

**REPUBLIC OF ZAMBIA**

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**INFORMATION AND COMMUNICATION TECHNOLOGIES ACT, 2006**

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**CONTENTS**

**CHAPTER 1**

**PRELIMINARY PROVISIONS**

**CHAPTER 2**

**ESTABLISHMENT AND FUNCTIONS OF THE AUTHORITY**

**CHAPTER 3**

**LICENSING**

**CHAPTER 4**

**ECONOMIC REGULATION**

**CHAPTER 5**

**TECHNICAL REGULATION**

**CHAPTER 6**

**CONSUMER AFFAIRS**

**CHAPTER 7**

**POSTAL SERVICES**

**CHAPTER 8**

**DISPUTES, REVIEWS AND APPEALS**

**CHAPTER 9**

**ENFORCEMENT AND OFFENCES**

**CHAPTER 10**

**TRANSITIONAL PROVISIONS**

**CHAPTER 11**

**CONSEQUENTIAL PROVISIONS AND AMENDMENTS**

## Chapter 1

### PRELIMINARY PROVISIONS

- Short title and commencement
1. (1) This Act may be cited as the Information and Communication Technologies Act, [●].
- (2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint, provided that the Minister shall not appoint a day that is later than six months after the enactment of the Act.
- (3) Where a date is not appointed under subsection (2), the Act shall be deemed to come into force on the date of expiration of the period referred to in that subsection.
- Interpretation
2. In this Act, unless stated otherwise or the context otherwise requires:
- “**access**” means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis for the purpose of providing electronic communications services. This covers inter alia: access to network elements and associated facilities, access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems, access to number systems or systems offering equivalent functionally, access to fixed and mobile networks, in particular roaming, access to conditional access systems for digital television services, access to virtual network services.
- “**Authority**” or “**ICT Authority**” means the Information and Communication Technology Authority established by section [●] (“*Establishment of the Authority*”) of this Act.
- “**Board**” means the ICT Authority Board constituted under section [●] (“*Board, management and staff of the Authority*”) of this Act.
- “**Chairperson**” means the person elected as Chairperson of the Board under section [●] (“*Board, management and staff of the Authority*”) of this Act.
- “**class assignment**” means a declaration issued by the Authority pursuant to this Act granting a class of persons, subject to certain rules, rights to use frequency bands and/or numbers.
- “**class licence**” means a declaration issued by the Authority pursuant to this Act authorising a class of persons, subject to certain rules to:
- (i) construct, own and/or make available one or more electronic communications networks;
- (ii) provide one or more network services; or
- (iii) provide one or more electronic communications services.
- “**co-location**” means the accommodation of two or more switches, antennas or other electronic communications network equipment in or

on a single building, tower or other structure.

**“Communications Authority”** means the Communications Authority established under section 3(1) of the Telecommunications Act.

**“Company”** has the meaning assigned to it in the Companies Act Chapter 388

**“Convention”** means the International Telecommunication Convention signed at Nairobi on 6<sup>th</sup> November, 1982 or any other international telecommunication convention to which the Government of the Republic of Zambia is from time to time a party, and includes in either case any regulations or other subordinate instrument or provisions annexed thereto or made thereunder.

**“Constitution”** means the Constitution of Zambia Act, Chapter 1, as amended.

**“Director General”** means the person appointed Director General of the Authority under section [ ● ] (*“Board, management and staff of the Authority”*) of this Act.

**“convergence”** means the progressive integration of networks into a common digital platform that allows the delivery of video, audio, text, graphics and data.

**“Courier Service”** means a service by which a document, letter, parcel or any article (other than a telegram) is conveyed from door to door without a postage stamp.

**“customer”** means a person who receives an electronic communications service under an agreement with or pursuant to terms and conditions established by a service licensee.

**“customer equipment”** means equipment, including cabling, hardware and software, employed on the customer side of the network boundary.

**“Deputy Director General”** means the person appointed Deputy Director General of the Authority under section [ ● ] (*“Board, management and staff of the Authority”*) of this Act.

**“dominant position”** has the meaning attributed to it in section [ ● ] (*“Relevant markets and dominant market players”*) of this Act.

**“electronic communication”** means the communication of information in the form of speech or other sound, data, text or images, by means of guided and/or unguided electromagnetic energy.

**“electronic communications”** are items of information, in the form of speech or other sound, data, text or images, communicated by means of guided and/or unguided electromagnetic energy.

**“electronic communications licensee”** means a person who holds an individual licence or who is registered under a class licence.

**“electronic communications market”** means any area of activity identified by the Authority, pursuant to section [ ● ] (*“Relevant markets*

*and dominant market players”*), as constituting a single market within the information and communication technology sector.

**“electronic communications network”** means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit and packet switch, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting and cable television networks, irrespective of the type of information conveyed;

**“electronic communications apparatus”** shall include electronic communications network and any equipment or facility constructed or adapted for use as part of, or for the purpose of an electronic communications service

**“electronic communications service”** means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding editorial control over, content transmitted using electronic communications networks and services; it does not include information society services.

**“franking machine”** means a machine used for making impressions on postal articles to denote payment of postage and includes any meter and any franking or date stamping die used in connection with postal franking.

**“ICT Policy”** means the national ICT policy, as published by the Ministry from time to time, and/or any replacement or supplementary policy directly applicable to the electronic communications sector.

**“ICTA” shall mean the Information and Communications Technology Authority.**

**“ICT Tribunal” or “Tribunal”** means the ICT Tribunal established by section 16 of this Act.

**“Independent Broadcasting Authority Act” or “IBA Act”** means the Independent Broadcasting Authority Act no. 20 of 2002.

**“Independent Broadcasting Authority”** means the Independent Broadcasting Authority established by section 4 of the Independent Broadcasting Authority Act.

**“individual assignment”** means a document issued by the Authority pursuant to this Act granting the holder, subject to certain rules, rights to use frequency bands and/or numbers.

**“individual licence”** means a document issued by the Authority pursuant to this Act authorising the holder, subject to certain rules to:

- (i) construct, own and/or make available one or more electronic communications networks;
- (ii) provide one or more network services; or
- (iii) provide one or more electronic communications services.

**“interconnection”** means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators.

**“licensee”** means a holder of a network licence and/or a service licence.

**“mail”** means every postal article and every mail bag, container or conveyance of any kind by which a postal article is carried, whether or not it contains a postal article.

**“mail bag”** means any bag, box, basket, parcel, hamper or other container or covering in which a postal article is conveyed, whether or not it contains a postal article for the time being.

**“Minister”** or **“Ministry”** for the purposes of this Act means the Minister or Ministry of the Republic of Zambia responsible for information and communication technology sector.

**“money order”** means a money order-

- (a) issued under this Act; or
- (b) issued by any postal authority for payment under this Act;

**“network boundary”** means the first equipment socket in a private residence, the main distribution frame in a building, or the point at which an electronic communications network receives electronic communications from or sends electronic communications to a customer.

**“network licence”** means an electronic communications licence entitling the holder to construct, own and/or make available an electronic communications network and/or to provide a network service to a customer.

**“network licensee”** means a holder of a network licence.

**“network service”** means a service for the carrying of information (in the form of speech or other sound, data, text or images), by means of guided and/or unguided electromagnetic energy but does not include services provided solely on the customer side of the network boundary.

**“physical co-location”** means a type of co-location where the licensee controlling the building, tower or other structure in or on which another licensee’s switches, antennas or other electronic communications

network equipment are accommodated, also allows the other licensee to operate those switches, antennas or other electronic communications network equipment.

“*postal article*” means every article collected for conveyance by post, and includes a telegram.

“*postal officer*” means any person appointed by the Corporation as a postal officer for the purposes of this Act.

“*postal service*” means the conveyance of letters to their addressees or to another person for delivery to their addressee, or the collection thereof for such conveyance or delivery, or any associated service.

“*Radiocommunications Act*” means the Radiocommunications Act Chapter 169 of 1994.

“*Scarce resources*” means for the purposes of this Act, resources that are limited and include frequency spectrum, numbers and electronic addresses

“*sender*” of a postal article means the person from whom the postal article purports to have come;

“*service licence*” means an electronic communications licence entitling the holder to provide one or more electronic communications services.

“*service licensee*” means a holder of a service licence.

“*technology-neutral*” means regulating the activities of market players on the basis of the service such market players provide and not on the basis of the technology they use to provide that service.

“*Telecommunications Act*” means the Telecommunications Act Chapter 469 of 1994.

“*telegram*” means any message transmitted by means of telegraphy and delivered to the addressee;

“*telegraph office*” means any place used by the Corporation for the handling of telegrams;

“*transmission*”, in relation to a telegram, includes the reception as well as the sending of the telegram.

“*Vice-Chairperson*” means the person elected as Vice-Chairperson of the Board under section [7 ● ] of this Act.

“*virtual co-location*” means a type of co-location where the licensee controlling the building, tower or other structure in or on which another licensee’s switches, antennas or other electronic communications network equipment are accommodated, operates those switches, antennas or other electronic communications network equipment on behalf of the other licensee.

“*Zambia Bureau of Standards*” means the Zambia Bureau of Standards established under the Standards Act Chapter 416.

“*Zambia Competition Commission*” means the Zambia Competition Commission established by section 4 of the Competition and Fair

Trading Act Chapter 417.

Supremacy of  
Act

**3.** Where any inconsistency arises between the provisions of this Act and the provisions of any other written law relating to the regulation of information and communication technologies activities, the provisions of this Act shall prevail to the extent of the inconsistency.

**Part II**  
**Objectives of the Bill**

**4.**The objective of the bill is to make provisions for a regulatory framework for telecommunications, radiocommunications, postal and courier services and all matters related thereto, specifically to:-

- (a) Promote the implementation of the ICT Policy;
- (b) Establish a regulatory framework for the ICT, postal and courier service industry;
- (c) Provide for the licensing of telecommunications, radio communications, postal and courier services;
- (d) Provide for economic regulations of the ICT, postal and courier industry;
- (e) Provide for technical regulation of the ICT industry;
- (f) Protect the rights and interests of service providers and consumers.

**Chapter 2**  
**Establishment and Functions of the Authority**

Establishment  
of the  
Authority

**5.** There is hereby established the Information and Communication Technology Authority which shall regulate the electronic communications and postal activities to ensure growth, sustainable competition and high quality of service to the consumers.

Powers and  
Functions of  
the Authority

- 6..** (1) Subject to the provisions of this Act, the Authority shall regulate telecommunications, radio communications, postal and courier activities in Zambia.
- (2) Without derogating from the generality of subsection (1), the Authority shall:
- (1) have the power to implement and administer the licensing and assignment schemes established by this Act including :
    - (a) to issue renew, suspend, revoke or cancel licences
    - (b) to establish standards for the sector
    - (c) to regulate rates and charges
    - (d) to monitor
      - (i)the performance of the sector including levels of investment, availability, quality cost and standards of

services,

(ii) to ensure compliance with the provisions of this Act

(e) to disseminate information about matters relevant to the sector

- (2) promote the adoption of new technologies and services within the information and technology sector;
- (3) promote indigenous participation in the information and communication technology sector;
- (3) have the power to consult with other bodies or institutions on matters relevant to the sector;
- (4) promote the interests of consumers, purchasers and other users of information and communications services, including in particular those who are disabled or of pensionable age;
- (5) take all reasonable steps to extend the provision throughout all urban and rural areas on Zambia, of such information and communication services as satisfy all reasonable demand for them including, in particular, emergency services, directory information services and maritime services;
- (6) have power to approve the sites at which all transmitting stations other than aircraft stations, mobile stations or ship stations are to be established and at which all radio station apparatus used in connection with a transmitting station is to be erected, and
- (7) assign the frequencies on which all radio transmitting stations and all apparatus shall be worked; and
- (8) approve
  - (1) the mode of transmission to be adopted in connection with all transmitting stations and the power to be radiated therefrom;
  - (2) the classes, types and standards of transmitting stations and the radio station apparatus to be used in connection with different classes of radio communication services; and
  - (3) the classes, types and standards of receiving stations and radio and other apparatus to be used in connection with diffusion services
- (9) regulate the provision of postal services to from and within Zambia

- (10) issue decisions in accordance with the provisions of this Act, disputes that are validly put to it pursuant to this Act;
  - (11) to the extent that they are not inconsistent with this Act and any regulations validly issued by the Minister pursuant to this Act, have the power to make declarations, rules or issue guidelines for any purpose that the Authority reasonably considers necessary or desirable for giving effect to this Act;
  - (12) for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act, be capable in law of performing such acts as are reasonably incidental or conducive to the performance of the specific powers and functions conferred, and the discharge of the specific duties imposed, upon it by this Act; and
- (12) subject to the provisions of this Act, generally be capable of performing such acts as a legal person is capable in law of performing.

PROVIDED HOWEVER that in exercising the powers under subsection 7 of this section the Authority shall have regard to the provisions of the Convention

Board,  
management  
and staff of the  
Authority

7. (1) There is hereby constituted the ICT Board which shall be the governing body of the Authority.
- (2) The members of the Board shall consist of seven (7) suitably qualified persons in good standing with vast knowledge and or experience in matters relating to radio communications, telecommunications, postal services and consumer protection nominated by the following entities:
- (a) the Economics Association of Zambia;
  - (b) the Zambia Institute of Certified Accountants
  - (c) the Law Association of Zambia;
  - (d) the Engineering Institute of Zambia;
  - (e) the Zambia Consumer Association
  - (g) the Zambia Chamber of Commerce and Industry;
  - (i) one other member nominated by the Minister to the Board.
- (3) The Minister shall, for the purposes of this Act [ ● ], within thirty days of the coming into force of this Act, call for the nominations of Board members and shall, within sixty days of the coming into

force of this Act, present, without favour, discretion or right of veto, all nominations to Parliament for ratification which ratification shall be made by the fifteenth day from the date of presentation of the nominations to parliament.

- (4) The Minister shall effect the appointments of the Board members specified in Subsection 3 immediately upon ratification of Parliament failure to which the Board members shall be deemed to have been appointed.
- (5) Subject to the provisions of Subsections 8 (1) and (2) of this Act, the Minister shall for subsequent appointments of members of the Board follow the procedure stipulated in Subsection 3 of this Section.
- (6) The office of a Board member shall not be occupied prior to ratification.
- (7) A person shall not be nominated or appointed as a member of the Board if that person:
  - (a) has an existing criminal record;
  - (b) is a member of Parliament or local authority;
  - (c) is an office-bearer or employee of any political party;
  - (d) has a direct or indirect financial interest in the information and communication technology sector; or
  - (e) is an immediate family member of a person referred to in subsections (b) - (d).
- (8) A Chairperson and Vice-Chairperson shall be elected by the members of the Board from amongst themselves.
- (9) The Board shall appoint a Director General and a Deputy Director General, on such terms and conditions as the Board may determine.
- (10) The Director General shall be the Chief Executive Officer of the Authority and shall be responsible for the management of the affairs of the Authority.
- (11) The Board shall appoint such other suitably qualified staff of the Authority as it considers necessary for the performance of the functions of the Authority under this Act, on such terms and conditions as the Board may determine.
- (12) A Board, management or staff member of the Authority may not:
  - (a) be or become a shareholder;
  - (b) have or acquire any direct or indirect financial interest; or
  - (c) otherwise participate as an applicant, employee, consultant or advisor;in an electronic communications licensee, , whilst, or within

twelve months of ceasing to be, a Board, management or staff member of the Authority.

- Membership tenure and replacements
- 8.** (1) Subject to the other provisions of this Act, a member of the Board shall be appointed and hold office for a period of three years from the date of appointment and may be re-appointed for one further term of three years.
- (2) Subject to the provisions of Section 8 (1), the office of a member of the Board shall be terminated on the fifteenth sitting day of parliament next succeeding the date of his nomination unless, on or before the fifteenth sitting day from the date of presentation of the nominations to Parliament, Parliament by resolution ratifies the appointment.
- (3) Subject to Subsection 8 (1) on the expiration of the period for which a member is appointed, the member shall continue to hold office until the member's successor is appointed.
- (4) The office of member shall become vacant:
- (a) upon resignation;
  - (b) upon expiration of the period for which a member is appointed, subject to any re-appointment;
  - (c) upon the death of the member;
  - (d) if that member, without good cause or approval of the Chairperson, is absent from three consecutive meetings of the Board of which that member had notice;
  - (e) if that member is adjudicated bankrupt;
  - (f) if the member becomes mentally or physically incapable of performing his duties as a member, or
  - (g) if the member is convicted by any court of a criminal offence.
- (4) A member may resign from office by giving one month's notice in writing to the Board.
- (5) Whenever the office of a member becomes vacant, the Board shall appoint another member in place of the member who vacates office, for the remainder of the term provided that such appointments by the Board shall not exceed three (03) members.
- Allowances
- A member of the Board or any Committee member thereof shall be paid such travelling, subsistence or other allowances if any, as the Board with the approval of the Minister may determine.
- Board organisation and functioning
- 9.** (1) Subject to the other provisions of this Act, the Board shall regulate its own procedure.
- (2) The Board shall meet for the initial transaction of business at such place and time as the Chairperson may determine, and thereafter the Board shall meet for the transaction of business at least once

every three months at such places and at such times as the Board may determine.

- (3) Upon giving notice of at least fourteen days, a meeting of the Board shall be called by the Chairperson and shall be called if not less than one third of the members so request in writing; provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.
- (4) There shall preside at any meeting of the Board:
  - (a) the Chairperson; or
  - (b) in the absence of the Chairperson, the Vice-Chairperson; or
  - (c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.
- (5) Five members shall constitute a quorum at any meeting of the Board.
- (6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.
- (7) The Board may invite any person whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.
- (8) The validity of any proceedings, act or decision of the Board shall not be affected by reason only of any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.
- (9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any Committee established by the Board.

Disclosure of interest

- 10.** (1) If a member or person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member, person or that member's or person's immediate family member is directly or indirectly interested in a private capacity, the member or that person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.
- (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.
- (3) If a member or person participates in the proceedings of the Board while knowingly holding a conflict of interest, the member or

person commits an offence and shall be liable upon conviction, to a fine not exceeding Two hundred and seventy seven thousand seven hundred and seventy eight penalty units or to imprisonment for a term not exceeding sixty (60) months, or to both.

- Committees of the Board
- 11.** (1) The Board may for the purposes of performing the functions of the Authority establish Committees and delegate to any such Committee such of its functions as it considers necessary which may include the following:
- (a) committee on competition, interconnection and tariffs;
  - (b) committee on licensing and assignment of scarce resources;
  - (c) committee on universal access and service; and
  - (d) committee on consumer affairs; and
  - (e) And any other committee that the Board may deem necessary
- (2) The Board may delegate to a Committee of the Board such of its functions as it deems fit.
- (3) The Board may appoint as members of the Committee persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.
- (4) Subject to any specific or general direction of the Board, a Committee may regulate its own procedures.
- (5) Each Committee shall keep minutes of its meetings and shall keep the Board informed of its activities and shall conduct its proceedings in such manner as the Board may determine
- (6) Meetings of the Committee shall be held at such times and venues as the Board may determine
- Independence of the Authority
- 12.** Except as otherwise provided in this Act, the Authority shall be an independent and autonomous body, and, shall not be subject to the direction of any other person or authority
- Funds of the Authority
- 13.** (1) The Authority shall be funded by:
- (a) such sums as may be appropriated from time to time by Parliament for the purposes of the Authority;
  - (b) such fees as the Authority may impose by way of fees for licences and assignments;
  - (c) such sums as may be paid to the Authority by way of fines payable pursuant to this Act;
  - (d) such fees as the Authority may impose for services requested and provided under this Act;
  - (e) such grants and donations as may be made to the Authority, provided however that the Authority shall not be entitled to receive, whether directly or indirectly, any grants or donations from any party licensed or likely to be licensed

under this Act; and

- (f) such sums of money or such other assets as may accrue to or vest in the Authority from time to time.
- (2) The Authority may from time to time raise funds from banks and other financial institutions in such form and at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Board considers appropriate.
- (3) There shall be paid from the funds of the Authority:
  - (a) the salaries and allowances of the staff of the Authority;
  - (b) any other expenses incurred by the Authority in the performance of its functions.
- (4) The Authority shall devote at least ... percent of its funding in any financial year to the education and training of its management and staff in matters related to its functions under the Act:
- (5) The financial year of the Authority shall be the period of twelve months ending on the 31st of March in each year.
- (6) Before 1 March in each year, the Authority shall submit to the Board an estimate of its expenditure for the proceeding financial year in such form and containing such particulars as the Board may direct. The Board shall, before 1 April in each year notify the Authority of the amount approved for expenditure and notify the Minister accordingly.
- (7) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts and such accounts shall be audited annually by independent auditors appointed by the Authority.

Transparency  
of the  
Authority

- 14.** (1) No rule or guideline issued by the Authority pursuant to this Act shall take effect subject to the other provisions of this Act until it is duly published in the Gazette.
- (2) The Authority shall be open and transparent in its operations and, in this regard, shall, without limitation, undertake the following:
- (a) publish in the print and electronic media, within thirty days of its publication in the Gazette, any declaration, rule or guideline it issues pursuant to this Act;
  - (b) subject to confidentiality obligations, publish on the Internet, within four (4) weeks of it being made, any decision issued pursuant to this Act;
  - (c) submit to the Minister, not later than 30 September of each year, an annual report and audited accounts detailing its activities throughout the previous calendar year;
  - (d) The Minister shall not later than fourteen days after the first sitting of the National Assembly next after the receipt of the annual report and audited accounts, lay the annual report and

audited accounts before the National Assembly

- (e) publish in the print and electronic media, within thirty (30) days of consideration by Parliament of the annual report and audited accounts for the previous financial year; and
- (3) (a) A person who is aggrieved or whose interest is adversely affected by any decision of the Authority made pursuant to the exercise of the powers and functions under this Act or its subsidiary legislation (“**aggrieved person**”) may request in writing to the Authority for a statement of the reasons for the decision.
- (b) The Authority shall, upon such written request by an aggrieved person, provide a copy of a statement of reasons for the decision and any relevant information taken into account in making the decision.
- (c) The Authority is not required to publish, or to disclose to the aggrieved person, a statement of reasons or a part of a statement of reasons if the publication or disclosure would
- disclose a matter that is, in the opinion of the Authority, of a confidential character;
  - be likely to prejudice the fair trial of a person; or
  - involve the unreasonable disclosure of personal information about any individual (including a deceased person).
- In this Chapter, “*decision*” includes any action, order, report direction.
- (4) (a) An aggrieved person may at any time within but not later than 30 days after the date of receipt of the Authority’s statement of reasons specified in section .....of this Act request the Authority in writing for a review of the Authority’s decision and specify therein the reasons and basis for this request.
- (b) Subject to subsection ..... Of this section, upon receipt of the aggrieved person’s written submissions the Authority shall meet to review its decision taking into consideration the submissions of the aggrieved person under subsection ..... of this section;
- (c) The Authority may, in carrying out the review of its decisions under

this Part, use and exercise any of its powers under this Chapter.

(d) The Authority shall not later than 60 days from the date of receipt of the aggrieved person's written submissions, concluding its review of the decision and inform the aggrieved person in writing of its final decision thereon the reason therefore.

(5) (a) Subject to section-of this Act and subsections – and –of this section, an aggrieved person may appeal to court for a judicial review of the Authority's decision or other action

(b) The decision or direction of the Authority that is the subject matter of an application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgement or order of the Court

(c) A person shall not apply to the court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

(6) Matters upon which the Authority shall monitor and report, with regard to the annual report provided for in subsection (2)(c), shall include, but are not limited to, the following:

(a) the operation and administration of this Act and its subsidiary legislation;

(b) the efficiency by which licensees provide networks and/or services;

(c) the quality of services;

(d) the rates paid by consumers for services;

(e) the markets defined pursuant to section [ ● ] (*“Relevant markets and dominant market players”*);

(f) declarations of dominance pursuant to section [ ● ] (*“Relevant markets and dominant market players”*);

(g) a register of all reference interconnection offers, interconnection agreements, access agreements and co-location agreements lodged with the Authority;

(h) all disputes referred to the Authority;

(i) licences issued, suspended and/or withdrawn;

(j) the precise application of the universal access and service contributions made by licensees;

(k) any declarations, rules, decisions, guidelines or regulations made by the Authority; and

(l) any major studies undertaken by the Authority relevant to the information and communication technology sector.

Seal of

**15.** (1) The seal of the Authority shall be such device as may be

- Authority determined by the Board.
- (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Controller or one other person authorised in that regard by a resolution of the Board.
  - (3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Controller or any other person generally or specifically authorised by the Board in that regard.
  - (4) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Board shall be received in evidence without further proof, unless the contrary is proven.
- ICT Tribunal **16.** (1) There is hereby established the Information and Communication Technology Tribunal,
- (2) The Tribunal shall convene for the purposes of reviewing any matter on appeal from a decision by the Authority pursuant to section [ ● ] (*“Institutional Disputes”*), but not from a declaration, rule or guideline issued by the Authority.
  - (3) The Tribunal shall at all times consist of ;
    - (a) a chairperson who shall be a person holding the office of a Judge of the High Court in Zambia;
    - (b) two persons who have experience in law for at least ten years; and
    - (c) two persons who are graduates of a recognised university, each having at least ten years experience in one or more of the fields of economics, finance, engineering, management, broadcasting or information and communications technologies.
  - (5) Within ninety (90) days of the coming into force of the Act the Minister shall appoint the members of the ICT Tribunal for a term not exceeding five years on such terms and conditions as the Minister shall deem fit.
  - (6) The office of the chairperson or any other member of the ICT Tribunal shall become vacant:
    - (a) upon resignation;
    - (b) upon the death of the member;
    - (c) if that member is adjudged bankrupt;
    - (d) if the member becomes physically or mentally incapable of performing his duties as a member; or
    - (e) if the member is convicted by any court of a criminal offence.

- (5) The chairperson or any member may, at any time, resign from office by giving one month's notice in writing to the Minister.
- (6) The decisions of the ICT Tribunal, on any matter, shall be decided on a majority of votes of the members.
- (7) The quorum for the ICT Tribunal shall be formed by the Chairman and at least two other members, for the purposes of fulfilling the functions of the ICT Tribunal under this Act.
- (8) (1) The ICT Tribunal shall determine procedures which procedures may include:
  - (a) the appointment of members to form the quorum of the ICT Tribunal;
  - (b) the appointment of an acting member;
  - (c) the conduct of the hearings; and
  - (d) any other matter incidental to the hearings.
- (2) The Minister shall determine the funding and remuneration of the ICT Tribunal;
- (9) In order to ensure impartiality and adequacy of the ICT Tribunal:
  - (a) a member of the ICT Tribunal shall disclose, as soon as reasonably practicable, to the chairperson, any interest, whether substantial or not, which may conflict with the member's duties as a member of the ICT Tribunal, in a particular matter;
  - (b) if the Chairperson is of the opinion that the member's interest is in conflict with the member's duties, the Chairperson shall inform all the parties, including the appellants, to the matter of the conflict;
  - (c) if none of the parties to the matter objects to the conflict, the member may continue to execute his duties as a member of the ICT Tribunal in relation to that matter;
  - (d) if a party to the matter objects to the conflict, the member shall not continue to execute its duties as a member of the ICT Tribunal in relation to that matter.
- (10) The Minister shall fill any vacancy arising on the ICT Tribunal within thirty (30) days after the vacancy arises.

Competition

- 17.** (1) The Authority, pursuant to the provisions of this Act, shall be the sole institutional body responsible for the regulation of competition in the information and communication technology sector as provided for in section 42, and such matters as are related thereto.
- (2) The Authority may require the Zambia Competition Commission to provide it with written advice concerning any matter related to

competition or consumer welfare that arises in the course of the performance by the Authority of its functions in terms of this Act.

(3) The Authority shall cooperate with the Zambia Competition Commission in the performance of its duties with respect to matters related to the information and communication technology sector under the Competition and Fair Trading Act,.

(4) If there is any conflict between this Act and the Competition and Fair Trading Act, this Act shall prevail.

**Immunity** **18.** No action or other proceedings shall lie or be instituted against any Board member or ICT Tribunal member for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of that Board member's or ICT Tribunal member's functions under this Act.

**Disclosure** **19.** A person shall not without the consent in writing given by, or on behalf of, the Authority, publish or disclose to any person otherwise than in the course of the person's duties, the contents of any document, communication or information which relates to, and which has come to the person's knowledge in the course of, the person's duties under this Act.

**Powers of the Minister** **20.** (1) The Minister shall upon recommendation from the Authority make regulations and decisions in respect of information and communication technology where this is expressly provided for in this Act.

(2) The Minister shall have the power to allot radio frequency spectrum in accordance with applicable national, regional and international protocols and guidelines including the Convention

(3) Subject to the provisions of this Act, no decision made by the Minister pursuant to this Act shall take effect until it is duly published in the gazette

(4) The Minister shall publish in the print and electronic media within thirty (30) days of its publication in the gazette any decision issued pursuant to this Act.

### **Chapter 3**

#### **LICENSING**

**Licence eligibility to any further appeal** **21.** to any further appeal. (1) The following persons, and only the following persons, shall be eligible to apply for and hold an individual licence under this Act, or to act pursuant to a class licence under this Act:

(a) any company validly established in Zambia; and

(b) any individual who is a citizen of, or is an established

resident in, Zambia.

- (2) Neither the Minister nor the Authority may, whether through regulations, rules, licences, decisions or other mechanisms, impose any obligations in respect of the nationality of shareholders in any company that meets the eligibility requirements of subsection (1), either as regards a condition for obtaining a licence or as regards a condition of exercise of any licence obtained.
- Network licence
- 21.** (1) Subject to section [ ● ] (“*Licence Exemption*”) of this Act, no person shall construct, own or make available an electronic communications network and/or provide network services except in accordance with the terms and conditions of a class licence granted under this Part.
- (2) Notwithstanding the provisions of subsection (1), no person shall construct, own or make available those electronic communications networks and/or provide those network services listed in a declaration to be issued by the Authority except under, and in accordance with the terms and conditions of, an individual licence granted under this Part.
- Service licence
- 23.** (1) Subject to section [ ● ] (“*Licence Exemption*”) of this Act, no person shall provide electronic communications services except in accordance with the terms and conditions of a class licence granted under this Part.
- (2) Notwithstanding the provisions of subsection (1), no person shall provide those electronic communications services listed in a declaration to be issued by the Authority except under, and in accordance with the terms and conditions of, an individual licence granted under this Part.
- Licence exemption
- 24.** (1) No electronic communications licence shall be required under this Act for the activities listed in a declaration to be issued by the Authority.
- (2) In addition, the Authority may, by declaration, exempt a person or class of persons, for a limited or unlimited period of time, from the requirement to hold an individual licence or a class licence under this Part, where necessary and expedient to pursue the purposes of this Act. In such a case, the Authority shall retain the power to reverse its decision, where necessary and expedient to pursue the purposes of this Act, and in the event of such reversal, shall provide reasonable notice to the affected party.
- Grant of individual licence
- 25.** (1) Subject to compliance with the rules referred to in subsection (2), individual licences shall be issued by the Authority to any applicant fulfilling the eligibility requirements set forth in section [ ● ] (“*Licence Eligibility*”) and who, subject to criteria published by the Authority from time to time, is financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations to be set forth in the individual licence concerned.

- (2) The Authority shall by regulations issue rules setting forth in detail the procedure to be followed for the grant of an individual licence under this section which procedure shall be non-discriminatory and transparent.
- (3) The Authority shall set and make known the period within which a decision on any application shall be made, such period as may be prescribed by the Authority provided that failure by the Authority to issue a decision within such period shall, except in stipulated circumstances, be deemed acceptance of the application.
- Individual licence fees**
- 26.** The Authority shall issue rules determining:
- (1) the one-off fees payable by the applicant upon the filing of an individual licence application;
  - (2) the one-off fees payable by the applicant upon the granting of an individual licence; and
  - (3) the annual fees payable for the monitoring of the licensee's compliance with the individual licence conditions.
- Terms and conditions of an individual licence**
- 27.** (1) All individual licences shall include the standard licence conditions set forth in rules to be issued by the Authority.
- (2) The Authority may, in respect of any individual licence, determine and impose special terms and conditions including, without limitation, as regards licence term, licence area, and specific rights and obligations in respect of interconnection and access.
- Renewal of an individual licence**
- 28.** Subject to such procedures as may be prescribed by the Authority and upon payment of such fees as may be prescribed, an individual licence granted under this Act may be renewed on its expiry, upon application within the period specified in the licence concerned where the licensee;
- (1) continues to fulfil the eligibility requirements set forth in section [●] ("*Licence Eligibility*");
  - (2) subject to criteria published by the Authority from time to time, continues to be financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations to be set forth in the individual licence concerned; and
  - (3) has not, during the current term of the licence, committed a breach of;
    - (a) the provisions of section 30 (1) of this Act; or
    - (b) regulations issued
    - (c) or a breach of a condition of a licence condition breach of which is stipulated in the license to be a material breach;

provided that where a license has on repeated occasions contravened the conditions of the individual license or has been the subject of such complaints by customers of the

licensee a in the opinion of the Board warrants action the Authority by notice in writing to the licensee may vary the conditions of the license or attach new conditions to the license

- Modification of an individual licence
- 29.** (1) Subject to this section, and in particular the requirement to solicit and consider representations from the licensee concerned, the Authority may modify the terms and conditions of an individual licence granted under this Act, but only where, and to the extent that, such modification is necessary in the light of legislative changes and/or national or public interests.
- (2) Before making modification of the terms and conditions of an individual licence under this section, the Authority shall give notice to the licensee concerned:
- (a) stating that it proposes to make modifications in the manner specified in the notice ; and
  - (b) specifying the time (not being less than four (4) weeks from the date of service of the notice on such licensee) within which written representation in respect of the proposed modifications may be made.
- (3) Upon receipt of any representation referred to in subsection (2), the Authority shall give due and proper consideration to such representation and may then:
- (a) reject the representation; or
  - (b) amend the proposed modifications
- and, in either event, it shall thereupon issue a directive in writing to such licensee requiring that, within such reasonable time as the Authority may specify, effect be given to the finalised modifications.
- Suspension, revocation and cancellation of an individual licence
- 30.** (1) The Authority may, by declaration, suspend, revoke or cancel an individual licence granted under this Act in any of the following circumstances:
- (a) the licensee has failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the individual licence;
  - (b) the licensee has contravened the provisions of any other written law relevant to the licensee
  - (c) the licensee has committed a material breach of the licence or failed to comply with any decision, declaration, rule or guideline lawfully made or given by the Authority;
  - (d) the licensee:
    - (i) enters into receivership or liquidation;
    - (ii) takes any action for its voluntary winding-up or

dissolution;

- (iii) enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
- (iv) is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution;

(e) the licensee has ceased, however briefly, to fulfil the eligibility requirements set forth in section [ ● ] (“*Licence Eligibility*”); or

(f) the suspension or withdrawal is in the public or national interest.

(g) Any other breach as may be prescribed by the Authority

(2) Notwithstanding any contrary provision in this Act, an individual licence may be suspended, revoked or cancelled under sub-section (1)(a), (b) or (c) above, only after:

(a) the Authority has by written notice informed the licensee of its breach under the said subsection and demanded that the breach be remedied within sixty (60) days from the date of the notice; and

(b) the licensee has failed to remedy the breach within the said time-frame.

(3) Prior to the suspension or revocation of an individual licence under this section, the Authority shall inform the licensee by written notice, as soon as practicable, of its intention to suspend, revoke or cancel the licence and the reasons therefor.

(4) The affected licensee shall be given a reasonable opportunity to make written submissions to the Authority within a time period specified in the notice and such time period shall not be less than fourteen (14) days from the date of the notice.

(5) The affected licensee may, within the time period specified in the notice, make written submissions and the Authority shall consider any such submissions in making its final determination on the suspension, revocation or cancellation of the individual licence.

(6) Subject to subsections (4) and (5) of this section, the suspension or withdrawal of an individual licence shall take effect on the expiration of thirty (30) days from the date on which the notice of the Authority’s declaration under subsection (3) of this section in respect of the suspension or revocation is served on the licensee.

(7) When the suspension or withdrawal of an individual licence has taken effect, the Authority shall, as soon as practicable, cause the suspension or withdrawal to be published in at least one national

		daily newspaper.
	(8)	Any delay or failure to publish the notice of suspension or withdrawal shall not in any manner affect the validity of the suspension or revocation.
Registration under class licence	<b>31.</b>	(1) Class licences shall be issued by declaration of the Authority. (2) All persons intending to undertake activities covered by a class licence shall, prior to undertaking such activities, file with the Authority a completed version of the appropriate class licence registration form. (3) The Authority shall issue rules determining the format of class licence registration forms.
Class licence fees	<b>32.</b>	The Authority shall issue rules determining: (1) the one-off fees payable upon the filing of a class licence registration form; and (2) the annual fees payable for the operation of the class licence
Terms and conditions of a class licence	<b>33.</b>	All class licensees shall comply with the standard licence conditions set forth in rules to be issued by the Authority.
Renewal of the right to hold a class licence	<b>34.</b>	(1) In order to remain eligible to undertake activities covered by a class licence, all persons having filed a class licence registration form shall, prior to every anniversary of the date on which such filing took place, file with the Authority an updated version of the appropriate class licence registration form. (2) Where a person fails to comply with subsection (1) above, he shall be de-registered by the Authority in respect of the class licence concerned and shall upon written notice by the Authority immediately cease to undertake any activities pursuant to the said class licence.
New class licences and modifications to existing class licences	<b>35.</b>	(1) The Authority may at any time notice promulgate a new class licence or upon giving thirty (30) days written notice, modify and or repeal an existing class licence give reasonable notice to the public in such form as may be stipulated (2) No compensation shall be due for any promulgation, modification or repeal made pursuant to subsection (1) above.
Suspension, revocation and cancellation of the right to hold a class licence	<b>36.</b>	(1) The Authority may de-register any person subject to a class licence under this Act in any of the following circumstances: (a) the person has committed a material breach of the licence or failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the class licence; (b) the person has contravened the provisions of any written law relevant to the class licence; (c) the person has failed to comply with any decision,

declaration, rule or guideline lawfully made or given by the Authority;

(d) the person has ceased, however briefly, to fulfil the eligibility requirements set forth in section [ ● ] (“*Licence Eligibility*”); or

(e) the de-registration is in the public interest.

(2) Notwithstanding any contrary provision in this Act, a person may be de-registered under subsection (1)(a), (b) or (c) above, only after:

(a) the Authority has by written notice informed the licensee of its breach under the said subsection and demanded that the breach be remedied within thirty (30) days from the date of the notice; and

(b) the licensee has failed to remedy the breach within the said time-frame.

(3) The person whose registration has been cancelled shall immediately lose the right to provide any service covered by the relevant class licence until such time as the Authority may decide to re-register the person.

Provision of essential services

**37. (1)** A service licensee holding an individual licensee shall, provide the following electronic communications services (the “**essential electronic communications services**”), twenty-four (24) hours a day, seven (7) days a week, at the prescribed level of quality, without discrimination:

(a) emergency service with priority routing, enabling any member of the public to make contact, with, in particular, the police, the fire brigade and the ambulance service;

(b) directory assistance service, enabling any subscriber to obtain a telephone number through the assistance of an operator or through automated means;

(c) operator assistance service, enabling any subscriber to obtain assistance, including accessing services, setting up calls, remedying faults and directory services; and

(d) such other services as may be determined by the Minister from time to time, in consultation with the Authority and published in the gazette.

(2) Essential electronic communications services shall be provided in accordance with the terms and conditions of the applicable licence.

(3) The following essential electronic communications services shall be provided free-of-charge:

(a) emergency service; and

(b) operator assistance for remedying faults.

(c) Directory assistance services

Transfer of

**38.** No licence nor any rights thereunder may be ceded, transferred,

licence rights	assigned, pledged or otherwise disposed of or encumbered without the prior written consent of the Authority, which consent may be made subject to such terms and conditions as the Authority may determine.
Change of control of a licensee	<p><b>39.</b> (1) A licensee shall without undue delay notify the Authority of any direct or indirect changes to its shareholding.</p> <p>(2) A licensee which holds an individual licensee must obtain the Authority’s prior written consent for:</p> <ul style="list-style-type: none"> <li>(a) any transfer of shares which would result in the direct or indirect ownership of more than 25% of the issued voting share capital of the licensee changing hands;</li> <li>(b) any change in ownership of the licensee’s issued voting share capital that results in a change to the composition of one-quarter of the licensee’s board of directors.</li> </ul>
Obligations incumbent upon persons undertaking exempt activities	<b>40.</b> The fact that any activities are deemed to be exempt from licensing requirements under this Act shall not affect the requirement for persons undertaking such activities to comply with all other applicable provisions of this Act or its enabling regulations.
Necessity for scarce resources assignment	<b>41.</b> Nothing in this Part III (“ <i>Licensing</i> ”) shall be construed to allow a licensee to begin its activities in breach of any applicable provisions of Part V (“ <i>Technical Regulation</i> ”) of this Act relating to the necessity, in certain circumstances, of obtaining rights of use for scarce resources as provided.

## Chapter 4

### ECONOMIC REGULATION

Relevant  
markets and  
dominant  
market players

**42.** (1) The Authority shall, no later than 31 December of each year, determine and publish in the *Gazette* a list for the following calendar year of:

- (a) all retail and wholesale electronic communications markets that, in the Authority's opinion, warrant the regulatory control provided for in this Part IV; and
  - (b) licensees deemed to hold, for each electronic communications market so identified, a dominant position.
- (2) For the purposes of subsection (subject (1)(b));
- (a) The Authority that may determine a licensee to be in a dominant position in  
any aspect of the ICT market;
  - (b) The Authority may publish guidelines and regulations which clarify how it shall apply the test of dominant position.
  - (c) The guidelines and regulations in subsection (b) of this section may specify the matters which the Commission may take into account, including:-
    - (i) the relevant economic market;
    - (ii) global technology and commercial trends affecting market power;
    - (iii) the market share of the licensee;
    - (iv) the licensee's power to make independent rate setting decisions;
    - (v) the degree of product or service differentiation and sales promotion in the market; and

- (vi) any other matters which the Commission is satisfied are relevant;

- Interconnection
- 43.** (1) Network licensees have the right, and when solicited in writing by another network licensee the obligation, to negotiate, in good faith, for the purposes of enabling the provision of electronic communications services to the public, an agreement for interconnection with each other, in respect of the electronic communications networks used by them.
- (2) Where network licensees fail to reach agreement within the prescribed period from the date of receipt of a written request, the matter may be referred by either network licensee to the Authority for examination and determination. In such a case, the Authority may order the network licensees to interconnect their electronic communications networks on such default terms and conditions as prescribed by the Authority from time to time.
- (3) Any network licensee that has, for the calendar year in question, been deemed to hold a dominant position in a given interconnection market in accordance with section [●] (“*Relevant markets and dominant market players*”) of this Act, shall for the purposes of enabling the provision of electronic communications services to the public, as concerns that interconnection market:
- (a) offer interconnection to network licensees on terms set forth in a reference interconnection offer to be:
    - (i) submitted for the approval of the Authority within such period as maybe prescribed from the date of publication in the *Gazette* of the network licensee’s status as a licensee holding a dominant position;
    - (ii) subject to any amendments as the Authority deems reasonable; and
    - (iii) published, in a format readily accessible to other network licensees, within such period as may be prescribed from the date of receiving the approval;
  - (b) ensure that said reference interconnection offer, and each of its terms and conditions, and the subsequent provision of interconnection is fair and non-discriminatory, and in particular that:
    - (i) interconnection fees are cost-oriented and transparent;
    - (ii) interconnection points are made accessible on a transparent basis at any technically feasible point in the network; and
    - (iii) the terms and conditions prescribed by the Authority at the time of the said offer be incorporated within the reference interconnection offer;

- (c) provide interconnection and ancillary information to other network licensees under the same conditions and of the same quality as such network licensee's provide for its own services and/or those of its subsidiaries, affiliates or in other of its agreements; and
  - (d) maintain its accounts in such a manner as to ensure that, should they be inspected by the Authority, it is reasonably simple to verify compliance with the terms of subsection (4)(b) of this section [ ● ] ("*Interconnection*"), in particular by maintaining a separate account for interconnection activities sufficiently detailed to allow identification of all elements of revenue and costs, together with the basis of their calculation.
- (4) Every interconnection agreement, including any interconnection agreement resulting from the signature of a reference interconnection offer, shall be in writing in the English language and must not pose an unreasonable risk:
- (a) in the event of catastrophic network breakdown or in exceptional cases of *force majeure* such as extreme weather, earthquakes, flood, lightning or fire, to the maintenance of:
    - (i) any electronic communications network used for the provision of electronic communications services to the public; or
    - (ii) any electronic communications service provided to the public;
  - (b) to the integrity of any electronic communications network used for the provision of electronic communications services to the public;
  - (c) to the interoperability of electronic communications services;
  - (d) to the protection of personal data, the confidentiality of information processed, transmitted or stored, or the protection of privacy.
- (5) (i) No interconnection agreement shall be implemented without having received the prior, written approval of the Authority. The Authority may only withhold such approval where it considers that the interconnection agreement does not meet the essential requirements set forth in sub-section (5) of this section [ ● ] ("*Interconnection*").
- (ii) Where the Authority issues a written decision indicating that it does not give its approval to the interconnection agreement, it shall explain the reasons for the decision provided that the parties to the interconnection agreement may re-submit a modified version of the agreement within such period as may be prescribed.
- (iii) Where the Authority fails to issue a written decision within

sixty (60) days of receiving the interconnection agreement, this failure to respond shall be deemed to constitute approval of the interconnection agreement.

- (6) The Authority may by rules or guidelines prescribe any matter considered necessary for inclusion in interconnection agreements.
- (7) The Authority shall maintain a register of all interconnection agreements, which shall:
  - (a) contain the terms and conditions of each interconnection agreement (with such commercially sensitive terms and conditions excluded as the Authority deems fit); and
  - (b) be open to public inspection, subject to such procedures and fees as may reasonably be prescribed by the Authority.
- (8) Any information:
  - (a) obtained by a network licensee from another network licensee as a result of the negotiation referred to in subsection (1) of this section [ ● ] (“*Interconnection*”); and
  - (b) which was, at the time it was obtained:
    - (i) previously unknown to the network licensee obtaining it; and
    - (ii) not publicly available;

may, for so long as such information remains publicly unavailable, be used only for the purposes for which it was supplied.

Access

- 44.** (1) A licensee may, for the purposes of enabling the provision of electronic communications services to the public, negotiate in good faith an agreement for access to those electronic communications network elements of any network licensee that appear in a list to be published annually in the *Gazette* by the Authority, and, when solicited in writing by a licensee, and such network licensee shall, for the purposes of enabling the provision of electronic communications services to the public, negotiate such an agreement.
- (2) Where the parties fail to reach agreement within such period as may be prescribed by the Authority, from the date of receipt of a written request, the matter may be referred by either party to the Authority for examination and determination. In such a case, the Authority may order the network licensee to allow access to its electronic communications network(s) on such default terms and conditions as prescribed by the Authority from time to time.
  - (3) Any network licensee that has, for the calendar year in question, been deemed to hold a dominant position in a given electronic communications market in accordance with section [ ● ] (“*Relevant markets and dominant market players*”) of this Act, shall for the purposes of enabling the provision of electronic

communications services to the public, as concerns that electronic communications market, offer access to requesting licensees:

- (a) on reasonable and non-discriminatory terms and conditions, in particular in respect of price;
  - (b) of at least the same technical quality as the technical quality provided on its own electronic communications network or, as the case may be, for its own electronic communications services.
- (4) Every access agreement shall be in writing.
- (5) No access agreement shall be implemented without having first been filed with the Authority.
- (6) The Authority may by regulations or guidelines prescribe any matter considered necessary for inclusion in access agreements.
- (7) The Authority shall maintain a register of all access agreements, which:
- (a) shall, without revealing the terms and conditions of the agreement, contain:
    - (i) the names of the parties to the agreement;
    - (ii) a general description of the matter governed by the agreement; and
    - (iii) the date of the agreement; and
  - (b) shall be open to public inspection, subject to such procedures and fees as may be prescribed by the Authority.
- (8) Any information:
- (a) obtained by either party to an access agreement as a result of the negotiation referred to in subsection (1) of this section [ ● ] (“Access”); and
  - (b) which was, at the time it was obtained:
    - (i) previously unknown to the party obtaining it; and
    - (ii) not publicly available;
- may, for so long as such information remains publicly unavailable, be used only for the purposes for which it was supplied.

- Co-location      **45.** (1) Where a network licensee has the right under this Act to install facilities on, over or under public or private land, or to take advantage of a procedure for the expropriation or use of private property, it shall, when solicited in writing by another network licensee for the purposes of enabling the provision of electronic communications services to the public, have an obligation to negotiate an agreement for co-location with that other network licensee.
- (2) Where the parties fail to reach agreement within a period to be

prescribed by the Authority, the matter may be referred by either party to the Authority for examination and determination. In such a case, the Authority may order the parties to undertake co-location on such reasonable terms as it may prescribe.

- (3) Notwithstanding subsection (1), a request to negotiate an agreement for co-location may be refused where:
  - (a) the space available is insufficient to accommodate the physical co-location requested, and virtual co-location is not reasonably feasible;
  - (b) the co-location requested is likely to lead to harmful interference; or
  - (c) viable alternatives to co-location are open to the requesting party and have not been reasonably explored.
- (4) Any refusal to negotiate an agreement for co-location shall be made in writing and shall set forth clearly and in sufficient detail the reasons relied upon by the requested party provided that such refusal is approved by the Authority
- (5) Every co-location agreement shall be in writing in the English language.
- (6) The Authority may by regulations or guidelines prescribe any matter considered necessary for inclusion in collocation agreements.
- (7) No co-location agreement shall be implemented before:
  - (a) it has first been filed with the Authority; and
  - (b) any consultation process pursuant to subsection (10) below has been completed.
- (8) The Authority shall maintain a register of all co-location agreements, which:
  - (a) shall, without revealing the terms and conditions of the agreement, contain:
    - (i) the names of the parties to the agreement;
    - (ii) a general description of the matter governed by the agreement; and
    - (iii) the date of the agreement; and
  - (b) shall be open to public inspection, subject to such procedures and fees as may reasonably be prescribed by the Authority.
- (9) Any information:
  - (a) obtained by either party to a co-location agreement as a result of the negotiation referred to in subsection (1) of this section [ ● ] (“*Co-location*”); and

- (b) which was, at the time it was obtained:
  - (i) previously unknown to the party obtaining it; and
  - (ii) not publicly available;

may, for so long as such information remains publicly unavailable, be used only for the purposes for which it was supplied.

- (10) Third parties resident in, and public authorities having control over, any area in which co-location is proposed shall, where the Authority considers it appropriate:
  - (a) be informed of the filing with the Authority of any relevant co-location agreement by publication in the appropriate public media at the expense of the parties to the co-location agreement; and
  - (b) following such publication, be afforded a reasonable opportunity to make submissions to the Authority in respect of the co-location proposed.
- (11) Where the Authority considers it appropriate, third parties resident in, and public authorities having control over, any area in which co-location is undertaken pursuant to a co-location agreement that has not been the object of the procedure set forth in sub-section (10) above, shall, upon written request, be afforded a reasonable opportunity to make submissions to the Authority in respect of the co-location being undertaken.
- (12) The Authority shall give due consideration to any submissions it may receive pursuant to subsection (10) or subsection (11) above and may, where it is reasonably satisfied that there exists a risk of serious harm to the interests of the public, in particular as regards its safety and quality of life, order the parties concerned:
  - (a) not to undertake the co-location proposed; or
  - (b) to modify or cease the co-location being undertaken.

Interim arrangements for interconnection, access or co-location

- 46. (1)** In the event that interconnection, access or collocation is established before the execution of an interconnection, access or collocation agreement as applicable, the parties involved shall, within sixty (60) days of such establishment, agree on interim interconnection, access or collocation charges as applicable for the period until the interconnection, access or collocation agreement as applicable, comes into force.
- (2) Where the parties fail to agree within the said sixty (60) days period, the default charges published by the Authority shall apply.
- (3) When the interconnection, access or collocation agreement comes into effect, it shall be deemed to have applied from the date the interconnection, access or collocation was established. The parties will promptly adjust retroactively any charges previously agreed or imposed by the Authority as the case may be and thereafter effect payments in accordance with the provisions of the

interconnection, access or collocation agreement.

- Authority to be copied      **47.** All requests and or refusals for interconnection, access and/or co-location shall be made in writing, sent by registered post and copied to the Authority.
- Prices for services to the public      **48.** (1) Subject to the provisions of this Act and any regulations, rules or declarations made pursuant to this Act, a licensee may, for the electronic communications service the licence provides to the public, set and revise prices, provided that in setting prices, the licensee shall observe the following;
- (a) prices shall be transparent and non-discriminatory and based on the cost of providing service;
  - (b) shall not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing electronic communications services to the public; and
  - (c) such other criteria as may be prescribed by the Authority
- (2) A licensee shall:
- (a) submit to the Authority for the Authority’s prior approval the prices the licensee intends to charge within thirty (30) days
  - (b) upon approval of the prices by the Authority the licensee shall publish such prices at its own expense in at least two daily newspapers, of national circulation at least seven (07) days prior to their introduction; and
  - (c) provide all its electronic communications services in accordance with the prices approved by the Authority.
- (3) The Authority shall maintain a register of the approved prices which shall be open to public, subject to such procedures and fees as may be prescribed by the Authority.
- (4) The Authority may carry out reviews of the prices referred to in this section in order to ensure that they conform to the provisions of this section.
- (5) A licensees shall, for the electronic communications services it provides to the public, provide sufficient detailed billing information to enable customers to verify whether or not they have been billed correctly
- Prices for services to the public offered by licensees holding a dominant position      **49.** (1) Any service licensee that has, for the calendar year in question, been deemed to hold a dominant position in a retail electronic communications market in accordance with section [ ● ] (“*Relevant markets and dominant market players*”) of this Act, shall, as concerns that electronic communications market:
- (a) submit to the Authority for its prior approval the prices it intends to charge to the public for each electronic communications service, together with a detailed

justification of such prices; and

(b) shall not apply the prices in question until they have been approved by the Authority in accordance with subsection (2) below.

(2) Subject to subsection (4) below, the Authority shall issue a written decision approving or disapproving the prices so submitted, together with the reasons for such decision, within four (4) weeks of the receipt of such submission.

(3) The Authority shall base its decision under subsection (2) on the extent to which the prices proposed by the licensee:

(a) respect the principles set forth in section [ ● ] (“*Prices for services to the public*”) subsection (2) of this Act;

(b) cost oriented; and

(c) meet such other criteria as the Authority may consider relevant.

(4) The Authority may request for additional information from the licensee concerned and, where it does so, the time limit set forth in subsection (2)(a) above, shall recommence upon receipt of the additional information requested.

Regulatory  
forbearance

**50.** (1) The Authority may forbear from applying to a licensee or a class of licensees, in any or all of its or their geographic markets, any provision of this Part IV, and/or any regulation, declaration, guideline or other rule issued thereunder, if the Authority reasonably considers that:

(a) application of such provision, regulation, guideline or rule is not necessary for:

(i) the protection of consumers; or

(ii) the promotion of competition amongst licensees; and

(b) forbearance from applying such provision, regulation, guideline or rule is consistent with:

(i) the objects of this Act; and

(ii) any relevant instrument under this Act.

(2) Where, pursuant to subsection (1) of this section [ ● ] (“*Regulatory forbearance*”), the Authority decides to forbear from applying any provision, regulation, guideline or rule, it shall, without undue delay, publish a notice of forbearance in the *Gazette*, setting forth the details of, and the reasons for, the decision, and inviting interested parties to make submissions in relation to that decision within a period specified in that notice, but in any event not shorter than four (4) weeks from the date of publication of that notice.

(3) The Authority shall give due and proper consideration to any representation it may receive in accordance with subsection (2) and shall thereafter issue its final decision.

## Chapter 5

### TECHNICAL REGULATION

- Spectrum and number assignment
- 51.** (1) The Authority shall set forth in a declaration the bands of frequency spectrum and blocks of numbers that may be used pursuant to a class assignment and those, if any, that may be used without assignment.
- (2) All persons intending to undertake activities covered by a class assignment shall, prior to undertaking such activities, file with the Authority a completed version of the appropriate class assignment registration form.
- (3) The Authority shall issue rules determining the format of class assignment registration forms.
- (4) In all cases not expressly covered by the declaration referred to in subsection (1), frequency spectrum and numbers shall be assigned individually by the Authority, which shall do so:
- (a) in accordance with the national frequency and national numbering plan; and
- (b) in a transparent and non-discriminatory manner;
- and all persons intending to undertake activities covered by an individual assignment must, prior to undertaking such activities, obtain such assignment.
- (5) Subject to subsection (6) below, individual assignments shall be issued to any person fulfilling the eligibility requirements set forth for licence applicants in section [ ● ] (“*Licence Eligibility*”) and who, subject to criteria published by the Authority from time to time, is financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations to be set forth in the individual assignment concerned.
- (6) Where, having regard in particular to:
- (a) the availability of any given frequency band or number, or block thereof; and
- (b) the actual or likely demand for that frequency band or number, or block thereof;
- the Authority reasonably considers that such frequency band or number, or block thereof, should be subject to a restricted granting procedure, the Authority shall not assign that frequency band or number, or block thereof, except in accordance with a restricted granting procedure to be set forth in a declaration issued by the Authority. In such a case, the choice of successful applicant(s) must be based on objective criteria made known in advance to all applicants.
- (7) All individual assignments of frequency or numbers and all class assignments of frequency or numbers shall include the standard

assignment conditions set forth in rules to be issued by the Authority.

- (8) The Authority may, in respect of any individual assignment of frequency or numbers, determine and impose special terms and conditions including, without limitation, as regards the term of the assignment and the area for which the assignment is valid. Such special terms and conditions must be reasonable.
- (9) Where applicable, any assignment issued under this section [ ● ] (“*Spectrum and number assignment*”) shall be issued at the same time as any associated electronic communications licence.

Assignment exemption

- 52. (1) Notwithstanding the provisions of this Part V, no assignment shall be required under this Part V for the activities listed in a declaration to be issued by the Authority.
- (2) In addition, notwithstanding the provisions of this Part V, the Authority may by declaration published in the *Gazette*, where necessary and expedient to pursue the purposes of this Act, exempt a person or class of persons from the requirement to hold an individual assignment or a class assignment under this Part V.

Assignment fees

- 53. (1) The Authority shall issue rules determining:
  - (a) the one-off fees payable for the filing of class assignment registration forms and individual assignment application forms;
  - (b) the one-off fees payable for the actual assigning of frequency spectrum, electronic addresses or numbers; and
  - (c) the annual fees payable for the monitoring of the licensee’s compliance with the conditions attached to the class or individual assignment.
- (2) The assignment fees shall be determined by the Authority and may be reviewed from time to time.
- (3) Where a restricted granting procedure is applied, the fee payable for the actual assigning of frequency spectrum, electronic addresses or numbers shall be determined in accordance with the declaration issued by the Authority pursuant to section [ ● ] (“*Frequency and number assignment*”) above

Assignment renewal

- 54. (1) Subject to such procedures and fees as may reasonably be prescribed by the Authority, an individual assignment granted under this Act may be renewed on its expiry, on application fourteen (14) days prior to expiry of the individual assignment.
- (2) Except where the Authority reasonably considers that the frequency band, electronic addresses, or number concerned should be subject to a restricted granting procedure, the Authority shall renew an individual assignment pursuant to Subsection (1), for a term to be determined by the Authority, where the assignee;
  - (a) continues to fulfil the eligibility requirements set forth in

section [ ● ] (“*Licence eligibility*”);

- (b) subject to criteria published by the Authority from time to time, continues to be financially and technically capable of meeting its statutory and regulatory obligations as well as the obligations to be set forth in the individual assignment concerned; and
- (c) has not, during the current term of the assignment, committed a material breach of the provisions of the individual assignment.

- (3) In order to remain eligible to undertake activities covered by a class assignment, all persons having filed a class assignment registration form shall, fourteen (14) days prior to each anniversary of the date on which such filing took place, file with the Authority an updated version of the appropriate class assignment registration form.
- (4) Where a person fails to comply with subsection (3) above, he shall be de-registered by the Authority in respect of the class assignment concerned and shall thereupon immediately cease to undertake any activities pursuant to said class assignment.

Modification,  
suspension  
and  
withdrawal of  
individual  
assignments

- 55.** (1) Subject to this section, and in particular the requirement to solicit and consider representations from the assignee concerned, the Authority may modify the special terms and conditions of an individual assignment, including the specific frequency bands electronic addresses or numbers assigned, and may suspend or withdraw an individual assignment.
- (2) The Authority may exercise the powers conferred by subsection (1) where:
    - (a) the holder of an individual assignment fails to make proper and efficient use of the frequency bands, electronic addresses or numbers assigned to it;
    - (b) the holder of an individual assignment has failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the individual assignment;
    - (c) the holder of an individual assignment has contravened the provisions of any written law relevant to the individual assignment;
    - (d) the holder of an individual assignment has failed to comply with the provisions of this Act, or regulations made under the Act, or any instrument, directive, declaration or other rule issued, made or given by the Authority;
    - (e) the holder of an individual assignment has ceased, however briefly, to fulfil the eligibility requirements set forth in section [ ● ] (“*Licence eligibility*”); or
    - (f) the Authority is of the reasonable view that it is necessary or desirable in the public and or national interest that it

exercises such powers.

- (3) Before effecting a modification, suspension or withdrawal under this section the Authority shall give notice to the assignee concerned:
  - (a) stating that it proposes to act in the manner specified in the notice;
  - (b) specifying the time (not being less than thirty (30) days from the date of service of the notice on such assignee) within which written representation in respect of the proposed actions may be made.
- (4) Upon receipt of any representation referred to in subsection (3), the Authority shall give due and proper consideration to such representation and may then:
  - (a) reject the representation; or
  - (b) amend the proposed actions in accordance with the representation or otherwise;

and, in either event, it shall thereupon issue a direction in writing to such assignee requiring that, within such time as the Authority may specify, effect be given to the proposed actions specified in the notice or to such actions as subsequently amended by the Authority.

Modification,  
suspension  
and  
withdrawal of  
class  
assignments

- 56.** (1) The Authority may at any time, giving at least thirty (30) days notice, promulgate a new class assignment notice and after having solicited and duly considered representations from the assignees concerned, modify or repeal an existing class assignment.
- (2) No compensation shall be due for any promulgation, modification or repeal made pursuant to subsection (1) above.
  - (3) The Authority may, on giving such notice as may be prescribed and after having solicited and duly considered representations from the assignee concerned, de-register any person subject to a class assignment under this Act in any of the following circumstances:
    - (a) the person has committed a material breach of the terms and conditions of the class assignment or failed to comply with the provisions of this Act or its subsidiary legislation or the terms and conditions of the class assignment;
    - (b) the person has contravened the provisions of any written law relevant to the class assignment;
    - (c) the person has failed to comply with this Act, any regulations made there under and any instrument, declaration, direction or other rule issued, made or given by the Authority;
    - (d) the person has ceased, however briefly, to fulfil the eligibility requirements set forth in section [ ● ] (“*Licence*

*eligibility*"); or

(e) the de-registration is in the public and or national interest.

- (4) The person who has been de-registered pursuant to subsection (3) shall immediately lose all rights covered by the relevant class assignment until such time as the Authority may decide to re-register the person.
- (5) No compensation shall be payable for any de-registration made pursuant to subsection (3), except, at the sole discretion of the Authority, as regards sub-section 3(e).

Rights of transfer

**57.** A person to whom frequency bands, electronic addresses or numbers have been assigned shall not be permitted to transfer their rights to use such frequency band, electronic addresses or numbers to any third party, whether for remuneration or otherwise, except with the prior written consent of the Authority on such terms as may be stipulated in the written consent.

Access to public land

- 58.** (1) A network licensee may, for the purposes of enabling the provision of any electronic communications service to the public:
- (a) enter upon any public land and survey the land or any portion of it; or
- (b) enter upon any public land in order to construct, erect, place, maintain, examine, alter or remove any line, pole or radio link installation which is, respectively, either the property of the network licensee or is under the control of the network licensee;

provided that in doing so it does not interfere unduly with the use and enjoyment of such public property.

- (2) Where any significant damage to land or property is caused, by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to receive compensation for it from the network licensee as provided by law..

Access to private land and acquisition of private property

- 59.** (1) Where, for the purposes of enabling the provision of any electronic communications service to the public, a network licensee reasonably requires to enter upon private land, or to effect the acquisition of private property or an interest in private property, and no reasonable alternatives to such entry or acquisition exist, the network licensee:
- (a) shall be entitled to seek to obtain the consent of the land or property owner to the entry onto such land or acquisition of such property or property interest; and
- (b) where it seeks to do so, shall provide notice of the proposed entry or acquisition to the owner of the land or property, and other land and/or property owners who could reasonably be expected to be affected by the proposed entry or acquisition, and seek their written consent.

- (2) Where the land or property owner and the network licensee, as the case may be, cannot agree, the network licensee may apply to the relevant authority having jurisdiction over such private land or property in order to request that the authority order the proposed entry or undertake the proposed acquisition under applicable laws.
- (3) Where any significant damage to land or property is caused, by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to receive compensation for it from the network licensee in accordance with applicable law.
- Technical standards for equipment connected to a network
- 60.** (1) For the purposes of this Act, the Authority shall be responsible for the establishment and publication of technical standards relating to all electronic communications equipment intended to be used in Zambia.
- (2) In establishing such standards, the Authority shall:
- (a) consult with and keep fully informed the Zambia Bureau of Standards;
- (b) seek submissions from the public, in particular those persons likely to be most affected by the publication of such standards; and
- (c) take due account of any relevant standards prescribed by international organisations including the International Telecommunications Union.
- Type Approval of equipment
- 61.** (1) For purposes of this Act, any equipment intended to be used in Zambia shall be type approved by the Authority before use.
- (2) Subject to applicable procedures and fees, the Authority shall, at the request of any licensee, equipment manufacturer or equipment supplier, conduct type approval tests, and issue type approval certificates, in respect of electronic communications equipment intended for use in Zambia.
- (3) The Authority shall, in conducting type approval of equipment, be guided by the technical standards formulated by the Authority under section [ ● ] (“*Technical standards for equipment connected to a network*”) of this Act.

## Chapter 6

### CONSUMER AFFAIRS

#### Part 1

#### Consumer Protection and Quality of Service

- Quality of service 62. All service providers shall, in respect of their specific services:-
- (a) meet such minimum standards of quality of service as the Authority may from time to time specify and publish;
  - (b) deal reasonably with consumers; and
  - (c) adequately address consumer complaints.
- Resolution of Consumer disputes 63. (1) The Authority may use any of its powers under this Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including but not limited to quality of service or the failure by a licensee to comply with a consumer code prepared under this Chapter.
- (2) The Authority shall establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation processes for the resolution of the complaints or disputes provided that the licensee's resolution of the complain before presentation of the complaint to the Authority.
- Consumer code 64. (1) Subject to the provisions of subsection (2) of this section the Authority may designate an industry body to be a consumer forum and to prepared by such industry body shall be subject to the prior approval of the ratification by the Authority.
- (2) Without prejudice to the provisions of subsection (1) of this section, the Authority may require licenses to prepare individual consumer code for their respective customers and such consumer code shall be subject to the prior approval of and ratification by the Authority.
- (3) A consumer code prepared by a consumer forum, the Authority or licensees shall include model procedures for:-
- (a) Reasonably meeting consumer requirements;

- (b) the handling of customer complaints and disputes including an inexpensive arbitration process other than court, and procedures for the compensation of customers in case of a breach of a consumer code, and
- (c) the protection of consumer information.
- (4) Other matters which the consumer code shall address include but are not limited to:-
  - (a) Further recourse available to a consumer who is dissatisfied with the licensee's complaints handling procedures together with specific details of compensation and refund schemes offered by licensee to its customers,
  - (b) the provision of information to customers regarding services, rates and performance,
  - (c) the provisioning and fault repair of services,
  - (d) the advertising or representation of services,
  - (e) customer charging, billing, collection and credit practices, and
  - (f) any other matter which, in the opinion of the Authority, may be of concern to consumers.
- (5) After the preparation of a consumer code and subsequent ratification by the Authority, the consumer code shall be published by the licensee and the Authority and notice of it shall be advertised in at least one national daily newspaper.
- (6) A consumer code prepared pursuant to this Chapter shall be subject to annual review and ratification by the Authority prior to publication by the licensee and the Authority.

## **Part II**

### **Tariff Rate Regulations**

Approval  
of tariffs  
and charges  
by Authority

65. (1) Holders of individual licenses shall not impose any tariff or charges for the provision of any service until Authority has approved such tariff rates and charges except as otherwise provided in this Part.
- (2) The licensees specified in subject (1) of this section shall provide services at the tariff rates and charges so

approve by the Authority and shall not depart therefrom without prior written approval by the Authority of such proposed charges in tariff rates and charges.

(3) All licensees mentioned in subject (1) of this section shall publish the tariff rates charged to customers for their respective service and the modifications thereto as may be approved from time to time by the Authority.

(4) The tariff rates established by a licensee mentioned in subsection (1) of this section shall be on the basis of such principles as the Authority may from time to time stipulate in its guidelines or regulation including the following:-

- (a) tariff rates shall be fair and, for similarly situated persons not discriminatory;
- (b) tariff rates shall be cost-oriented and, in general, cross-subsidies shall be eliminated;
- (c) tariff rates shall not contain discounts that unreasonably prejudice the competitive opportunities of other providers;
- (d) tariff rates shall be structured and levels set to attract investments into the communications industry; and
- (e) tariff rates shall take account of the regulations and recommendations of the international organisations of which Zambia is a member.

Exemption 66. Notwithstanding the provisions of section ..... of this Act, the Authority may intervene in such manner as it deems appropriate in determining and setting the tariff rates for any non-competitive services provided by a provider mentioned in section ..... (1) of this Act for good cause or as the public interest may require.

Tariff rates rules And regulations. 67. (1) The Authority may from time to time make rules or Regulations on determination and publication of tariff Rates for respective services by the licensees specified in section .....(1) of this Act.

(2) The regulations and rules which may be made by the Authority under subsection (1) of this section may include but are not limited to:-

- (a) rules about the tariff rates and charges and variation of rates for specified or classes of services;

- (b) rules about the publication or disclosure of tariff rates for specified or classes of services; or
- (c) tariff rate models that may be applicable to specified licensees or classes of licensees or specified or classes of services.

Penalty for  
Operating  
Unapproved  
Tariffs, charges etc.

68, Notwithstanding any other provision of this Act, the Act, the Authority shall prescribe and enforce appropriate financial penalties upon any holder of an individual licence who exceeds the tariff rates duly approved by the Authority for the provision of its services

### Part 3

#### Universal Access and Service

Establishment  
of a Universal  
Access and  
Service Fund

- 69.** (1) The Authority shall determine a system to promote the widespread availability and usage of electronic communications networks and services throughout Zambia by encouraging the installation of electronic communications networks and the provision of electronic communications services in unserved or underserved areas and or unserved and underserved communities.
- (2) A determination by the Authority under subsection (1) shall include definitions of ‘unserved’ or “underserved areas” and “underserved community”, and in determining such definitions, the Authority shall have regard to:
- (a) the level of competition in particular areas or places;
  - (b) the availability of services in particular areas or places;
  - (c) the availability of services to any such group;
  - (d) the commercial viability of installation of electronic communications networks or providing electronic communications services in particular areas or places; and/or
  - (e) any barriers to the use of available services.
- (3) For the purposes of this Part VI, the Authority shall establish a fund for the financing of universal access and or service activities, which fund shall be controlled by the Authority
- (4) The Minister may upon the recommendation of the Authority issue regulations on universal access or service, which regulations may include;
- (a) the nature and status of the universal access fund,
  - (b) its sources of funding and the manner in which it will be paid,
  - (c),its internal organisation and its relation with other entities,
  - (d) the activities that the universal access fund shall finance and

the manner in which such financing shall occur; and

(e) Any other matter related to or incidental to the establishment and operation of the universal access funds

Cap on  
financing of  
Universal  
Access and  
Service Fund

**70. (1)** Annual contributions by any licensee to the universal access and service fund shall not exceed an amount prescribed by the Authority [ ● ].

**(2)** The Authority shall publish in the print and electronic media within three (3) months of the end of each financial year, details of the contributions to, and allocations from, the universal access fund.

## Chapter 7

### POSTAL SERVICES

Functions of the 71  
Commission in  
relation to  
postal service.

- (1) The functions of the Authority in relation to postal and courier Services shall be to:-
  - (a) ensure that sufficient postal and other related services are provided throughout the country;
  - (b) promote development of postal systems and services in accordance with recognised international standards, practices and public demand;
  - (c) exercise licensing and regulatory functions in respect of postal services and courier services in the country in accordance with this Act;
  - (d) 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;
  - (e) regulate the issuance of postage stamps including definitive, commemorative and special issues of postage stamps and any other philatelic items;
  - (f) stimulate competition in the provision of postal and courier services;
  - (g) ensure that reasonable demands for postal services and courier services are satisfied;
  - (h) stimulate and monitor the development postal services and courier services;
  - (i) further the advancement of technology relating to the post and postal services;
  - (j) define the universal postal service and to stipulate the obligation of its provider;
  - (k) define the mechanism for financing the provision of universal postal service obligations;
  - (l) oversee the provision of universal postal service and adjudicate on consumer complaints;
  - (m) promote and protect the interests of consumers of postal and courier services with regard to quality and prices of services provided;

- (n) clearly define and demarcate between reserved and competitive services.
  - (o) ensure that inter-connection of services is done on fair and non-discriminatory terms to facilitate the provision of seamless and end-to-end delivery of communications, messages, goods, funds and other services;
  - (p) provide advice and resolve disputes on inter-connection agreements between postal operators and other interested parties.
- (2) In discharging the functions and duties under subsection
- (1) The Authority shall have regard to:-
- (a) fostering the development and expansion of postal service and courier services in the country in collaboration with other countries and international organisations;
  - (b) the maintenance of effective competition between persons providing or interested in providing postal services and courier services;
  - (c) the provision of postal and courier service rates consistent with efficiency service and the necessity for maintaining financial viability; and
  - (d) the promotion and development of standards in the field of postal systems and services.

Exclusive right 72  
 Services  
 To provide  
 Certain postal  
 Services.

- (1) The Authority shall grant to the Zambia Postal Corporation the exclusive right to provide private letter boxes or bags and postal services except in relation to:-
- (a) letters weighting more than three hundred and fifty grams;
  - (b) the conveyance and deliver of a letter by the sender himself;
  - (c) the conveyance and delivery of a letter by any person otherwise than for fee or reward;

- (d) the conveyance and delivery of a letter concerning the affairs of the sender or his agent, client or customer, or of the addressee or his agent, client or customer, by means of a message sent for that purpose;
- (e) the conveyance and delivery of a letter solely concerning goods or property commercially sent by water, land or air, to be delivered with the goods or property, if the letter is open to inspection and has inscribed on it the words “consignee’s or other words of similar import;
- (f) the conveyance and delivery of a letter exceeding the prescribed dimensions for a letter;
- (g) the conveyance and delivery of a letter containing any document issuing out of a court or of any return or answer thereto; or
- (h) the conveyance and delivery of a letter is such conditions, as may be prescribed by the Corporation by statutory instrument.

(2) Subsection (1) does not operate so as to:-

- (a) authorise any person to make a collection of letters for the purpose of their being conveyed or delivered in any manner authorised by any of paragraphs (b) to (f) of that subsection, where the collection is made from the letters of more than one person or authority; or
- (b) authorise a common carrier by land or his servant or agent to collect letters or convey or deliver a letter, whether or not for fee or reward, except for such letters as are mentioned in paragraph (d) of that subsection.

Operation  
of postal  
service  
and  
courier

73. (1) Any person other than the Zambia Postal Service Corporative and Licensed Courier Operator who-

- (a) operates or offers to operate a postal or courier services; or
- (b) collects, conveys, delivers or deals with any letter

otherwise than as permitted by or under this Act;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ..... penalty unit or to imprisonment for a term not exceeding three months, or to both, for every letter in respect of which the offence is committed.

Conditions 74. Every licensee shall be required to observe the following conditions:-  
Of licence

- (a) to provide postal or courier services to any person, who requests for such services where available;
- (b) to notify the Authority forthwith of the current tariffs charged for postal or courier services and changes to the tariffs for each different type of postal or courier 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 or couriers 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 the country;
- (e) to furnish the Authority with a copy of its latest audited annual accounts and financial statements of the business with the application for renewal of its licence;
- (f) If the licensee is a company with a share capital, to provide documentary evidence of current status of shareholding together with the applicant for renewal of its licence;
- (g) where the licensee intends to enter into any association, contract or arrangement with a third party, to provide postal or courier services which only the licensee is permitted under its licence to provide, to seek approval from the Authority 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 the country is a party;
- (i) not to enter into any arrangement with any person running an international postal service on terms and conditions which the Authority deems to be unfavourable to the national interest;

*General Provisions Relating to Postal or Courier Services*

*postage stamps and postal charges.* 75. The Zambia Postal Services Corporation shall have exclusive rights to issue postage stamps and provide private letter boxes subject to such conditions as the Authority may specify.

*Address may be liable for Postage etc.* 76. (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.

(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.

*Postal articles not to be opened* 77. (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.

*Interception of postal articles in public emergency etc.* 78. (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 in order in class or description of postal articles in the course of transmission by post within the country 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) in the interest of public security or tranquillity.

- Article 79. (1) No person shall send by post or courier any material or postal article which likely to injure any person in the course of transmission..
- Material injurious to persons.
- (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 or courier any explosive, inflammable, dangerous, filthy, noxious or deleterious substance or any sharp instrument not property protected which is likely to injure any person or any postal article in the course of transmission.

Prohibited material

**80.** No person shall send by post or courier:-

- (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 authority may be regulation prohibit.

Regulations 81..

Prohibiting Injurious Articles

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

- Material Sent in contravention of this act
- 82.** (1) Where any postal article sent by post is reasonably suspected by the public postal licensee or other person licensed to provide courier 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 informing the Authority and hand over such postal article or material to the authority or any person authorised in writing by the Authority;
- (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.
- (2) 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.
- (3) 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.

Power to 83.  
with postal articles  
containing  
  
anything  
to be  
in respect of  
which an  
offence is  
committed.

- (1) If any licensee under this Part has reason to believe that any postal article or material contains anything in respect of which an offence is being or has been committed, or is being attempted to be committed, such licensee may require, by notice in writing, the attendance, at a specified post office and time, of the addressee of such postal article or of some agent deputised in writing by such addressee and of a police officer, and such postal article shall then be opened by the addressee or his agent in the Presence of an authorised employee and of the police officer.
- (2) If the addressee or his agent fails to attend in pursuance of the Notice under subsection (1) or refuses to open the article, it shall be opened by the authorised employee of the licensee in the presence of the police officer.
- (3) Where the postal article has been opened under this section, it shall be delivered to the addressee unless the police officer states that it is required for the purpose of any legal proceedings, in which event it shall be delivered to the police officer on his signing a receipt therefore.
- (4) Where the licensee is requested by the Inspector General 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.

Withholding 84.  
postal  
articles

If any person refuses to pay any postage or other sum which he is legally bound to pay in respect of any postal article or material, the licensee may, without prejudice to any other method of recovery, withhold

- until  
postage etc  
Is paid.
- from that person any postal article or material addressed to that person,  
until such postage or other sum is paid.
- .
- Postal  
Financial  
Services.
85. (1) The authority shall allow the public postal licensee to carry out postal financial services on its own account or as an agent.
- (2) For the purposes of this section, “postal financial services” include money orders, postal orders, postal drafts, postal cheques, postal traveller’s cheques, electronic money transfer, giro, cash-on-delivery, collection of bills, savings service, micro financial services, subscription to newspapers and periodicals or any other form of financial service as the Authority may prescribe.
- Regula-  
tions  
services  
for postal  
to:-  
services.
86. The Minister in consultation with the Authority and Public Postal Operator may make regulations generally with respect to postal and, without prejudice to the generality of the foregoing, with respect to:-
- (a) the disposal of undelivered postal articles;
- (b) 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*

Offences 87  
Relating to  
Postage  
Stamps and  
Post marks.

- (1) Any person who, with intent to defraud:-
  - (a) removes any postage stamp from any postal article or from any document used for the purposes of the Corporation;
  - (b) removes from any postage stamp which has previously been used any mark or impression which has been made thereon at any post office; or
  - (c) uses, cuts, scraps, defaces, obliterates, adds to or alters any mark or impression upon any postal article, money order, postal order or other warrant, order, paper or material whatsoever provided, used or made for the purposes of the Corporation.

Shall be guilty of an offence and shall be liable on conviction to a fine not exceeding .....or to imprisonment for a term not exceeding twelve months, or to both.

- (2) Any person who sells any postage stamp from which any mark or impression put thereon at any post office for the purposes of the Corporation has been removed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ..... Or to imprisonment for a term not exceeding twelve months, or to both.
- (3) For the purposes of this section, the sender of a postal article shall until the contrary is proved, be deemed to be the person by whom the postage stamp was affixed upon that article.

Fraudu - 88.  
  
Lent  
Use of official  
Marks

Any postal officer who, with intent to defraud, puts any incorrect official mark on a postal article shall be guilty of an offence and shall be liable On conviction to a fine not exceeding two thousand two hundred and twenty two penalty units or to imprisonment or a term not exceeding two years, or to both.

General 89.  
Offences  
Relating  
To mail.

- A person authorised to receive or in any way handle mail who:-
- (a) wilfully or negligently loses, destroys, detains, delays, misdelivers or omits to dispatch mail;
  - (b) unlawfully communicates or divulges the contents of any postal article;
  - (c) while in charge of any mail:-
    - (i) Permits an unauthorised person to have access to that mail;
    - (ii) is intoxicated; or

- (iii) wilfully misspends time and thereby delays the arrival of such mail at its proper destination;
- (d) through negligence or misconduct, endangers the safety of mail;
- (e) gives false information of an assault upon him or of theft or attempted theft from him, at any time when he was in charge of mail;
- (f) without lawful authority, collects, receives or delivers any postal article otherwise than in the ordinary course of his duties;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand kwacha or to imprisonment for a term not exceeding six months, or to both.

False Entries Relating Mail

90. Any postal officer carrying mail and required to keep any record relating to that mail who makes any false entry in that record, knowing the entry to be false, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand kwacha or to imprisonment for a term not exceeding twelve months, or to both.

Offences Relating To postal Articles.

91. Any person who:-

- (a) in purported compliance with any requirement under this Act, makes any false statement as to the contents of any postal article;
- (b) sends by post:-
  - (i) Any article in or upon which there is any Indecent or obscene matter or anything of a profane, libellous or grossly offensive character; or
  - (ii) correspondence dealing with any fraudulent or immoral business or undertaking;
- (c) without due authority, places any placard in or against any post office or telegraph office;
- (d) wilfully damages or disfigures any post office or telegraph office or wilfully damages, disfigures or tampers with any card, notice or other property of, or which is being used by or on behalf of, the Corporation;

- (e) commits a nuisance with respect to a post office or telegraph office or any card, notice or other property referred to in paragraph (d); or
- (f) by any false representation, induces any postal officer to deliver to him or to any other person any postal article not addressed to or intended for him or for that other person;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand one hundred and eleven, penalty units or to imprisonment for a term not exceeding twelve months, or to both.

Theft 92.  
of or  
interference  
with mail

Any person who:-

- (a) steals any mail;
- (b) steals from any mail or post office or telegraph office, or from the custody or possession of a postal officer, any postal article or any of the contents of a postal article;
- (c) unlawfully destroys mail or any postal article or any of the contents of a postal article;
- (d) receives any mail or postal article or any of the contents of a postal article, knowing it to have been stolen;
- (e) unlawfully searches mail; or
- (f) stops mail with intent to steal or unlawfully to search the mail;

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ten years.

Transmi 93.  
sion of  
dangerous  
substances  
and  
endager-  
ment of  
post office  
or telegraph  
office

Any person who puts into or places against any post office or telegraph office, or any letter box or other receptacle for the receipt of mail, any fire, match or light, or any explosive, dangerous, noxious or harmful substance or fluids, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding fourteen years.

Temper- 94.  
postal  
With mail

Any person who unlawfully opens or tampers with or conceals any article shall be guilty of an offence and shall be liable on conviction to Imprisonment for a term not exceeding seven years.

Unauth- 95.

Any person who, without the authority of the Corporation, places or

orised  
words,  
notices as  
to reception  
where  
of letters etc.

maintains in or on any building, wall, box, pillar or other place any letters or symbols which signify, or imply, or are likely to be taken to signify or imply, that any house or place is a post office or a place things in the exclusive privilege of the Corporation may be done shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand kwacha or to imprisonment for a term not exceeding twelve months or to both.

Trespass 96.  
upon, and  
disorderly  
behaviour in,  
post office or  
telegraph  
office.

- (1) Any person who\_
- (a) without the permission of an authorised officer, enters any part of a post office or telegraph office which is not open to the public;
  - (b) behaves in a disorderly manner in a post office or telegraph office; or
  - (c) wilfully obstructs, hinders, or delays any postal officer in the execution of his duty;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand kwacha or to imprisonment for a term not exceeding twelve months, or to both.

- (2) Any person who contravenes this section and who, on being required to leave a post office or telegraph office by a postal officer, fails to leave the place within a reasonable time may be removed by the officer with such force as may be reasonably necessary in the circumstances.

Offences 97.  
relating to  
money orders,  
person  
postal orders,  
etc.

- Any person who, with intent to defraud:-
- (a) issues, reissues, utters or passes off, or presents to any other or at any post office, any money order, postal order or other warrant or order for the remittance of money through the post; or
  - (b) sends by post any letter, telegram or other communication or message concerning anything referred to in paragraph (a);

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding seven years.

Theft, 98.  
Forgery, etc  
Of telegrams.

- Any person who:-
- (a) with intent to defraud, takes any telegram from the possession

of any postal officer or other person having the custody of it, or from any post office or telegram office;

- (b) steals, conceals or destroys any telegram or any part thereof;
- (c) receives any telegram, or any part thereof, knowing it to have been stolen;
- (d) forges a telegram or fraudulently and knowing it to be forged or to contain false information utters a telegram;
- (e) with intent to defraud, gives verbally or delivers for transmission as a telegram any message or communication which he knows to be forged or the information given or contained in which he knows to be false;

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding seven years.

Impersonation of  
Offence 99. Any person who, with intent to defraud, by words or conduct pretends to

be a postal officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred and fifty five penalty units or to imprisonment for a term not exceeding six months or to both.

False Declarations 100. Any person who, in any declaration required to be made under this Act, makes any false statement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand kwacha or to imprisonment for a term not exceeding six months, or to both.

Evidence 101. In any legal proceedings for the recovery of any sum payable under this Act in respect of a postal article:-

- (a) the official stamp or mark on it denoting the sum due shall be *prima-facie* evidence that such sum is due in respect of the postal article;
- (b) the production of any postal article having on it a post office stamp or mark denoting that delivery of the postal article has been refused or that the person to whom it is addressed is dead or cannot be found, shall be *prima-facie* evidence of that fact; and
- (c) the person from whom the postal article purports to have come shall, until the contrary is proved be deemed to be the sender.

Immunity 102. No action or other proceedings shall lie or be instituted against the

officers Postmaster-General or any postal officer for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Revenue 103. The principal moneys received in respect of money orders and postal orders, or any other warrant or order for remitting money by post, shall not form part of the postal revenue unless, in the case of money orders and postal orders, their period of currency has lapsed.  
For money  
Orders,  
Postal  
Orders etc.

Delivery 104. (1) Any postal article which:-  
Of postal (a) is reasonably suspected by a postal officer of containing anything which may afford evidence of the commission of a criminal offence; or  
Articles to (b) is reasonably suspected of being sent in order to further the concealment of the commission of a criminal offence;  
Public  
Prosecutors.

shall be detained by the officer in charge of any post office or telegraph office in which it is or through which it passes, and that officer shall, if authorised by the Director of Public Prosecution, cause the postal article to be handed over to a public prosecutor.

(2) The Director of Public Prosecutions may, by statutory notice, delegate the powers contained in subsection (1) to State Advocates or Public Prosecutors generally or specifically.

### Chapter 8

#### DISPUTES, REVIEWS & APPEALS

Institutional 105. (1) Any person aggrieved by a decision of the Authority pursuant to disputes this Act may appeal to the Board for a review of the decision in question and the Board shall undertake such review at the earliest practicable opportunity, provided that:  
(a) such application shall be instituted within sixty (60) days of the date upon which the applicant received notice of the relevant decision; and  
(b) unless the Board determines otherwise, the decision or

direction shall remain valid and binding until such time as the applicant's application to have it reviewed and/or set aside has been heard and determined by the Board.

- (2) Where the Board, in the course of the review referred to above, fails to issue a decision within a period of thirty (30) days following its receipt of the relevant application, or where the applicant is aggrieved by the decision of the Board, the applicant may appeal to the ICT Tribunal to have the decision reviewed and/or set aside, provided that:
  - (a) such application shall be instituted within sixty (60) days of the date upon which the applicant received notice of the Board's decision or, in the absence of such decision, within sixty (60) days of the end of the aforementioned one (1) month period; and
  - (b) unless the ICT Tribunal determines otherwise, the relevant decision shall remain valid and binding until such time as the applicant's application to have it reviewed and/or set aside has been heard and determined by the ICT Tribunal.
- (3) Subject to subsection (5) below, any decision by the ICT Tribunal is final and binding on the parties to the appeal and is not subject to any further appeal.
- (4) Any person aggrieved by an act performed or decision made by the Minister or the ICT Tribunal pursuant to this Act may appeal to the High Court to have the act or decision reviewed and/or set aside, provided that:
  - (a) such application must be instituted within sixty (60) days of the date upon which the applicant received notice of the Minister's or ICT Tribunal's decision; and
  - (b) unless the High Court determines otherwise, the relevant act or decision shall remain valid and binding until such time as the applicant's application to have it reviewed and/or set aside has been heard and determined by the High Court.
- (5) The High Court, the decision of which shall be final, shall only have the power to set aside an act or decision of the ICT Tribunal or the Minister if, in performing the relevant act or making the relevant decision, the ICT Tribunal or, as appropriate, the Minister:
  - (a) exceeded the bounds of its powers;
  - (b) committed a material error of law;
  - (c) committed a material procedural irregularity; or
  - (d) came to a conclusion which is not rationally justifiable in relation to:
    - (i) the information before the ICT Tribunal or, as

appropriate, the Minister;

- (ii) the purpose of the statutory provision under which that act was performed or decision was made; or
- (iii) the reasons of the ICT Tribunal or, as appropriate, the Minister for that act or decision.

Licensee  
disputes

**106.** (1) The provisions of this section [ ● ] shall apply:

- (a) where there is a dispute between licensees as to the implementation, interpretation or performance of their obligations under this Act and or any agreement between them; and
  - (b) subject to any terms agreed to by the licensees in the relevant agreement.
- (2) The licensees shall first attempt in good faith to resolve their dispute in accordance with the dispute resolution provisions that are provided for in the respective agreements.
- (3) Where the licensees are unable to resolve their dispute in accordance with subsection (2) above, they may agree to mediation, a binding arbitration, or seek relief from a court of competent jurisdiction.
- (4) Where licensees are unable to resolve their dispute in accordance with subsection (2) above, or are unable to agree on whether to mediate, arbitrate or litigate in accordance with subsection (3), they, or any one of them, may refer the dispute to the Authority for determination.
- (5) Where the licensees are unable to resolve a dispute in accordance with subsection (2) above, or are unable to agree on whether to mediate, arbitrate or litigate in accordance with subsection (3) and such matter is referred to the Authority for resolution, the Authority shall investigate the dispute and within thirty (30) days of its filing, and determination as to:
- (a) whether the parties have fulfilled their obligations under subsection (2) above; and
  - (b) if so, whether the dispute will be heard by the Authority.
- (6) The Authority shall hear a dispute provided for in subsection (5) above adopting the dispute resolution procedures set forth in the guidelines, published by the Authority at the time of the dispute.

## Chapter 9

### ENFORCEMENT AND OFFENCES

- Inspection
- 107.** (1) In order to ensure compliance with the provisions of this Act and the terms and conditions of any licence or assignment, the Authority shall carry out inspections and may appoint such inspectors as may be necessary.
- (2) Every inspector shall be provided with a certificate of appointment which shall be prima facie evidence of the inspector's appointment as such.
- (3) Any inspector or police officer carrying out any functions under this Act shall on demand by any person who is affected by the inspector's exercise of power, produce for inspection the certificate referred to in subsection (2).
- (4) An inspector shall have the power, on production of the certificate of appointment issued under subsection (2), to demand the production of, and to inspect and/or make copies of a licence or assignment issued under this Act, or any agreement concluded, or accounts kept, pursuant to the provisions of this Act.
- (5) An inspector may, upon probable cause shown on oath to a magistrate court obtain a warrant to enter upon and search or examine the premises prescribed in the warrant in order to ascertain whether any offence under this Act is being or has been committed in such premises and shall have the power to make such examination, inspection and inquiry and do such things as may appear to him necessary for ascertaining whether or not the provisions of this Act or the regulations under this Act are being complied with
- PROVIDED that nothing in this subsection shall require a warrant to be obtained for entry to premises or any part of premises which, in the ordinary course of business, are open to the public
- (6) Where an inspector or police officer as the case may be is satisfied that a person does not have a valid individual licence or individual assignment or is not validly acting under a class licence or class assignment, the inspector may serve on that person notice in the prescribed form.
- (7) All books, records and documents required to be kept by a licensee shall be open to inspection at all reasonable times by an inspector or police officer as the case may be

- (8) An inspector or police officer may seize
  - (a) any electronic communications apparatus which he has reasonable cause to suspect is being used by or is in the possession of or under the control of a person in contravention of this Act; and
  - (b) any book, record or document which he has reasonable cause to suspect will afford evidence of the commission of an offence under this Act
- (9) An inspector may order a person to cease using, pending inquiry, by the Authority any electronic communication apparatus which in his opinion, is being operated otherwise than in accordance with this Act, the regulations or the terms and conditions of a licence
- (10) Any person who obstructs or hinders an inspector or police officer in the exercise of his powers under this section or who neglects or fails to comply with an order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million three hundred and eighty eight thousand eight hundred and eighty nine penalty units or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment

Failure to obtain licence

- 108.** (1) Any person who constructs, owns or makes available an electronic communications network or provides network services without having first obtained any relevant individual licence, or having filed any relevant class licence registration form, commits an offence and shall be liable upon conviction to a fine of up to two million seven hundred and seventy seven thousand seven hundred and seventy eight penalty units, a term of imprisonment not exceeding twelve (12) months or to both such fine and imprisonment.
- (2) Any person who provides an electronic communications service without having first obtained any relevant individual licence, or filed any relevant class licence registration form, commits an offence and shall be liable upon conviction to a fine of up to one million three hundred and eighty eight thousand eight hundred and eighty nine penalty units, a term of imprisonment not exceeding six (06) months or to both such fine and imprisonment.

Failure to obtain assignment

**109.** Any person who uses one or more frequency bands and electronic addresses or numbers without having first obtained any relevant individual assignment, or filed any relevant class assignment registration form, commits an offence and shall be liable upon conviction to a fine of up to twenty seven million seven hundred and seventy seven thousand seven hundred and seventy penalty units, or a term of imprisonment not exceeding sixty (60) months or to both such fine and imprisonment.

Security of

**110.** (1) Any person who wilfully removes, destroys or damages any

electronic  
communications  
installation  
or plant

installation, software, hardware or plant used for electronic  
communications services commits an offence and shall be liable on  
conviction to, a term of imprisonment of up to twenty (20) years

(2) Any person who knowingly and without lawful authority:

(a) causes an electronic communications network and or service to perform any function for the purpose of securing access to any program or data held in that electronic communications network or electronic communications service or any other electronic communications network or electronic communications service;

(b) causes an electronic communications network or service to perform any function for the purpose of securing access to any program or data held in that electronic communications network or electronic communications service or any other electronic communications network or electronic communications service with intent to commit or facilitate the commission of an offence involving property, fraud, dishonesty or which causes bodily harm;

(c) who does a direct or indirect act which the person knows will cause unauthorised modification of any program or data held in an electronic communications network or electronic communications service or any other electronic communications network or electronic communications service;

(d) secures access to an electronic communications network and or electronic communications service, or obstructs or intercepts or causes to be intercepted directly or indirectly any function of an electronic communications network and or electronic communications service an electronic communications network and or electronic communications service;

(e) discloses any password, access code or other means of gaining access to any electronic communications network and or electronic communications service ;

(f) with requisite knowledge and intent engages in conduct which causes an electronic communications network and or electronic communications service to cease to function permanently or temporarily;

commits an offence and shall be liable upon conviction to a fine of up to two hundred and seventy seven million seven hundred and seventy seven thousand seven hundred and eighty penalty units or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

(2) Any person who removes, destroys or damages, whether wilfully, negligently, accidentally or otherwise, the installation or plant used for electronic communications services shall, in addition to any penalty for

which he is liable for an offence under this Act, be liable to pay compensation for the damage done and the compensation shall be recoverable by civil action or suit before any court of competent jurisdiction.

General offences

- 111.** (1) Subject to the specific penalties set forth elsewhere in this Act, any person who contravenes or fails to comply with a provision of this Act commits an offence and is liable on conviction, for each such breach, to a fine of up to two hundred and seventy seven thousand seven hundred and seventy seven penalty units or a term of imprisonment not exceeding six (06) months or to both such fine and imprisonment.
- (2) Subject to any specific penalties set forth therein, any person who contravenes or fails to comply with a provision of a regulation, rule or decision issued pursuant to this Act, including, without limitation, in respect of interconnection, access and co-location rights and obligations, commits an offence and is liable on conviction, for each such breach, to a fine of up to one million three hundred and eighty eight thousand eight hundred and eighty nine penalty units or a term of imprisonment not exceeding six (06) months and one hundred and thirty eight thousand eight hundred and eighty eight penalty units for each day of continued default or to both such fine and imprisonment.
- (3) Any person who without lawful excuse contravenes or fails to comply with any term or condition expressed in an individual licence or assignment he holds, or a class licence or assignment he is acting under, including, without limitation, in respect of due dates for fee payments, commits an offence and is liable on conviction to payment of a fine of up to six hundred and ninety four thousand four hundred and forty four penalty units for each such breach, and in default a payment of sixty nine thousand four hundred and forty four penalty units for each day of continued default
- (4) Any person who interferes with the programming a mobile telephone handset, including by modifying its International Mobile Equipment Identity code, commits an offence and shall be liable upon conviction to a fine of up to one hundred and thirty eight thousand eight hundred and eighty eight penalty units, or a term of imprisonment not exceeding twelve (12) months or to both such fine and imprisonment.

Offences by body corporate

**112.** Where an offence under this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in such capacity shall, as well as such body corporate, be deemed to have committed that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all due 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.

Penalty for abetting, or attempting to commit, offences

**113.** Any person who abets the commission of any offence punishable under this Act, or attempts to commit any offence so punishable, shall, on conviction, be liable to the penalty provided for that offence.

High Court to have full jurisdiction

**114.** Notwithstanding the provisions of any written law to the contrary, the High Court may try any offence under this Act or any regulations or rules made under it and may impose the full penalty for such offence.

Power of Director General to compound certain offences

**115.** Where the Authority is satisfied after an investigation or where any person admits that he has committed an offence against this Act or any regulations or rules made under it, the Director General of the Authority may compound such offence by collecting from that person such sum of money as may to the Director General seem fit, not exceeding fifty percent of the maximum amount of fine to which that person would have been liable on conviction, and no person having made such payment shall be thereafter prosecuted in relation to the offence so compounded.

## Chapter 10

### TRANSITIONAL PROVISIONS

- Transfer to the Authority
- 116.** (1) The Board of Regulators established pursuant to Section 3(2) of the Telecommunications Act shall, upon commencement of this Act, immediately become dissolved, provided however that such Board shall continue to function on a transitional basis until the Board provided for in this Act is ratified by Parliament.
- (2) If any Board member, contemplated in subsection (1) is not appointed in terms of section [ ● ] (“*Board, management and staff of the Authority*”), the termination of that person’s tenure of office shall be dealt with in accordance with any terms and conditions relating to such termination in the agreement covering his or her appointment as Board member.
- (3) The first meeting of the Board constituted in accordance with section [ ● ] (“*Board, management and staff of the Authority*”), shall be held within three months of the date of ratification by Parliament.
- (4) With regard to the transfer of staff to the Authority from the Communications Authority established under section 3 of the Telecommunications Act:
- (a) every person appointed under section 4 of the Telecommunications Act who is in the service of the Communications Authority immediately before the establishment date, is, as from that date, hereby transferred to the service of the Authority;
- (b) every person so transferred shall be regarded as having been appointed in terms of section [ ● ] (“*Board, management and staff of the Authority*”);
- (c) the remuneration and other terms and conditions of any person transferred as contemplated by subsection 4(a) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the establishment date and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date;
- (d) any person transferred to the service of the Authority as contemplated in sub-section (1), who immediately before such transfer was a member of a pension fund of the Communications Authority, remains a member of that pension fund upon such transfer despite any provision to the contrary in any law or in the rules of that pension fund and the Authority must contribute to the pension fund in respect of that person to the same extent as an employer is required in terms of the laws and rules regulating that pension fund to contribute in respect of an employee who is a member of

that fund.

- (e) Without limiting the generality of paragraph 4, the terms and conditions of employment of a telecoms officer may make provision for or with respect to the maintenance of schemes (whether contributory or not) for the payment to such officers and their dependants of such retirement benefits, gratuities or other allowances as it may determine

(5) With regard to the transfer to the Authority of assets and liabilities from the Communications Authority established under section 3 of the Telecommunications Act:

- (a) all assets, rights, liabilities and obligations which, immediately before the establishment date, vest in the Communications Authority pass to the Authority on that date;
- (b) the registrar of deeds shall take the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no transfer fee, office fee or other charge shall be payable in respect of that entry or endorsement; and
- (c) all licences issued, rights granted and undertakings given by the Communications Authority by or under the underlying statutes shall be deemed to have been issued, granted or given by the Authority.

(6) Any application, proceedings or similar matter pending before the Communications Authority or the Minister at the date this Act comes into force shall be dealt with by the Authority or the Minister, as appropriate, under and in accordance with the provisions of this Act.

(7) Any order, ruling or direction made or given by the Communications Authority before the date this Act comes into force must be regarded as having been made or given by the Authority.

(8) Anything done before the commencement of this Act under or in terms of a provision repealed or amended by this Act must be regarded, unless clearly inappropriate, to have been done under or in terms of the corresponding provision of this Act.

(9) Any reference to the Communications Authority in any law shall be deemed, unless clearly inappropriate, to be a reference to the Authority.

(10) The Authority is the legal successor of the Communications Authority.

Incumbent's  
fixed-line  
licence

**117.** (1) The operator's licence established by and pursuant to Paragraph 2 of the Third Schedule to the Telecommunications Act shall cease to be valid six (06) months after the commencement of this Act.

(2) The beneficiary of the licence referred to in subsection (1) shall, upon request made to the Authority in writing sent by registered

post and received within six (6) months of the commencement of this Act, be issued with one or more electronic communications licences and, if appropriate, one or more assignments under this Act, on terms and conditions that are consistent with this Act.

Licence migration

- 118.** (1) Subject to the provisions of this section, all licences issued under the Telecommunications Act and the Radiocommunications Act shall remain in force in accordance with the terms and conditions of such licences.
- (2) The Authority shall, no later than sixty (60) days from the commencement date of this Act, publish or cause to be published, on the Internet, the standard terms and conditions for individual and class network and service licences.
- (3) As soon as reasonably practicable, and no later than six (6) months from the commencement date of this Act, the Authority shall issue one or more electronic communications licences and, where applicable, one or more assignments, to any person who, as at the commencement date of this Act, holds a valid licence issued under the Telecommunications Act or the Radiocommunications Act.
- (4) The terms and conditions of any electronic communications licence or assignment issued by the Authority shall:
- (a) include those terms and conditions published pursuant to subsection (2);
- (b) be of the same duration as the unexpired portion of the previous licence;
- (c) contain fee payment obligations no less favourable than those provided for in the previous licence; and
- (d) not derogate from the allocations and rights to radio frequency or numbers provided for in the previous licence.
- (5) At a date six (6) months from the commencement date of this Act the previous licences shall immediately cease to be valid and enforceable and the licence holder shall not have any right to compensation in this regard.

Existing regulations and rules

- 119.** (1) Regulations or rules made under the Telecommunications Act and the Radiocommunications Act shall, to the extent that they are not inconsistent with this Act, remain in force until they are revoked or replaced by regulations or rules made under this Act and shall, for all purposes, be deemed to have been made under this Act.
- (2) The Minister upon the recommendation of the Authority, in consultation, as appropriate, may, whenever it is necessary for the orderly transition to the regulatory regime introduced by this Act, by notice published in the *Gazette* make such modifications to regulations or rules made under the previous Acts as the Minister considers appropriate.

## Chapter 11

### CONSEQUENTIAL PROVISIONS AND AMENDMENTS

Repeal of Telecommunications Act

**120.** The Telecommunications Act, 1994 is hereby repealed, provided however that, until the date six (6) months from the commencement date of this Act, a person holding one or more licences under that Act shall continue to be bound by both the provisions of the Telecommunications Act and this Act.