Commission shall consider the standard terms and conditions of re-sale of stamps submitted under paragraph (2) and communicate its decision to the public postal licensee within thirty days from the date of submission of the request for approval.

7. Illegal manufacture and unlawful use of postage stamps

(1) Subject to section 73 of the Act, a person shall not—

- (a) without lawful authority, possess any dye, plate, instrument or contrivance used for the printing of postage stamps sold or used by the public postal licensee;
- (b) manufacture, or without lawful excuse, possess any dye, plate, instrument or contrivance or part of any such die, plate, instrument, or contrivance or of any materials, for making illegal stamps, or mark in imitation of, or similar to, or purporting to be any stamp or mark of the public postal licensee;
- (c) without lawful authority, make on any postage stamp any mark in imitation of or similar to or purporting to be any stamp or mark of the public postal licensee;
- (d) without lawful authority, stamp, mark, obliterate, print over or in any other way alter the original appearance of, or caused to be stamped, marked, obliterated, printed over or in any other manner to be altered the original appearance of any unused postage stamp issued by the public postal licensee.

(2) The Commission shall confiscate any dye, plate, stamp, instrument, contrivance, or materials found in the possession of any person in contravention of this regulation.

(3) For purposes of this Regulation, an illegal stamp means any facsimile, imitation or representation, whether on paper or otherwise of any stamp for denoting a rate of postage used by a licensee.

8. Issuance of certificates of posting

(1) The public postal licensee shall, at the request of the sender of an unregistered postal article intended for transmission by letter box, give the sender a certificate of posting of the postal article upon payment of the prescribed fee.

(2) A certificate of posting of an article shall not entitle the sender to compensation or to the right of return of an already accepted article and shall not be acceptable as proof of the nature of the contents of the postal article to which it related.

9. Disposing undeliverable postal articles

(1) Domestic letters or other postal articles that cannot be delivered due to an undecipherable or non-existent address or post code may be opened by a postal licensee and where the letter or article is capable of being delivered based on information in the letter or article, the postal licensee shall deliver the letter or article delivered accordingly.

(2) Where a letter or postal article opened under paragraph (1), is incapable of being delivered, but contains the address of a sender, it shall be returned to the sender.

(3) Every undeliverable postal article that has been opened and remains undeliverable may be kept for a minimum period of three months and may thereafter be destroyed.

(4) Where the letter or postal article opened contains any thing of value or a saleable article, it shall be kept safely and a record thereof opened and maintained by a postal licensee for a period of six months and if not claimed, the contents shall be disposed of in accordance with the Disposal of Uncollected Goods Act (Cap. 38).

(5) Where a letter or postal article is opened as provided by this regulation, the licensee shall affix a mark on the letter or postal article indicating the—

- (a) date and time of opening;
- (b) period it has remained undelivered;
- (c) contents; and
- (d) manner the licensee decides to deal with the undelivered article.

(6) Where a letter or postal article is returned to the sender because of being undeliverable as addressed and the sender refuses to take delivery, the letter or postal article shall be dealt with as provided under paragraph (3).

10. Postal articles of dead persons

Where a postal licensee is satisfied that the addressee of a postal article is dead, it may—

- (a) retain the postal article and on production of the will or letters of administration to the estate of the addressee together with the written application of one or more of the executors or administrators, deliver or release the article in accordance with such request; or
- (b) treat the postal article in accordance with the provisions of these regulations that relate to undeliverable postal articles.

11. Prohibited articles

(1) All postal licensees shall, where applicable before accepting any item for postage, require the sender to declare its contents.

(2) In accordance with section 58 of the Act, a person shall not send, by post—

- (a) any explosive, inflammable, dangerous, noxious or deleterious substance, filthy, sharp instrument not properly protected or any article or thing whatsoever which is likely to injure either other postal articles in the course of conveyance or any person handling the article;
- (b) any article for export, import or carriage which is prohibited under any law in Kenya, or which, being subject to any restriction imposed by such law, is transmitted otherwise than in accordance with that restriction;

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- (c) any article which may not, under the law of the country to which it is addressed, be imported or transmitted by post;
- (d) any article sent by post in a stamped or embossed envelope wrapper, card forms or paper in imitation of the one issued under the authority of the public postal licensee;
- (e) any article of such form or colour or so made up for transmission by post or that is likely, in the opinion of the postal licensee, to embarrass the officers of the organizations dealing with the article;
- (f) any article bearing any stamp or impression of a stamping machine denoting payment of postage or fee which is imperfect or mutilated or defaced in any way or across which is written or printed or otherwise impressed.
- (g) any article whereon the payment of any postage or fees purports to be denoted by any stamp or impression which has been previously used to denote payment of the postage or fee s on any other postal article or any other stamp duty or tax;
- (h) betting advertisements relating to illegal business;
- (i) fortune telling advertisements;
- (j) sweepstake or lottery tickets, or advertisement and other notices in relating to sweepstake or lottery that are unlawful;
- (k) money lenders circulars that are enclosed;
- (l) any article which infringes trade mark or copy right laws;
- (m) any sample packets consisting of literature for the blind containing any article liable to customs duty in the country or place of destination;
- (n) any living creature, other than bees, leeches and silk worms, parasites or destroyers for noxious insects; and
- (o) any other article which, is prohibited from being posted or accepted for transmission by post by the Act or these Regulations.

(3) The prohibited postal articles may, in exceptional circumstances, be sent by post in accordance with the First Schedule to these Regulations.

(4) Any person who contravenes this regulation commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

12. Postal security and safety

A postal licensee shall take reasonable steps to improve mail security and combat postal crimes that include among others—

- (a) mail violation;
- (b) mail bombs;
- (c) illicit drug trafficking or firearms; or
- (d) other crimes relating to postal articles and property.

13. Compensation

(1) A Postal licensee shall develop and file with the Commission its compensation policies for loss or damage of postal articles.

(2) In the case of an insured postal article compensation shall be limited to the market value of the postal article even where it has been insured in excess of its value.

(3) A postal licensee shall not pay compensation—

- (a) where the article is a prohibited article and is not sent as provided under these regulations;
- (b) in the case is of an insured postal article, where—
 - (i) a false statement has been made by the sender or addressee for the postal article;
 - (ii) the addressee of the postal article has signed and returned the delivery note without objection;
 - (iii) any bill of exchange, bond, coupon, or other negotiable security particulars that are required to sufficiently identify the contents of the postal article are not presented to the postal licensee; or
 - (iv) the cover or seal of the article bears traces of theft or damage.

14. Use of technology

A postal licensee shall use appropriate technology to enhance the quality of its services and diversify postal services.

15. Universal service obligation

(1) The Commission shall from time to time provide targets to postal licensees to facilitate the achievement of universal service obligations.

(2) In providing targets for the fulfillment of universal service obligations by postal licensees, the Commission shall have regard to—

- (a) measurable quantity and quality of service standards for postal services in relation to customer satisfaction;
- (b) speed, reliability and security of the service;
- (c) accessibility to and affordability of universal postal services; and
- (d) the evolution in technological, economic and social environment.

(3) The provision of universal postal services shall be the responsibility of the public postal licensee.

(4) Notwithstanding paragraph (3) the Commission may require a licensee for unreserved postal services to provide any or universal postal services.

(5) The public postal licensee may provide universal postal services through a contract, an agency or a franchise and Commission shall not require such agent or franchisee to hold a license under the Act.

(6) The public postal licensee shall notify the Commission of any contract, agency or franchise entered into under paragraph (5).

(7) The public postal licensee shall not suspend the provision of basic postal service except in case of a force majeure event including, among others, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority.

(8) To the extent necessary to ensure the maintenance of universal service, the Commission may continue to reserve services for public postal licensees.

(9) A licensee who contravenes this regulation commits an offence and is liable on conviction fine of three hundred thousand shillings for every month or part thereof during which such failure continues.

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16. Extra-Territorial Offices of Exchange (ETOE)

(1) A foreign postal licensee shall not establish an Extra-Territorial Office of Exchange in Kenya or use the Universal Postal Union system, without the consent of the Commission.

(2) Postal articles originating from a foreign country shall be considered to be commercial cargo upon arrival in Kenya and shall be subject to customs clearance procedures.

(3) Postal articles delivered by a foreign postal licensee to an address in Kenya, shall pay the terminal dues applicable under the Universal Postal Union system.

17. Penalty

A person who contravenes these Regulations commits an offence and is liable, where no penalty is provided, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

18. Revocation of Part X of L.N. 68/2001

Part X of the Kenya Communications Regulations, 2001, is revoked.

FIRST SCHEDULE

[Regulation 11(3).]

*Article**Qualification for acceptance*

- | | |
|---|---|
| (a) Dangerous drugs. | By insured box or by insured parcel post and only if sent for medical or scientific purposes to the country, which admits them when sent for those purposes. |
| (b) Live bees, leeches silk worms, parasites or destroyers of noxious insects used for the purposes of controlling those insects. | By letter post if addressed to officially recognized institutions. |
| (c) Any postal article enclosed in an envelope with an open panel. | By the inland service. |
| (d) Paper money not crossed for payment solely through Post Bank. | For transmission by the inland service by registered letter or registered parcel post for transmission by the international service by registered letter post, insured letter post, or insured parcel post. |
| (e) Jewellery and other valuables. | By registered letter post of insured parcel, or insured box. |
| (f) Any postal article bearing the word "registered" or any other phrase to that effect and any article which by these regulations is required to be registered or subject to the provisions of these regulations and is of a monetary value. | By registered post. |
| (g) Deleterious liquids perishable biological substances or other similar substances. | By letter post at the letter rate of postage only if sent for medical examination or analysis to a recognized medical practitioner or qualified veterinary surgeon. |

FIRST SCHEDULE—*continued*

<i>Article</i>	<i>Qualification for acceptance</i>
(h) Inflammable liquids	Having a flash point of thirty two degrees centigrade or above but lower than sixty five degrees centigrade, maximum amount of one litre.
(i) Radiative liquids	Small quantities suitable packed, provided that when made up for the post radiation measured at the outside surface of a package does not exceed ten miliroentgen per twenty four hours by letter post at the letter rate of postage.
(j) Any article liable to customs duty.	To countries which permit by law or regulations, the importation of such articles by post and by registered post if the law or regulations of the country or place of destination so requires.
(k) Advertisements and publications relating to the treatment of general diseases or to any preparations for its prevention, care or relief.	If addressed to a qualified medical practitioner or chemist.

**KENYA INFORMATION AND COMMUNICATIONS (IMPORTATION, TYPE
APPROVAL AND DISTRIBUTION OF COMMUNICATIONS EQUIPMENT)
REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

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 2. Interpretation.
 3. Equipment subject to type approval.
 4. Application for type acceptance.
 5. Evaluation.
 6. Type acceptance.
 7. Provisional type approval.
 8. Final type approval.
 9. Technical evaluation.
 10. Type approval certificate.
 11. Connection of type approved terminals to the public electronic communications network.
 12. Type approval label for terminal or network equipment.
 13. Revocation of type approval of device.
 14. Complaint procedure.
 15. Installation of approved equipment.
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 20. Capacity of the importer or distributor.
 21. Import and sale restrictions.
 22. Power to inspect.
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[Subsidiary]

**KENYA INFORMATION AND COMMUNICATIONS (IMPORTATION, TYPE
APPROVAL AND DISTRIBUTION OF COMMUNICATIONS EQUIPMENT)
REGULATIONS, 2010**

[L.N. 57/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“communication equipment” means telecommunication equipment, radio communication equipment or broadcasting apparatus;

“national standards” means the Kenya standards established by consensus and approved by the Kenya Bureau of Standards, that provide, for common and repeated use, rules, guidelines or characteristics for products and services and related processes or production methods, aimed at achieving the optimum degree of order in a given context including terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method;

“operating network” means a network that can carry communications traffic in the form of voice or data;

“service provider” means a person providing communication services under the Act;

“type acceptance” means the process of evaluating communications equipment that has been type approved by a recognized foreign national regulatory authority with a view to ensure conformity of such equipment to national standards;

“type approval” means a method of checking the compatibility of communications equipment with any operating communication network and the conformance of such equipment to national standards.

3. Equipment subject to type approval

(1) All communications terminals, network equipment and communications equipment to be used for connection or access to the public operating communication networks, wireless communications equipment and radio communications equipment intended to be connected directly or to inter work with a communications network in Kenya to send, process or receive information shall prior to their use be submitted for type approval or type acceptance by the Commission.

(2) The Commission shall grant type approval for each type of equipment once, and subsequent users of the same type of equipment shall not apply to the Commission for approval.

(3) Notwithstanding paragraph (2), where there is a change of model, design or specification of equipment which had been type approved by the Commission, the equipment shall be re-submitted for type approval.

(4) The Commission shall conduct type approval in accordance with the procedures for type approval of communication equipment in Kenya as it publishes from time to time.

4. Application for type acceptance

A service provider shall submit its application for approval or type acceptance of communications equipment in prescribed forms issued by the Commission.

5. Evaluation

(1) The Commission may not return to an applicant any samples of equipment and associated literature submitted for the purpose of type approval or acceptance.

(2) The Commission shall evaluate an application and communicate its decision to the applicant within sixty days from the date of receipt of the application.

(3) Where the Commission does not communicate its approval or refusal within the period prescribed in paragraph (2), the Commission shall be deemed to have approved the application.

6. Type acceptance

(1) The Commission may type accept any equipment that has been granted type approval from another country or jurisdiction that is recognized by the Commission.

(2) Notwithstanding paragraph (1), an applicant for type acceptance shall submit a sample or samples of the equipment and copies of test results and type approval certificate from that country or jurisdiction at the time of the submission of the application for provisional acceptance.

(3) The Commission may, on its own initiative or upon an application by a service provider, conduct inquiries to determine whether technical standards from other countries or jurisdictions should be recognized in Kenya for purposes of exempting any equipment from type approval or testing requirements.

7. Provisional type approval

(1) Any person may submit equipment for provisional type approval by the Commission.

(2) Notwithstanding paragraph (1), licensed vendors shall submit equipment intended for commercial purposes for type approval.

(3) Where the Commission has determined that equipment that is the subject of an application for provisional type approval complies with the provisional type approval requirements, the Commission may grant provisional type approval for a period not exceeding six months on such terms and conditions that it may determine.

(4) When granting provisional type approval to equipment, the Commission may, where it considers it necessary, limit the number of units of that equipment that an applicant can hold and utilize until the final type approval is granted.

8. Final type approval

(1) An application for final type approval shall be made before the expiry of the provisional type approval period and shall indicate the date of grant of provisional approval.

(2) No provisional type approval shall lapse or expire while an application for final type approval is pending at the Commission.

(3) The Commission shall grant final type approval where it is satisfied that the grant of the final type approval—

- (a) is in the public interest; and

[Subsidiary]

- (b) will not lead to harmful interference to any communications and radio communication network or be a risk to human health or the environment.

(4) The Commission shall inform the applicant in writing of the final type approval of equipment or apparatus.

(5) Where the Commission is of the view that an equipment or apparatus should not be type approved, it shall notify the applicant, in writing, of its decision and state the reasons for the refusal.

(6) The Commission shall, from time to time, publish a list of all type approved equipment.

9. Technical evaluation

(1) The Commission shall carry out technical evaluation of equipment by document examination and where applicable laboratory testing of equipment sample, and in accordance with the procedures for type approval and acceptance of communication equipment in Kenya which the Commission shall publish from time to time.

(2) The samples of equipment submitted shall be—

- (a) in a good working condition;
- (b) properly configured for testing and complete with the necessary test adapters; and
- (c) clearly marked with the trade name, model and serial number.

(3) Where the Commission requires clarification on the technical details or other specifications of the equipment submitted for type approval or acceptance, it shall notify the applicant and require the applicant to respond in the required manner within the time specified by the Commission.

(4) An application for type approval or type acceptance shall be rejected or deemed to have been rejected by the Commission if the applicant fails to respond within three months from the date of the Commission's request for details or clarifications.

10. Type approval certificate

(1) The Commission shall issue a provisional or final type approval certificate to the successful applicant for a specific model of equipment.

(2) The communication equipment to be sold or used shall be of the same model that was granted the type approval and not modified in any way without the approval of the Commission.

(3) The grant of type approval under this Regulation shall not be construed as a guarantee for the proper functioning, performance or quality of the equipment by the Commission.

(4) A supplier, importer or distributor shall ensure that the approved equipment inter-works properly with the public electronic communication network.

(5) The Commission shall not be liable for interference caused to other equipment, injury, or loss of life, or damage to property, arising as a direct or indirect result of the use of any approved equipment.

(6) Where there is doubt relating to the interpretation of a type approval specification, the method of carrying out the test or the validity of the statements made by the manufacturers of the equipment, the interpretation of the Commission shall be final.

11. Connection of type approved terminals to the public electronic communications network

(1) A supplier, importer or distributor shall, before selling any communication equipment, ensure that the equipment meets the standards and specifications set out by the Commission and is compatible with the public communications networks.

(2) A service provider shall not connect type approved communication equipment to public networks before the equipment is inspected by the Commission and network operators.

(3) A network operator shall not have the right to refuse connection to type approved equipment.

12. Type approval label for terminal or network equipment

(1) A service provider shall affix a type approval label in all its communications terminal or network equipment.

(2) Every supplier, importer or distributor shall ensure that all equipment offered for sale or private use have valid type approval or type acceptance certificates issued by the Commission and is clearly affixed with a type approval label issued by a recognized Commission containing—

- (a) the logo of the Commission;
- (b) the type of the equipment; and
- (c) the alphanumeric identifications of the equipment.

13. Revocation of type approval of device

(1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the operation or use of equipment or apparatus that has been granted provisional or final type approval and may revoke the type approval where it is satisfied that—

- (a) the holder of a final or provisional type approval certificate has violated its conditions; or
- (b) the equipment or apparatus is causing or is likely to cause harmful interference to communications network or is a risk to human health or the environment.

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

14. Complaint procedure

(1) Any person may make a complaint in respect of the working of any equipment that has been type approved or object to the type approval of any equipment by submitting a complaint or objection to the Commission in writing stating—

- (a) the name and address of the complainant;
- (b) the name and address, if known, of the person against whom the complaint is made; and
- (c) the facts, including supporting data, where available, showing that the apparatus does not conform to these Regulations and that the apparatus may cause harmful interference to communications network or is a risk to human health or the environment.

(2) The Commission shall forward a copy of the complaint or objection to the applicant or holder of a type approval certificate and give the applicant or holder an opportunity to give evidence to rebut the complaint or objection.

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(3) The Commission shall consider any complaint or objection received when considering the application for type approval or in evaluating the operation of equipment for that has been granted type approval.

15. Installation of approved equipment

(1) No person other than a communications technician registered with the relevant regulatory authority shall install type approved equipment.

(2) Notwithstanding paragraph (1), where the installation is done by any other person, the installation shall be certified by a communications engineer registered with the relevant regulatory authority.

16. Exemptions from type approval

The Commission may, where it deems expedient, exempt any communications equipment that is temporarily imported into Kenya for re-export from type approval requirements.

17. Conditions for importation and distribution

(1) A person shall not supply, import or distribute electronic communications equipment unless that person has a licence granted by the Commission.

(2) A licensed supplier, importer or distributor of electronic communications equipment shall ensure that—

- (a) the equipment is type approved by the Commission; and
- (b) customers for radio communications equipment have radio communications licences from the Commission.

(3) Notwithstanding paragraph (1), a person may import into Kenya any type approved terminal electronic communication equipment where the equipment is solely for personal use.

(4) A person shall not sell electronic communication equipment sell at a place other than a shop or a distribution centre of a licensed supplier, importer or distributor.

18. Lists of equipment

(1) The Commission shall from time to time publish a list of prohibited equipment.

(2) A service provider shall not supply, import or distribute for use any equipment prohibited by the Commission.

19. Re-exportation of equipment

(1) A supplier, importer or distributor who wishes to import and re-package equipment for re-exportation or transshipment shall apply for a permit from the Commission.

(2) Prior to the importation of any equipment under this regulation, the supplier, importer or distributor shall furnish or cause to be furnished to the Commission full particulars of the respective equipment and the business the supplier, importer or distributor is involved in.

(3) A supplier, importer or distributor who imports and repackages equipment for re-exportation or transshipment, equipment imported without a permit issued under paragraph (1) commits an offence.

20. Capacity of the importer or distributor

The Commission shall not issue a permit to a supplier, importer or distributor unless the Commission is satisfied that the supplier, importer or distributor—

- (a) is capable of conducting the business;

- (b) has qualified and competent technical and supporting staff;
- (c) has a suitable shop or distribution centre; and
- (d) meets any other criteria determined by the Commission.

21. Import and sale restrictions

The Commission may in consultation with the relevant Government agencies, restrict the importation or sale within Kenya of any communications or other apparatus, where it is of the opinion that the equipment or apparatus may cause damage or harmful interference to communications networks or is a risk to human health or the environment.

22. Power to inspect

An authorized officer of the Commission may at reasonable times enter premises on which a supplier, importer or distributor is keeping imported communications equipment for the purposes of inspecting the equipment.

23. Disposal of equipment

(1) The equipment which has been brought for type approval and which due to destructive tests or other reasons the Commission determines as not being suitable for return to the applicant, may be destroyed by the Commission after giving thirty days notice for objection to the applicant.

(2) A person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Tribunal.

24. Offence and penalty

(1) A person who deals in or uses equipment without type approval or acceptance in accordance with these Regulations commits an offence.

(2) A person who is convicted of an offence 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.

25. Revocation of Part VIII of L.N. 68/2001

Part VIII of the Kenya Communications Regulations, 2001 is revoked.

**KENYA INFORMATION AND COMMUNICATIONS (RADIO COMMUNICATIONS
AND FREQUENCY SPECTRUM) REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Purpose and object.
 4. Eligibility for licenses.
 5. General licensing conditions.
 6. Application criteria for approval.
 7. Assignment of frequencies.
 8. Obligations of licensees.
 9. Sharing of frequencies.
 10. Frequency spectrum pricing.
 11. Pricing parameters.
 12. Type approval and inspection.
 13. Monitoring and inspection.
 14. Inspection, sitting and maintenance of illuminated towers and control equipment.
 15. Radio spectrum management and monitoring facilities.
 16. Disposal of uncollected goods.
 17. Misuse of frequencies.
 18. Amount of frequencies.
 19. Revocation of Part VI of L.N. 68/2001.
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[Subsidiary]

KENYA INFORMATION AND COMMUNICATIONS (RADIO COMMUNICATIONS AND FREQUENCY SPECTRUM) REGULATIONS, 2010

[L.N. 58/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Radio Communications and Frequency Spectrum) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**authorised frequency**” means the frequency assigned to a station by the Commission;

“**harmful interference**” means radiation or induction which—

- (a) endangers the functioning of a radio-navigation service or of a safety service; or
- (b) obstructs or repeatedly interrupts an authorised radio or telecommunication service;

“**licensee**” means a person licensed under the Act;

“**network**” means two or more stations operated by a person and used or intended to be used in communication with one another;

“**radio emission**” means any emission of electromagnetic energy of frequencies currently less than three hundred Gigahertz without continuous artificial guide or such other frequencies as the Commission may from time to time publish in the *gazette*;

“**spectrum assignment**” means the authorization by the Commission to any licensee specific frequencies or frequency pairs for use within a given allocation, at specified geographic location;

“**station**” means a transmitter, receiver, a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radio-communication;

“**transmitter**” means anything, irrespective of its use, function or the purpose of its design, that is capable of radio emission;

“**user**” means any person or body of persons who uses or operates radio communication services.

3. Purpose and object

The purpose and objective of these Regulations is to—

- (a) promote and support the orderly development and efficient operation of radio communication systems and services to meet the country’s socio-economic, security and cultural needs;
- (b) ensure proper planning, utilization and management of the spectrum resource in accordance with the Act, Government of Kenya Policy objectives, international agreements;
- (c) promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management technology based on operational requirements and technical viability;

[Subsidiary]

- (d) ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum number of users.

4. Eligibility for licenses

The Commission shall publish guidelines that shall specifying the persons eligible and eligibility criteria for the grant of spectrum licences from time to time.

5. General licensing conditions

(1) A person shall not possess, establish, install or use any radio communication station which requires licensing under these Regulations in any place or on board any local vessel, aircraft or vehicle, unless that person has a valid licence granted by the Commission.

(2) A radio communication licence shall not confer any ownership rights of the frequency on the licensee.

(3) A licensee shall not transfer frequencies assigned and the rights therein without the written consent of the Commission.

(4) A licensee shall comply with the provisions of the International Telecommunications Convention.

(5) Where the authorization is for a period not exceeding one month, the Commission may grant temporary authorization for the utilization of the frequency spectrum and the minimum applicable fee will be for a period of one month.

6. Application criteria for approval

(1) The Commission shall, when considering an application for frequency assignment, take into consideration—

- (a) spectrum availability for the type of service and proposed location;
- (b) whether the proposed service can be satisfied by any other means of communication;
- (c) the distress and safety radio communication services which require protection from harmful interference; and
- (d) the current technical advances that ensures the most efficient spectrum use.

(2) The Commission may assign a frequency or frequencies to the applicant, and shall for that purpose take into account all technical data of the equipment and associated accessories that the applicant is proposing to use.

7. Assignment of frequencies

(1) The Commission may assign frequencies when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Kenya table of frequency allocations.

(2) A person licensed to operate and provide radio communication systems and services shall apply to the Commission, for the assignment of the necessary frequencies.

(3) Where the Commission is satisfied with an application, it may assign the applicant a frequency, which the applicant shall use in accordance with the prescribed technical and operating parameters.

(4) Where the frequencies applied for are not available, the Commission may assign frequencies in an alternative frequency band.

(5) The Commission may impose such conditions as it may consider necessary for the use of the assigned frequencies.

[Subsidiary]**8. Obligations of licensees**

(1) A licensee who has been assigned frequencies bands for use shall—

- (a) maintain and provide, at the Commission's request, an inventory of frequencies assigned;
- (b) keep the licence in force by regular payment of annual fees prescribed by the Commission from time to time;
- (c) put into use the assigned frequencies within the period specified by the Commission;
- (d) use such measures as may be prescribed by the Commission to eliminate unauthorized emissions, harmful interference or illegal use of the spectrum;
- (e) optimize the utilization of frequency spectrum resource in the manner prescribed by the Commission from time to time; and
- (f) implement all the measures prescribed by the Commission from time to time.

(2) The Commission may where it considers it necessary, require a licensee to migrate to a new frequency band.

(3) The Commission shall implement the migration through an arrangement that shall not impose unreasonable burden to the licensee involved.

(4) A licensee shall not make material change to a licensed station or change the station parameters specified in the licence, without a written authorization from the Commission.

(5) A licensee shall require the written consent of the Commission where a licensee proposes to—

- (a) increase the height of a structure supporting the radiating portion of the antenna;
- (b) relocate an antenna where such relocation would involve a change in the geographic co-ordinates of latitude or longitude by as much as one second, or relocation involves a change in street address;
- (c) change in antenna parameters, including height, number of antenna elements, radiation pattern or polarization.

(6) All licensees shall, unless exempted by the terms of authorization, transmit the assigned call sign at the end of each complete transmission.

(7) The transmission of the call sign at the end of each transmission shall not be required in cases of projects requiring continuous, frequent or extended use of the transmitting apparatus, if, during the periods and in connection with the use, the call sign is transmitted at least once every thirty minutes.

9. Sharing of frequencies

(1) The Commission may, where necessary, require a licensee to share a frequency.

(2) The Commission shall implement the sharing through an arrangement that shall not impose unreasonable burden to the licensee involved.

10. Frequency spectrum pricing

(1) The Commission may from time to time prescribe the methods of determining frequency spectrum pricing.

(2) The Commission shall not avail frequency spectrum licences to a licensee unless the licensee has paid frequency spectrum licence fees and complies with the conditions imposed by the Commission.

[Subsidiary]

(3) The Commission may recall frequencies assignments that have not been utilized within the period specified in the licence.

(4) Where a frequency assignment is recalled for non-utilization, the licence fee paid in accordance with paragraph (2) shall not be refunded.

11. Pricing parameters

(1) The Commission shall adopt a pricing formula that reflects the economic value of frequency spectrum in order to encourage efficient use of frequency spectrum and stimulate growth.

(2) The pricing formula adopted under paragraph formula shall take into account the following factors—

- (a) size of spectrum assigned;
- (b) frequency band and level of congestion within the band;
- (c) market demand;
- (d) power output and;
- (e) geographical usage; and
- (f) such other factors as the Commission may from time to time determine.

(3) The Commission shall review and publish the pricing formula for frequency spectrum at least once in every three years.

12. Type approval and inspection

(1) A licensee shall not use any frequency spectrum unless the radio equipment in respect of which an assignment is sought has been duly type approved or type accepted by the Commission.

(2) Upon installation of the radio communication system, the licensee shall ensure that the system is inspected and certified by the Commission to be operating in accordance with the Act and the Regulations made thereunder.

13. Monitoring and inspection

(1) The Commission shall monitor all emissions from licensed stations to ensure the efficient utilization and compliance with licensed parameters.

(2) The licensee shall permit unlimited access by the Commission's authorized officers to the licensee's installations at reasonable times for the purposes of inspection and verification of operational parameters.

(3) The owners and management agents of buildings shall—

- (a) require proof of licences and authorization from the Commission before authorizing the installation of any radio communication systems in their premises;
- (b) keep records of all equipment installations; and
- (c) permit unlimited access by the Commission's authorized officers to the licensees' installations for the purposes of inspection and verification of operational parameters.

(4) A licensee shall, when requested to do so, make available all records that relate to a station's operations to the Commission's authorized officers.

(5) A licensee shall report any interference experienced to the Commission, in writing.

[Subsidiary]

(6) Where the Commission, pursuant to a report made to it or on its own accord, is of the view that certain measures need to be undertaken to avoid or mitigate any interference, the Commission may require a licensee or a class of licensees, in writing, to take the measures specified.

14. Inspection, sitting and maintenance of illuminated towers and control equipment

(1) A licensee of a radio station that has an antenna structure shall paint and illuminate the tower, perform routine inspections and maintenance of the tower to ensure that it is properly marked and illuminated and on any other associated control equipment, required.

(2) All licensees shall comply with directions given by the Commission in consultation with the government agency responsible for civil aviation, in matters relating to antenna towers.

(3) All licensees shall ensure that the sitting of antennas and towers comply with all applicable laws to which they are subject to.

(4) All licensees shall ensure that the sitting and installation of transmitters, antennas and towers comply with the laws and guidelines relating to radiation limits that may be in force from time to time.

15. Radio spectrum management and monitoring facilities

Where the Commission is of the opinion that a radio operation or structure may cause harmful interference to its operation, the Commission may restrict the installation or operation of radio communications apparatus or erection of structures within a specified area from the Commission's radio monitoring facilities.

16. Disposal of uncollected goods

(1) The Commission may disable or confiscate any radio communication apparatus or stations operated in contravention of the conditions of its licence or in contravention of the Act and these Regulations.

(2) The confiscated equipment or apparatus may, if not collected by a licensee, be disposed of in accordance with laws governing disposal of uncollected goods.

17. Misuse of frequencies

(1) A licensee who uses any radio communication station for or in furtherance of unlawful conduct, commits an offence and is liable, upon conviction, to a fine not exceeding One Million Kenya Shillings or to imprisonment for a term not exceeding five years or both.

(2) Any person who, upon receiving a request for information concerning the use of frequency spectrum from the Commission, fails to disclose the information or gives false or misleading information commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or both.

18. Amount of frequencies

The Commission may prescribe the minimum or maximum number or amount of radio communication channels or frequencies which any user or licensee may be granted.

19. Revocation of Part VI of L.N. 68/2001

Part VI of the Kenya Communications Regulations, 2001 is revoked.

KENYA INFORMATION AND COMMUNICATIONS (UNIVERSAL ACCESS AND SERVICE) REGULATIONS, 2010

ARRANGEMENT OF REGULATIONS

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 4. Amount of the Universal Service Levy.
 5. Purpose of the Universal Service Fund.
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 7. Identification of projects to fund.
 8. Management of the Fund.
 9. Universal Service Advisory Council.
 10. Fund accounts.
 11. Annual report.
 12. Investment of the funds of the Fund.
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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (UNIVERSAL ACCESS AND SERVICE) REGULATIONS, 2010**

[L.N. 70/2010.]

1. Citation

These Regulations shall be cited as the Kenya Information and Communications (Universal Access and Service) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Advisory Council” means the Universal Service Advisory Council established under section 102A of the Act;

“designated population” means individuals, households, groups, communities or institutions determined by the Commission, from time to time to be the target beneficiaries of universal access;

“Fund” means the Universal Service (US) Fund established under section 84J of the Act;

“licensee” means any person licensed under the Act;

“operating plan” means a plan prescribed by the Commission for the implementation of specific universal service programs and projects;

“subsidies” means assistance granted to support universal service programmes and projects;

“universal access” means access of one hundred percent by a designated population that can obtain, at the minimum, public access to quality and affordable communication systems and services;

“universal service” means access of one hundred percent by a designated population that is reasonably able to privately subscribe to and use particular communication systems and services of a specified quality on an individual, household or institutional basis including, among others, to the provision of—

- (a) public voice telephony;
- (b) internet access; or
- (c) other services by which people access efficient, affordable and modern communications systems and services;

“unserved areas” means geographic areas where no designated level of universal access is currently available;

“Universal Service Levy” means a levy charged by the Commission on licensees for purposes of the Universal Service Fund;

“universal service programs” means the general macro-level universal service initiatives aimed at achieving one or more of the universal service objectives.

“universal service projects” means the specific micro-level implementation activities related to each Universal Service Program.

3. Purpose and object

(1) The purpose of these Regulations is to provide a regulatory framework for the design and implementation of universal access and service provision and for the administration of the Universal Service Fund in Kenya.

[Subsidiary]

(2) Without prejudice to the generality of section 84J of the Act, the objectives of the Universal Service Fund shall be to—

- (a) encourage efficient access to and use of communications systems and services throughout the Republic of Kenya, focusing on rural, remote and under-served areas in order to promote social, and economic development;
- (b) ensure reasonable availability and affordability of basic and advanced communications systems and services to persons with disabilities, at the household and individual levels, particularly where the market is unable to deliver such services in a financially viable manner;
- (c) support the development of information and communication technologies, including related human capacity and technological innovation;
- (d) provide support for the introduction and expansion of communication services to schools, health facilities and other organizations serving public needs; and
- (e) facilitate development of and access to a wide range of local and relevant content.

4. Amount of the Universal Service Levy

(1) The Universal Service Levy imposed under section 84J(3) of the Act shall be charged on all licensees offering communications systems and services on a commercial basis.

(2) The levy charged on licensees shall be an amount not exceeding one percent of the gross revenue of a licensee.

5. Purpose of the Universal Service Fund

The funds from the Fund may be applied in activities that support national communications development programmes including, among others—

- (a) funding universal service programmes and projects;
- (b) identifying, approving, scheduling and financing private sector and local community investments in universal service provision projects; and
- (c) the conduct of research and other relevant studies in information technologies.

6. Manner of funding

The Commission may fund universal service programmes and projects through—

- (a) subsidies;
- (b) loans; and
- (c) grants.

7. Identification of projects to fund

When identifying the projects to be funded by the Universal Service Fund, the Commission—

- (a) shall promote the establishment of efficient, self-sustaining projects, that will expand access to communications systems and services on their own initiative and with minimal funding;
- (b) may support projects that are not economically feasible without support of the Fund;
- (c) may support projects to the extent necessary to create adequate economic incentives for investors.

[Subsidiary]**8. Management of the Fund**

Pursuant to section 84J of the Act, the Commission shall collect and disburse the funds of the Fund in accordance with the Act and—

- (a) establish administrative mechanisms, systems and structures for proper management of the Universal Service Fund;
- (b) supervise and provide broad policy directions for the management of the Fund and Universal Service Programs;
- (c) develop specific indicators of communications access;
- (d) as far as practicable, apply a competitive selection process to select beneficiaries of the Fund;
- (e) develop appropriate socio-economic criteria for identifying the geographical areas, population groups, institutions and organizations that may be eligible to benefit from the Fund;
- (f) develop criteria for evaluating project proposals for funding;
- (g) monitor and evaluate the fund projects; and
- (h) formulate the annual operating plans of the Fund.

9. Universal Service Advisory Council

The Universal Service Advisory Council shall—

- (a) advise the Commission and provide strategic policy guidance for the implementation of the Universal Service Fund; and
- (b) perform any other functions assigned to it by the Board from time to time and as necessary for the implementation of these Regulations.

10. Fund accounts

(1) The Commission shall deposit the funds of the Fund monies in one or more accounts established in one or more reputable banks in Kenya.

(2) The Commission shall maintain a separate account for the Universal Service Fund and shall keep proper books of accounts and records of the operations of the Fund.

(3) The accounts of the Fund may at any time and shall at the end of each financial year, be audited by an independent auditor.

11. Annual report

(1) The Commission shall, within three months after the end of the financial year, prepare and submit to the Minister an annual report containing—

- (a) the audited financial statements of the Fund; and
- (b) details of activities supported by the Fund.

(2) The Annual Report shall also be available for public inspection at such times and in such manner as the Commission shall prescribe.

12. Investment of the funds of the Fund

The Commission may invest or apply the funds of the Fund towards—

- (a) fixed bank deposits;
- (b) Government securities; or
- (c) any other investments approved by the Commission and in accordance with applicable financial Regulations.

13. Power to issue guidelines

The Commission may, from time to time, issue guidelines relating to the management of the fund.

KENYA INFORMATION AND COMMUNICATIONS (LICENSING AND QUALITY OF SERVICE) REGULATIONS, 2010

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 14. Principles for developing quality of service standards.
 15. Quality of service standards.
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 19. Telecommunications contractors.
 20. Approvals from other authorities.
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[Subsidiary]

KENYA INFORMATION AND COMMUNICATIONS (LICENSING AND QUALITY OF SERVICE) REGULATIONS, 2010

[L.N. 71/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Licensing and Quality of Service) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**contact address**” means the physical address, telephone number, facsimile number and email address of a licensee or an applicant for licence;

“**licence**” means a licence issued under the Act;

“**licensee**” means a person or an entity licensed by the Commission to provide any communication services;

“**market structure**” describes the state of a telecommunications market in relation to competition.

3. Market structure

(1) The Commission may, from time to time, publish details of the communications market structure prevailing in the country.

(2) The Commission shall, when issuing licences, consider the market structure.

4. Application for licence

(1) A person who wishes to operate any communication system or provide a communications service requiring a licence under the Act, shall apply to the Commission for a licence.

(2) An application for a licence under these Regulations shall in the manner and form prescribed by the Commission.

(3) An entity applying for a licence under these Regulations shall ensure that its shareholding conforms to the prevailing communications sector policy.

(4) An applicant for a licence shall submit to the Commission—

- (a) registration or identification documents prescribed by the Commission;
- (b) the applicant’s contact address;
- (c) where applicable, a detailed business plan for the proposed services;
- (d) detailed information relating the proposed system or services to be provided;
- (e) where applicable, information relating to the previous experience in the management of the proposed system or the provision of the services for which a licence is sought; and
- (f) any other information that the Commission may require.

5. Failure to submit documents or information

(1) Where an applicant fails to submit all documents or information required under these Regulations the Commission shall reject the application and inform the applicant, in writing, of the rejection.

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(2) Where the Commission rejects an application due to incomplete or insufficient information, the rejection shall not, except where a tender process is involved, bar the applicant from resubmitting the application.

(3) The Commission shall treat the re-submitted application as a new application.

6. Granting of licences

Upon the completion of the application process, the Commission shall, if it is satisfied that the applicant has complied with the requirements under these Regulations, issue a licence to the applicant.

7. License terms and conditions

(1) The Commission may specify the terms and conditions of a licence consistent with the provisions of the Act, Regulations and other relevant circumstances.

(2) A licensee shall comply with all terms and conditions of its licence.

8. Notification of change of particulars

A licensee shall—

- (a) notify the Commission of its intention to change the name or contact address it filed with the Commission at least thirty days before effecting such change; and
- (b) notify the Commission and the public of any trade or brand name it intends to use at least thirty days prior to using the trade or brand name.

9. Change in shareholding

(1) A licensee shall ensure that its shareholding complies, at all times with the Government's Communications Sector Policy, published from time to time.

(2) A licensee shall notify the Commission of any proposed change in ownership, control or proportion of shares held in it, at least thirty days before the change is effected.

Provided that—

- (a) any change in shareholding exceeding fifteen per centum of the issued share capital; or
- (b) the acquisition by an existing shareholder of at least five per centum of additional shares,

shall require the prior written consent of the Commission and the Commission shall notify the applicant of its acceptance or refusal, stating the reasons for its decision, within thirty days of receipt of the request for consent.

10. Transfer or assignment of a licence

(1) A licensee shall not transfer or assign a licence granted under the Act without the written consent of the Commission.

(2) The Commission may, when considering an application for the transfer or assignment, consider the same requirements and terms as if considering an application for the grant of a new licence.

(3) The Commission shall communicate its decision on an application for the transfer or assignment of a licence to an applicant within thirty days of receipt of the application and state the reasons for the decision.

[Subsidiary]**11. Renewal of a licence**

(1) A licensee shall make an application for the renewal of its licence in accordance with the procedure specified in each licence.

(2) When considering an application for renewal of a licence, the Commission shall consider the extent of compliance, by the licensee, with the terms and conditions contained in the licence in the previous licence period.

12. Revocation of licences

(1) The Commission may revoke a licence in accordance with the Act.

(2) Any person who is aggrieved by the decision of the Commission made under this regulation may appeal to the Tribunal within thirty days from the date of the decision.

13. Obligations of a licensee to provide quality of service

(1) A licensee shall, in addition to the terms and conditions of the licence—

- (a) improve service quality, by identifying service deficiencies and making appropriate changes;
- (b) maintain service quality, while considering environmental and operating conditions;
- (c) avail information to ensure informed subscriber choice of services and licensees;
- (d) improve the operation and performance of interconnected networks; and
- (e) assist in the development of related communications markets.

14. Principles for developing quality of service standards

(1) The Commission shall, when developing quality of service standards, ensure that—

- (a) the parameters related to quality of service are clearly defined and measurable;
- (b) information about the standards relating to quality of service are sufficient, comparable and accessible;
- (c) communications infrastructure and services are compatible with international standards;
- (d) practices increasing the user satisfaction and decreasing user complaints are encouraged;
- (e) discrimination, relating to the quality of the service offered, between similar users is avoided; and
- (f) special needs of disabled users are also considered when developing quality of service parameters.

15. Quality of service standards

The quality of service standards under these Regulations may be determined based on—

- (a) parameters, defining the applicable quality of service measurements for specific services;
- (b) methods of measuring service performance against predetermined parameters;

- (c) measurable service characteristics of parameters determined by the Commission; and
- (d) any applicable targets for parameters identified by the Commission from time to time.

16. Measurement, reporting and record keeping

(1) The Commission shall, from time to time, publish a notice in the *Gazette* prescribing quality of service parameters that licensee are to measure and report on to it.

(2) The notice published under paragraph (1) shall specify measurement and reporting intervals for quality of service parameters prescribed by the Commission.

(3) A licensee shall, for each parameter prescribed by the Commission under paragraph(1)—

- (a) take measurements using the method specified for the parameter;
- (b) compile, summarize and submit the measurements to the Commission, in the prescribed format and within the specified period;
- (c) submit any additional information required by the Commission, including details of the times, places and other particulars of the measurements, as the Commission may from time to time direct; and
- (d) retain all quality of service data, including all measurements and related records, for a minimum of twelve months after the reporting period or as the Commission may, from time to time, direct.

17. Inspections and investigations

The Commission may inspect or investigate matters relating to the measurement of quality of service, of a licensee from time to time to ensure compliance.

18. Publication of reports on measurements of quality of service

The Commission may publish measurement results or the quality of service reports submitted by licensees.

19. Telecommunications contractors

(1) The Commission shall, before issuing a licence to a telecommunications contractor under these Regulations, consider—

- (a) the applicant's ability to conduct the business; and
- (b) the competence of the technical staff undertaking to its works.

(2) A telecommunications contractor shall, when undertaking works ensure, that the work complies with guidelines issued by the Commission from time to time and any other internationally acceptable standards prevailing.

(3) The Commission may revoke the licence of a telecommunications contractor who contravenes paragraph (2).

20. Approvals from other authorities

Notwithstanding that a licence has been issued by the Commission, a licensee shall bear the responsibility of obtaining the approvals of other Government agencies, local authorities or other relevant authorities that may be required for the provision of the licensed services, installation, placement, laying or maintenance of any facilities on, through, under or across any land.

[Subsidiary]**21. Duty of care**

(1) A licensee shall, when installing its facilities, take all reasonable steps to ensure that it causes as little detriment or damage, and inconvenience to the public, as is practicable in the circumstances.

(2) If a licensee engages in any activity relating to any land under these Regulations, the licensee shall take all reasonable steps to restore the land to the condition it was before the activity began.

(3) A licensee shall, when installing its communications systems, take all reasonable steps to—

- (a) observe international standards and practices;
- (b) protect the safety of persons and property;
- (c) protect the environment; and
- (d) ensure that the activity does not adversely interfere with—
 - (i) the operations of a public utility;
 - (ii) public roads and paths;
 - (iii) the movement of traffic; and
 - (iv) the use of land.

(4) A licensee shall enter into an agreement with any public utility whose operations are likely to be affected by an activity of the licensee, to provide for the most convenient manner in which the licensee shall engage in that activity.

22. Validity of provisions

Where one or more of the provisions of any licence, for any reason becomes invalid or unenforceable, the validity or enforceability of the other provisions of the licence shall not be affected.

23. Transitional provisions

(1) When the Commission introduces a new licensing framework, a person holding a licence issued under the former licensing framework (in this section referred to as an “old licensee”) shall continue to hold the licence in accordance with its terms and may migrate to the new licensing framework in accordance with the migration modalities issued by the Commission.

(2) Where a licensee who held a licence before the commencement of these Regulations notifies the Commission that the licensee opts to migrate to a new licence—

- (a) the Commission shall issue the new licences to the licensee on terms that do not detract from the rights held by the licensee under the old licence;
- (b) the new licence issued by the Commission to the licensee shall be valid for the unexpired term of the old licence or the full duration of the new licence whichever period is shorter;
- (c) the old licence shall cease to be valid immediately the new licence, commences; and
- (d) the old licensee shall be deemed to have waived the right to the continuation of the old licence and no compensation shall be due to the old licensee in this regard.

(3) Where an old licensee notifies the Commission that the old licensee opts to continue with the old licence—

- (a) the old licensee shall be entitled to continue to operate the network or provide the service contemplated and authorized by that licence for the remainder of the term of that licence;

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- (b) the old licence shall expire at the end of the licence term specified in that licence, and licensee may apply for renewal under the new licensing framework.

24. Miscellaneous offences

(1) A person who provides any services under the Act without a licence issued by the Commission commits an offence.

(2) A person who commits an offence under these Regulations for which no penalty is specifically provided, is be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

**KENYA INFORMATION AND COMMUNICATIONS (ELECTRONIC
CERTIFICATION AND DOMAIN NAME ADMINISTRATION) REGULATIONS, 2010**

ARRANGEMENT OF REGULATIONS

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 6. Certification practice statement.
 7. Responsibilities of a certification service provider.
 8. Records management.
 9. Issuance of certificates.
 10. Obligations of a subscriber.
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 15. Performance audits.
 16. Security guidelines.
 17. Incident handling.
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 19. Winding up of operations of a certification service provider.
 20. Licensing for updating of a repository and administering a subdomain in the .ke ccTLD.
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 24. Winding up of operations of a subdomain administrator.
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[Subsidiary]**KENYA INFORMATION AND COMMUNICATIONS (ELECTRONIC
CERTIFICATION AND DOMAIN NAME ADMINISTRATION) REGULATIONS, 2010**

[L.N. 116/2010.]

1. Citation

These Regulations may be cited as the Kenya Information and Communications (Electronic Certification and Domain Name Administration) Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“administrative contact” means the entity responsible for maintenance of a domain name;

“certification personnel” means any person who has—

- (a) direct responsibility for the day-to-day operations, security and performance of any activity, relating to a certification service provider, regulated under the Act and these Regulations; or
- (b) duties that directly involve the issuance, renewal, suspension, revocation of certificates, creation of private keys or administration of a certification service provider's computing facilities;

“certification practice statement” means a statement of the practices that a certification service providers employs when approving or rejecting certificate applications, or issuing, managing or revoking certificates.

“country code Top Level Domain (ccTLD) administrator” means the entity managing the ke ccTLD;

“ccTLD namespace” means a collection of uniquely-assigned identifiers within the Kenya country code Top Level Domain;

“licensee” means a person licenced under the Act;

“registrant” means a domain name holder;

“registrar” means an entity that is authorized under the Act to administer the process of registration and modification of domain names;

“relying party” means an individual or organization that acts on the basis of a certificate;

“subdomain administrator” means an entity managing a sub domain in the ke ccTLD;

“subscriber” means a certificate holder;

“subscriber identity verification method” means the method used to verify and authenticate the identity of a subscriber;

“technical contact” means the entity responsible for maintaining the primary name server for a domain name and for effecting technical changes to a domain name;

“time-stamp” means a cryptographical digital attestation that a document or data existed at a particular time and has not been altered since a particular point in time and serves as a trusted third party witnessing the existence and particulars of electronic data;

“time-stamp services” means issuance of time-stamps.

3. License for electronic certification services

The Commission may, upon application in the prescribed manner and subject to such requirements as it may consider necessary, grant a licence to a person to provide electronic certification services, services.

4. Application for a licence

A person applying for a licence shall, in addition to the requirements prescribed in the Act and any Regulations made thereunder—

- (a) submit for approval a certification practice statement, which fulfils the requirements prescribed in these Regulations;
- (b) undergo and pass an initial audit; and
- (c) fulfill other requirements relating to qualification, expertise, manpower, financial resources and infrastructure facilities necessary to issue an advanced electronic signature certificate as may be prescribed by the Commission from time to time.

5. Recognition of foreign certification service providers

(1) The Commission may recognize a foreign certification service provider as a certification service provider for the purposes of these Regulations, where the foreign certification service provider—

- (a) is duly licensed or authorized by the relevant government authority in the country in which it operates;
- (b) complies with internationally acceptable standards and requirements under the Act and these Regulations; and
- (c) has established a local agent to provide the certification services in Kenya.

(2) A certificate issued by a certification service provider recognized under paragraph (1) shall be valid for the purposes of the Act and these Regulations.

(3) Where the Commission is satisfied that a foreign certification service provider has contravened any of the conditions and restrictions of recognition under paragraph (1), it may revoke the recognition.

6. Certification practice statement

(1) A certification service provider shall, before commencement of its operations, prepare a certification practice statement, in accordance with these Regulations and guidelines issued by the Commission from time to time and submit it, for approval by the Commission.

(2) A certification service provider shall not change the certification practice statement without the prior written approval of the Commission.

(3) A certification service provider shall specify, in its certification practice statement—

- (a) any limitation of its liabilities and particularly, the implication of reliance limitations specified; and
- (b) the subscriber identity verification method for the issuance, suspension, revocation and renewal of a certificate.

(4) A certification service provider shall file, with the Commission, a copy of its certification practice statement and specify its effective date and publish it on its web site.

(5) A certification service provider shall log all changes to the certification practice statement and specify the effective date of each change.

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(6) A certification service provider shall keep, in a secure manner, a copy of each version of its certification practice statement and record the date it came into effect and the date it ceased to have effect.

7. Responsibilities of a certification service provider

- (1) A certification service provider shall—
- (a) issue and renew certificates;
 - (b) suspend, reinstate or revoke certificates;
 - (c) conduct personal identification of subscribers;
 - (d) publish accurate information relating to certificates;
 - (e) provide a repository service listing all published certificates, records of revoked certificates that may be used to verify the validity of published certificates;
 - (f) ensure protection of private information and safekeeping of data security; and
 - (g) provide time-stamp services.

8. Records management

- (1) A certification service provider shall, keep securely all records relating to—
- (a) issuance, renewal, suspension or revocation of certificates, including the identity of any person requesting for a certificate;
 - (b) the process of generating key pairs by the subscribers or the licensed certification service provider;
 - (c) the administration of its computing facilities; and
 - (d) such other information as may be determined by the Commission from time to time.

(2) A certification service provider may keep its records in paper-based form, electronic form or any other form approved by the Commission from time to time.

(3) A certification service provider shall index, store, and preserve the records kept under paragraph (2) in a form that the records may be reproduced in an accurate, complete, legible manner and a manner accessible to the Commission or to any authorized officer.

(4) A certification service provider shall retain copies of all the certificates it has issued and preserve them so that they shall be accessible for a period of not less than seven years.

(5) A certification service provider shall retain all records required to be kept under paragraph (1) and all the logs of the creation of the archive of certificates required under paragraph (3) for a period of not less than seven years.

9. Issuance of certificates

- (1) A certification service provider shall issue a certificate containing—
- (a) information identifying the certification service provider;
 - (b) information identifying the signature owner;
 - (c) signature-verification data which corresponds to signature-creation data;
 - (d) the commencement and expiry date of the certificate;
 - (e) information regarding the authorization of the subscriber, if a subscriber is acting on behalf of another person;

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- (f) information regarding the conditions of usage of the certificate and limits on the value of transactions, where applicable;
- (g) the secure electronic signature of the certification service provider that verifies the information in the certificate;
- (h) sufficient information that can be used to locate or identify one or more repositories in which notification of the revocation or suspension of the certificate would be listed, if the certificate is suspended or revoked; and
- (i) any other information as may be determined by the Commission from time to time.

(2) A certification service provider shall determine, based on official documents, the identity of the person to whom a certificate is issued and shall specify, in the certification practice statement, the subscriber identity verification method applied in the issuance of certificates.

(3) A certification service provider shall give a subscriber an opportunity to verify the contents of the certificate before the subscriber accepts it.

(4) A certification service provider shall inform a subscriber, in writing, the legal effect of an advanced electronic signature, the limitations on use of certificates and the dispute resolution procedures, applicable.

(5) A certification service provider shall warn subscribers, in writing, not to allow third parties to use signature creation data associated with signature verification data in the certificate.

(6) Where the subscriber accepts the issued certificate, the certification service provider shall publish a signed copy of the certificate in a repository in accordance with regulation 8.

(7) Where the subscriber does not accept the certificate, the certification service provider shall not publish the certificate.

(8) Once a certificate has been issued by the certification service provider and accepted by the subscriber, the certification service provider shall notify the subscriber, within a reasonable time, of any fact that subsequently becomes known to the certification service provider that may significantly affect the validity or reliability of the certificate.

(9) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the issuance of a certificate.

(10) Where a certification service provider issues an additional certificate to a person on the basis of a valid certificate held by the same person and subsequently the original certificate is suspended or revoked, the certification service provider shall investigate and determine whether the new certificate should also be suspended or revoked.

10. Obligations of a subscriber

(1) Where a subscriber has accepted a certificate, the subscriber shall generate a key pair by applying the relevant security procedure.

(2) A subscriber shall be deemed to have accepted a certificate if he publishes or authorizes the publication of the certificate to any person, in a repository; or otherwise demonstrates his acceptance.

(3) A subscriber certifies, by accepting a certificate, to all who wish to reasonably rely on the information contained in the certificate that—

- (a) the subscriber holds and is entitled to hold the private key corresponding to the public key listed in the certificate;

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- (b) all representations made by the subscriber to the certification service provider and all the information contained in the certificate are true; and
- (c) all information in the certificate is within the knowledge of the subscriber is true.

(4) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his certificate and take the necessary steps to prevent its disclosure to any person who is not authorized to affix the advanced electronic signature of the subscriber.

(5) In the event that the subscriber becomes aware that the private key has been compromised, the subscriber shall, notify the certification service provider of such compromise within twenty four hours.

11. Liability of certification service providers

(1) A certification service provider shall, by issuing or guaranteeing a certificate to the public, accept liability for damage caused to any person who reasonably relies on the certificate unless the certification service provider can prove that it was not negligent.

(2) The liability of a certification provider under paragraph (1) shall be limited to issues relating to—

- (a) the accuracy, at the time of issuance, of all information contained in the certificate and the fact that the certificate contains all the details prescribed for the certificate;
- (b) the assurance that at the time of the issuance of the certificate, the signatory identified in the certificate held the signature-creation data corresponding to the signature- verification data given or identified in the certificate;
- (c) assurance that the signature-creation data and the signature-verification data can be used in a complementary manner in cases where the certification service provider generated both of them; and
- (d) the failure to publish a notice of suspension or revocation of a certificate in the repository specified in the certificate.

(3) Where a certification service provider has specified in a certificate, the limits on the use of the certificates and the limits on the values of transactions for which the certificate may be used, it shall not be liable for any damage resulting from exceeding the limits.

12. Renewal of certificates

(1) The provisions of regulation 9 shall apply *mutatis mutandis* to the renewal of certificates.

(2) The subscriber identity verification method employed for renewal of certificates shall be specified in the certification practice statement.

(3) A certification service provider shall log and keep, in a secure manner, the date and time of all transactions relating to the renewal of a certificate.

13. Suspension of certificates

(1) A certification service provider shall maintain facilities that can receive and respond to requests for suspension of certificates at all times of the day and on all days of every year.

(2) A certification service provider shall, upon receiving a valid request under paragraph (1) suspend a certificate and publish a notice of the suspension in the respective repository.

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(3) The subscriber identity verification method employed for suspension of certificates shall be specified in the certification practice statement.

(4) Where a request for suspension is received and a certification service provider determines the revocation of the certificate would be justified in the light of all the evidence available to it, the certificate service provider may revoke the certificate.

(5) A certification service provider may, regardless of the subscriber's consent, suspend a certificate that it has issued if it has reasonable grounds to believe that the certificate is unreliable.

Provided that the certification service provider shall conduct and complete its investigation into the reliability of the certificate and decide within a reasonable time whether to reinstate or revoke the certificate.

(6) A certification service provider shall, within a reasonable time, terminate a suspension initiated through a request, upon discovering and confirming that the request for suspension was made without the authorization of the subscriber.

(7) A certification service provider shall, after suspending a certificate, consult with the subscriber or his authorized agent on whether to reinstate or revoke the certificate.

(8) The provisions of regulation 11 shall apply where the suspension of a certificate leads to the revocation of the certificate.

(9) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the suspension of certificates.

(10) A party who wishes to rely on any certificate shall, before relying on a certificate, establish the status of the certificate.

14. Revocation of certificates

(1) A certification service providers shall revoke a certificate upon—

- (a) receiving a request for revocation from a subscriber or his authorized agent;
- (b) detecting forgery or falsification of the information existing in the database or changes in the information in database; and
- (c) detecting the incapacity, bankruptcy or death of the subscriber:

Provided that where it is practicable, a certification service provider shall afford the subscriber a reasonable opportunity to be heard, before the revocation is effected.

(2) A certification service provider shall maintain facilities that can receive and act upon requests for revocation at all times of the day and on all days of every year.

(3) A certification service provider shall use the subscriber identity verification method specified in the certification practice statement to confirm the identity of the subscriber or authorized agent who makes a request for revocation.

(4) A certification service provider shall, after revoking a certificate, give a notice of revocation to the subscriber and publish the notice in the respective repository.

(5) A certification service provider shall log and keep in a secure manner the date and time of all transactions relating to the revocation of a certificate.

(6) A party who wishes to rely on any certificate shall, before relying on a certificate, establish the status of the certificate.

15. Performance audits

The Commission shall, at least once in every year, audit the operations of a licensed certification service provider to monitor compliance with the Act and these Regulations.

[Subsidiary]**16. Security guidelines**

(1) A certification service provider shall comply with the security guidelines that may be issued by the Commission.

(2) A certification service provider shall provide every subscriber with a secure and trustworthy system to generate his key pair.

(3) A certification service provider shall establish a mechanism that generates and verifies advanced electronic signatures in a secure and trustworthy manner and indicates the validity of a signature.

(4) Where the advanced electronic signature is not valid, the mechanism established under paragraph (3) should indicate the reason for invalidity and the status of the certificate.

(5) Where a verification mechanism is established by any person who is not a certification service provider, the resulting signature shall not be considered secure unless a licensed certification service provider endorses the implementation of mechanism and its certificate.

(6) A licensed certification service provider shall store the keys, including the subscriber's and the certification service provider's keys, in a secure and trustworthy manner.

17. Incident handling

(1) A certification service provider shall establish an incident management plan to address, among others, incidents relating to—

- (a) compromise of key;
- (b) penetration of certification service provider's system and network;
- (c) unavailability of infrastructure; and
- (d) fraudulent registration and generation of certificates, certificate suspension and revocation information.

(2) Where any incident referred to in paragraph (1) occurs, a certification service provider shall report the incident to the Commission within twenty four hours.

18. Confidentiality

(1) A certification service provider shall not collect personal data directly from the subscribers or their authorised agents, unless the personal data is necessary for the purposes of issuance of a certificate.

(2) A certification service provider shall keep all information relating to a subscriber confidential.

(3) A certification service provider shall not disclose any information relating to a subscriber unless the disclosure is authorized by the subscriber:

Provided that a certification service provider may, pursuant to an order of the court, disclose information relating to a subscriber without the consent of the subscriber.

(4) The obligation to maintain confidentiality shall not apply to information relating to a subscriber which—

- (a) is contained in the certificate and is available to the public for inspection;
- (b) is otherwise provided by the subscriber to the licensed certification service provider for disclosure to the public; or
- (c) relates to the revocation or suspension of a certificate.

[Subsidiary]

(5) Where a certification service provider has permitted a subscriber to use a pseudonym, the certification service provider shall, at the request of law enforcement authorities, disclose data relating to the subscriber that is required to prosecute offences or to protect against threats to public safety or public order.

19. Winding up of operations of a certification service provider

(1) A certification service provider may, where the certification service provider intends to discontinue its operations—

- (a) arrange for its subscribers to re-subscribe to another licensed certification service provider;
- (b) make arrangements for its records and certificates to be archived in a secure manner; and
- (c) transfer its records to another licensed certification service provider in a secure manner.

(2) A certification service provider shall, where the certification service provider intends to discontinue its operations—

- (a) give the Commission and its subscriber a minimum of six months notice, in writing, of its intention to discontinue its operations; and
- (b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least two months notice of its intention to discontinue its operations.

20. Licensing for updating of a repository and administering a subdomain in the .ke ccTLD

(1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may consider necessary, grant a licence for updating a repository or administering a subdomain in the Kenya country code top level domain.

(2) A person shall not create a new sub-domain under the Kenya country code Top Level Domain without the approval of the Commission.

(3) The Commission may issue guidelines for assignment of sub domains under the ccTLD namespace and prescribe—

- (a) words, phrases or abbreviations that may not constitute a sub-domain name; or
- (b) words, phrases or abbreviations that are reserved for special purposes.

21. Responsibilities of .ke ccTLD administrator

(1) The administrator of the shall—

- (a) be the administrative technical and contact for the ccTLD;
- (b) administer the .ke ccTLD;
- (c) maintain the operational stability and utility of the ccTLD;
- (d) notify the Commission of any change in the ccTLD data;
- (e) provide name service for the ccTLD and ensure that the database is secure and stable;
- (f) comply with the Commission's guidelines for the administration of the ccTLD; and
- (g) allow the Commission to access ccTLD zone files.

[Subsidiary]**22. Winding up of operations of the .ke ccTLD administrator**

The administrator of the ccTLD shall, where the—

- (a) give the Commission and administrators of sub domains in the ccTLD a minimum of a six months, notice in writing, of its intention to discontinue its operations;
- (b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least four months notice of its intention to discontinue its operations;
- (c) furnish the Commission with an up-to-date copy of its zone files; and
- (d) seek the Commission's approval for the transfer of the zone files to another entity, in a secure manner.

23. Responsibilities of a subdomain administrator

(1) The administrator of a subdomain in the .ke ccTLD shall—

- (a) administer a subdomain in the .ke ccTLD;
- (b) at all times, maintain a website that contains registration information;
- (c) maintain the operational stability and utility of the subdomain in the .ke ccTLD;
- (d) notify the Commission of any change in the data of a subdomain;
- (e) provide the name service for a subdomain and ensure that the database is secure and stable;
- (f) provide a domain registration system for the subdomain;
- (g) allow the Commission to access the zone files and registration data for the subdomain; and
- (h) comply with the Commission's guidelines for the administration of sub domains in the .ke ccTLD.

24. Winding up of operations of a subdomain administrator

The administrator of a subdomain shall, where the administrator intends to discontinue its operations—

- (a) give the Commission and its registrants a minimum of six months notice, in writing, of its intention to discontinue its operations;
- (b) publish, in at least one local daily newspaper with nationwide circulation and in such other manner as the Commission may determine, at least four months notice of its intention to discontinue its operations;
- (c) furnish the Commission with an up-to-date copy of its zone files; and
- (d) seek the Commission's approval for the transfer of the zone files and registration data to another administrator of a sub domain in the .ke ccTLD, in a secure manner.

25. Performance audits

The Commission shall, at least once in every year, audit the operations of the administrator of the .ke ccTLD and subdomain administrators, to evaluate compliance with the Act and these Regulations.

26. Limitation of liability

A registrant shall bear liability for the infringement of third party rights and interest arising from holding or using a domain name in the ccTLD.

27. Confidentiality

A subdomain administrator shall use the information obtained from its registrants for the purpose of domain name registration except where the law requires otherwise.

28. Offences and penalties

(1) Any licensee who contravenes the provisions of these Regulations commits an offence.

(2) Any person who commits an offence under these Regulations for which no penalty is expressly provided shall be liable on conviction to imprisonment for term not exceeding five years or a fine not exceeding one million shillings or both.
