



Executive Summary

The Kenya Information and Communications (Amendment) Bill, 2019 (**National Assembly Bill Number 20**) should be adopted partially, some clauses amended, and some deleted, as shown in the matrix.

The new amendments to KICA proposed by Hon. Elisha Odhiambo, MP, published on March 15th, 2019, seek to add a new section 34A on the compensation of telecommunications consumers for call drops; a new section 25A on splitting telecommunications businesses, and section 84J prescribing how the Universal Service Fund (USF) should be used.

Clause	Provision	Proposal	Justification
25A. (1)	In addition to operating a telecommunication system or providing a telecommunication service as may be specified in the license granted under section 25, a person may engage in any other business provided that such a person shall -		
(a)	obtain the relevant licences from the respective regulators of any industry or sector ventured into;	Keep the section	There is already a framework in place for licenses in any industry, and if a telco gets into that business it would need to apply for that license anyway. For example, if the telco started selling medicines online, then it would need the relevant pharmaceutical license.
(b)	legally split or separate the telecommunication business from such other business; and	Delete section.	If the telecommunications company creates a separate company 100% owned (and controlled and managed) by itself, then there is no point of splitting it, It is just a department or subsidiary of the company. Dictating how a company runs its strategy will add bottlenecks, increase operational cost, and stifle innovation.

			<p>Telecommunication companies have the unique capability to reach every single person in this country. They should therefore be encouraged rather than be hindered. Currently, e-Health, e-Agriculture, etc. are still really under-developed in this country. They need more support and stronger players to push in that space and expand the economy.</p> <p>Separating a business will not be enough because anti-competitive practices have to be checked even across different business entities owned by the same holding company.</p> <p>Successful companies should be supported to grow and compete at the global stage; as opposed to being targeted for being diligent, hardworking, and executing their strategy properly.</p>
(c)	Provide separate accounts and reports in respect of all business carried out.	Delete section	As per the above reasons
(2)	A person who provides any service without the relevant licence under this section commits an offence	Delete section	It is expected that any other related business needs an operating licence as per available regulations.
(3)	A person convicted of an offence under this section shall, on conviction be liable to a	Delete section	The offence being committed should be clear enough since we have recommended

	fine not exceeding ten million shillings or to imprisonment for a term not exceeding two years, or both.		deleting of clause 25A. 1(b), 1 (c)
(4)	A person who, at the commencement date of this section, was operating a business that does not comply with the requirements of this section shall ensure that the business is compliant within six months of the coming into force of this section.	Delete this section	
(5)	The commission, shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.	Delete this section	
34A. (1)	A licensee is liable to credit a consumer who initiates a call that gets cut out after a connection by Kenya Shillings ten worth of airtime for each call drop within its network for a maximum of three call drops per day	Amend this section. Have the figure as a percentage of the cost of the call. Have a clause to protect consumers of other Telecommunications Services since Telecommunication companies offer more than just phone calls. What happens to the	There should be a rationale for the penalty of Kenya Shillings 10 worth of airtime. It is not clear how this figure was arrived at. Currently, there is a subsidiary clause by the regulator where telecommunications companies are penalized a percentage of their profit for the poor quality of service. "The CA levies a fine equal to 0.1 percent of the gross annual revenue of a firm

		other services (like internet access, satellite communication, mobile money services) when the Service Level Agreement has not been met?	for failing to meet standards." This fund goes directly to CA, and not the affected end-users. This new provision is more desirable because the refund goes to the consumers, rather than to CA.
34A. (2)	A licensee shall not be liable to compensate a consumer, where a call gets cut out due to third party interference on the licensee's connection lines, inevitable accident or <i>force majeure</i> .	Keep this section	
84J (2)	The objective and purpose of the Fund shall be to -		
(a)	promote the availability of quality services at just, reasonable and affordable rates for all consumers;	Delete section	The objective of the USF is very clear and the fund should be used to fulfill those objectives. CA has an entire department that can address quality control issues hence no need to legislate this in USF. The USF should not be used to address quality controls where CA can fund through its budget lines.
(b)	increase nationwide access to advanced telecommunications service;	Amend this section	This section should be amended to ensure there is proportionate allocation of the USF to expand coverage in underserved

			regions, and ensure that there is equitable distribution of resources across the country.
(c)	advance the availability of such services to all consumers, including those in low income, and rural areas;	Keep this section	
(d)	increase access to telecommunications and advanced services in schools, libraries and rural health care facilities;	Keep this section	
(e)	provide equitable and nondiscriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs; and	Keep this section	
(f)	support capacity building and promote innovation in information and communications technology services	Keep this section	
(4)	The Commission shall in each financial year submit to the National Assembly a report indicating -	Keep this section	The amendment should be tailored towards demanding more transparency from the Authority, tightening reporting standards and returns to Parliament.
	(a) the total amount of money that was collected for the respective financial year;	Keep this section	

	(b) the activities the Commission undertook to implement the objectives of the Fund; and	Keep this section	There should be more transparency on outcomes of Universal Service Advisory Council board meetings and how the USF is spent. The CA's quarterly statistics are the perfect opportunity to share on the progress of the number of places that have been connected, as well as the number of people that have been using the network/services. This does not need to wait for annual reports.
	(c) the extent to which the objective of the Fund were achieved	Keep this section	
(5)	The Universal Fund shall be utilized by the Commission as follows -	Keep this section	This clause is highly welcomed. The law must prescribe in the narrowest terms possible on what the USF should be used to achieve to avoid abuse of the fund. In the absence of transparency and uncertainty on how the USF needs to be apportioned, it leaves the utilization of the fund to the vagaries of people who may or may not have the interest of the country at heart.
	(a) six-percent of the Fund shall be used for ensuring the availability of telecommunication services to all	Keep this section	

	consumers, including those in low income and rural areas;		
	(b) twenty percent of the Fund shall be used for increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities.	Keep this section	
	(c) ten percent of the Fund shall be used for ensuring increased nationwide access to advanced telecommunications services; and	Keep this section	
	(d) ten percent of the Fund shall be used for furthering the other objectives if the Fund as the Commission may determine.	Delete section	10% is a big percentage to be allocated as miscellaneous expenses. Instead of expanding the uses of the USF, we should first utilize the USF to meet the original objectives of increasing penetration levels. The USF should be dedicated to its original purpose until everyone is online.
(6)	A person who fails to utilize or utilizes the Universal Fund in a manner that does not promote the objectives of the Fund, commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term	Keep this section	

	not exceeding two years or to both.		
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