

SPECIAL ISSUE

Kenya Gazette Supplement No. 105 (National Assembly Bills No. 19)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2013

NAIROBI, 22nd July, 2013

CONTENT

Bill for Introduction into the National Assembly—

	PAGE
The Kenya Information and Communications (Amendment) Bill, 2013	535

**NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY**

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

1941

1941

1941

1941

1941

1941

1941

1941

**THE KENYA INFORMATION AND
COMMUNICATIONS (AMENDMENT) BILL, 2013**

A Bill for

**AN ACT of Parliament to amend the Kenya
Information and Communication Act, 1998 and
for connected purposes**

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Kenya Information and Communications (Amendment) Act, 2013.

Short title.

2. (1) The Kenya Information and Communications Act, 1998, in this Act referred to as “the principal Act”, is amended in section 2—

Amendment to
section 2 of No. 2
of 1998.

- (a) by deleting the definition of “Commission” and inserting in its proper alphabetical sequence, the following new definition of—

“Authority” means the Communications Authority of Kenya established under section 3 of the principal Act;

- (b) by deleting the words “the Minister for the time being responsible for communications” in the definition of “Minister” and inserting the words “Cabinet Secretary”;

- (c) by inserting in proper alphabetical sequence the following new definitions—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to electronic, print and all other types of media;

“Commission” means the Communications Authority of Kenya

“cyber security” means the collection of tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment;

“former Commission” means the Communications Commission of Kenya immediately existing before the commencement of this Act;

“market” means a market in Kenya or a substantial part of Kenya and refers to the range of reasonable possibilities for substitution in supply or demand between particular kinds of goods or services and between suppliers or acquirers, or potential suppliers or acquirers, of those goods or services;

“media” means broadcast, electronic and other types of media but does not include print and book publishing;

“significant market power” means a position of economic strength enjoyed by a licensee which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave independently of its competitors, customers and consumers.

(2) The principal Act is amended by deleting the word “chairman” wherever it appears and substituting therefor the word “chairperson”.

Amendment to
section 2 of No. 2
of 1998.

3. Part II of the principal Act is amended by deleting the words “Communications Commission of Kenya” wherever they appear and substituting therefor the words “Communications Authority of Kenya”.

Repeal and
replacement of
section 5A of No.
2 of 1998.

4. The principal Act is amended by repealing section 5A and replacing it with the following new section —

Independence of the
Authority.

5A. (1) The Authority shall be independent and free of control by government, political or commercial interests in the exercise of its powers and in the performance of its functions.

(2) In fulfilling its mandate, the Authority shall be guided by the national values and principles of governance in

Article 10 and the values and principles of public service in Article 232 (1) of the Constitution.

5. The principal Act is amended by repealing section 5B and replacing it with the following new sections —

Repeal and replacement of section 5 of No. 2 of 1998.

Freedom of the media.

5B. (1) The Authority shall, in undertaking its functions under this Act comply with the provisions of Article 34 (1) and (2) of the Constitution.

(2) Subject to Article 24 of the Constitution, the right to freedom of the media and freedom of expression may be limited for the purposes, in the manner and to the extent set out in this Act and any other written law.”

(3) A limitation of a freedom under subsection (2) shall be limited only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

(4) The right to freedom of expression shall not extend to—

- (a) the spread of propaganda for war;
- (b) incitement to violence;
- (c) the spread of hate speech; or
- (d) advocacy of hatred that—
 - (i) constitutes ethnic incitement, vilification of others persons or community or incitement to cause harm; or
 - (ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).

(5) The Authority may make Regulations for the better carrying out of the provisions of this section.

Policy guidelines by
Cabinet Secretary.

5C. (1) The Cabinet Secretary may issue to the Authority, policy guidelines of a general nature relating to the provisions of this Act.

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

Repeal and
replacement of
section 6 of No.2
of 1998.

6. The principal Act is amended by repealing section 6 and replacing it with the following new section—

Board of the
Authority.

6. (1) The management of the Authority shall vest on the Board which shall consist of—

- (a) a chairperson appointed by the President in accordance with section 6B;
- (b) the Principal Secretary for the time being responsible for matters relating to broadcast, electronic, print and all other types of media;
- (c) the Principal Secretary for the time being responsible for matters relating to finance;
- (d) the Principal Secretary for the time being responsible for matters relating to internal security; and
- (e) seven persons appointed by the Cabinet Secretary in accordance with section 6B.

7. The principal Act is amended by inserting the following new sections immediately after sections 6—

Qualifications for
appointment of
chairperson and
members of the
Board.

6A. (1) A person shall be qualified for appointment as a chairperson or member of the Board under subsection (1) (a) and (e), if that person is—

- (a) a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya, in any of the following fields—
 - (i) law;
 - (ii) telecommunications, information and communication technology;
 - (iii) Broadcasting;
 - (iv) postal regulation;
 - (v) humanities and social sciences; or
 - (vi) any other relevant field.
- (c) has experience in the relevant sector for a period of at least ten years in the case of the chairperson and five years in the case of any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(2) Despite subsection 1(b) and (c), a person may be qualified for appointment as a chairperson or member of the Board, if such person, not being a degree holder, demonstrates that he or she has a distinguished career of not less than twenty years in the information, communication and technology sector.

(3) A person shall not be qualified for appointment as a chairperson or member of the Board under section 6 (1) (a) and (e) if that person—

- (i) in the last six months immediately preceding the appointment, had personal direct or indirect commercial interest in the sector regulated under this Act;
- (ii) is an office-bearer or employee of any political party;

- (iii) is a public officer;
- (iv) is an un-discharged bankrupt;
- (v) suffers from physical or mental infirmity that would render him or her incapable of discharging the functions of the Board ;
- (vi) has been convicted of a felony and sentenced to a term of imprisonment;
- (vii) has been convicted of an offence under this Act; or
- (viii) has been compelled to resign or been removed from office, on account of abuse of office.

**Appointment
procedures.**

6B. (1) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of chairperson or a member of the Board, the Cabinet Secretary shall, by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Board, and shall invite applications from qualified persons.

(2) The Cabinet Secretary shall, within seven days after the deadline of receipt of applications submitted under subsection (1), consider the applications, shortlist and publish the names of the shortlisted applicants inviting public comment in at least two newspapers of national circulation.

(3) The Cabinet Secretary shall within seven days of expiry of the period of notice under subsection (1) consider the public comments received under subsection (2) and—

- (a) in the case of the chairperson forward three names to the President for appointment;
- (b) in the case of any other member, make the appointment.

(4) The President shall, upon receipt of the names submitted to him under subsection 3 (a), appoint the chairperson from amongst the applicants.

(5) In selecting, shortlisting and appointing the chairperson and members of the Board, the President and the Cabinet Secretary shall—

- (a) ensure that the appointees to the Board, reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalised groups; and
- (c) ensure that not more than two thirds of the members are of the same gender.

(6) Every appointment made under this section shall be published in the Kenya Gazette.

Term of office.

6C. The chairperson and members of the Board shall hold office for a period of three years renewable once.

Vacation from office.

6D. (1) The office of the chairperson or member shall become vacant if the holder—

- (a) resign from office by notice in writing to the Cabinet Secretary;
- (b) dies;
- (c) is removed from office for—
 - (i) gross misconduct, whether in the performance of the chairperson or member's functions or otherwise; or
 - (ii) is absent from three consecutive meetings of the Authority without permission of the Board,

except for good cause shown.

(2) A person desiring the removal of the chairperson or a member of the Board on any ground specified in subsection (3) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.

(3) The Cabinet Secretary shall, within seven days, consider the complaint and if satisfied that it discloses a ground under subsection (3)—

(a) submit the complaint together with his recommendations to the President in the case of a chairperson; and

(b) determine the complaint in the case of a member of the Board.

(4) The procedure for removal of the chairperson and a member under section 6D shall be carried out in accordance with Article 47 of the Constitution on fair administrative justice set out in Article 47 of the Constitution.

6E. (1) The Authority shall establish a Broadcasting Standards Committee.

(2) The Broadcasting Standards Committee established by subsection (1) shall be responsible for—

(a) administering the broadcasting content aspect of this Act;

(b) formulating media standards; and

(c) regulating and monitoring compliance with those standards.

(3) The Broadcasting Standards Committee shall receive and consider reports and recommendations relating to broadcasting content from the Media Council established under the Media Council of Kenya Act.

8. Section 7 of the principal Act is amended by—

Amendment of
section 7 of No. 2
of 1998.

- (a) inserting the following new paragraphs immediately after paragraph (e)—
 - (f) establish a broadcasting standards committee and such other committees as may be necessary to carry out its functions; and
 - (g) co-opt persons whose skills and expertise may be necessary for the functions of the Authority;

Provided that any person co-opted in the Authority may attend the meetings of the Authority and participate in its deliberations, but shall have no power to vote.

- (b) renumbering section 7 as section 7 (1).

9. Section 11 of the principal Act is amended—

Amendment of
section 11 of No.
2 of 1998.

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

(1) The Director-General shall be the chief executive officer of the Authority and shall be responsible for the day to the day management of the Authority.

- (b) By inserting the following new subsections immediately after subsection (2) —

(3) The Director-General shall be recruited and appointed by the Board through a competitive process.

(4) The Board shall determine the terms and conditions of service of the Director-General, in consultation with the Public Service Commission.

(6) The Director-General shall be appointed for a term of four years renewable once.

10. The Principal Act is amended by repealing section 12.

Repeal of section
12 of No. 2 of
1998.

11. Section 23 of the principal Act is amended by—

Amendment of
section 23 of No.
2 of 1998.

- (a) deleting paragraph (d);
- (b) renumbering paragraph (e) as paragraph (d)
- (c) inserting a new paragraph immediately after paragraph (d) as follows—

(e) have regard to the values and principles of the Constitution.

Amendment to the heading of Part V of No. 2 of 1998.

11. The heading to Part V of the principal Act is amended by inserting the words “and courier” immediately after the word “postal”.

Amendment of section 46D of No. 2 of 1998

12. Section 46A of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (h)—

- (i) administering the broadcasting content aspect of this Act;
- (j) developing media standards; and
- (k) regulating and monitoring compliance with those standards.

Amendment of section 46D of No. 2 of 1998

13. Section 46D of the principal Act is amended in subsection (1) by—

- (a) inserting the following new paragraph immediately after paragraph (c) —
- (d) a public officer or a state officer.

(b) renumbering paragraph (d) as paragraph (e).

Amendment of section 46H of No. 2 of 1998

14. Section 46H of the principal Act is amended in subsection (2) (c) by inserting the words “or listening to” immediately after the word “watching”.

Amendment of section 46J of No. 2 of 1998

15. Section 46J of the principal Act is amended by deleting paragraph (c) and substituting therefor the following new paragraph—

- (c) fails to utilize the assigned broadcasting frequencies within such period as the Authority shall stipulate in the licence.

Repeal and replacement of section 46S of No. 2 of 1998.

16. The principal Act is amended by repealing section 46S.

Amendment to section 48 of No. 2 of 1998

17. Section 48 of the principal Act is amended in subsection (1) by deleting the word “shall” and substituting thereof the word “may”.

Repeal and replacement to section 50 of No. 2 of 1998.

18. The Principal Act is amended by repealing section 50 and replacing with the following new section-

Designation of Postal Corporation of Kenya.

50. The Authority may designate the Postal Corporation of Kenya to be the public postal licensee and assign to it, by notice in the Gazette, any of the powers, duties and functions of the Authority under this Part.

19. Section 83A of the principal Act is amended in subsection (1) by inserting the words “up to a maximum of one per centum of the annual gross turnover of the offending licensee in the preceding year for every year or part thereof in which the offence is continuing” immediately after the word “shilling”.

Amendment of section 83A of No. 2 of 1998.

20. The principal Act is amended by inserting the words “and cyber security” in the heading to Part IVA immediately after the word “Services”.

Amendment to the heading of Part VIA of No. 2 of 1998.

21. Section 83C of the principal Act is amended—

Amendment of section 83C of No. 2 of 1998.

(a) renumbering section 83C as section 83C(1);

(b) in subsection (1) —

(i) by inserting the words “and cyber security” after the word “electronic transaction”.

(ii) by inserting the following new paragraphs immediately after paragraph (f)—

(g) promote and facilitate the efficient management of critical internet resources; and

(h) develop a framework for facilitating the investigation and prosecution of cybercrime offences.

(c) by inserting the following new subsection immediately after subsection (1)—

(2) The Cabinet Secretary may in consultation with the Authority make regulations with respect to cyber security.

22. Section 83Q of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 83Q of No. 2 of 1998.

(3) Any person who secures unauthorized access or attempts to secure unauthorized access to a protected system commits an offence and is liable on conviction, to a fine not exceeding five million shillings or to imprisonment for a term of ten years or to both.

Repeal of section
83U of No.2 of
1998.

23. The principal Act is amended by repealing section 83U and replacing therefor the following new section—

83U. Any person who intentionally and without authorization, engages in the input, acquisition, alteration, deletion or suppression of a telecommunication system or otherwise alters the authenticity or integrity of such a system, with the intent that it be considered or acted upon for legal purposes as though it were authentic or with integrity, regardless of whether or not the system is directly readable or intelligible, for any unlawful purpose, commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term of not exceeding five years or to both.

Repeal of section
83V of No.2 of
1998.

24. The principal Act is amended by repealing section 83V and replacing it with the following new section—

83V. The Cabinet Secretary may, in consultation with the Authority, make regulations under this Part.

Amendment of
section 84K of
No.2 of 1998.

25. Section 84K of the principal Act is amended in subsection (1)—

- (a) by deleting paragraph (c);
- (b) by deleting the word “Commission” and substituting therefore the word “Fund” appearing in paragraph (d).

Repeal of sections
84L to 84N of
No.2 of 1998.

26. The principal Act is amended by repealing sections 84L to 84N, both sections inclusive.

Amendment of
section 84P of
No.2 of 1998.

27. Section 84P of the principal Act is amended by deleting paragraphs (b) and (c) and substituting therefor the following new paragraphs—

- (b) operations of the Fund;
- (c) mechanisms for accessing the Fund;

28. Section 84 S (2) of the principal Act is amended—

Amendment of
section 84S of
No.2 of 1998.

- (a) in paragraph (a) by deleting the words “which unfairly excludes or limits competition between such operators and any other party”,

- (b) by deleting paragraph (c) and substituting therefor the following new paragraph—

- (c) the effectuation of any anti-competitive conduct in the communications sector;

29. Section 84T (6) of the principal Act is amended—

Amendment of
section 84T of
No.2 of 1998.

- (a) by deleting the words “is competing unfairly” and substituting therefor the words “has engaged in anti-competitive conduct”.

- (b) by deleting paragraph (b) and substituting therefor the following new paragraph—

- (b) require the licensee to pay a fine not exceeding the equivalent of ten percent of the annual gross turnover of the preceding year, for each financial year that the breach persists..

- (c) by inserting the word “or” immediately after the word “void”;

- (d) by inserting the following new paragraph immediately after paragraph as follows—

- (d) impose any other lawful remedial measure to redress this offence.

30. Section 84W of the principal Act is amended—

Amendment of
section 84W of
No.2 of 1998.

- (a) in the first subsection (2) by deleting paragraph (g) and substituting therefor the following new paragraph—

- (g) account separation;

- (b) in subsection (4) by—

- (i) deleting the words “twenty five percent of

the gross turnover of the entire telecommunications market” appearing in paragraph (a) and substituting therefor the words “fifty percentum of the relevant gross market segment;

- (ii) deleting paragraphs (b), (c) and (d) and substituting therefor the following new paragraphs—

(b) significant market power enjoyed by the telecommunications service provider; and

(c) any other consideration the Authority may determine.

Amendment of
section 85A of
No.2 of 1998.

31. Section 85A of the principal Act is amended by inserting the following new subsection immediately after subsection (2)–

(3) The Cabinet Secretary shall in consultation with the Authority make regulations with respect to infrastructure sharing.

Amendment of
section 90 of No.2
of 1998.

32. Section 90 of the principal Act is amended in subsection (4) by deleting the words “subsection (3) and substituting therefor the words “subsection (2).

Repeal and
replacement of
section 93 of No.2
of 1998.

33. The principal Act is amended by repealing section 93 and replacing it with the following new section—

93. Access to information and restrictions on disclosure of information held by the Authority shall be implemented pursuant to Article 35 of the Constitution.

Amendment of
section 102 of
No.2 of 1998.

34. Section 102 of the principal Act is amended—

(a) in subsection (1) by—

- (i) deleting paragraph (a) and substituting therefor following new paragraph—

(a) a chairperson who shall be a person competent to be appointed as a Judge of the High Court or who is an Advocate of the High Court of not less than ten years.

- (ii) deleting the word “two” appearing in subsection 1 (b) and substituting with the

word "four" appearing in paragraph (b);

(iii) deleting paragraph (c);

(b) by deleting subsection (2) and substituting the following new subsection—

(2) The chairperson of the Tribunal shall be appointed by the Judicial Service Commission.

(2A) The provisions set out in the Second Schedule shall have effect in relation to the membership, procedure and sittings of the Tribunal.

(c) inserting the following new subsection immediately after subsection (4)—

(5) The quorum for the conduct of the business of the Tribunal shall be three members, one of whom shall be the Chairperson.

35. Section 102A of the principal Act is amended in—

Amendment of
Section 102 A in
No. 2 of 1998

(a) in subsection (2), by deleting the word "seven" and substituting therefor the words "nine";

(b) in subsection (2) (b), by deleting the words "at least four" and substituting therefor the words "eight";

(c) in subsection 4 (a) by inserting the following words "or any other relevant field" after the word "finance";

(d) by inserting the following new subsections immediately after subsection (4)—

(5) The Universal Service Advisory Council shall—

(a) advise the Authority and provide strategic policy guidance for the administration and implementation of the Universal Service Fund; and

(b) perform any other functions as the Cabinet Secretary, in consultation with the Board, may from time to time assign.

(6) The Council shall consist of a chairperson and eight other members appointed in accordance with this section.

(7) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of chairperson or a member of the Council, the Cabinet Secretary shall by notice in the Gazette and in at least two daily newspapers of national circulation, declare vacancies in the Council, inviting applications from qualified persons.

(8) Within seven days of receipt of applications submitted under subsection (7), the Cabinet Secretary shall consider the applications, shortlist and publish the names of the shortlisted applicants inviting public comment.

(9) Within seven days after the expiry of the period of notice under subsection (7) the Cabinet Secretary shall consider the public comments received, and make the appointment.

(10) In selecting, nominating, approving or appointing the chairperson and members of the Council, the Cabinet Secretary shall—

- (a) ensure that the nominees to the Council, reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalised groups; and
- (c) ensure that not more than two thirds of the members are of the same gender.

(11) Every appointment made under section 5 (1) shall be by name and by notice in the Kenya Gazette.

36. The principal Act is amended by inserting the following new sections immediately after section 103—

104. (1) The Authority shall pursuant to Article 157 (12) of the Constitution have the power to undertake prosecution of any offence under this Act.

(2) An officer duly authorised in writing by the Authority may conduct a prosecution for any offence under this Act.

Transition.

105. The transition provisions set out in the Sixth Schedule to to this Act shall have

Amendment of
No. 2 of 1998 by
insertion of new
sections 104 and
105.

effect with respect to the staff, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act.

37. (1) On the commencement of this Act-

Transitional provisions.

- (a) any person who was an employee of the former Commission immediately before the commencement of this Act shall be deemed to be an employee of the Authority on the same terms and conditions of service;
- (b) all property, assets, rights, liabilities, obligations, agreements, licences and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former Commission, shall, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority to the same extent as they were enforceable by or against the former Commission before the commencement of the Act;
- (c) where the transfer of any property transferred to or vested in the Authority under subsection (1) is required by any written law to be registered, the Authority shall, within six months from the date of commencement of this Act and amendments thereto or within such other period as any relevant law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Authority or any person by way of registration fees, stamp or other duties—
 - (i) make such entries in the appropriate register as shall give effect to the transfer;
 - (ii) where appropriate, issue to the Authority a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

- (iii) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

Amendment of
the First Schedule
to No. 2 of 1998.
Amendment of
the Second
Schedule to No. 2
of 1998.

38. The First Schedule to the Principal Act is amended by deleting subsection 1(1).

39. The Second Schedule to the principal Act is amended by deleting paragraph 1.

Amendment of
the Fourth
Schedule to No. 2
of 1998.

40. The Fourth Schedule to the principal Act is amended—

- (a) by deleting paragraph 6.
- (b) in paragraph 9, by deleting the words “one half of the” and substituting therefor the word “six”;
- (c) inserting a new paragraph immediately after paragraph 11 as follows—

12. The Council shall submit to the Board a report on the discharge of its functions on a quarterly basis.

Amendment of
the Fifth Schedule
to No. 2 of 1998.

41. The Fifth Schedule to the principal Act is amended in—

- (a) paragraph (3) (a) by deleting the words “six months” and substituting therefor the words “twelve months”;
- (b) paragraph (3) (b) by deleting the words “six months” and substituting therefor the words “one year”.

MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by the of Cabinet Secretary for Information, Communication and Technology.

The principle object of this Bill is to provide part of the framework for the realization of the right of freedom of the media as provided for under Article 34 of the Constitution in relation to the oversight over broadcasting. This is cognisant of the fact that broadcasting is over the radio frequency spectrum, a resource that the State is bound to utilize for the benefit of the people of Kenya in keeping with the requirements of the Constitution of Kenya, 2010.

The Bill seeks to provide for the body that is free of control by government, political or commercial interests that will set broadcasting media standards, and regulate and monitor compliance with those standards. The Bill further seeks to provide for a complaints and regulatory oversight body mechanism over broadcasting media standards.

The Bill while recognizing the fact that every person has the right of freedom of expression underlies that only a few persons can be licenced to broadcast due to the limited resource that is the radio frequency spectrum.. The Bill also recognizes that Freedom of the media is a corollary to freedom of expression which is limited under Article 33 and 34 of the Constitution of Kenya 2010.

The Bill seeks to provide a broadcasting media standards framework for these and to regulate and monitor compliance with those standards in a converged environment of telecommunications and broadcasting technologies. The Bill therefore limits the freedom of expression and of the media to the extent of the setting up of a body to set broadcasting media standards and to regulate and monitor compliance with those standards.

The Bill seeks to amend the Kenya Information and Communications Act in order to among other things, align it with the Constitution of Kenya, 2010. In this respect the Bill seeks to provide for a statutory framework governing the communications sector in order to conform to, and

satisfy, the requirements of the Constitution of Kenya, 2010.

It is also proposed to make a raft of amendments to enable better regulation of the sector by providing for the handling of new regulatory challenges in the communications sector due to rapid technological changes. It is proposed to rename the Communications Commission of Kenya to Communications Authority of Kenya so as to better reflect the regulatory function of the current Commission.

The Bill seeks to provide a framework for dealing with issues relating to competition and consumer protection in the sector.

The Bill contains provision to rename the Communications Commission of Kenya to the Communications Authority of Kenya.

The Bill contains provision for the guiding principles to comply with the Constitution of Kenya .

The Bill contains provision for the anchoring of oversight over broadcasting content as provided for under Article 34 as limited by Article 24 of the Constitution.

The Bill contains provisions establishing the Communication Authority of Kenya, qualifications and appointment of the members of the Board and with additional functions to the Authority on broadcasting and other electronic media standards in accordance with Article 34(3) and Article 34 (5) the Constitution of Kenya, 2010.

This is not a Bill concerning county governments.

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

Dated the 22nd July, 2013.

ADEN DUALLE,
Leader of the Majority Party.

Section 2 of No. 2 of 1998. Which it is proposed to amend—

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

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

"advanced electronic signature" means an electronic signature which meets all the following requirements:

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

"agreement" includes decisions or practices;

"Board" means the Board of Directors constituted under section 6;

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

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

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

"broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin,

being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area by means of a telecommunication process and includes multi-channel distribution:

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

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

"Commission" means the Communications Commission of Kenya established under section 3;

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

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

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

"computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, software and

communication facilities which are connected or related as a system or network;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"financial year" means a financial year within the meaning of section 18;

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

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

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

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

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

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

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

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

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

"licence" means any licence issued under this Act;

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

"Minister" means the Minister for the time being responsible for communications;

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

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

(b) any program or data is added to its contents; or

- (c) any act occurs which impairs the normal operation of the computer system;

"parcel" means a postal article which is posted at the office of a licensee as a parcel or is received at another office;

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

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

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

"post" (i) when used with reference to telecommunication includes any pole, standard, stay, strut or other above-ground contrivance for installing, carrying, supporting or suspending a telecommunication line; and

(ii) when used with reference to the transmission of postal articles by post, means any system for the collection, despatch, conveyance, handling and delivery of postal articles;

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

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

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

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

"postal service" means any service by post;

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

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

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

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

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

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

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

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

"public postal licensee's installation or plant" means any installation or plant used for postal purposes belonging to or used by the public postal licensee;

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

- (i) is capable of being transmitted through a telecommunication system; or

- (ii) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence or, motion of any object or objects of any class;

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

"radio-communication station" means any telecommunication station capable of being used or being adapted for radio-communication;

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

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

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

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

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

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

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

telecommunication and radio-communication apparatus is or may be installed, supported, carried or suspended;

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

"telecommunication operator" means a telecommunication operator licensed under section 79;

"telecommunication service" means any of the following—

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

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

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) data;
- (iv) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound, visual images or data; or

- (v) signals serving for the activation or control of machinery or apparatus and includes any cable for the distribution of anything falling within (i) to (iv) above;

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

"vandalize" means to commit an act of vandalism—

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

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

(3) In this Act—

(a) a postal article shall be deemed to have been delivered—

- (i) to the addressee, if it is delivered into the private letter box of the addressee, leaving it at the house, or office of the addressee as set out thereon, or with his employee or agent or other persons authorised to receive it and, where the addressee is a guest or is resident at a hotel, hostel or lodgings, it is left with the proprietor or manager thereof or with his agent; or

- (ii) to a postal services operator licensed under section 51, if it is deposited into a posting box or handed over to an employee or agent of a postal services operator authorised to receive it;

(b) a postal article shall be deemed to be in the course of transmission by post from the time of its being delivered to the public postal licensee until the time of its being delivered to the addressee, or it is returned to the sender or otherwise disposed of under the provisions of this Act.

(d) save as otherwise agreed to between the originator and the addressee—

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

- (ii) if the addressee has a designated computer resource for the purpose of receiving an electronic record, receipt occurs at the time when the electronic record enters the designated computer resource; or
- (iii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; or
- (iv) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee;
- (v) an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business; and
- (vi) the provisions of subparagraph (v) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-paragraphs (ii) or (iii).

Section 5 of No. 2 of 1998. Which it is proposed to amend—

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.

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

Section 6 of No. 2 of 1998. Which it is proposed to amend—

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

- (a) a chairman who shall be appointed by the President;
- (b) the Director-General who shall be appointed by the Minister;

- (c) the Permanent Secretary in the ministry for the time being responsible for information and communications or his representative;
 - (d) the Permanent Secretary in the ministry for the time being responsible for finance or his representative;
 - (e) the Permanent Secretary in the ministry for the time being responsible for internal security or his representative;
 - (f) at least seven other persons, not being public officers, appointed by the Minister and of whom—
 - (i) at least one shall have knowledge or experience in matters relating to law;
 - (ii) at least one shall have knowledge or experience in postal services;
 - (iii) at least one shall have knowledge or experience in matters relating to broadcasting;
 - (iv) at least one shall have knowledge or experience in matters relating to radio communications;
 - (v) at least one shall have knowledge or experience in matters relating to information technology or computer science;
 - (vi) at least one shall have knowledge or experience in matters relating to telecommunications; and
 - (vii) at least one shall have knowledge or experience in consumer protection matters
- (2) The Minister shall have due regard to registered societies representing such matters in exercising his powers under this section.

Section 7 of No. 2 of 1998. Which it is proposed to amend—

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

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

Section 11 of No. 2 of 1998. Which it is proposed to amend—

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

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

Section 12 of No. 2 of 1998. Which it is proposed to amend—

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

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

Section 23 of No. 2 of 1998. which it is proposed to amend—

23. (1) The Commission shall, so far as is reasonably practicable, ensure there are provided throughout Kenya, such telecommunication services and in particular, emergency, public payphone and directory

information services, as are reasonably necessary to satisfy the public demand thereof.

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

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

Section 46A of No. 2 of 1998, which it is proposed to amend—

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

- (a) promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya;
- (b) facilitate and encourage the development of Kenyan programmes;
- (c) promote the observance at all times, of public interest obligations in all broadcasting categories;
- (d) promote diversity and plurality of views for a competitive marketplace of ideas;

- (e) ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;
- (f) protect the right to privacy of all persons; and
- (g) carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act.

Section 46D of No. 2 of 1998. which it is proposed to amend—

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

- (a) is a political party;
- (b) is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
- (c) is of unsound mind;
- (d) does not fulfill such other conditions as may be prescribed;
- (2) In considering applications for the grant of a broadcasting licence, the Commission shall have regard to—
 - (a) observance at all times of public interest obligations in all broadcasting categories
 - (b) diversity and plurality of views for a competitive marketplace of ideas;
 - (c) availability of radio frequency spectrum including the availability of such spectrum for future use;
 - (d) efficiency and economy in the provision of broadcasting services;
 - (e) demand for the proposed broadcasting service within the proposed broadcast area;
 - (f) expected technical quality of the proposed service, having regard to developments in broadcasting technology;
 - (g) suitability, capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
 - (h) financial means and business record, if any, of the applicant; and

- (i) any other relevant matter that the Commission may consider necessary.

Section 46H of No. 2 of 1998. which it is proposed to amend—

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

(3) Without prejudice to the generality of sub-section (1), the Commission shall—

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

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

Section 46J of No. 2 of 1998. which it is proposed to amend—

46J. The Commission may in accordance with this Act revoke a licence to broadcast where the licensee—

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

Section 48 of No. 2 of 1998. which it is proposed to amend—

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

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

made in respect of receiving, collecting, sending, despatching and delivery.

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

Section 50 of No. 2 of 1998. which it is proposed to amend—

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

Section 83A of No. 2 of 1998. which it is proposed to amend—

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

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

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

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

Section 83C of No. 2 of 1998. which it is proposed to amend—

83C. The functions of the Commission in relation to electronic transactions shall be to:

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

Section 83Q of No. 2 of 1998. which it is proposed to amend—

84Q. A licensee under this Act shall not engage in activities which have or are intended to or likely to have the effect of unfairly preventing, restricting or distorting competition where such act or omission is done in the course of, as a result of or in connection with any business activity relating to licensed services.

Section 83U of No. 2 of 1998. which it is proposed to amend—

84U. No licensee under this Act shall deny access or service to a customer except for delinquency of payment of dues or for any other just cause.

Section 83V of No. 2 of 1998. which it is proposed to amend—

83V. (1) Any person who causes a computer system to perform any function for the purpose of securing access to any program or data held in

any computer system, with intent to commit an offence under any law, shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

(2) For the purposes of this section, it is immaterial that—

- (a) the access referred to in subsection (1) is authorized or unauthorized;
- (b) the further offence to which this section applies is committed at the same time when the access is secured or at any other time.

Section 84K of No. 2 of 1998. which it is proposed to amend—

84K. (1) There shall be credited to the Fund—

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

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

Section 84L of No. 2 of 1998. which it is proposed to amend—

84L. Any person may make an application to the Board for consideration for the grant of a loan from the Fund in the prescribed form.

Section 84M of No. 2 of 1998. which it is proposed to amend—

84M. (1) The Board may—

- (a) accept or reject any application for a loan;

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

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

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

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

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

Section 84N of No. 2 of 1998. which it is proposed to amend—

84N. Where an applicant fails to make the repayments of instalments on the loan within the prescribed period, the Board may impose penalties for each month or part of the month that the repayments remain unpaid.

Section 84P of No. 2 of 1998. which it is proposed to amend—

84P. The Minister may, in consultation with the Commission, make regulations generally with respect to the administration of the Fund and without prejudice to the generality of the foregoing, with respect to—

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

Section 84S of No. 2 of 1998. which it is proposed to amend—

84S. (1) The Commission may, on its own motion or upon complaint, investigate any licensee whom it has reason to believe or is alleged to have

committed any act or omission, or to have engaged in a practice, in breach of fair competition or equal access.

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

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

Section 84T of No. 2 of 1998. which it is proposed to amend—

84T. (1) The Commission may, on its own motion, investigate any licensee who commits any act or omission in breach of fair competition.

(2) Any person having a complaint of a breach of fair competition against a licensee shall lodge a complaint to the Commission and the Commission shall, if it appears that a breach of fair competition has been

or is being committed, investigate the act and omission and give written notice to the licensee stating-

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

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

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

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

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

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

(7) The provisions of subsection (6) shall not in any way affect the right of any person to make and sustain any claim under any law in force

in Kenya for the act or omission which constitutes an offence under this Act or from being liable under that other written law to any punishment or penalty higher than that prescribed under this Act.

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

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

Section 84W of No. 2 of 1998. which it is proposed to amend—

84W. (1) The Minister may in consultation with the Commission make regulations with respect to competition issues.

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

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

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

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

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

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

Section 85A of No. 2 of 1998. which it is proposed to amend—

85A. (1) Co-location at sites and facilities may be done with prior agreement of licensees.

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

Section 90 of No. 2 of 1998. which it is proposed to amend—

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

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

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

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

Section 93 of No. 2 of 1998. which it is proposed to amend—

93. (1) No information with respect to any particular business which -

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

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

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

(a) for the purpose of facilitating the performance of any statutory functions of the Commission; or

(b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or

(c) for the purpose of any civil proceedings brought under or by virtue of this Act.

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

Section 102 of No. 2 of 1998. which it is proposed to amend—

102. (1) There shall be established an Appeals Tribunal for the purpose of arbitrating in cases where disputes arise between the parties

under this Act and such matters, as may be referred to it by the Minister which shall consist of -

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and
- (b) two other members who are persons possessing, in the opinion of the Minister, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or the Corporation.
- (c) two other members who shall be nominated by the Media Council established under the Media Act, 2007, and appointed by the Minister.

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

(3) The Minister may from time to time publish in the gazette 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.

Section 102A of No. 2 of 1998, which it is proposed to amend—

102A. (1) There is established a Council to be known as the Universal Service Advisory Council.

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

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

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

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

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

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

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

Section 103 of No. 2 of 1998. which it is proposed to amend—

103. (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.

The First Schedule of No. 2 of 1998. which it is proposed to amend—

FIRST SCHEDULE

(s. 8)

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

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

The Second Schedule of No. 2 of 1998. which it is proposed to amend—

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

The Fourth Schedule of No. 2 of 1998. which it is proposed to amend—

FOURTH SCHEDULE (sec. 102A)

**PROVISIONS AS TO THE UNIVERSAL SERVICE ADVISORY
COUNCIL**

Tenure of office

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

Appointment of members

2. The members of the Council shall be appointed at such times that their respective terms of office shall expire at different times.

Vacation of office

3. A member of the Council may:-

- (a) at any time by notice in writing addressed to the Minister, resign his office;
- (b) be removed from office by the Minister if the member—

- (i) has been absent from three consecutive meetings of the Council without permission from the chairman;
- (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with creditors; or
- (iii) is convicted of an offence involving dishonesty or fraud;
- (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings; or
- (v) is incapacitated by prolonged physical or mental illness; or
- (vi) fails to comply with the provisions of the Act relating to disclosure.

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 to this Schedule, the Council shall regulate its own procedure.

Meetings

6. Meetings of the Council shall be called by the Chairman 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 the Council shall consist of such matters as the Board may from time to time refer to the Council for consideration and such other matters as the Council, with the agreement of the Board, may receive.

Quorum.

9. A quorum at any meeting of the Council shall be one half of the members of the Council.

Resolutions.

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

Staff of the council.

11. The secretary and any other staff of the Council shall be members of the staff of the Commission appointed for the purpose by the Board.

The Fifth Schedule of No. 2 of 1998. which it is proposed to amend—

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 at the date of commencement of this Act provided that—

- (a) such parties shall be granted a period not exceeding six months during which they may continue to operate in respect of their existing delegated sub-domains; and
- (b) before the expiry of the six months or such longer period as the Minister may, by notice in the Gazette, specify period, such parties shall apply to the Commission to be licensed under this Act.

1

1

2

3

4

