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**THE KENYA COMMUNICATIONS (AMENDMENT)
BILL, 2007**

A Bill for

AN ACT of Parliament to amend the Kenya
Communications Act, 1998

*Preamble
Consumer
Missing
" "*

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Communications
(Amendment) Act, 2007.

Short title

2. The Kenya Communications Act, 1998, in this Act
referred to as "the principal Act," is amended in section 1 by
deleting the word "Kenya" and substituting therefor the words
"Information and."

Amendment
of section 1 of
No. 2 of 1998.

3. Section 2 of the principal Act is amended –

Amendment
of section 2 of
No. 2 of 1998.

(a) in subsection (1), by inserting the following new
definitions in their proper alphabetical sequence—

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

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

"broadcasting signal distribution " means the
process whereby the output signal of a
broadcasting service is taken from the point of
origin, being the point where such signal is made
available in its final content format, from where it
is conveyed to any broadcast target area by means

of a telecommunication process and includes multi-channel distribution;

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

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

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

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

"community broadcasting service" means a broadcasting service which—

- (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons

associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and

- (d) may be funded by donations, grants, sponsorships or membership fees, or by any combination of the aforementioned;

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

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

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

“digital signature certificate” means trusted electronic credentials that enable access, control, secure messaging, and transaction security, issued by a trusted third party generally referred to as a certification service provider;

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

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

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

"electronic Gazette" means the Gazette published in electronic form;

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

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

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

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

"Fund" means the Universal Service Fund established by section 110 of this Act;

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

"licence" means any licence issued under this Act;

"major telecommunications service provider" means a licensee with a market share of more than twenty-five per cent of the revenue of the entire telecommunications market in Kenya and has been declared by the Commission by notice in the Gazette to be a major telecommunications service provider;

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

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

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

Cap. 63.

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

"public broadcaster" means the Kenya Broadcasting Corporation established by the Kenya Broadcasting Corporation Act;

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"public broadcasting services" means broadcasting services of the public broadcaster;

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

"secure electronic signature" means an electronic signature which meets the following requirements—

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

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

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

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

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

"terrestrial broadcasting service" means a service that is broadcast from the transmitter situated upon the earth's surface;

(b) in subsection (3), by inserting the following new paragraphs immediately after paragraph (b)–

(c) save as otherwise agreed to between the originator and the addressee–

(i) the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator;

(ii) the time of receipt of an electronic record shall be determined as follows–

(aa) if the addressee has designated computer resource for the purpose of receiving an electronic record, receipt occurs at the time when the electronic record enters the designated computer resource;

- (bb) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; or
- (cc) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee;
- (dd) save as otherwise agreed between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business;
- (ee) the provisions of subparagraph (d) shall apply notwithstanding that the place where

the computer resource is located may be different from the place where the electronic record is deemed to have been received under subsection (3).

4. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 2 of 1998.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The object and purpose for which the Commission is established shall be to license, regulate and promote information and communication services.

(b) by deleting subsection (5).

5. The principal Act is amended by inserting the following new sections immediately after section 5—

Insertion of new sections 5A and 5B in No. 2 of 1998.

Minister to issue policy guidelines. **5A.**(1) The Minister may issue to the Commission policy guidelines of a general nature relating to the provisions of this Act as may be appropriate.

in consultation to stakeholders

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

Independence of the Commission. **5B.** Except as provided for under this Act or any other law, the Commission shall exercise its functions independent of any person or body.

6. Section 6 of the principal Act is amended—

Amendment of section 6 of No. 2 of 1998.

- (a) in paragraph (c), by inserting the words "information and" immediately before the word "communications";
- (b) by deleting paragraph (f) and substituting therefor the following new paragraph—

gender

(f) at least seven other persons, not being public officers, appointed by the Minister and of whom—

- (i) at least one shall have knowledge or experience in matters relating to law;
- (ii) at least one shall have knowledge or experience in matters relating to postal services;
- (iii) at least one shall have knowledge or experience in matters relating to broadcasting or mass media;
- (iv) at least one shall have knowledge or experience in matters relating to radio communications;
- (v) at least one shall have knowledge or experience in matters relating to information technology or computer science;
- (vi) at least one shall have knowledge or experience in matters relating to telecommunications; and
- (vii) at least one shall have knowledge or experience in

commerce or related
consumer interests;

(c) by deleting paragraph (g);

(d) by renumbering the existing provision as
subsection (1) and inserting the following new
subsection—

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

7. Section 24 of the principal Act is amended in subsection (2)—

Amendment
of section 24
of No. 2 of
1998.

(a) by deleting the words “three hundred thousand
shillings” and substituting therefor the words
“one million shillings”;

(b) by deleting the words “three years” and
substituting therefor the words “five years”.

8. The principal Act is amended by repealing section 26.

Repeal of
section 26 of
No.2 of 1998.

9. Section 28 of the principal Act is amended—

Amendment
of section 28
of No. 2 of
1998.

(a) by deleting the words “one hundred thousand
shillings” and substituting therefor the words “one
million shillings”;

(b) by deleting the words “one year” and substituting
therefor the words “five years”.

10. Section 33 of the principal Act is amended by
deleting the words “one hundred thousand shillings” and
substituting therefor the words “three hundred thousand
shillings”.

Amendment
of section 33
of No. 2 of
1998.

Amendment
of section 34
of No. 2 of
1998.

11. Section 34 of the principal Act is amended in subsection (3) by—

- (a) deleting the words “three hundred thousand shillings” and substituting therefor the words “one million shillings”;
- (b) by deleting the words “three years” and substituting therefor the words “five years”.

Amendment
of section 38
of No. 2 of
1998.

12. Section 38 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “(other than radio communication restricted to the receiving of public broadcasting)”;
- (b) in subsection (2), by—
 - (i) deleting the words “three hundred thousand shillings” and substituting therefor the words “one million shillings”;
 - (ii) by deleting the words “three years” and substituting therefor the words “five years”.

Amendment
of section 44
of No. 2 of
1998.

13. Section 44 of the principal Act is amended—

- (a) by deleting the words “five hundred thousand shillings” and substituting therefor the words “one million shillings”;
- (b) by deleting the words “three years” and substituting therefor the words “five years”.

Amendment
of section 45
of No. 2 of
1998.

14. Section 45 of the principal Act is amended—

- (a) by deleting the words "three hundred thousand shillings" and substituting therefor the words "one million shillings";
- (b) by deleting the words "one year" and substituting therefor the words "five years".

15. The principal Act is amended by inserting the following new Part immediately after Part IV—

Insertion of
new Part in
No. 2 of 1998.

PART IVA _ BROADCASTING SERVICES

Functions of the
Commission in
relation to
broadcasting
services.

46A. The functions of the Commission, in relation to broadcasting services, shall be to—

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

Classification of
broadcasting
services.

46B.(1) Subject to the provisions of this Act, the Commission may, on such terms as it may determine, issue sound or television broadcasting service licences for specified areas according to the following broadcasting service categories—

- (a) public broadcasting service;
- (b) free-to-air private broadcasting service;
- (c) subscription broadcasting service;
- (d) community broadcasting service.

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

- (a) Free-to-air radio service;
- (b) Free-to-air television service;
- (c) Satellite-free-to-air radio services;
- (d) Satellite-free-to-air television services;
- (e) Satellite-subscription television services;
- (f) Satellite-subscription radio services;
- (g) Terrestrial-subscription television services;
- (h) Subscription management services;
- (i) Direct-to-home delivery service, including multi-channel satellite distribution;
- (j) Cable television subscription service;

- (k) Low power radio service;
- (l) such other class of licence as may be determined in accordance with the Regulations.

46C.(1) Subject to the provisions of this Act, no person shall provide broadcasting services except in accordance with a valid licence issued under this Part.

Requirement of a
broadcasting
licence

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

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

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

46D. (1) A person shall not be eligible for the grant of a broadcast licence if such person—

Eligibility for
licensing and
considerations for
award of licence

- (a) has a direct, indirect or beneficial interest of whatever nature, in the same broadcast service category, as provided for in section 46B;
- (b) is a political party or is an organization with affiliation or

connection to one or more political parties;

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

(2) No broadcasting licensee—

- (a) shall own or have a controlling interest in another broadcasting licensee;
- (b) shall own or have a controlling interest in a person licensed to produce a newspaper.

(3) In considering an application for the grant of a broadcasting licence, the Commission shall have regard to—

- (a) availability of radio frequency spectrum including the availability of such spectrum for future use;
- (b) efficiency and economy in the provision of broadcasting services;
- (c) demand for the proposed broadcasting service within the proposed broadcast area;
- (d) expected technical quality of the proposed service, having regard to the developments in the broadcasting technology;
- (e) capability, experience and expertise of the applicant in as far as carrying

out such broadcast service is concerned;

(f) financial means and business record of the applicant; and

(g) any other matter that the Commission may consider necessary.

46E.(1) The Kenya Broadcasting Corporation established under section 3 of the Kenya Broadcasting Corporation Act is hereby designated as the public broadcaster and shall provide public broadcast services.

Public broadcast services.

Cap. 225.

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

(a) to provide universal broadcasting services as may be specified;

(b) to provide the public with quality programmes that provide impartial and balanced information education and entertainment;

(c) to operate in the public interest and conduct broadcasting services with impartial attention to the interests and susceptibilities of different communities of Kenya;

(d) to respond to the aspirations of the entire Kenyan population in terms of age, race, gender, interests and backgrounds;

(e) to promote the cultural, moral, social and economic values of Kenya;

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

*Community
broadcast services* **46F.(1)** The Commission may, upon application in the prescribed manner and subject to such conditions as the Commission may deem necessary, grant a licence authorizing the provision of community broadcasting services by any group of people having a common interest.

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

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

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

- (a) ensure that a cross section of the community is represented in the management of the affairs of the broadcasting service;
- (b) ensure that each member of the community has equal opportunity to be elected to the board or committees managing the affairs of the broadcasting service;
- (c) ensure that members of the community have a way of making their preferences considered in the selection and provision of programmes;
- (d) conform to any conditions or guidelines as the Commission may, from time to time, require or issue with regard to such broadcasting service.

46G.(1) Subject to the provisions of this Act, the Commission may grant a licence to any person to provide private broadcasting services.

Private
broadcasting
services.

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

- (a) provide coverage in such areas as may be specified by the Commission;
- (b) meet the highest standard of journalistic professionalism;
- (c) in the case of free-to-air television, include drama, documentaries and

children's programmes that reflect Kenyan themes.

Commission to
prescribe
programme code.

46H. (1) The Commission shall have power to set standards for the manner, time, and type of programmes to be broadcast by licensees under this Act.

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

- (a) draw up and from time to time, review programming codes;
- (b) define a watershed period with special regard to programming included in licensed services when children and young persons are likely to be watching programmes; and
- (c) prescribe rules to ensure compliance with the programming code:

Provided that the programme code referred to herein shall not apply where a licensee is a member of a body which has proved to the satisfaction of the Commission that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms and provided further that such code of conduct and disciplinary mechanisms are acceptable to the Commission.

Responsibilities of
broadcasters.

46I.(1) All licensed broadcasters shall, in their programmes, be responsible for the presentation and maintenance of standards and shall—

- (a) provide responsible and responsive programming that caters for the varied needs and susceptibilities of different

sections of the Kenyan community;

- (b) ensure that Kenyan identity is developed and maintained in programmes;
- (c) observe standards of good taste and decency;
- (d) gather and present news and information accurately and impartially;
- (e) when controversial or contentious issues of public interests are discussed, make reasonable efforts to present alternative points of view, either in the same programme or in other programmes within the period of current interest;
- (f) respect the right of individuals to privacy;
- (g) respect copyright and neighbouring rights in respect of any work or material;
- (h) conform to guidelines as may be issued by the Commission from time to time;
- (i) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;
- (j) ensure that advertisements, either in terms of content, tone or treatment, do not mislead or are not repugnant to good taste.

(2) Where, under the provisions of any law—

- (a) a cinematograph film is submitted for classification and approval for exhibition; and
- (b) approval for exhibition of the film is either denied or granted subject to excisions therefrom,

no broadcaster shall—

- (i) in the case of any film in respect of which such approval is denied, broadcast the film or any part thereof; or
- (ii) in the case of any film that is approved for exhibition subject to excisions therefrom, broadcast that film or any part thereof if the film or, as the case may be, that part thereof includes any part of the film required to be excised,

except with the consent of and subject to any conditions given by the Board of Censors established under the Films and Stage Plays Act.

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Revocation of licences

46J. The Commission may revoke a licence to broadcast where the licensee—

- (a) is in breach of the provisions of this Act or regulations made thereunder;

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

46K. The Minister may, in consultation with the Commission, make regulations generally with respect to all broadcasting services and without prejudice to the generality the foregoing, with respect to—

Regulations on broadcasts.

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

46L.(1) A broadcaster shall establish and maintain a procedure, which shall be submitted to the Commission for approval, by which persons aggrieved by any broadcast or who allege that a broadcaster is not complying with the provisions of this Act or any other written law, may file complaints.

Complaints.

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

(3) Complaints made under this section

shall be in writing and shall set out the grounds upon which they are based, the nature of damage or injury suffered as a result of the broadcast or the violation complained of and the remedy sought.

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

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

Access to
pro-grammes.

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

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

Requirement for a
licence for signal
distribution.

46N.(1) Subject to the provisions of this Act, no person shall provide signal distribution services within Kenya or from Kenya to other countries except in accordance with a licence issued under this Part.

(2) Any person who contravenes the provisions of subsection (1) commits an

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

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

Signal distribution
licence:

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

- (a) give priority to broadcasting channels licensed in Kenya;
- (b) deliver public services, including educational programmes as well as commercial and community services;
- (c) provide an open network that is interoperable with other signal distribution networks;
- (d) provide services to broadcasting licensees on an equitable, non-preferential and non-discriminatory basis;
- (e) comply with any other conditions as the Commission may from time to time determine.

(3) In the case of a signal distribution licensee utilizing the radio frequency spectrum, the Commission may, in addition, require the licensee to comply with any conditions as to the nature and location of

transmitters and their transmission characteristics, as may be prescribed.

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

Revocation of signal
distribution licence:

46P.(1) The Commission may revoke a licence under this Part where the licensee or a person under the control of the licensee—

- (a) is in breach of the provisions of this Act or any regulations made thereunder;
- (b) is in breach of the conditions of a licence;
- (c) fails to commence operations within a period of one year from the date of grant of the licence.

Offences relating to
broadcasting services:

46Q.(1) Any person who operates a broadcasting station or provides a broadcasting service without a valid broadcasting licence commits an offence.

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

- (a) that person operates a broadcasting system or provides broadcasting services which are not of a description specified in the licence;

(b) that person provides broadcasting services in an area for which he is not licensed to broadcast;

(c) that person operates a broadcasting service or uses broadcasting equipment in contravention of the Act or licence.

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

46R. The transitional provisions set out in the Fifth Schedule to this Act shall have effect with respect to broadcasting permits issued prior to the commencement of this Part.

16. Section 49 of the principal Act is amended by deleting the words "fifty thousand shillings" and substituting therefor the words "two hundred thousand shillings".

Amendment
of section 49
of No. 2 of
1998.

17. Section 67 of the principal Act is amended by deleting the words "fifty thousand shillings" and substituting therefor the words "two hundred thousand shillings".

Amendment
of section 67
of No. 2 of
1998.

18. Section 69 of the principal Act is amended by deleting the words "fifty thousand shillings" and substituting therefor the words "three hundred thousand shillings".

Amendment
of section 69
of No. 2 of
1998.

19. Section 71 of the principal Act is amended by deleting the words "one hundred thousand shillings" and substituting therefor the words "five hundred thousand shillings".

Amendment
of section 71
of No. 2 of
1998.

20. Section 72 of the principal Act is amended by deleting the words "one hundred thousand shillings" and substituting therefor the words "five hundred thousand shillings".

Amendment
of section 72
of No. 2 of
1998.

Amendment
of section 73
of No. 2 of
1998.

21. Section 73 of the principal Act is amended by deleting the words "two hundred thousand shillings" and substituting therefor the words "five hundred thousand shillings".

Amendment
of section 74
of No. 2 of
1998.

22. Section 74 of the principal Act is amended by deleting the words "five thousand shillings" and substituting therefor the words "ten thousand shillings".

Amendment
of section 75
of No. 2 of
1998.

23. Section 75 of the principal Act is amended by deleting the words "one hundred thousand shillings" and substituting therefor the words "three hundred thousand shillings".

Amendment
of section 76
of No. 2 of
1998.

24. Section 76 of the principal Act is amended by deleting the words "one hundred thousand shillings" and substituting therefor the words "five hundred thousand shillings".

Amendment
to heading of
Part VI of
No.2 of 1998.

25. The principal Act is amended in the heading of Part VI by deleting the words "LICENSING PROCEDURE" and substituting therefor the words "LICENSING AND ENFORCEMENT".

Amendment
of section 78
of No.2 of
1998.

26. Section 78 of the principal Act is amended in subsection (1)–

- (a) by deleting the words "sixty days" whenever they occur and substituting therefor the words "thirty days;" ;
- (b) by inserting the following proviso immediately after paragraph (c)–

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

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

Amendment

27. Section 79 of the principal Act is amended–

- (a) by deleting the words "sixty days" and substituting therefor the words "thirty days";
- (b) by inserting the following further proviso at the end of the section—

"Provided also that the Commission shall not issue any monopoly or duopoly licence".

28. Section 82 of the principal Act is amended in subsection (2)—

of section 79 of No.2 of 1998.
Amendment of section 82 of No.2 of 1998.

- (a) by deleting the words "sixty days" and substituting therefor the words "thirty days";
- (b) by inserting the following proviso immediately after paragraph (c)—

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

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

29. The principal Act is amended by inserting the following new section immediately after section 83—

Insertion of section 83A in No.2 of 1998.

Enforcement of licence conditions. **83 A (1)** Where, on its own motion or consequent upon a complaint made by any person, the Commission—

- (a) is satisfied that a licensee is contravening or has contravened the provisions of this Act or any other written law or any of the conditions of the licence;

- (b) notifies the licensee, in writing, specifying the acts or omissions which, in its opinion, constitute or would constitute a contravention of the Act or of the conditions of the licence;
- (c) requires the licensee to remedy the contravention within such period as the Commission may specify in the notice,

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

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

Insertion of
Parts VIA –
VIC in No. 2
of 1998.

30. The principal Act is amended by inserting the following new Parts immediately after Part VI–

PART VIA _ INFORMATION TECHNOLOGY

Application.

84.(1) This Part shall not apply to any rule or law requiring writing or signature in any of the following matters–

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

Functions of the
Commission in
relation to
information
technology services.

85. The functions of the Commission in relation to information technology services shall be to–

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

86.(1) No person shall—

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

Requirement for a
licence.

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

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

Licence for electronic
certification services

87.(1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorizing any particular person or any specified classes of persons to provide electronic certification services.

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

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

Licence for country
code Top-level
domain

88.(1) The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licences under this section authorising persons, whether of a specified class or any particular person to administer a sub-domain in the country code top-level domain.

(2) The transitional provisions set out in the Fifth Schedule to this Act shall have effect with respect to the management and administration of the country code top-level domain issued prior to the commencement of this Part.

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

Legal recognition of electronic records

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

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

Retention of electronic records

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

electronic record are available in the electronic record:

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

Retention of
information in
original form.

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

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

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

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

- (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display, and,
- (b) the standard of reliability

required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

92.(1) Subject to subsection (2) in the context of contract formation, unless otherwise agreed by the parties, an offer and acceptance of an offer may be expressed by means of electronic messages and where an electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability solely on the ground that an electronic message was used for the purpose.

Formation and
validity of contracts

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

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

Recognition of parties
of electronic
messages.

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

Attribution of
electronic records

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

- (a) in order to ascertain whether the electronic message was that of the originator, the addressee properly applied a procedure

previously agreed to by the originator for the purpose; or

- (b) the electronic message as received by addressee resulted from actions of a person who had the authority to act on behalf of the originator in respect of the electronic record.

Acknowledgement of receipt.

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

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

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

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

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

Secure electronic record.

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

Compliance with requirement for a signature.

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

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

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

which it relates, any alteration made to that information after the time of signing is detectable.

Legal recognition of
electronic signatures.

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

Protected systems

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

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

Regulations for
electronic signatures.

100. The Minister may, for the purposes of this Act, prescribe regulations on—

- (a) the type of electronic signature to be affixed;
- (b) the manner and format in which the electronic signature shall be affixed;
- (c) the manner and procedure which facilitates identification of the person affixing the electronic signature;
- (d) control of the processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and

- (e) any other matter which is necessary to give legal effect to electronic signatures.

101.(1) Where any law provides for—

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

- (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Government in a particular manner;
- (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner; or
- (c) the receipt of payment of money in a particular manner;

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

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

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

Electronic Gazette

102. Where any law provides that any rule, regulation, order, notification, or any other matter shall be published in the Gazette, such requirement shall be deemed to have been satisfied if the publication of such rule, regulation, order, notification or any other matter is done electronically in such manner as may be prescribed:

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

Tampering with
computer source
documents.

103. Any person who knowingly or intentionally conceals, destroys or alters, or intentionally or knowingly causes another to conceal, destroy or alter any computer source code, computer programme, computer system or computer network, where the computer source code is required to be so kept or maintained by any law for the time being in force, shall be guilty of an offence punishable with imprisonment for a period not exceeding five years, or a fine not exceeding one million shillings or both.

Hacking into
computer system.

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

(2) A person who commits the offence of hacking shall be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or to both.

Publishing of obscene
information in
electronic form.

105. Any person who publishes or causes to be published in electronic form, any material which is lascivious or appeals to the prurient

interest, or if its effect is such as to tend to deprave or corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein, commits an offence, and shall be liable on conviction to imprisonment for a period not exceeding one year or a fine not exceeding three hundred thousand shillings, or both.

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

Publication for
fraudulent purpose.

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

Unauthorized access
to protected systems.

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

Re-programming of
mobile telephone.

(2) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding one year or to a fine not exceeding three hundred thousand shillings or to both.

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

109. (1) A person commits an offence if—

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

purpose, or to allow it to be used unlawfully for that purpose.

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

PART VIB _ UNIVERSAL SERVICE FUND

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

Establishment of the Fund.

(2) The object and the purpose for which the Fund is established shall be to provide funds to support widespread access to information and communications technology services and to promote capacity building and innovation.

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

Revenue and expenditure of the Fund.

(a) charges or levies from licensed operators;

- (b) sums of money which may from time to time be voted by Parliament for that purpose;
- (c) income from any investment made by the Commission; and
- (d) any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Board and incurred in connection with the administration of the Fund.

Application for grant
of fund loan.

112. Any licensed service provider wishing to be considered for the grant of a universal access fund loan shall make an application to the Commission in the prescribed form.

Conditions for grant
of loan.

113. (1) The Board may—

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

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

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

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

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

Annual returns

115.(1) The Minister may, in consultation with the Commission, make regulations generally with respect to the administration of the Fund.

Regulations for
Universal Service
Fund

(2) Without prejudice to the generality of the foregoing the Minister may make rules with respect to—

- (a) fees from licensed operators;
- (b) levels of subsidy;
- (c) mechanisms for collection of fees;
- (d) penalties for delayed remittances;
or
- (e) prescribing anything that may be prescribed under this Part.

**PART VIC _ FAIR COMPETITION AND
EQUAL TREATMENT**

Commission to
ensure fair
competition.

116.(1) The Commission shall ensure that there is fair competition in the information and communications sector.

(2) Without prejudice to the generality of subsection (1), the Commission shall in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among licensees.

Commission to
investigate acts of
unfair competition.

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

(2) Acts or omissions contemplated under subsection (1) shall include—

- (a) any abuse by an operator, either independently or with others, of a dominant position which unfairly excludes or limits competition between such operator and any other party;
- (b) entering any agreement or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition; or
- (c) the effectuation of anti-competition changes in the

market structure and in particular, anti-competition mergers and acquisitions in the information and communication sector.

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

- (a) that the Commission is investigating a possible breach of fair competition;
- (b) the reasons for the suspicion of a contravention or breach, including any matter of facts or law which are relevant to the investigation;
- (c) any further information needed by the Commission in order to complete the investigation; and

where appropriate, the steps to be taken by the operator in order to remedy the breach.

(2) An operator issued with a notice under subsection (1) may, within thirty days from the date of the notice, make representations in response to the notice, and give to the Commission all information required under the notice.

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

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

(5) Where the Commission has made a decision that an operator is competing unfairly, the Commission may—

- (a) order the operator to stop the unfair competition;
- (b) order the operator to pay a fine not exceeding the equivalent of ten percent of the annual turnover of the operator;
- (c) declare any anti-competition agreement or contract null and void.

(6) The provisions of subsection (5) shall not affect in any way the right of any other person to take any other action against the operator through the prosecution under any other law in force in the Republic of Kenya for an act or omission which constitutes an offence under this Act or from being liable under that other written law to any punishment or penalty higher than that prescribed under this Act or Regulations.

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

(8) The provisions of this section shall not limit or in any way affect the obligations of an operator under any condition of a licence.

Access to services:

119. No operator shall deny access or service to any person or class of persons except for non-payment of dues or for any other justifiable reason.

Same tariffs to apply:

120. An operator shall provide equal opportunity for access to the same type and quality of service to all customers in a given area at substantially the same tariff except variations that may be justifiable due to use of special technologies required to serve specific subscribers.

Regulations on
competition.

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

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

- (a) access, including rules of interconnection, by operators and their subscribers to each other's network;
- (b) the process of handling alleged breaches of fair competition;
- (c) investigation of an operator alleged to have committed act or omission in breach of fair competition;
- (d) access to information from any licensee or operator with regard to facilitating investigations on alleged breaches of fair competition;
- (e) steps to be taken in order to remedy the breach;
- (f) services in respect of which limited competition may be allowed.

31. The principal Act is amended by repealing and re-enacting Part VII, with amendments, as follows—

Replacement
of Part VII of
No.2 of 1998.

PART VII _ MISCELLANEOUS PROVISIONS

National
Communication
Secretariat

122.(1) The National Communication Secretariat, established under section 84 of the principal Act, is hereby continued as the National Communication Secretariat, headed by a Communications Secretary and comprising such

other officials as may be determined from time to time.

(2) The functions of the Secretariat shall be—

- (a) to advise the Government on the adoption and implementation of new information and communications technology policy, by conducting research, analysis and preparing policy recommendations which—
 - (i) promote the benefits of technological development to all users of information and communications facilities;
 - (ii) fosters national safety and security, economic prosperity and the delivery of critical social services;
 - (iii) facilitates and contributes to the full development of competition and efficiency in the provision of services both within and outside Kenya; and
 - (iv) fosters full and efficient use of information and communications resource including effective use of the radio spectrum by the Government in a manner which encourages the most beneficial use thereof in the public interest;

- (b) provide technical support to the Government in advancing information and communications infrastructure development, enhancing competition and creating trade opportunities; and
- (c) represent the Government in domestic and international information and communications policy making activities.

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

Content Advisory
Council

(2) The Council shall have such functions and powers as the Board may determine in the exercise of the powers conferred under Part IVA of the Act and in particular shall provide advice on—

- (a) monitoring and regulating broadcast content;
- (b) handling complaints from operators and consumers; and
- (c) monitoring compliance with broadcasting codes and ethics for media practitioners.

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

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

- (ii) at least four members appointed by the Minister after consultation with the Board;

(4) The Council may with the approval of the Board co-opt such experts as it considers necessary.

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

- (a) have knowledge and experience in media, broadcasting, communication or culture;
- (b) have satisfied the Minister that they are unlikely to have a conflict of interest under Part IVA and will not have any financial or other interest likely to prejudicially affect the carrying out of any functions under this Part; and
- (c) are in the opinion of the Minister suitable to perform the functions and duties of a member competently and honestly, and are willing to serve as members.

(6) The provisions set out in the Fourth Schedule shall have effect in relation to the membership, procedure and sittings of the Council.

Universal Access
Advisory Council

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

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

- (a) project identification and prioritization;
- (b) monitoring projects and disbursement of funds; and
- (c) project auditing and impact assessment.

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

- (a) a Chairman appointed by the Minister after consultation with the Board;
- (b) at least four members appointed by the Minister after consultation with the Board;

(4) The Council may, with the approval of the Board, co-opt such experts as it considers necessary.

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

- (a) have knowledge and experience in broadcasting, telecommunications, postal systems, information technology or finance;

- (b) have satisfied the Minister that they are unlikely to have a conflict of interest under this Act and will not have any financial or other interest which will be likely prejudicially affect the carrying out of any functions under this Part;
- (c) are in the opinion of the Minister, otherwise suitable to perform the functions and duties of a member competently and honestly, and are willing to serve as members.

(6) The provisions set out in the Fourth Schedule shall have effect in relation to the membership, procedure and sittings of the Council.

Co-location

125.(1) When operators or service providers co-locate their facilities at sites where the communication networks of other operators or service providers exist and are active, they shall first obtain the agreement of the mentioned operators or service providers.

(2) When no agreement can be reached under subsection (1), the parties shall refer the issue to the Commission for decision.

(3) Major telecommunications service providers shall file tariffs, rates, terms, and conditions of co-location with the Commission.

Power of operator to use land

126.(1) Subject to subsection (3), a telecommunication operator may, with the consent in writing of the owner or occupier of any land, and subject to such terms and conditions as may be agreed upon between the operator and the

owner or occupier, place or maintain under, over, along, across, in or upon such land, any telecommunication apparatus or such radio-communication apparatus, installed or used in accordance with a radio-communication licence.

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

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

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

- (a) acquire any right other than that of user of such land under, over, along, across, in or upon which any telecommunication apparatus or radio communication apparatus is placed and only such purposes as the parties have agreed;
- (b) exercise those powers in respect of any land vested in or under the control of a local authority, except in accordance with a procedure set out in section 127.

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

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

Procedure for using
public land

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

(2) The local authority or other public body may, upon request under subsection (1), permit the telecommunication operator to exercise any or all of the powers under section 126(2), subject to such conditions, including the payment

of any fee for the use of the property, the time or mode of execution of any works, or for any other related activity undertaken by the telecommunication operator under the section as may be agreed between the telecommunication operator and the authority.

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

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

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

Compulsory purchase
of land.

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

Cap.301.

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

129.(1) On the declaration of any public emergency or in the interest of public safety and tranquility, the Minister for the time being responsible for internal security may, by order in writing direct—

Powers on occurrence
of emergency.

(a) any officer duly authorized in that behalf to take temporary

possession of any telecommunication apparatus or any radio communication station or apparatus within Kenya, and—

- (b) in the case of radio communication, that any communication or class of communication shall or shall not be emitted from any radio communication station or apparatus taken under this section; or
- (c) in the case of telecommunication, that any communication within Kenya from any person or class of persons relating to any particular subject shall be intercepted and disclosed to such person as may be specified in the order; or
- (d) in the case of postal services, that any postal articles or class or description of postal article in the course of transmission by post within Kenya shall be intercepted or detained or shall be delivered to any officer mentioned in the order or shall be disposed of in such manner as the Minister may direct; or
- (e) in the case of broadcasting, and any broadcasting apparatus or any radio, television, cable or satellite broadcasting or signal distribution station or apparatus within Kenya—

- (i) that no broadcasting shall be broadcast from any radio communication station or apparatus taken under this section; or
- (ii) that any signal within Kenya from any person or class of persons relating to any specified subject shall be intercepted and disclosed to such person as may be specified in the order.

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

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

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

130.(1) If a court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the provisions of this Act has been or is being committed, and that

Entry and search of premises, etc.

the evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, it may grant a search warrant, authorizing any person or persons authorized in that behalf by the Commission and named in the warrant, with any police officer, to enter, at any time within one month from the date of the warrant, the premises specified in the information, or as the case may be, the vehicle, vessel or aircraft so specified and to search such premises, vehicle, vessel or aircraft, and to examine and test any station or apparatus or obtain any article or thing found in such premises, vessel, vehicles or aircraft.

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

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

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

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

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

(3) Where under this section a person is authorized to examine and test any information and communications system or apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on,

the vessel, aircraft or vehicle, to give such authorized person such assistance as he may reasonably require in the examination or testing of such system or apparatus.

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

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

(5) For the purposes of this section, "court" means a Resident Magistrate's Court.

Seizure of apparatus,
article or other
property.

131.(1) A search warrant granted under section 130 may authorize the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any radio-communication apparatus, information and communications system or apparatus, article or other thing found in the course of the search carried out in pursuance of the warrant which

appears to have been used in connection with or to be evidence of the commission of any offence under this Act.

(2) If a police officer or any person authorized by a warrant to exercise the powers conferred under this section has reasonable grounds to suspect that an offence under this Act has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any radio-communication apparatus, information and communications system or apparatus or any other thing which appears to have been used in connection with or to be evidence of the commission of any such offence.

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

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

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

Forfeiture of property used in commission of offence.

committed, to be forfeited to the Commission:

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

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

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

Disposal of property
seized under section
131.

133.(1) Any property seized by a person authorized by a warrant under section 131 may be detained—

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

(2) After the end of the period for which

its detention is authorized by virtue of subsection (1), any such property which:

- (a) remains in the possession of the Commission; and
- (b) has not been ordered to be forfeited under section 132.

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

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

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

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

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

General restrictions on disclosure of information

- (a) has been obtained under or by virtue of the provisions of this Act; and

- (b) relates to the private affairs of any individual or to any particular business, shall, during the lifetime of that individual or so long as that business continues to be carried on shall be disclosed by the Commission or by any other person without the consent of that individual or the person for the time being carrying on that business.

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

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

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

Powers in relation to
electricity
undertakers, etc.

135.(1) Subject to subsection (7), any person who establishes or operates, under any written law or otherwise, any undertaking for the supply of electricity (in this section referred to as "the undertaker") or any person who constructs, equips or operates a railway by means of electricity (in this section referred to as "the railway operator") shall, at least one month before erecting, placing

or altering the position of any line or wire for the transmission of such electricity, forward to the telecommunication operator within the area within which such work is to be executed, or to the public postal licensee where any post office or other property is likely to be affected, a notice in writing of his intention to execute such work together with a plan of the proposed work, and the undertaker or the railway operator shall also give to the telecommunication operator, or as the case may be, the public postal licensee, all such other information as he may require in order to determine whether such work is likely to interfere unduly with any telecommunication or postal services.

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

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

services, but also to the interests of all persons supplied or who may be supplied with electricity by the undertaker and of all persons using the facilities provided by the railway operator.

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

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

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

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

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

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

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

Structures likely to interfere with telecommunication or postal services.

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

Offences by companies.

(2) Where a person is convicted of an offence under this Act in relation to the unlawful

use of any telecommunication system or radio communication apparatus, or to the use of any apparatus or property for the purpose of interfering with any telecommunication, radio communication or postal services, the court may, in addition to any other penalty, order all or any of the apparatus or property with which the offence was committed to be forfeited to the Commission.

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

Property of the
Commission in
Custody of employee.

138.(1) Where any employee of the Commission dies or leaves the service of the Commission and at the time of such death or termination of service any premises of the Commission were occupied by him or any property of the Commission was in his possession, it shall be the duty of such employee or, in the event of his death, of the person in whose possession such property may be or who may be occupying such premises, as soon as practicable, to deliver such property to the Commission or to vacate such premises.

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

Commission or, as the case may require, to evict from such premises any person found therein.

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

Limitation of actions.

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

140. Notwithstanding anything to the contrary in any law—

Restriction on execution against property of Commission

- (a) where any judgment or order has been obtained against the Commission, no execution or attachment, or process in the nature thereof, shall be issued against the Commission or

against any property of the Commission, but the Director General shall, without delay, cause to be paid out of the revenue of the Commission such amounts as may, by the judgment or order, be awarded against the Commission to the person entitled thereto;

- (b) no property of the Commission shall be seized or taken by any person having by law power to attach or restrain property without the previous written permission of the Director General.

Service of notice
etc. on Director
General

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

- (a) by delivering of the notice or other document to the Director General or to any other authorized employee of the Commission; or
- (b) by leaving it at the office of the Director General; or
- (c) by sending it by registered post to the Director General.

Service of notice
etc. by Director
General

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

- (a) by delivering it to that person;
or
- (b) by leaving it at the usual or last known place of abode of that

person; or

- (c) by sending it by registered post addressed to that person at his usual or last known address.

143.(1) The Appeals Tribunal established under section 102 of the principal Act is hereby continued as the Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties under this Act, which shall consist of—

Establishment and
constitution of
Appeals Tribunal.

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and
- (b) four other members who are persons possessing, in the opinion of the Minister, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or the Commission.

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

(3) The Minister may from time to time, by publication in the Gazette amend the schedule as he deems fit.

(4) The members of the Tribunal shall hold office for a period of three years but shall be eligible for reappointment for one further term of a period

not exceeding three years.

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

Repeal of Cap.
411 and savings:

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

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

Insertion of
new
Schedules in
No.
2/1998:

32. The principal Act is amended by inserting the following new schedules immediately after the Third Schedule—

FOURTH SCHEDULE (sec. 123, 124)

PROVISIONS AS TO ADVISORY COUNCILS

Tenure of office:

1. The Chairman and members of an advisory council shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years on such terms and conditions as may be specified in their instrument of appointment, but shall be eligible for reappointment for one more term of a period not exceeding three years.

2. The members of an advisory council ^{Appointment times} shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

3. A member of an advisory council may— ^{Vacation of office.}

(a) at any time by notice in writing addressed to the Minister, resign his office;

(b) be removed from office by the Minister if the member—

(i) has been absent from three consecutive meetings of the Council without permission from the chairman;

(ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with creditors; or

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings; or

(v) is incapacitated by prolonged physical or mental illness: or

(vi) fails to comply with the provisions of the Act relating to disclosure.

Gazettement of members.

4. The names of persons appointed to be members of an advisory council and the interests they represent and the names of persons ceasing to be members of the council shall be notified in the Gazette.

Meetings and proceedings.

5. Subject as hereinafter provided, an Advisory Council shall regulate its own procedure.

Meetings.

6. Meetings of an advisory council shall be called by the Chairman of the council whenever the Board so requests.

Absence of chairman.

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

Agenda of meetings.

8. The agenda at a meeting of an advisory council shall consist of such matters as the Board may from time to time refer to the Council for consideration and such other matters as the Council, with the agreement of the Board, may receive.

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

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

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

FIFTH SCHEDULE (sec. 46R)

TRANSITIONAL PROVISIONS

1. In this Schedule, unless the context requires otherwise— Interpretation.

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

2. The Commission shall respect and uphold the vested rights and interests of parties holding broadcasting permits issued by the Minister before the Broadcasting permits granted by the Minister.

commencement
of the Act;

Provided that—

- (a) such parties shall comply with this Act and any regulations made thereunder; and
- (b) before expiry of a six month period, such parties shall apply to be licensed as broadcasters as provided under Part. IVA of this Act.

Domain
administrators.

3. The Commission shall respect and uphold the vested rights and interests of parties that were actively involved in the management and administration of the .ke domain name space before the commencement of this Act;

Provided that—

- (a) such parties shall comply with this Act and any regulations made thereunder; and
- (b) before expiry of a six month period, such parties shall apply to be licensed as registrars and registries as provided for in this Act.

Amendment of
various laws.

33. The several written laws specified in the first column of the Schedule herebelow are amended in the provisions thereof

specified in the second column in the manner respectively specified in the third column.

SCHEDULE

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Kenya Broadcasting Corporation Act, Cap. 221	Long title	Delete the words "to provide for the control of broadcast receiving sets, and for liccnsing of dealers, repairers and importers of broadcast receiving sets;"
	s.1 (2)	Delete
	s.9 (3)	Delete
	s.11 (3)	Delete paragraphs (a), (b), (c), (d) and (e)
	Part VI (secs.21-36)	Delete whole part
	s.49	Delete
	s.50	Delete
The Penal Code, Cap.63	s.4	Insert the following new definition in its proper alphabetical sequence— "electronic record" means a record generated in digital form by an information system which can be transmitted within an information system or from one

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
		information system to another, and stored in an information system or other medium;
	s. 346	Add at the end thereof the words "or in electronic form."
	s. 347	Insert the following new paragraphs immediately after paragraph (d)-

(e) fraudulently--

- (i) makes or transmits any electronic record or part of an electronic record;
- (ii) affixes any digital signature on any electronic record, or
- (iii) makes any mark denoting the authenticity of a digital signature.

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

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
		(f) without lawful authority or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with a digital signature either by himself or by any other person, whether such person is living or dead at the time of such alteration; or
		(g) fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of deception practised upon him, does not know the contents of the document or electronic record or the nature of the alteration.
	s.349	Insert the words "or electronic record" after the words "any document".
	s.354	Insert the words " or electronic record" after the words "any document" wherever they occur;
	s.355	Insert the words "or electronic record" after the word "document" wherever it occurs;

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
	s.357	Insert the words "or electronic record" after the word "document" wherever it occurs.
The Evidence Act, Cap. 80	s.3	Insert the words "whether kept in written form or printouts or electronic form" at the end of the definition of "banker's book"
	New	Insert the following new part in Chapter III immediately after Part VI -

PART VII – ELECTRONIC RECORDS

Section 106B to apply in proof of electronic records.

106A. The contents of electronic records may be proved in accordance with the provisions of section 106B.

Admissibility of electronic records.

106B.(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
		evidence would be admissible.
		(2) The conditions mentioned in subsection (1), in respect of a computer output, are the following— <ul style="list-style-type: none"><li data-bbox="1402 578 1868 1069">(a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;<li data-bbox="1402 1120 1868 1518">(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;<li data-bbox="1402 1580 1868 1798">(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in

Written Law Provision Amendment

which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and

- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

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

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

Written Law Provision Amendment

successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

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

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

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any matters to

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
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which conditions mentioned in sub-section (2) relate; and

- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate).

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

(5) For the purpose of this section—

- (a) information is supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment, whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for

Written Law	Provision	Amendment
		the purpose of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.
	Proof as to a digital signature.	106C. Except in the case of a secure signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record, then the fact that such a digital signature is the digital signature of the subscriber must be proved.
	Proof as to the verification of digital signature.	106D. In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the court may direct— (a) that person or the certification service provider to produce the digital signature certificate; or (b) any other person to apply the procedure listed in the digital signature certificate and verify the digital signature purported to have been affixed by that person.
	Presumption as to Gazettes in	106E. A court shall take recognizance of every electronic record

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
	electronic form.	purporting to be the official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from its proper custody.
	Presumption as to electronic agreements.	106F. A court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was concluded by affixing the digital signature of the parties.
	Presumption as to electronic records and digital signatures.	106G.(1) In any proceedings involving a secure electronic record, the court shall presume, unless the contrary is proved, that the secure electronic record has not been altered since the specific point of time the secure digital signature was affixed. (2) In any proceedings involving secure digital signature, the court shall presume, unless the contrary is proved, that the secure signature is affixed by the subscriber with the intention of signing or approving the electronic record;

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
		(3) except in the case of a secure electronic or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.
	Presumption as to digital signature certificates.	106H. A court shall presume, unless the contrary is proved, that the information listed in a digital signature certificate is correct, except for information, which has not been verified, if the certificate was accepted by the subscriber.
	Presumption as to electronic messages.	106I. A court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission, but the court shall not make any presumption as to the person by whom such a message was sent.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to make certain necessary amendments to the Kenya Communications Act, 1998, in order to streamline and introduce regulatory standards in information technology and broadcasting which are presently weak. This will be done by transforming and empowering the

Communication Commission of Kenya into a fully-fledged information and communications technology sector regulator.

The Bill seeks to address the following policy imperatives—

- (i) create regulatory, advisory and dispute resolution bodies to support the implementation of the national information and communications technology policy;
- (ii) provide a new regulatory framework for broadcasting stations and services;
- (iii) provide for the licensing of certification service providers and country top level domain administrators; and
- (iv) provide for computer-related offences including reprogramming of mobile telephones.

The Bill further proposes to make consequential amendments to the Kenya Broadcasting Corporation Act, Chapter 221 of the Laws of Kenya, the Penal Code, Chapter 63 of the Laws of Kenya and the Evidence Act, Chapter 80 of the Laws of Kenya.

Clause 2 seeks to amend section 1 of the Kenya Communications Act, 1998 and rename the said Act as “the Information and Communications Act”.

Clause 3 seeks to insert new definitions in the Act. These include definitions in relation to broadcasting, certification and electronic transactions in light of the enhanced regulatory powers of the revamped Commission.

Clause 4 seeks to amend section 5 of the Act to enhance the object and purposes for which the Commission is established to include licensing and regulation of information technology and broadcasting services. Clause 4 also seeks to delete subsection (5) of section 5 of the Act to enable the Minister exercise the same powers under a new and independent provision inserted under clause 5.

Clause 5 seeks to insert new sections 5A and 5B in the Act. Section 5A will explicitly enable the Minister to issue policy guidelines of a general nature to the Commission whereas section 5B provides for independent exercise of the functions of the Commission subject to the provisions of any other laws.

Clause 6, in principle part, seeks to replace paragraph (g) of section 6 of the Act with a new paragraph (f). The new paragraph (f) proposes to increase

the number of persons the Minister may appoint to the Board of the Commission from five to seven and also designates the respective occupational backgrounds of those appointees.

Clause 7 seeks to amend section 24 of the Act and enhance the penalty provided therein from a fine of three hundred thousand shillings or three years imprisonment to one million shillings or five years imprisonment.

Clause 8 seeks to delete section 26 of the Act which deals with the enforcement of licensing conditions since the same has been revamped and moved to Part VI of the Act.

Clause 9 seeks to amend section 28 of the Act and enhance the penalty provided therein from a fine of one hundred thousand shillings or one year imprisonment to one million shillings or five years imprisonment.

Clause 10 seeks to amend section 33 of the Act and enhance the penalty provided therein from a fine of one hundred thousand shillings to a fine of three hundred thousand shillings.

Clause 11 seeks to amend section 34 of the Act and enhance the penalty provided therein from a fine of three hundred thousand shillings or one year imprisonment to one million shillings or five years imprisonment.

Clause 12 seeks to amend section 38 of the Act and remove the requirement that the Commission be excluded from dealing with radio communication restricted to receiving of public broadcasting. The clause also proposes to enhance the penalty provided therein from a fine of three hundred thousand shillings or one year imprisonment to one million shillings or five years imprisonment.

Clause 13 seeks to amend section 44 of the Act and enhance the fine therein from five hundred thousand shillings or three years imprisonment to one million shillings or five years imprisonment.

Clause 14 proposes to amend section 45 of the Act by enhancing the fine therein from three hundred thousand shillings or one year imprisonment to a fine of one million shillings or five years imprisonment.

Clause 15 provides for the insertion of a new **Part IVA** to deal with Broadcasting Services. The new part proposes to give the Commission powers to licence and regulate broadcasting services and promote the development of local content in broadcasting. The Part also sets out the eligibility criteria for the award of a broadcasting licence and designates the

Kenya Broadcasting Corporation as a public broadcaster. The Part further requires broadcasters to be responsible and gives the Commission powers to revoke broadcasting licences if the licensee is in breach of the provisions of this Bill or regulations made thereunder.

Clause 16 seeks to amend section 49 of the Act to enhance the penalty provided therein from a fine of fifty thousand shillings to two hundred thousand shillings.

Clause 17 seeks to amend section 67 of the Act to enhance the penalty provided therein from a fine of one hundred thousand shillings to two hundred thousand shillings.

Clause 18 seeks to amend section 69 of the Act to enhance the penalty provided therein from a fine of fifty thousand shillings to two hundred thousand shillings.

Clause 19 seeks to amend section 71 of the Act to enhance the penalty provided therein from a fine of one hundred thousand shillings to five hundred thousand shillings.

Clause 20 seeks to amend section 72 of the Act to enhance the penalty provided therein from a fine of one hundred thousand shillings to two hundred thousand shillings.

Clause 21 seeks to amend section 73 of the Act to enhance the penalty provided therein from a fine of two hundred thousand shillings to five hundred thousand shillings.

Clause 22 seeks to amend section 74 of the Act to enhance the penalty provided therein from a fine of five thousand shillings to ten thousand shillings.

Clause 23 seeks to amend section 75 of the Act to enhance the penalty provided therein from a fine of one hundred thousand shillings to three hundred thousand shillings.

Clause 24 seeks to amend section 76 of the Act to enhance the penalty provided therein from a fine of one hundred thousand shillings to five hundred thousand shillings.

Clause 26 seeks to amend section 78 of the Act to reduce the period of notice of a grant of a licence from sixty days to thirty days. The Clause also inserts

a proviso thereof to exclude telecommunications vendors, radio communications or value added services from the requirement.

Clause 27 seeks to amend section 79 of the Act to reduce the period within which the Commission should notify the applicant of a decision to refuse to grant a licence from sixty days to thirty days. The Clause also inserts a proviso thereof to bar the Commission from issuing any monopoly or duopoly licence

Clause 28 seeks to amend section 82 of the Act to reduce the period within which objections to the modification of licence conditions may be made from sixty days to thirty days. The Clause also inserts a proviso thereof to exclude telecommunications vendors, radio communications or value added services from the requirement.

Clause 29 seeks to insert a new section 83A in the Act to give power to the Commission to enforce licence conditions.

Clause 30 seeks to insert new Parts VIA-VIC into the Act. **Part VIA** contains provisions in respect of Information Technology. These include provisions empowering the Commission to facilitate electronic communications by means of electronic records, legal recognition of electronic records and electronic transactions including the Electronic Gazette and creates new offences with respect to electronic records and transactions. **Part VIB** provides for the establishment of the Universal Service Fund, its revenue and expenditures and also sets out the conditions for the grant of a loan by the Fund. **Part VIC** contains provisions empowering the Commission to ensure fair competition and equal treatment in the information and communications sector and gives the Commission power to investigate acts of unfair competition and make appropriate orders thereto.

Clause 31 seeks to repeal and re-enact, with amendments, the Miscellaneous Provisions. These include the enhancement of the functions of the National Communication Secretariat and the establishment of the Content Advisory Council and Universal Access Advisory Council, both to operate under the Commission.

Clause 32 seeks to insert two new Schedules in the Act, the Fourth and Fifth Schedules. The Fourth Schedule provides for the terms of office of the chairman and members of both the Content Advisory Council established under section 123 and the Universal Access Advisory Council established under section 124. The Schedule also sets out the procedure to be followed in meetings of the Councils.

The Fifth Schedule sets out the transitional provisions. Paragraph 2 requires the Commission to respect and uphold, on certain conditions, the broadcasting permits issued by the Minister before the commencement of this Act. Paragraph 3 requires the Minister to respect and uphold, on certain conditions, the vested rights and interest of parties involved in administration of the .ke domain name before the commencement of this Act.

The Bill also proposes consequential amendments to certain statutes to bring them into conformity with this Bill if enacted. These are set out in the Schedule to the Bill and are as follows—

(a) Amendments to the Kenya Broadcasting Corporation Act, Cap.221

The provisions to be repealed are set out in the Schedule to this Bill. These provisions have become obsolete by virtue of both the principal Act and this Bill.

(b) Amendments to the Penal Code, Cap.63

Section 4 – It is proposed to insert the definition of “electronic record” in the interpretation provision of the Code.

Section 346 – It is proposed to include electronic records in the exemption to the definition of documents stated therein.

Section 347 – it is proposed to widen the scope of the offence of making a false document to include the dishonest and fraudulent making or altering of electronic records.

Section 349 – it is proposed to widen the scope of the offence of forgery to include the forging of electronic records.

Section 354 – it is proposed to widen the scope of the offence of uttering false documents to include the uttering of false electronic records.

Section 355 – It is proposed to widen the scope of the offence of procuring execution of documents by false pretences to include such procuring of electronic records.

Section 357 – it is proposed to widen the scope of the offence of making documents without authority to include such unauthorized making of electronic records.

(c) Amendments to the Evidence Act, Cap. 80

It is proposed to insert a new Part VII in Chapter III of the Act. The proposed new Part provides for the admissibility of electronic records in court proceedings if the conditions set therein are met.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 17th May, 2007.

MUTAHI KAGWE,

Minister for Information and Communications.

Section 1 of Act No. 2 of 1998 which it is proposed to amend-

Short title and commencement.

1. This Act may be cited as the Kenya Communications Act, 1998 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

Subsection (1) of section 5 of Act No. 2 of 1998 which it is proposed to amend-

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

Subsection (5) of section 5 of Act No. 2 of 1998 which it is proposed to delete-

(5) Any policy guidelines, rules and regulations issued by the Minister shall maintain the role of the Commission as provided in section 23(2) of this Act and no monopoly or duopoly licence to operate a telecommunication system or

provide any telecommunication services shall be granted by the Minister or the Commission.

Paragraph (f) of section 6 of Act No. 2 of 1998 which it is proposed to delete-

- (f) the Permanent Secretary in the Ministry for the time being responsible for information and broadcasting or his representative; and

Paragraph (g) of section 6 of Act No. 2 of 1998 which it is proposed to delete-

- (g) at least five other persons, not being public officers, appointed by the Minister by virtue of their knowledge or experience in matters relating to postal services, telecommunications, commerce or related consumer interests and the Minister shall have due regard to registered societies representing such interests in exercising his powers under this paragraph.

Subsection (2) of section 24 of Act No. 2 of 1998 which it is proposed to amend-

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

Section 26 of Act No. 2 of 1998 which it is proposed to delete-

Enforcement of licence conditions:

26.(1) Where, on its own motion or consequent upon complaints made by third parties, the Commission—

- (a) is satisfied that a telecommunication operator is contravening or has contravened any of the conditions of a licence and that the contravention or apparent contravention is not of a trivial nature;
- (b) notifies the telecommunication operator, in writing, specifying the acts or omissions which, in its opinion,

constitute or would constitute contravention of the conditions of the licence;

- (c) requires the telecommunication operator to remedy the contravention within such period as the Commission may specify in the notice;

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

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

Section 28 of Act No. 2 of 1998 which it is proposed to amend-

- Obtaining service dishonestly. **28.** A person who dishonestly facilitates or obtains a service provided by a person authorized under this Act to provide telecommunications services with intent to avoid payment of any charge applicable to the provision of that service commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Section 33 of Act No. 2 of 1998 which it is proposed to amend-

- Trespass and wilful obstruction of telecommunication officer. **33.** Any person who—
- (a) without permission, enters the equipment room of a telecommunication operator; or
- (b) enters any enclosure around the telecommunication office in contravention of any rule or notice to the contrary; or
- (c) refuses to leave such equipment room or enclosure on

being requested to do so by any telecommunication officer; or

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

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

Section 34 of Act No. 2 of 1998 which it is proposed to amend-

Prohibition of
unlicensed
telecommunication
system.

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

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

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

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

Subsection (1) of Section 38 of Act No. 2 of 1998 which it is proposed to amend-

38.(1) The Minister in consultation with the Commission may make regulations generally with respect to radio communication (other than radio communication restricted to the receiving of public broadcasting) and, without prejudice to the

generality of the foregoing, with respect to—

Subsection (2) of Section 38 of Act No. 2 of 1998 which it is proposed to amend—

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

Section 44 of Act No. 2 of 1998 which it is proposed to amend—

Unlawfully sending
of misleading
messages, etc

44. Any person who—

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

use of the radio communication station or radio communication apparatus by him or by any other person acting on his behalf.

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

Section 45 of Act No. 2 of 1998 which it is proposed to amend-

Deliberate
interference with
radio
communication.

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

Subsection (2) of Section 49 of Act No. 2 of 1998 which it is proposed to amend-

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

Section 67 of Act No. 2 of 1998 which it is proposed to amend-

Operating without
a valid licence.

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

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

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

Section 69 of Act No. 2 of 1998 which it is proposed to amend-

Affixing materials on post office. **69.** A person who, without the authority of the public postal licensee, affixes any placard, advertisement, notice, document, board or other thing in or on, or paints tar, or in any way disfigures any post office, commits an offence and shall, be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Section 71 of Act No. 2 of 1998 which it is proposed to amend-

Transmitting offensive material by post. **71.** Any person, who without lawful excuse, the proof of which shall lie on the person charged, sends or procures to be sent by post, a postal article which has thereon or enclosed therein any word, drawing or picture of a scurrilous, threatening, obscene or grossly offensive character, commits an offence and shall on conviction be liable a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years or to both.

Section 72 of Act No. 2 of 1998 which it is proposed to amend-

Unlawful opening of postal articles etc. by non-employees of licensee. **72.** Any person who, not being an employee of the public postal licensee or not being employed in connection with postal services—
(a) opens any postal article otherwise than in accordance with this Act.
(b) interferes in any way with any mailbag or postal article opened under the authority of this Act, otherwise than in accordance with the law;
(c) fraudulently puts, alters, removes or erases any

official mark on a postal article;

- (d) maliciously and without authority, the proof of which authority shall lie on the person charged, opens, destroys, detains or secretes any article after it has been transmitted by post and before it has been delivered to the addressee;
- (e) without the authority of the public postal licensee, the proof of whose authority shall lie on the person charged, knowingly enters any premises used for the purpose of the postal services and to which the public has no right of access;
- (f) refuses or fails to leave any such premises when called upon so to do by an authorised employee of the public postal licensee; or
- (g) wilfully and unlawfully obstructs or impedes any employee of the public postal licensee or any other person in the discharge of his duties in connection with postal services.

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

Section 73 of Act No. 2 of 1998 which it is proposed to amend-

Using of fictitious stamps.

73. Any person who-

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

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

Section 74 of Act No. 2 of 1998 which it is proposed to amend-

Use of certain words.

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

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

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

Section 75 of Act No. 2 of 1998 which it is proposed to amend-

Transmitting prohibited articles by post.

75. Any person who—

- (a) sends by post any postal article which is prohibited from being so transmitted under any regulations made under this Act;
- (b) sends by post, otherwise than in accordance with any regulations made under this Act, any postal article containing any noxious, explosive or dangerous substance which would be likely to damage any other postal article;
- (c) subscribes on the outside of any postal article, or

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

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

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

Section 76 of Act No. 2 of 1998 which it is proposed to amend-

Interfering with
postal installation:

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

Section 78 of Act No. 2 of 1998 which it is proposed to amend-

Notice of licence:

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

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

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

Section 79 of Act No. 2 of 1998 which it is proposed to amend-

Grant of licence. 79. The Commission may, upon expiry of the period of notice under section 78 grant a licence to the applicant if satisfied that the applicant should be licensed, subject to such conditions, including the payment of such licence fee as may be prescribed:

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

Section 84 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 122)

Section 85 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 126)

Section 86 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 127)

Section 87 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 128)

Section 88 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 129)

Section 89 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 130)

Section 90 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 131)

Section 91 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 132)

Section 92 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 133)

Section 93 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 134)

Section 94 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 135)

Section 95 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 136)

Section 96 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 137)

Section 97 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 138)

Section 98 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 139)

Section 99 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 140)

Section 100 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 141)

Section 101 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 142)

Section 102 of Act No. 2 of 1998 which it is proposed to amend-
(Now Act No. 143)

Section 103 of Act No. 2 of 1998 which it is proposed to amend-
(Now section 144)

The long title to Cap. 221 which it is proposed to amend-

Long title. An Act of Parliament to establish the Kenya Broadcasting Corporation to assume the Government functions of producing and broadcasting programmes or parts of programmes by sound or televisions; to provide for the management, powers, functions and duties of the Corporation; to provide for the control of broadcast receiving sets, and for the licensing of dealers, repairers and importers of broadcast receiving sets; and for connected purposes.

Subsection (2) of section 1 of Cap. 221 which it is proposed to delete-

Cap.411. 1. (2) This Act shall have effect notwithstanding the

provisions of the Kenya Posts and Telecommunications Corporation Act.

Subsection (3) of section 9 of Cap. 221 which it is proposed to delete-

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

Subsection (3) of section 11 of Cap. 221 which it is proposed to amend-

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

- (a) radio engineering;
- (b) television engineering;
- (c) television programmes;
- (d) radio programmes;
- (e) news;
- (f) personnel and administration;
- (g) finances.

Section 49 of Cap. 221 which it is proposed to delete-

Offences by
Corporations and
forfeiture of apparatus

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

(2) Where a person is convicted of an offence under this Act in relation to the unlawful use of radiocommunication apparatus or for the unlawful establishment of radiocommunication station, the court may, in addition to any penalty, order all or any of the apparatus or installation in connection with which the offence was committed to be forfeited to the Corporation.

Section 50 of Cap. 221 which it is proposed to delete-

Place of trial. 50.(1) Any person charged with any offence under this Act may be proceeded against, tried and punished in any place within Kenya where he may be in custody for that offence as if the offence had been committed in such place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place.

(2) Nothing contained in this section shall preclude prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried or punished.

Part VI of Cap. 221 which it is proposed to delete 21 – 36-

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

Corporation to be the licensing authority. 21. The power for the control of receiving sets for wireless and television broadcasts, and for the licensing of dealers in and repairers of such sets shall vest in the Corporation upon the commencement of this Act.

Interpretation of Part. 22. In this Part, unless the context otherwise requires-
 “dealer” means a person who by way of trade or business buys, offers for sale, sells, lets on hire or otherwise deals in sets;
 “dealer’s licence” means a licence issued to a dealer under section 25;
 “licence” means any licence issued under this Part;

"licensed premises" means premises in respect of which a dealer's licence or repairer's licence is in force:

"licensing officer" means a licensing officer appointed under this Act and includes the managing director:

"permit" means a permit issued under section 26:

"police officer" includes an administration police officer:

"possession", "be in possession of" and "have in possession" have the meanings assigned to such expressions in section 4 of the Penal Code: Cap. 63.

"prescribed fee" means the appropriate fee prescribed:

"repair" in relation to a set includes providing maintenance service of any kind and fitting spare parts:

"repairer" means a person who by way of trade or business carries out repairs to or provides maintenance services for sets:

"repairer's licence" means a licence issued to a repairer under section 25:

"set" means an apparatus for the reception of television broadcasts or for the reception of sound broadcasts, and where an apparatus is designated or constructed for the reception of both television and sound broadcasts (other than those relating to television broadcasts) such apparatus shall be deemed to comprise two sets, one for the reception of sound broadcasts and the other for television broadcasts as the case may be.

23. For the purposes of this Act, the managing director, shall Appointment of

licensing officers. be the chief licensing officer and the Corporation may by notice in the Gazette appoint such other licensing officers who may be public officers as are necessary for the purposes of this Part.

Dealing and repairing of sets to be licensed. 24.(1) No dealer or repairer shall carry on trade or business as such unless he holds a valid dealer's or repairer's licence, as the case may be.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding six months or to both.

Issue, etc. of dealer's and repairer's licenses. 25. (1) A dealer's or repairer's licence—

- (a) may be issued by a licensing officer on payment of the prescribed fee;
- (b) may be issued subject to such conditions not inconsistent with this Act as the licensing officer thinks fit to impose;
- (c) shall specify the premises to which such licence relates;
- (d) shall be exhibited in a conspicuous place in such premises; and
- (e) may be revoked at any time by the managing director in his discretion.

(2) Before a dealer's or repairer's licence may be issued under this section the applicant shall satisfy the licensing officer that he has complied with the requirements of any other written law relating to the carrying on of the trade or business of the dealer or repairer.

Permits. 26. (1) Subject to this section, no person shall be in possession of a set unless he is also in possession of a permit relating to that set.

(2) No dealer shall sell a set to any person unless, at the time of such sale, he issues a permit in the prescribed form to, and collects the prescribed fee therefor from, such person.

(3) No dealer shall let on hire a set to any person unless such dealer is in possession of a permit for such set issued by a licensing officer and endorses the permit in respect of the person to whom the set is so let

(4) No permit shall be required-

- (a) by a dealer by reason of his possession of a set for sale;
- (b) by a repairer by reason of his possession of a set for repair.

(5) The Minister may by rules prescribe the validity of permits issued under this section.

(6) A valid permit may be transferred to any person to whom the possession of the set concerned is transferred by endorsement of the name of such person upon the permit.

(7) Any person who contravenes or fails to comply with subsections (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding six thousand shillings or to imprisonment for a period not exceeding six months or to both.

27. Every dealer's and repairer's licence-

Form and duration of licences

- (a) shall be in the prescribed form; and
- (b) shall come into effect on the date of commencement specified therein and expire one year from that date of commencement.

28. Subject to any rules made under section 35, the Corporation shall from time to time prescribe the fees payable for any permit or licence issued under this Part.

Fees.

29. Where a licensing officer is satisfied that any licence or permit has been lost or destroyed he may, upon payment of the prescribed fee, issue a duplicate of such licence or permit.

Replacement of licence or permit.

30. Any applicant for a dealer's or repairer's licence, who is

Appeals to the Minister.

aggrieved by the refusal of a licensing officer to issue a license to him, and any holder of a dealer's or repairer's licence who is aggrieved by the revocation of such licence by the Managing Director may within fourteen days of being informed of the refusal or revocation appeal to the Minister, whose decision on such appeal shall be final and shall not be subject to appeal.

Registers.

31. Every holder of a dealer's or repairer's licence shall keep such registers and render such returns as the chief licensing officer may, by notice in the Gazette or by notice in writing require.

Inspection of licensed premises.

32. As all reasonable times a licensing officer or a police officer of or above the rank of chief inspector may enter the premises of a dealer or repairer for the purpose of ensuring that the provisions of this Part and any subsidiary legislation thereunder are being complied with.

Obstruction

33.(1) Any person willfully obstructing, impeding, hindering or resisting any person in the execution of his duty under this Part shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.

(2) An offence under this section shall be cognizable to the police.

Fees to form part of revenue of Corporation.

34. All fees or payments collected or levied under this Part shall be and form part of the revenues of the Corporation.

General power of making rules under Part

35. The Minister after consultation with the Board may make rules for any purpose for which rules may be made under this Part and for prescribing anything which may be prescribed under this Part and generally for the better carrying out of the purposes of this Part, and in particular, but without prejudice to the generality of the foregoing, may make rules with respect to any of the following matters—

- (a) the particulars to be furnished for any of the purposes of this Part;
- (b) the procedure on application for the grant of any licence;
- (c) the production and return of licences upon

revocation;

- (d) the exemption of any person or class of persons from the liability of holding a permit;
- (e) the granting of permits at concessionary rates to organizations established for education purposes.

36. A permit relating to any set which, at the commencement of this Act, constituted a valid permit under the Broadcast Receiving (Apparatus) Act (now repealed), shall be deemed for all the purposes of this Part to be a permit in respect of that set.

Transitional
provision. Cap. 224
(1972).